

DEC 5 2000

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY CB

In the Matter of:

United States Fidelity and Guaranty Company,
NAIC #25887

Fidelity and Guaranty Insurance Underwriters, Inc.,
NAIC #25879

Respondents

) Docket No. 00A-194-INS

) **CONSENT ORDER**

Examiners for the Department of Insurance (the "Department") conducted a market conduct examination of United States Fidelity and Guaranty Company ("USFG") and Fidelity and Guaranty Insurance Underwriters, Inc ("FGIU"). These are referred to collectively as "Respondents." In the Report of the Examination, the Examiners have alleged that Respondents have violated A.R.S. §§ 20-157, 20-263, 20-357, 20-385, 20-400.01, 20-461, 20-1631, 20-1632.01, 20-1677, 23-906, 23-961, and A.A.C. R20-6-801(H)(1)(b).

Respondents wish to resolve this matter without formal proceedings, admit that the following Findings of Fact are true, and consent to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondents are authorized to transact property and casualty insurance, including workers' compensation, pursuant to Certificates of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a market conduct examination of Respondents, covering the time period from January 1, 1994 through September 27, 1996. The on-site examination was concluded on September

1 27, 1996. Based on the findings the Examiners prepared the "Report of Examination of
2 the Market Conduct Affairs of Respondents" dated September 27, 1996.

3 3. The Department previously conducted a market conduct examination of
4 Respondents. The on-site examination was concluded as of January 29, 1988. As a
5 result, a Consent Order (the "1988 Order"), was filed by the Director on May 19, 1988,
6 Docket No. 6687. The 1988 Order stated in part as follows:

7
8 1. Respondent[s] shall cease and desist from failing to include the
9 amount of applicable taxes and fees that would be required to purchase
10 comparable automobiles in its cash settlements of first party total loss
11 claims. . . .

12 3. Respondent[s] shall cease and desist from failing to adhere to
13 all requirements of the NCCI's [Schedule Rating] Plan in those companies
14 in which it has adopted the Plan.

15 4. Respondent[s] shall cease and desist from failing to document
16 the facts supporting adjustment made to the full manual premium
17 developed for risks in its commercial lines policies.

18
19 4. The Examiners reviewed 24 first party automobile total loss claims settled
20 by FGIU with loss dates from May 1, 1994 through August 11, 1996, and found that
21 FGIU failed to pay four claimants a total of \$157.55 for applicable taxes, license fees,
22 and other fees incident to transfer of evidence of ownership of a comparable
23 automobile.

24 5. The Examiners reviewed 158 personal automobile policies issued by
25 Respondents that had effective dates from January 1, 1994 through June 30, 1996 and
found as follows:

a. FGIU issued 89 policies which included the superseded 2/93 edition of
the Arizona Cancellation Endorsement rather than the currently filed 12/94 edition.

1 b. FGIU failed to use the correct language on Arizona Cancellation
2 Endorsements issued with all 158 policies.

3 c. FGIU applied an unfiled premium increase of five percent to the
4 physical damage component in rating 25 policies.

5 d. FGIU increased the premiums of eight policies as the result of
6 accidents, but did not notify the insureds of the reasons for the premium increases.

7 e. FGIU failed to provide evidence of the cancellation notices sent to 11 of
8 the 56 insureds whose policies were cancelled for nonpayment of premium.

9 f. FGIU terminated 45 policies for non-payment of premium without
10 sending notices of cancellation to the insureds on the effective dates of cancellation
11 after the seven-day grace period.

12 6. Workers' compensation ("WC") insurers are required by statute to belong
13 to a WC rating organization and to adhere to its rates unless the insurer has filed
14 deviations from these rates. Respondents are members of the National Council on
15 Compensation Insurance ("NCCI"), a duly licensed rating organization in Arizona. Any
16 reference in this Order to Respondents' filed rates and rules includes rates and rules
17 filed by the NCCI on Respondents' behalf.

18 7. The NCCI's Schedule Rating Plan ("Plan") was approved for use in
19 Arizona July 8, 1982 by the Director. Effective October 1, 1988, the Plan was amended
20 to require insurers to include within each workers compensation policy file a completed
21 schedule rating worksheet and loss prevention survey. An insurer may apply either the
22 schedule rating plan or a deviation from the rates filed by the NCCI, but not both.

23 FGIU adopted the Plan on September 2, 1982. Effective July 1, 1995, FGIU
24 withdrew from the Plan and adopted a 15% deviation. USFG adopted the Plan effective
25 January 20, 1988.

1 8. The Examiners reviewed 16 workers compensation policies issued by
2 Respondents with effective dates from February 2, 1994 to May 8, 1996, and found as
3 follows:

4 a. Respondents failed to include any documentation in support of the
5 schedule credits/debits applied to five policies (FGIU, 2; USFG, 3).

6 b. USFG changed schedule credits/debits from year to year on two
7 policies without documenting the change in risk characteristics.

8 c. USFG issued five policies where the risks were eligible for schedule
9 rating, without documenting that the risks had been considered for schedule rating.

10 d. Respondents issued six policies in which they failed to send copies
11 of the schedule rating worksheets to the NCCI (FGIU, 2; USFG, 4).

12 e. USFG applied different experience modifiers to two policies than
13 documented in policy files.

14 f. USFG failed to obtain loss control reports within 90 days of the
15 effective dates of two policies.

16 g. Respondents failed to notify the Industrial Commission of Arizona
17 ("ICA") of the issuance, renewal, cancellation, nonrenewal, or reinstatement of 13
18 policies (FGIU, 4; USFG, 9).

19 h. USFG excluded specific individuals from coverage under three
20 policies, but did not include signed right to rejection forms in the policy files.

21 i. Respondents failed to include the risk identification number on the
22 Policy Information Page of five files (FGIU, 2; USFG, 3).

23 j. FGIU failed to include the carrier identification number on the Policy
24 Information Page of two policy files.

1 k. USFG did not send notice of cancellation/nonrenewal to one
2 insured after the policy was cancelled/nonrenewed.

3 l. USFG rated one policy on the basis of rates other than those filed
4 with the Department. As a result, the insured was overcharged by \$25.00.

5 9. Respondents are members of the Insurance Services Office ("ISO"), a
6 property and casualty (P&C) rating organization duly licensed by the Department to file
7 rates on behalf of its members. ISO files rates on behalf of Respondents. Respondents
8 have filed with the Department various deviations from the ISO filings as well as having
9 filed independent filings of their own.

10 10. The Examiners reviewed 215 commercial package and commercial
11 automobile policies issued by Respondents which had effective dates from January 1,
12 1994 through June 30, 1996, and found as follows:

13 a. Respondents failed to include adequate documentation in support
14 of the schedule credits or debits given on 11 policies/coverage parts (USFG, 5; FGIU,
15 6).

16 b. Respondents failed to include adequate documentation in support
17 of the changes in schedule credits or debits from year to year on nine policies/coverage
18 parts (USFG, 4; FGIU, 5).

19 c. FGIU applied schedule credits to two policies for which the risks
20 were not eligible. As a result, the insureds were undercharged by a total of \$36.

21 d. Respondents issued four policies where schedule credits were
22 allowed in excess of the 25% maximum permitted by their filed rates and rules (FGIU, 2;
23 USFG, 2). As a result, the insureds were undercharged by a total of \$11,350.00.

1 e. USFG issued one policy without applying experience rating,
2 although the risk qualified for experience rating. As a result, the insured was
3 overcharged by \$2,068.

4 f. Respondents issued three policies in companies other than as
5 determined according to their underwriting guidelines (FGIU, 2; USFG, 1). As a result,
6 Respondents may have discriminated in favor of or against these insureds.

7 g. USFG issued one policy in its Business owners Program although
8 the risk was not eligible for that program.

9 h. FGIU failed to send notices of premium increase to one insured
10 whose rates were increased, at least 60 days in advance of the effective dates.

11 i. USFG reduced the premium of one policy in order to meet the
12 amount quoted by its agent. As a result, the insured was undercharged by \$134.

13 j. USFG failed to apply the package modifier determined according to
14 its filed rates and rules to one policy. As a result, the insured was overcharged by
15 \$35.00.

16 k. FGIU applied a deviation other than its filed deviation to one policy.
17 As a result, the insured was overcharged by \$269.00.

18 l. USFG classified four risks other than according to its filed rules. As
19 a result, one insured was undercharged by \$274.00. The Examiners were unable to
20 determine premium differences as to the other insureds.

21 m. USFG issued two policies rated other than on the basis of its filed
22 rates and rules. The Company was unable to provide evidence of how the premium
23 was developed. As a result, the insureds paid were undercharged by a total of \$229.00.
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1 n. USFG issued a policy for three terms using unfiled "a" rates. As a
2 result, the insured was undercharged for one policy term \$259 and overcharged for two
3 policy terms \$274.00.

4 o. Respondents issued two policies which were not rated for all
5 coverages or exposures (USFG,1; FGIU, 1). As a result, one insured was
6 undercharged by \$1,660.00. The Examiners were unable to determine the premium
7 difference for the other policy.

8 11. Respondents are members of the Surety Association of America ("SAA"),
9 a licensed rating bureau, and utilize rates and rules filed by SAA as well as their own
10 deviations from the SAA rates and rules. Respondents have also filed a \$100 minimum
11 premium for surety bonds, other than contract bonds.

12 12. The Examiners reviewed 2,200 surety bonds issued by USFG, and found
13 that USFG issued 67 bonds at rates other the rates filed by SAA on Respondents'
14 behalf. As a result, 15 insureds were overcharged by a total of \$3,681.

15 13. After the conclusion of this examination, USF&G and FGIU merged with
16 the St. Paul Insurance Cos. ("the St. Paul"). On October 1, 1999, the St. Paul sold its
17 personal lines operations, including the FGIU and USF&G personal lines policies to
18 Metropolitan Life Insurance Company ("Met Life").

19 14. The St. Paul has forwarded a copy of the sections of this examination,
20 related to the personal lines policies, to Met Life.

21 **CONCLUSIONS OF LAW**

22 1. FGIU violated A.A.C. R20-6-801(H)(1)(b), A.R.S. § 20-461(A)(6), and the
23 1988 Order by failing to pay first-party claimants for all applicable taxes, license fees,
24 and other fees incident to transfer of evidence of ownership of comparable automobiles.
25

1 2. FGIU and USFG violated A.R.S. § 20-462(A) by failing to pay interest on
2 claims that were not paid within 30 days of receipt of an acceptable proof of loss.

3 3. FGIU violated A.R.S. § 20-1631(C)(5) by issuing notices of cancellation
4 that did not include all language required by law.

5 4. FGIU violated A.R.S. § 20-385(A) by determining personal automobile
6 premiums other than according to their filed rates and rules.

7 5. FGIU violated A.R.S. § 20-263(A) by increasing the premium of
8 automobile policies as the result of accidents without documenting that the insureds
9 were substantially at fault.

10 6. FGIU violated A.R.S. § 20-157(A) by failing to provide evidence of the
11 cancellation notices in order to verify proof of mailing and compliance with the seven
12 day grace period pursuant to A.R.S. § 20-1632.01.

13 7. FGIU violated A.R.S. § 20-1632.01(B) by failing to send notices of
14 cancellation or non-renewal to personal auto insureds for non-payment of premium after
15 the seven-day grace period on the effective date of cancellation.

16 8. FGIU and USFG, violated A.R.S. § 20-400.01(B) and the 1988 Order by
17 making adjustments to full manual premium developed for workers' compensation
18 policies without adequate documentation in justification of the adjustments.

19 9. USFG violated A.R.S. § 20-400.01(A) by determining the premiums of
20 workers' compensation policies other than on the basis of its rates and rules filed
21 pursuant to A.R.S. § 20-357(A).

22 10. FGIU and USFG violated A.R.S. § 20-357(E) by failing to send copies of
23 schedule rating worksheets to the NCCI as required by the Schedule Rating Plan.
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1 11. USFG violated A.R.S. § 20-357(E) and the 1988 Order by failing to obtain
2 loss control reports within 90 days of the effective dates of policies, as required by the
3 Schedule Rating Plan.

4 12. FGIU and USFG violated A.R.S. § 23-961(F) by failing to notify the ICA of
5 policy issuance, renewal, cancellation, nonrenewal or reinstatement at least thirty days
6 prior to the effective date.

7 13. USFG violated A.R.S. § 20-400.01(D) and 23-906 by failing to obtain and
8 maintain copies of written notices by employees rejecting workers compensation
9 coverage.

10 14. FGIU and USFG violated A.R.S. § 20-357(E) by failing to include risk
11 identification numbers and carrier identification numbers on policy information pages.

12 15. USFG violated A.R.S. § 23-961(F) by failing to notify one insured of policy
13 cancellation/nonrenewal in writing.

14 16. USFG violated A.R.S. §§ 20-357(E) and 20-400.01(A) by rating one policy
15 on the basis of rates other than those filed with the Department.

16 17. USFG and FGIU violated A.R.S. § 20-400.01(B) and the 1988 Order by
17 making adjustments to full manual premium developed for commercial package and
18 commercial automobile policies without adequate documentation to justify the
19 adjustments.

20 18. USFG and FGIU violated A.R.S. § 20-400.01(A) by determining the
21 premiums of commercial package and commercial automobile policies, and surety
22 bonds, other than on the basis of its rates and rules filed pursuant to A.R.S. § 20-385

23 19. FGIU violated A.R.S. § 20-1677(A) by failing to send notice of premium
24 increase at least 60 days before policy expiration to a commercial package and
25 commercial auto insured.

1 20. USFG violated A.R.S. § 20-400.01(D) by failing to provide evidence of the
2 development of premiums to the Examiners.

3 21. Grounds exist for the entry of the following Order pursuant to A.R.S. §§
4 20-220, 20-400.01 and 20-456.

5 **ORDER**

6 **IT IS ORDERED THAT:**

7 1. Respondents shall cease and desist from the following acts:

8 a. Failing to include adequate documentation in support of schedule
9 credits/debits given workers' compensation insureds, including changes from year to
10 year;

11 b. Failing to document that workers' compensation risks eligible for
12 schedule rating have been so considered.

13 c. Failing to send copies of workers' compensation schedule rating
14 worksheets to the NCCI;

15 d. Failing to obtain loss control reports within 90 days of the effective
16 dates of policies, as required by the Schedule Rating Plan;

17 e. Failing to notify the ICA of workers' compensation policy issuance,
18 renewal, cancellation, nonrenewal, or reinstatement;

19 f. Failing to include signed right to rejection forms in workers'
20 compensation policies when certain employees are excluded from coverage;

21 g. Failing to include risk identification numbers and carrier
22 identification numbers on workers' compensation policy information pages;

23 h. Failing to notify insureds of policy cancellation/nonrenewal in
24 writing;

1 i. Rating and determining the premiums of commercial package,
2 business owners, commercial automobile policies, and surety bonds other than
3 pursuant to filed rates and rules;

4 j. Failing to include adequate documentation in support of schedule
5 credits/debits given commercial package, business owners and commercial automobile
6 insureds, including changes from year to year;

7 k. Failing to pay interest on all claims not paid within 30 days of
8 receipt of an acceptable proof of loss.

9 l. Failing to send notice of premium increase at least 60 days before
10 policy expiration;

11 m. Failing to provide evidence regarding development of premiums;

12 2. Within 90 days of filed date of this Order, Respondents shall submit to the
13 Arizona Department of Insurance, for approval, evidence that the following corrections
14 have been implemented and communicated to the appropriate personnel. Evidence of
15 corrective action and communication thereof includes but is not limited to memos,
16 bulletins, E-mails, correspondence, procedures manuals, print screens and training
17 materials.

18 a. Institute or modify procedures to ensure compliance with A.R.S. §
19 20-400.01(B) regarding the failure to include adequate documentation in support of
20 schedule credits/debits given workers' compensation insureds, including changes from
21 year to year.

22 b. Institute or modify procedures to ensure compliance with A.R.S. §
23 20-400.01(A) regarding the failure to document that workers' compensation risks eligible
24 for schedule rating have been so considered.

1 c. Institute or modify procedures to ensure compliance with A.R.S. §
2 20-357(E) regarding the failure to send copies of workers' compensation schedule rating
3 worksheets to the NCCI.

4 d. Institute or modify procedures to ensure compliance with A.R.S. §
5 20-357(E) regarding the failure to obtain loss control reports within 90 days of the
6 effective dates of policies, as required by the Schedule Rating Plan.

7 e. Institute or modify procedures to ensure compliance with A.R.S. §
8 23-961(F) regarding the failure to notify the ICA of workers' compensation policy
9 issuance, renewal, cancellation, nonrenewal, or reinstatement.

10 f. Institute or modify procedures to ensure compliance with A.R.S. §§
11 20-400.01(D) and 23-906 regarding the failure to include signed right to rejection forms
12 in workers' compensation policies when certain employees are excluded from coverage.

13 g. Institute or modify procedures to ensure compliance with A.R.S. §
14 20-357(E) regarding the failure to include risk identification numbers and carrier
15 identification numbers on workers' compensation policy information pages.

16 h. Institute or modify procedures to ensure compliance with A.R.S. §
17 23-961(F) regarding the failure to notify insureds of policy cancellation/nonrenewal in
18 writing.

19 i. Institute or modify procedures to ensure compliance with A.R.S. §§
20 20-357(E) and 20-400.01(A) regarding the issuance of commercial package, business
21 owners, and commercial automobile policies other than on the basis of filed rates and
22 rules.

23 j. Institute or modify procedures to ensure compliance with A.R.S. §
24 20-400.01(B) regarding the failure to include adequate documentation in support of
25

1 schedule credits/debits given commercial package, business owners, and commercial
2 automobile insureds, including changes from year to year.

3 k. Institute or modify procedures to ensure compliance with A.R.S. §
4 20-400.01(A) regarding the failure of determining the premiums of commercial package,
5 commercial automobile, and surety bonds insureds other than on the basis of its rates
6 and rules filed pursuant to A.R.S. § 20-385(A).

7 l. Institute or modify procedures to ensure compliance with A.R.S. §
8 20-1677(A) regarding the failure to send notice of premium increase at least 60 days
9 before policy expiration.

10 m. Institute or modify procedures to ensure compliance with A.R.S. §
11 20-400.01(D) regarding the failure to provide evidence of the development of premiums
12 to the Department.

13 n. Institute or modify procedures to ensure compliance with A.R.S. §
14 20-448(C) regarding unfairly discriminating between insureds by calculating premiums
15 of certain insureds differently than those of other insureds having substantially like
16 insuring, risk, and exposure factors, and expense elements.

17 3. Within 90 days of the filed date of this Order, Respondents shall refund
18 the amount of \$6,352.00, plus interest at the rate of 10% per annum from the date of the
19 overcharge to the date of the refund, to the insureds listed in Exhibit A of this Order.

20 4. Each payment made pursuant to paragraphs 3 and 4 above shall include
21 a letter to the insured in a form previously approved by the Director. A list of payments,
22 giving the name and address of each party paid, the amount of the payment, the
23 amount of interest paid, and the date of payment, shall be provided to the Department
24 within 90 days of the filed date of this Order.

1 5. The Department shall be permitted, through authorized representatives to
2 verify that Respondents has complied with all provisions of this Order.

3 6. Respondents shall pay civil penalties totaling \$15,000.00 to the Director
4 for deposit in the State General Fund in accordance with A.R.S. § 20-220(B), as follows:
5 FGIU, \$11,250; USF&G, \$3,750. These civil penalties shall be provided to the Market
6 Conduct Examinations Division of the Department prior to the filing of this Order.

7 7. The Report of Examination of the Market Conduct Affairs of Respondents
8 as of September 27, 1996, including the letter submitted in response to the Report of
9 Examination, shall be filed with the Department after the Director has filed this Order.

10 DATED at Phoenix, Arizona this 5th day of December, 2000.

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12 Charles R. Cohen
13 Director of Insurance
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CONSENT TO ORDER

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3 1. Respondents, United States Fidelity and Guaranty Company and Fidelity
4 and Guaranty Insurance Underwriters, Inc., have reviewed the foregoing Order.

5 2. Respondents admit the jurisdiction of the Director of Insurance, State of
6 Arizona, admit the foregoing Findings of Fact, and consent to the entry of the
7 Conclusions of Law and Order.

8 3. Respondents are aware of the right to a hearing, at which they may be
9 represented by counsel, present evidence, and cross-examine witnesses. Respondents
10 irrevocably waive the right to such notice and hearing and to any court appeals related
11 to this Order.

12 4. Respondents state that no promise of any kind or nature whatsoever was
13 made to them to induce them to enter into this Consent Order and that they have
14 entered into this Consent Order voluntarily.

15 5. Respondents acknowledge that the acceptance of this Order by the
16 Director of the Arizona Department of Insurance is solely for the purpose of settling this
17 matter and does not preclude any other agency or officer of this state or its subdivisions
18 or any other person from instituting proceedings, whether civil, criminal, or
19 administrative, as may be appropriate now or in the future.

20 6. Bruce Backberg, who holds the office of
21 Senior Vice President of Respondents, is authorized to enter into this Order
22 for them and on their behalf.

23 **UNITED STATES FIDELITY AND GUARANTY COMPANY**
24 **FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC.**

25 11/20/00
Date

By: 

EXHIBIT A
Worker's Compensation
United States Fidelity and Guaranty Company
 Violation of A.R.S. § 20-357(E) and 20-400.01(A)

Policy #	Overcharge
1910192958	\$25.00

Commercial Package
 Violation of A.R.S. § 20-385 and 20-400.01(A)

Fidelity and Guaranty Insurance Underwriters, Inc.

Policy #	Overcharge
IMP30064494902	\$269.00

United States Fidelity and Guaranty Company

Policy #	Overcharge
IMP30005319305	\$96.00
IMP30005319304	\$178.00
IMP30037940901	\$35.00
BSC30004695600	\$2,068.00
	<hr style="width: 50%; margin-left: auto; margin-right: 0;"/>
	\$2,377.00

Surety Bonds

United States Fidelity and Guaranty Company
 Violation of A.R.S. § 20-385(A) and 20-400.01(A)

policy #	Date	overcharge
36011010358934	08/10/94	\$13.00
36011010358934	08/10/95	\$13.00
43013025497955	01/31/95	\$400.00
43013025497955	01/31/96	\$400.00
01013010697880	03/14/94	\$50.00
41013010842935	12/13/94	\$295.00
41013010842935	12/13/95	\$295.00
72011010304913	07/01/94	\$300.00
72011010304913	07/01/95	\$300.00
56011011571928	11/20/94	\$340.00
72011010635875	07/17/94	\$450.00
72011010635875	07/17/95	\$450.00
52013010411892	04/12/94	\$125.00
52013010411892	04/12/95	\$125.00
52013010411892	04/12/96	\$125.00
REFUNDS DUE:		<hr style="width: 50%; margin-left: auto; margin-right: 0;"/>
		\$3,681.00
TOTAL REFUNDS DUE:		\$6,352.00

1 COPY of the foregoing mailed/delivered
2 This 5th day of December 2000, to:

3 Sara Begley
4 Deputy Director
5 Paul J. Hogan
6 Chief Market Conduct Examiner
7 Market Conduct Examinations Section

8 Mary Butterfield
9 Assistant Director
10 Consumer Affairs Division
11 Deloris E. Williamson
12 Assistant Director
13 Rates & Regulations Division

14 Steve Ferguson
15 Assistant Director
16 Financial Affairs Division

17 Alexandra Shafer
18 Assistant Director
19 Life and Health Division

20 Nancy Howse
21 Chief Financial Examiner

22 Terry L Cooper
23 Fraud Unit Chief

24 DEPARTMENT OF INSURANCE
25 2910 North 44th Street, Suite 210
Phoenix, AZ 85018

Emmanuel Munson-Regala, Senior Corporate Counsel
United States Fidelity and Guaranty Company
Fidelity and Guaranty Insurance Underwriters, Inc.
385 Washington Street
St. Paul, MN 55102-1396

