

MAR 10 1997

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY CB

In the Matter of)	Docket No. 97A-043
)	
FIDELITY AND DEPOSIT COMPANY OF MARYLAND)	CONSENT ORDER
)	
Respondent.)	
)	

Examiners for the Arizona Department of Insurance (the "Department") conducted a rate conduct examination of Fidelity and Deposit Company of Maryland, NAIC #39306, hereinafter referred to as "F&D" and as "Respondent". The Report of Examination of the Affairs of F&D (the "Report") alleges that Respondents have violated A.R.S. §§ 20-400.01 and 20-1677.

F&D wishes to resolve this matter without formal adjudicative proceedings and agrees to this Consent Order.

The Director enters the following Findings of Fact and Conclusions of Law, which are neither admitted nor denied by F&D, and the following Order.

FINDINGS OF FACT

1. F&D is authorized to transact property and casualty insurance (including workers' compensation) and surety insurance in Arizona, pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a rate examination of F&D. The on-site portion of the examination was concluded on November 4, 1994.

3. F&D is a member of the Insurance Services Office ("ISO") and the Surety Association of America ("SAA"), rating organizations duly licensed by the Department to file rates on

1 behalf of their members. ISO and SAA both file rates on behalf
2 of F&D. The rates and rules filed directly by F&D as well as
3 those filed on its behalf by ISO and SAA are hereinafter
4 referred to as F&D's "filed rates and rules".

5 4. The Examiners reviewed 287 of the 2,594 surety bonds
6 and 62 of the 1,000 commercial package ("CP") policies issued by
7 F&D with effective dates from April 1, 1989 through October 12,
8 1994. Of these, the Examiners issued a total of 66 criticisms
9 on 64 of the 359 files reviewed (18% error rate) because F&D:

10 a. failed to include any documentation in support of
11 the Schedule/IRPM credits/debits applied to six fidelity bonds.

12 b. failed to include adequate documentation in
13 support of the Schedule/IRPM credits/debits applied to three
14 surety bonds and five CP policies.

15 c. applied an unfiled 10% debit to all 20 fidelity
16 bonds reviewed (100%) in Class Code 872, Pension Plans. As a
17 result, the principals were overcharged by an aggregate of
18 \$311. It appeared to the Examiners that this was a general
19 business practice on all bonds of Class Code 872.

20 d. issued one fidelity bond with a \$25 unfiled flat
21 fee for a mid-term change to the bond. Company representatives
22 stated to the Examiners that this was a general business
23 practice on all mid-term changes to bonds of Class Code 872.

24 e. failed to waive an additional premium of \$15 on
25 one bond, although its filings required that all additional
26 premiums of \$15 or less be waived.

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1 f. failed to send a notice of premium increase to
2 three CP insureds at least 60 days in advance of the effective
3 date of the increase.

4 g. failed to use the filed class code in rating one
5 fidelity bond and its two renewals. As a result, the principal
6 paid a total of \$276 less than he would have paid had F&D
7 adhered to its filed rates and rules.

8 h. failed to apply the filed deductible credit on
9 one fidelity bond and its two renewals. As a result, the
10 principal paid a total of \$24 more than he would have paid had
11 F&D adhered to its filed rates and rules.

12 i. waived an additional premium of \$134 on one
13 contract bond although this was not permitted by F&D's filed
14 rates and rules. As a result, the principal paid a total of
15 \$134 less than he would have paid had F&D adhered to its filed
16 rates and rules.

17 j. failed to apply its minimum premiums on 17 surety
18 bonds for Class Code 213, Conservator or Guardian Bonds. As a
19 result, the principals paid a total of \$880 less than they would
20 have paid had F&D adhered to its filed rates and rules.

21 k. failed to document the development of rates on
22 three CP policies to enable the Examiners to determine whether
23 filed rates were used in determining policy premiums.

24 CONCLUSIONS OF LAW

25 1. By making adjustments to full manual premiums
26 developed for fidelity and surety bonds and CP policies without
27 adequate justification for the adjustments, Respondents violated
28 A.R.S. § 20-400.01(B). By calculating policy premiums on the

1 basis of these adjustments, Respondents violated A.R.S. §
2 20-400.01(A).

3 2. By calculating premiums of fidelity and surety bonds
4 and CP policies other other than on the basis of its rates and
5 rules filed pursuant to A.R.S. § 20-385(A), F&D violated A.R.S.
6 § 20-400.01(A).

7 3. By failing to send notices of premium increase to CP
8 insureds at least 60 days in advance of the effective date of
9 the increase, F&D violated A.R.S. § 20-1677(A).

10 4. By failing to document the development of rates on CP
11 policies to enable the Examiners to determine whether filed
12 rates were used in determining policy premiums, F&D violated
13 A.R.S. § 20-400.01(D).

14 5. Grounds exist for the entry of the provision of the
15 following Order.

16 ORDER

17 Respondents having admitted the jurisdiction of the
18 Director to enter this Order, having waived the Notice of
19 Hearing, having consented to the entry of this Order, and there
20 being no just reason for delay:

21 **IT IS HEREBY ORDERED THAT:**

22 1. F&D shall cease and desist from failing to document
23 the facts in support of adjustment to full manual premiums
24 developed for fidelity and surety bonds and CP policies; and
25 issuing fidelity and surety bonds and CP policies at premiums
26 other than those based upon its filed rates and rules.

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1 2. Within sixty (60) days of the filed date of this
2 Order, F&D shall submit written action plans to the Director as
3 follows:

4 a. to monitor Arizona issued policies to enforce
5 adherence to the provisions of its filed Schedule/IRPM Plans,
6 including the necessity of documenting individual risk
7 characteristics.

8 b. to instruct and train all underwriting personnel
9 in the documentation of rate development, and in the
10 development and the application of the minimum premium.

11 3. Within sixty (60) days of the filed date of this
12 Order, F&D shall file with the Director all rates and
13 supplementary rating information which deviate from rates and
14 rules filed by SAA and ISO on F&D's behalf, including the
15 following if they continue to be used by F&D:

16 a. F&D's rule for waiving premium adjustments of \$200
17 or less on contract performance and payment bonds;

18 b. F&D 's rule to charge a \$25 fee for all changes
19 to fidelity bonds in Class Code 872, Pension Plan.

20 c. F&D's 10% debit applied to fidelity bonds in
21 Class Code 872, Pension Plan.

22 4. Within 60 days of the filed date of this Order, F&D
23 shall refund premium overcharges, plus interest at the rate of
24 ten percent per annum from the date of each overcharge, to the
25 following principals:

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	Bond/Pol. #	No. of Years	Total Due
1			
2	08908396	6	\$ 76.
	09547541	3	24.
3	09896942	1	25.
	09969816	4	65.
4	09969861	5	135.
	09970451	5	50.
5	6 Principals	25	\$375.

5. Within 60 days of the filed date of this Order, F&D shall conduct a self-audit of all bonds with Class Code 872, Pension Plan, effective during the time frame covered by the Examination, to determine whether the principals were charged unfiled fees or premiums based upon unfiled rates, and return all such overcharges to the principals with interest at the rate of ten percent per annum from the date of each overcharge.

6. All payments referenced in Paragraphs 4 and 5 above shall be accompanied by a letter acceptable to the Director. A list of payments, and a detailed report of the self-audit, giving the name and address of each party, the amount of each payment, the amount of interest paid, and the date of payment, shall be furnished to the Market Conduct Examination Division of the Department within 75 days of the filed date of this Order.


7. The Department shall be permitted, through authorized representatives, to verify that Respondents have fully complied with all requirements of this Order.

8. Respondents shall pay a civil penalty of \$5,000 to the Director for remission to the State Treasurer for deposit in the State General Fund in accordance with A.R.S. §20-220(B). The civil penalty shall be provided to the Market Conduct Examination Division of the Department on or before February 10, 1997.

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9. The November 4, 1994 Report of Examination, and the objections to the Report filed by Respondents, shall be filed with the Department after issuance of this Order.

DATED at Phoenix, Arizona this 10 day of March, 1997.



John A. Greene
Director of Insurance

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CONSENT TO ORDER

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1. Respondent, Fidelity and Deposit Company of Maryland, has reviewed the attached Consent Order.

2. Respondent is aware of its right to a hearing at which hearing it may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived its right both to demand a public hearing and to seek judicial review of this Order.

3. Respondent admits the jurisdiction of the Arizona Department of Insurance and the Director of the Arizona Department of Insurance, and consents to the entry of this Order.

4. Respondent states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

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

6. James I. Keenan, Jr., who holds the office of Vice President, General Counsel & Secretary of Respondent, is authorized to enter into this Order for and on its behalf.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

February 25, 1997

(Date)

By James I. Keenan Jr.

1 COPY of the foregoing mailed/delivered
2 this 10th day of March , 1997, to:

3 Charles R. Cohen
4 Deputy Director
5 Gregory Y. Harris
6 Executive Assistant Director
7 Erin H. Klug
8 Chief Market Conduct Examiner
9 Mary Butterfield
10 Assistant Director
11 Life & Health Division
12 Deloris E. Williamson
13 Assistant Director
14 Rates & Regulations Division
15 Gary Torticill
16 Assistant Director and Chief Financial Examiner
17 Corporate & Financial Affairs Division
18 Cathy O'Neil
19 Assistant Director
20 Consumer Services Division
21 John Gagne
22 Assistant Director
23 Investigations Division
24 Terry L. Cooper
25 Fraud Unit Chief
26 Maureen Catalioto
27 Supervisor
28 Licensing Section

16 DEPARTMENT OF INSURANCE
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18 Phoenix, AZ 85018

18 James I. Keenan, Jr.
19 Vice President, General Counsel and Corporate Secretary
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21 *Curvey Burton*
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