

STATE OF NORTH DAKOTA
BEFORE THE INSURANCE COMMISSIONER

In the Matter of)	
)	
American Family Mutual Insurance)	CONSENT ORDER
Company,)	
NAIC 19275, FEIN 39-0273710,)	FILE NO. CO-09-234
)	
Respondent.)	

Insurance Commissioner Adam Hamm (hereinafter "Commissioner") has determined as follows:

1. The Commissioner has authority in this matter pursuant to N.D.C.C. § 26.1-01-03. The Commissioner has jurisdiction over the Respondent and the subject matter of this Consent Order, and this Consent Order is made in the public interest.

2. American Family Mutual Insurance Company, FEIN 39-0273710, NAIC 19275 (hereinafter "Respondent"), is an insurance company incorporated under the laws of the State of Wisconsin and has been duly authorized to do business in North Dakota since 1940.

3. On April 20, 1988, the Commissioner issued Bulletin 88-3 which described amendments made by the 50th North Dakota Legislative Assembly to the coordination of benefits provisions of state law found at N.D.C.C. § 26.1-41-13(3). That amendment gave no-fault automobile insurance carriers the right to coordinate no-fault medical benefits with health insurers. The bulletin summarized the requirements of the law as they relate to the coordination of benefits paid for economic loss incurred as a result of

accidental bodily injury sustained in automobile accidents. It explained that health insurers are the primary insurance carrier after the first \$5,000 [now \$10,000] in personal injury protection benefits have been paid by a no-fault automobile insurance carrier. However, the bulletin stated no-fault automobile insurance carriers must file amendments to their policies with the Insurance Department to take advantage of this permissible coordination of benefits provision.

4. In 1991, the North Dakota Legislative Assembly amended N.D.C.C. § 26.1-41-13 to remove any requirement of no-fault automobile insurance carriers to provide persons who purchase no-fault benefits from it with an equitable reduction or savings in the direct or indirect cost of the benefits. This requirement had become a part of the law by the 1987 amendment. The Commissioner's position is that this 1991 amendment did not eliminate the requirement that a no-fault insurance carrier file amendments to their policies to take advantage of permissible coordination of benefits; Respondent's position has been that this 1991 amendment removed the need to obtain the Commissioner's approval of a coordination of benefits plan.

5. The Respondent, believing it had authority to coordinate no-fault benefits with health insurers, did not receive approval from the Commissioner for its coordination of benefits plan; nor file with the Insurance Department a form that includes a coordination of benefits provision in its automobile insurance contracts.

6. On December 29, 2008, the Commissioner learned that the Respondent had been following a coordination of benefits practice pursuant to N.D.C.C. § 26.1-41-13 despite having not previously obtained approval from the Commissioner, nor any express language in its automobile insurance contracts that would allow such a

practice.

7. The Commissioner is of the opinion that (a) this practice violated the requirement that no insurance policy, contract, or agreement may be issued or delivered in this state until the form of that policy, contract, or agreement has been filed with and approved by the Commissioner in contravention of N.D.C.C. § 26.1-30-19(1); (b) this practice violated the requirement that no coordination of benefits plan may be used until the Commissioner approves such plan which was in contravention of N.D.C.C. § 26.1-41-13(3); (c) this practice did not constitute payment by the insurer of the uncontested claim as required by N.D.C.C. § 26.1-41-09; and (d) this practice was not a fair and equitable settlement practice which is in contravention of N.D.C.C. § 26.1-04-03(9).

8. Respondent, with its attorneys, met with the Department and Commissioner to clarify its coordination of benefits position, and to assure compliance in the future with the law as interpreted by the Commissioner.

9. Respondent, in order to reach an amicable resolution consistent with the best interests of its policyholders, has agreed to file an amended endorsement for approval of its coordination of benefits practice. The Commissioner agrees to withdraw the previous Cease and Desist Order and allow Respondent to coordinate medical benefits in its automobile no-fault insurance contracts upon approval by the Insurance Department of an appropriate form providing for coordination of benefits.

10. Respondent denies the allegations but acknowledges that these allegations, if proven to be true, may constitute grounds for the Commissioner to impose a civil penalty. Respondent and the Commissioner have agreed to an informal disposition of this matter without further administrative proceedings as provided by

N.D.C.C. § 28-32-22, and enter into the following Consent Order.

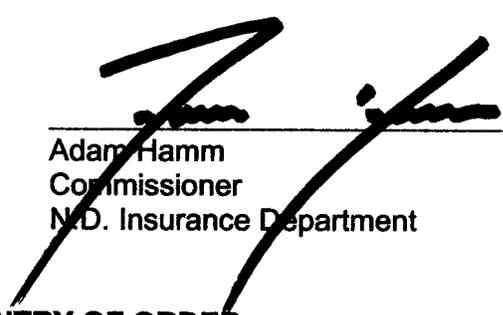
BY AGREEMENT OF THE PARTIES, IT IS ORDERED THAT:

1. Upon approval by the Insurance Department of an appropriate form providing for coordination of benefits, Respondent may coordinate benefits in its automobile insurance coverage pursuant to N.D.C.C. § 26.1-41-13.

2. Respondent shall, in lieu of other disciplinary action against its Certificate of Authority, pay an administrative penalty of \$5,000 to the State of North Dakota within 30 days of the execution of this Order. Payment must be mailed to: North Dakota Insurance Department, 600 East Boulevard Avenue, Dept. 401, Bismarck ND 58505-0320.

3. The use of this Consent Order for competitive purposes by an insurance producer or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED this 24th day of April, 2009.



Adam Hamm
Commissioner
N.D. Insurance Department

CONSENT TO ENTRY OF ORDER

The undersigned, _____, on behalf of **American Family Mutual Insurance Company** (hereinafter "the Company") states that the undersigned has read the foregoing Consent Order and is authorized by the Company

to consent to the entry of this order. The undersigned, on behalf of the Company, fully understands the contents and effect of the Consent Order. The Company has been advised of its right to be represented by legal counsel, to request a hearing in this matter, to present evidence and arguments to the Commissioner, and of its right to appeal from an adverse determination after hearing. That by the signing of this Consent to Entry of Order, the undersigned waives those rights in their entirety and consents to the entry of this Consent Order by the Commissioner of Insurance and agrees to be bound by it. It is further expressly understood that this Consent Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either express or implied.

DATED this 22nd day of April, 2009.

American Family Mutual Insurance Company

By:

Title:

[Signature]
Compliance Assessor

Subscribed and sworn to before me

this 22ND day of APRIL, 2009.

[Signature]
Notary Public

My Commission Expires: IS PERMANENT