



STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON MARKET CONDUCT EXAMINATION
OF THE
FIRST SUNAMERICA LIFE INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2007

DATE OF REPORT:

JANUARY 30, 2009

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REPORT ON MARKET CONDUCT EXAMINATION
OF THE
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AS OF DECEMBER 31, 2007

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EXAMINER:

MARC A. TSE

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wrynn
Superintendent

December 1, 2010

Honorable James J. Wrynn
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 30296, dated February 4th 2009, and annexed hereto, an examination has been made into the market conduct activities of the First SunAmerica Life Insurance Company hereinafter referred to as "the Company," at its office located at 3600 Route 66, Neptune, NJ 07753.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to ascertain that all disclosure statements were complete and accurate. Some disclosure statements either did not indicate the surrender charge percentages for the replacing policy or did not indicate any advantage of retaining the replaced policy. (See Item 4A of this report)
- The Company violated Section 403(d) of the New York Insurance Law and Section 86.4 of Department Regulation No. 95 by utilizing claim forms without the required frauds warning statement. (See Item 4C of this report)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2003 through December 31, 2007. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2007 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a review of: market conduct activities and utilized the National Association of Insurance Commissioners' Market Regulation Handbook or such other examination procedures, as deemed appropriate, in such review.

This report on examination is confined to comments on matters which involve departure from laws, regulations or rules, or which require explanation or description.

The examiner reviewed the corrective actions taken by the Company with respect to the market conduct violations, recommendations and/or comments contained in the prior report on examination. The results of the examiner's review are contained in item 5 of this report.

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of New York on December 5, 1978 under the name Capitol Life Insurance Company of New York. The Company was licensed and commenced business on September 30, 1980. The Company's present name was adopted on March 20, 1989.

Effective October 31, 1997, an affiliate, John Alden Life Insurance Company of New York merged with and into the Company.

Effective January 1, 1999, the Company's then ultimate parent company, SunAmerica Inc., was acquired by AIG in a stock for stock transaction.

B. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business in three states, namely New York, Nebraska and New Mexico. In 2007, 97.3% of life premiums, accident and health premiums, annuity considerations and deposit type funds, were received from New York. Policies are written on a non-participating basis. The Company's main product line is individual deferred annuities.

The Company's agency operations are conducted on a general agency and brokerage basis.

4. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

Section 51.6(b) of Department Regulation No. 60 states, in part:
"Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the "Disclosure Statement," and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part . . ."

The examiner reviewed a sample of 43 annuity replacements. The review of the sample revealed the following:

1. In 13 (30.2%) of the 43 Disclosure Statements, the agent failed to indicate the surrender charge percentages of the new policy (question 4 of the agent's statement).
2. In five cases (11.6%), the agent indicated "none" where the Disclosure Statement requires the advantages of retaining the existing coverage to be listed, despite the fact that the existing coverage had no surrender charge while the proposed coverage did have a surrender charge.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to ascertain that all disclosure statements were complete and accurate.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

Based upon the sample reviewed, no significant findings were noted.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Section 403(d) of the New York Insurance Law states, in part:

“All applications for commercial insurance, individual, group or blanket accident and health insurance and all claim forms...shall contain a notice in a form approved by the superintendent that clearly states in substance the following:

‘Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.’”

Pursuant to Section 403(d) of the New York Insurance Law, the Superintendent promulgated Section 86.4 of Department Regulation No. 95, which states in part:

“(a) . . . all claim forms for insurance, and all applications for commercial insurance and accident and health insurance, provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement:

‘Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.’ . . .

(e) . . . insurers may use substantially similar warning statements provided such warning statements are submitted to the Insurance Frauds Bureau for prior approval.”

A review of 64 death claim files revealed 61 (95.3%) instances where the frauds warning statement on the claim form was different from the language required under Section 403(d) of the New York Insurance Law and Section 86.4 of Department Regulation No. 95; the disparate language was not submitted to the Insurance Frauds Bureau for prior approval. The remaining death claim forms reviewed did not contain any fraud warning statement required by Section 403(d).

The Company violated Section 403(d) of the New York Insurance Law and Section 86.4 of Department Regulation No. 95 by utilizing claim forms which either did not contain the prescribed fraud language or contained a frauds warning statement which varied from the language prescribed and such language had not been approved for use by the Insurance Frauds Bureau.

The examiner recommends that the Company utilize claim forms with the required frauds warning language and if the Company uses language which varies from the required frauds warning language, that the Company obtains prior approval from the Frauds Bureau before the use of such language.

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the market conduct violations and recommendations contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Company exercise greater care to ensure that all applications are filled out properly to indicate whether the applicant is replacing an existing policy or contract.</p> <p>The Examiners review of new policies and contracts did not reveal instances whereby the Company failed to indicate whether the applicant is replacing an existing policy or contract.</p>
B	<p>The Company violated Sections 2112(a) and 2114(a)(1) of the New York Insurance Law for not appointing agents to represent the Company and for paying commissions to agents who were not appointed with the Company.</p> <p>The Examiner's review of agent's compensation did not reveal instances whereby the Company paid commissions to agents that were not appointed.</p>
C	<p>The Company violated Section 3227(b) of the New York Insurance Law when it did not pay interest on surrenders.</p> <p>The Examiners' review of a sample of surrenders revealed that the Company paid interest on surrenders in accordance with Section 3227(b) of the New York Insurance Law.</p>
D	<p>The Company agreed to review all surrenders made during the past five years and pay interest, where appropriate.</p> <p>The Company complied with the recommendation.</p>

6. SUMMARY AND CONCLUSIONS

Following are the recommendation and violations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company Violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to ascertain that all disclosure statements were complete and accurate.	5
B	The Company violated Section 403(d) of the New York Insurance Law and Section 86.4 of Department Regulation No. 95 by utilizing claim forms without the required frauds warning statement.	7
C	The examiner recommends that the Company utilize claim forms with the required frauds warning language and if the Company uses language which varies from the required frauds warning language, that the Company obtains prior approval from the Frauds Bureau before the use of such language.	7

Respectfully submitted,

_____/s/_____
Marc A. Tse
Associate Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

Marc A. Tse, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

_____/s/_____
Marc A. Tse

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 30296

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, ERIC R. DINALLO, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

MARC TSE

as a proper person to examine into the affairs of the

FIRST SUNAMERICA LIFE INSURANCE COMPANY

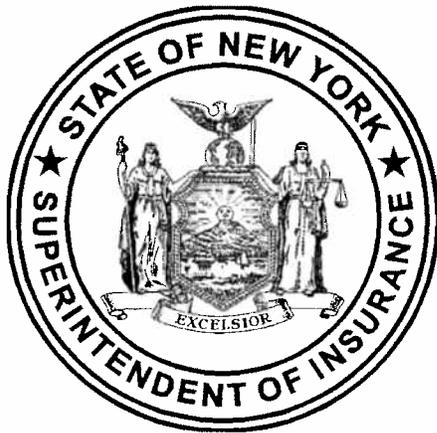
and to make a report to me in writing of the condition of the said

COMPANY

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name
and affixed the official Seal of the Department
at the City of New York

this 4th day of February, 2009



ERIC R. DINALLO
Superintendent of Insurance

Eric Dinallo
Superintendent