

STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF
THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA
REGARDING RESPONSE TO
SUPPLEMENT NO. 1 TO CIRCULAR LETTER NO. 19 (2000)

DATE OF REPORT:

DECEMBER 21, 2001

EXAMINER:

CLIFFORD CHANCE ROGERS & WELLS LLP

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

December 21, 2001

Honorable Gregory V. Serio
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 21729, dated April 13, 2001 and annexed hereto, a limited-scope examination has been made into the condition and affairs of The Guardian Life Insurance Company of America, hereinafter referred to as "Guardian," at its home office located at 7 Hanover Square, New York, New York. Included in this examination was an examination of the life insurance business of Berkshire Life Insurance Company, hereinafter referred to as "Berkshire," which was intended to be (and subsequently was) transferred to Guardian upon regulatory approval of Guardian's then-pending merger with Berkshire. Berkshire's business was examined at its home office located at 700 South Street, Pittsfield, Massachusetts.

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. SUPPLEMENT NO. 1 TO CIRCULAR LETTER NO. 19 (2000)

Supplement No. 1 to Circular Letter No. 19 (2000) (the "Supplement"), issued by the Department on June 22, 2000, notified all licensed life insurers and fraternal benefit societies that the Department was investigating allegations of race-based underwriting of life insurance by its licensees. The Supplement defined race-based underwriting as including, but not limited to, one or more of the following practices based solely on an insured's race, color, creed or national origin: refusing to insure; refusing to continue to insure or limiting the amount, extent or kind of coverage available; charging or collecting higher premiums or rates; making or requiring any rebate upon the amount paid; assigning substandard risk classifications; crediting or providing lower dividends, policy benefits or nonforfeiture values; making any distinction as to policy terms or conditions; imposing greater underwriting requirements (medical vs. non-medical); and fixing any fees or commissions in a manner as to encourage or discourage the writing or renewing of a specific type of policy.

The Supplement directed, pursuant to Section 308 of the New York Insurance Law, each domestic and foreign life insurer and fraternal benefit society to review its past and current underwriting practices regarding race-based underwriting and to report its findings to the Department no later than August 15, 2000. The Supplement further directed that all relevant documents, including, but not limited to, rate charts, mortality tables, labor negotiation documents with distribution force unions, agent and broker contracts, compensation schedules, underwriting and agent manuals, applications, policy form filings, board of directors (and committee) minutes, and internal memoranda be included in the insurer's review.

2. GUARDIAN'S AND BERKSHIRE'S RESPONSES TO THE SUPPLEMENT

In accordance with the requirements of the Supplement, by letter to the Department dated August 14, 2000 (Exhibit A), Guardian reported its findings regarding past and current race-based underwriting practices. In response to the Department's request for additional information dated September 27, 2000 (Exhibit B), Guardian supplemented its August 14, 2000 response with letters dated October 26, 2000 and November 6, 2000 (Exhibits C and D).

By letter to the Department dated July 31, 2000 (Exhibit E), Berkshire reported its findings regarding past and current race-based underwriting practices. In response to

the Department's requests for additional information dated October 16, 2000 and November 28, 2000 (Exhibits F and H), Berkshire supplemented its July 31, 2000 response with letters dated November 2, 2000 and December 8, 2000 (Exhibits G and I).

A. Guardian's and Berkshire's Investigations in Response to the Supplement

Guardian reported in its letters to the Department dated October 26, 2000, and November 6, 2000, and in its response to the Department's request for documents dated March 2, 2001, that its investigation consisted of a review of the following documents for the date ranges indicated:

- underwriting manuals, rate books and agency manuals 1874 – 1985;
- selected board minutes 1890 – 1990;
- selected insurance committee minutes 1887 – 1990; and
- various policy application forms, policy forms, correspondence and product development files 1896 – present.

Berkshire reported that its investigation consisted of three primary components: (i) a review of certain Berkshire documents to identify race-based underwriting policies, (ii) a review and analysis of certain life insurance policy application files, and (iii) conversations with certain long-term employees to determine whether they knew of any race-based underwriting policies or practices at Berkshire.

Berkshire reported in its December 8, 2000 letter to the Department that the following documents for the date ranges indicated were included in its review:

- selected rate manuals and rate charts 1886 – present;
- product manuals 1910 – present;
- underwriting guidelines and manuals 1933 – 1970;
- agent and broker contracts and compensation schedules 1945 – present;
- historical product development materials 1934 – 1939 and 1949 – 1969;
- reinsurance records 1931 – 1987;
- board minutes and finance committee meeting minutes 1923 – present;
- various state filings 1917 – present; and
- mortality tables 1933 – 1980.

Berkshire also examined a sampling of policy application files dating from the 1920s through the 1960s.

B. Findings Reported by Guardian and by Berkshire

Guardian reported to the Department that, to the best of its knowledge and belief, Guardian never engaged in "unlawful discrimination against persons based solely on race, creed, color, or national origin." Guardian did, however, disclose that a 1943 Agent's Manual contains a section entitled "Racial Origin," which states as follows:

Racial Origin

Insurance Experience shows that foreign-born applicants raised under conditions less favorable than those prevailing in America generally, are much less desirable for Waiver and Annuity Coverage than those whose ancestors have lived in the United States for at least one generation. Environment and standards of living are important factors in determining the desirability of foreign-born risks for Waiver and Annuity Coverage.

Waiver and Annuity benefits are not granted to applicants who have been in the United States less than two years, or those who have been here for a longer period of time when there is any doubt as to their remaining in this country.

(Emphasis in original)

Berkshire reported to the Department that, to the best of its knowledge and belief, Berkshire never engaged in "race-based underwriting practices based solely on an insured's race, color, creed or national origin."

3. SCOPE OF EXAMINATION

A limited-scope examination was made into the affairs of Guardian and Berkshire solely with respect to race-based underwriting policies and practices.

Guardian was incorporated as a stock life insurance company under the laws of the State of New York in 1860 as The Germania Life Insurance Company. In 1918, its present name was adopted. Effective January 1, 1946, Guardian became a mutual company. Berkshire was incorporated as a mutual life insurance company under the laws of the Commonwealth of Massachusetts in 1851 as Berkshire County Mutual Life Insurance Company. In 1855, the name Berkshire Life Insurance Company was adopted. On July 2, 2001, Berkshire was merged with and into Guardian pursuant to Section 7105 of the New York Insurance Law.

The scope of the examination included a review of life insurance business directly issued by Guardian and any life insurance business acquired by Guardian as the result of an assumption, merger, acquisition, consolidation or purchase. Thus, a review of Berkshire's life insurance business acquired by Guardian was included in the scope of the examination.

The business of Guardian Insurance and Annuity Company, Family Service Life Insurance Company and Park Avenue Life Insurance Company, all of which was referenced in Guardian's responses to the Supplement, was not included in the scope of examination because such business was not directly issued or acquired by Guardian. The business of Guardian Insurance and Annuity Company, a New York domiciled subsidiary of Guardian, incorporated in 1986, also was excluded from review because of the low probability (based upon the characteristics of the business) that it would have been subjected to race-based underwriting practices.

The scope of the examination included a review and analysis of the documents reviewed by Guardian and Berkshire in their internal investigations, as well as additional documents not reviewed by the companies. The examiners' review included, but was not limited to, the following significant materials:

- (a) all available Guardian and Berkshire rate books, Agent's Manuals, Life Manuals and Medical Examiner Manuals ranging in date for Guardian from 1875 through 1968, and for Berkshire from 1869 through 1970;
- (b) all available miscellaneous Guardian underwriting memoranda ranging in date from 1938 through 1955;
- (c) selected Guardian board and committee minutes, including various committee reports to the board of directors, ranging in date from 1860 through 1970, and Berkshire board minutes from 1868 through 1949;
- (d) all available pre-1970 Berkshire agent contract forms ranging in date from 1854 through 1963;
- (e) all available Guardian circular letters (written communications to managers, cashiers and/or agents) ranging in date from 1860 through 1970;
- (f) documents from selected Guardian executive officers' archives ranging in date from 1901 through 1919, and 1952 through 1953;
- (g) all available materials documenting Guardian's history dating from 1875 through 1960;
- (h) selected company publications of both Guardian and Berkshire, including a sample of monthly field publications;

- (i) all available Berkshire form filings and related correspondence with State Departments of Insurance from 1917 through 1970;
- (j) all available New York State Insurance Department examination reports on Guardian ranging in date from 1878 to 1970; and,
- (k) selected reference materials available from public sources.

The examination also included a review and analysis of Guardian and Berkshire policy application files. Policy application files reviewed in Berkshire's internal investigation were not separately reviewed by the examiners because Berkshire was unable to identify the particular application files it reviewed. Policy application files were selected for the examiners' review by querying Guardian's and Berkshire's databases using automated techniques based on criteria designed by the Department to enhance the likelihood of identifying minority policyholders. The Department also performed data analysis of both companies' in-force files to detect patterns of issuance that may indicate race-based underwriting.

In addition to the review of Guardian and Berkshire documents and policy application files, the examiners conducted meetings with Guardian and Berkshire employees responsible for key aspects of both companies' internal investigations, and interviewed several current and former long-term agents and underwriters of each company.

Certain documentation pertaining to Guardian and Berkshire policies and practices during the relevant time period had been discarded in accordance with each company's normal record retention policies and consistent with regulatory retention requirements, and consequently was unavailable for the examiners' review.

This report on examination is confined to comments on those matters which involve departure from laws, regulations or rules, or which, in the Department's discretion, otherwise require explanation or description.

4. EXAMINATION FINDINGS

Set forth below are the findings rendered by the examination, divided into two parts: (A) findings from the examiners' document review and analysis; and (B) findings from the examiners' review and analysis of policy application files.

A. Findings from the Review of Company Documents

The following race-based underwriting policies were evidenced in the written records of Guardian and Berkshire.

(1) Charging Different Premiums

The Occupational Ratings section of Berkshire rate books dated 1933 and 1936 contain a textual entry providing that: "The ratings given are for Caucasian male risks, unless it is otherwise stated The race of the applicant will sometimes modify the rating." The occupational rating schedules following the aforementioned textual entry indicate that "Caucasian" railroad porters were eligible for life insurance coverage at 137½% of standard rate. For "Others" (i.e., railroad porters of other races) the schedule instructs the agent or underwriter to "[a]dd to the above rating the rating for race." Although the textual entry is not repeated in subsequent Berkshire rate books, the entry pertaining to railroad porters in the occupational rating schedules continues to appear in 1938 and 1944 rate books. Neither the textual entry nor the schedule entry appears in a 1948 rate book. The examiners did not identify any other document explaining or referring to "the rating for race," and Berkshire was unable to provide the examiners with an explanation of this phrase.

Berkshire's written policy was contrary to then-effective Section 90 of the New York Insurance Law, a predecessor statute to the current Section 2606.¹ Section 90 provided that: "No life insurance corporation doing business within this state shall make any distinction or discrimination between white persons and colored persons, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons" Although Berkshire's written policy was contrary to the language of Section 90, the examiners identified no current or past policyholder who was affected by that policy.

(2) Limiting Policy Benefits Based on National Origin

Guardian Manuals from the 1930s through the 1960s include written policies limiting the benefits available to foreign-born applicants who resided in the United States for less than one or two years. Certain of those written policies predate the adoption of statutory provisions prohibiting such policies.

¹ Section 90 was in effect from 1892 through 1939, at which time it was recodified (with minor amendments) as Section 209(3). Section 209(3) was in effect until its recodification as Section 40(10) in 1961. In 1984, Section 40(10) was amended and recodified as Section 2606.

As of February 12, 1960, however, Section 209(3) of the New York Insurance Law (a predecessor to Section 2606) was amended to prohibit discrimination based on "national origin," which includes a person's country of birth. That amended provision provided, in part, that:

No life insurance company doing business in this state . . . shall reject any application for a policy of life insurance issued and sold by it, or refuse to issue such policy after appropriate application therefor . . . solely by reason of the applicant's race, creed, color or national origin.

Guardian Life Manuals from 1961, 1962, 1964, 1967 and 1968 provide that foreign-born applicants residing in the United States fewer than two years are ineligible for disability income coverage, and that foreign-born applicants residing in the United States for less than one year are ineligible for disability premium waiver coverage and ineligible for any policy without a medical examination. These written policies were contrary to the New York Insurance Law as it then existed.

Guardian reported to the Department that it no longer offers a disability income rider, and that its most recent products manual contains no similar restriction with respect to the availability of premium waiver coverage. Guardian reported also, however, that its current policy provides that non-medical coverage is unavailable to foreign-born applicants residing in the United States for less than one year. That policy is contrary to Section 2606 of the New York Insurance Law.²

The examiners, however, did not identify any instance in which a foreign-born applicant was denied disability income coverage, disability premium waiver coverage or non-medical coverage because of the duration of his residency in the United States. The Department directs Guardian to revise its written policies to assure compliance with Section 2606 of the New York Insurance Law.

B. Findings from the Review and Analysis of Policy Application Files

The examiners' ability to identify race-based underwriting practices in which Guardian or Berkshire might have engaged was limited in part by the relatively small number of policyholders who could be identified as minorities. Minority policyholders

² Section 2606 of the New York Insurance Law provides that no entity subject to the supervision of the superintendent shall "because of race, color, creed or national origin ... [m]ake any distinction or discrimination between persons as to premiums or rates charged for insurance policies or in any other manner whatever."

appear to have constituted a small percentage of Guardian and Berkshire policyholders during the period under review. Guardian submitted a May 5, 2001 memorandum to the Department stating that (i) Guardian ceased to sell industrial insurance in 1866, (ii) industrial policies were never written on a sub-standard basis, and (iii) Guardian usually "wrote the middle or upper middle class niche." A written description of Berkshire's historical marketing practices prepared at the Department's request states that Berkshire's marketing targets "have essentially always been the executive professional market" and Berkshire "never sold burial, funeral, industrial or debit insurance at any point in its 150-year history."

The examiners reviewed 489 Guardian policy application files and 408 Berkshire policy application files identified for review using sampling techniques designed by the Department to enhance the likelihood of identifying minority policyholders. Of the 489 Guardian files reviewed, the race of the policyholder could be identified in 414 files. In 22 of the 414 files, the policyholder was identified as a minority. Of the 408 Berkshire files reviewed, the race of the policyholder could be identified in 363 files. In 45 of the 363 files, the policyholder was identified as a minority. Where the race of the applicant was identified, it most often was included either in an agent's report or a third-party inspection report, and less frequently in a physician's or medical examiner's report. Neither company's application forms included an inquiry as to the applicant's race on the part of the application that was to be completed or signed by the applicant.

The review of minority policy application files revealed that minority policyholders and non-minority policyholders were charged the same premiums for identical policies. The premium each policyholder was charged was consistent with the rate book then in force, and the same rate books were used for both minority and non-minority applicants. In addition, no instances of assigning substandard classifications, limiting available coverage or imposing greater underwriting requirements based solely on an applicant's race, color, creed or national origin were identified through the examiner's review and analysis of policy application files.

The review of Guardian and Berkshire policy application files did, however, reveal instances in which both companies continued to accept third-party inspection reports on which the race of the applicant was recorded after the issuance of Circular Letter No. 5 (1964), which prohibited such practice.

Circular Letter No. 5 (1964), dated February 14, 1964, states, in part:

The Department's attention, however, has been directed to certain forms and reports furnished to some licensed insurers in which there may be set forth information as to the race or nationality of an insurance applicant, ...etc. Such forms, which are of the kind not required to be submitted to the Insurance Department for approval prior to use, includes agents confidential reports, medical reports, adjusters reports and inspection or credit reports.

The inclusion of inquiries or information as to race, color, creed or national origin in any form used by a licensed insurer, or the making of such inquiries on its behalf, clearly suggest possible or likely violation of both Section 40(10) and the firmly established policy of New York State. Accordingly, such practices shall be discontinued.

Fifteen of the reviewed Guardian application files and three of the reviewed Berkshire application files dated subsequent to the issuance of Circular Letter No. 5 (1964) revealed instances in which inspection reports inquiring and/or recording information as to the race of the applicant were used. The latest inquiries noted in the examiners' review were included in third-party inspection reports completed on Guardian and Berkshire applicants in 1966.

5. CONCLUSION

The Department's examination revealed that certain race-based underwriting policies were evidenced in written records of both Guardian and Berkshire. However, the examiners were not able to identify any current or past policyholder who was affected by any race-based underwriting policy or practice.

Respectfully submitted,

Clifford Chance Rogers & Wells LLP
Consultant

/s/
Partner

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

James F. Moyle, being duly sworn, deposes and says that the foregoing report is true to the best of his knowledge and belief.

/s/
James F. Moyle

Subscribed and sworn to before me

this _____ day of _____ 2001

APPOINTMENT NO. 21729

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, **GREGORY V. SERIO**, Acting Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

CLIFFORD CHANCE ROGERS & WELLS LLP

as a proper person to examine into the affairs of

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

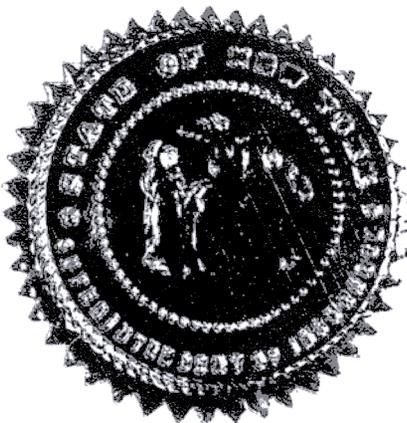
and to make a report to me in writing of the condition of the said

COMPANY

with such other information as it 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 13th day of April, 2001



GREGORY V. SERIO

Acting Superintendent of Insurance

by **KEVIN M. RAMPE**
Senior Deputy Superintendent
And General Counsel

Guardian's August 14, 2000 Response to
Supplement No. 1 to Circular Letter No. 19 (2000)

(Exhibit A)



Kimberly Preston
Senior Attorney

August 14, 2000

Mrs. Ruth Gumaer
Principal Insurance Examiner – Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004

Re: Circular Letter No. 19 (2000) and Supplement 1 (2000)

Dear Mrs. Gumaer:

This is in response to The Department's request for information regarding insurance company underwriting practices that may have resulted in different policy rates for individuals based on race. In accordance with Department requirements, Guardian has conducted an extensive review of all available life underwriting manuals, dividend rate books, supplemental rate books and agency manuals for The Guardian Life Insurance Company and its predecessor, The Germania Life Insurance Company. None of the referenced manuals included any distinction for premium based on race. In addition, we found no underwriting criteria that would have varied the availability, terms, benefits and conditions of any of our products by race. The years for review are listed below:

Germania Life Insurance Company:

1874-1890, 1891-1901, 1904, 1910, 1913, 1915, 1916, 1917

Guardian Life Insurance Company:

1919, 1922, 1923, 1926, 1928, 1929, 1931, 1932, 1934, 1935, 1938, 1939, 1940, 1943*, 1945, 1946, 1948, 1950, 1951, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1964, 1966, 1967, 1968, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985

An agent's manual from 1943 contained a section entitled, Racial Origin. However, upon further review, one determines that the section refers to coverage for foreign-born applicants. The provision reads as follows:

Racial Origin

Insurance Experience shows that foreign-born applicants raised under conditions less favorable than those prevailing in America generally are much less desirable for Waiver and Annuity Coverage than those whose ancestors have lived in the United States for at least one generation.

Environment and standards of living are important factors in determining the desirability foreign-born risks for Waiver and Annuity Coverage. Waiver and Annuity benefits are not granted to applicants who have been in the United States less than two years, or those who have been here for a longer period of time when there is any doubt as to their remaining in this country.

We also note for your information. The Guardian Insurance & Annuity Company ("GIAC") was incorporated as a stock company in 1970 and did not sell life insurance until 1986. GIAC has never used race as criteria for underwriting. In addition, Guardian has found no evidence to suggest that race was used as criteria for pricing by any other company it has acquired.

Finally, having found no evidence of race based underwriting, bullets 2 through 7 listed in Supplement 1 to Circular Letter 19 are not applicable to either Guardian or GIAC. As required by Supplement 1, please find a sworn statement from Joseph D. Sargent, CEO, affirming the information contained in this letter.

If you would like to discuss this matter in more detail, please feel free to contact me via email at Kpreston@glic.com or by telephone.

Sincerely,

Kimberly Preston



State of New York

SS

County of New York

Joseph D. Sargent, President and Chief Executive Officer of The Guardian Life Insurance Company of America, being duly sworn, deposes and says that, to the best of his information, knowledge and belief, the attached Report, having no additional attachments, is true and complete and not misleading and contains the most accurate information available at this time of its submission.

Joseph D. Sargent
President and Chief Executive Officer
The Guardian Life Insurance Company

Subscribed and sworn to before me this

11th day of August 2000

Notary Public

ARLENE M. WEBLER
Notary Public, State of New York
No. 30-4817688
Qualified in Nassau County
Certified in New York County
Commission Expires July 31, 1999

ARLENE M. WEBLER
Notary Public, State of New York
No. 30-4817688
Qualified in Nassau County
Certified in New York County
Commission Expires July 31, 1999

2001

Department's September 27, 2000 Request for Additional
Information

(Exhibit B)



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

September 27, 2000

Ms. Kimberly Preston
Senior Attorney
Guardian Life Insurance Company of America
7 Hanover Square
New York, New York 10004

Re: Guardian Life Insurance Company of America ("Guardian")
Guardian Insurance & Annuity Company ("GIAC")
Supplement No. 1 to Circular Letter No. 19 (2000)

Dear Ms. Preston:

We have completed our review of your submission made on behalf of Guardian and GIAC pursuant to Supplement No. 1 to Circular Letter No. 19 (2000).

Based upon our review of the filed report, we have the following queries and comments:

1. The Supplement describes race-based underwriting as practices based solely on an insured's race, color, creed or national origin. The filed report only discussed findings relative to practices based upon an insured's race. The filed report failed to discuss findings relative to practices based upon an insured's color, creed or national origin. Please discuss in the amended report findings relative to practices based upon an insured's color, creed or national origin.
2. The Supplement directed that the report should discuss the insurer's findings with regard to the marketing and/or sale of business directly issued by the insurer and business acquired by the insurer as a result of assumption, merger, acquisition, consolidation or purchase. The only reference to acquired business in the filed report was a statement that Guardian has found no evidence to suggest that race was used as a criteria for pricing by any other company it acquired. The filed report failed to discuss the scope of Guardian's review with regard to business acquired and the findings relative to race-based practices other than pricing relative to the acquired business. Please discuss these issues in the amended report.
3. The Supplement directed that the insurer's review of race-based underwriting practices should include all relevant documents including, applications, board of directors (and committee) minutes, policy form filings and compensation schedules, among other documents. The report did not indicate that these relevant documents were reviewed. Please indicate if these documents were included in the review and the findings of such review. If not, please indicate why such documents were not reviewed.

4. The filed report was submitted on behalf of both Guardian and GIAC. With regard to the discussion of GIAC, the filed report failed to discuss the scope of GIAC's review of race-based underwriting and the findings relative to race-based practices other than that race was never used as a criteria of underwriting. In addition, the filed report failed to discuss findings relative to practices based upon an insured's color, creed or national origin. Please discuss these issues in the amended report. Further, a jurat, in the form specified in Supplement No. 1 of Circular Letter No. 19 (2000), was not submitted for GIAC.

The amended report should include the information specified above in addition to the information included in your previous submission. The amended report must be filed, accompanied by a jurat in the form specified in Supplement No. 1 of Circular Letter No. 19 (2000), no later than 15 days after receipt of this letter.

Please direct any questions and your response to:

Mrs. Ruth Gumaer
Principal Insurance Examiner – Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004
Phone: (212) 480-4763 Fax: (212) 480-5329
E-mail: rgumaer@ins.state.ny.us

Very truly yours,

Ruth Gumaer
Principal Insurance Examiner

Guardian's October 26, 2000 Supplemental Response
(Exhibit C)



Kimberly Preston
Senior Attorney

October 26, 2000

Mrs. Ruth Gumaer
Principal Insurance Examiner- Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004

RECEIVED
NEW YORK STATE
INSURANCE DEPT.
NOV 01 2000
LIFE BUREAU

Re: Guardian Life Insurance Company of America ("Guardian")
Guardian Insurance & Annuity Company ("GIAC")
Supplement No. 1 to Circular Letter No. 19 (2000)

Dear Ms. Gumaer:

This is in response to your letter dated September 27, 2000. Your letter further inquired as to the business practices of Guardian and its affiliates pursuant to Supplement No. 1 and Circular letter No. 19. Please find our response to your comments in the order of your letter:

Guardian's report submitted on August 14, 2000 was based on an investigation concerning race, creed or national origin. We affirm in this writing that there has been no unlawful discrimination against persons based solely on race, creed, color or national origin in the history of the company.

With respect to findings of the marketing/business practices of acquired business, Guardian's response is based on the information obtained during the due diligence that was conducted prior to the acquisition of Family Service Life and Park Avenue Life. Family Service Life, an insurance company that has never been licensed to do business in New York, was purchased from The Torchmark Corporation. Park Avenue Life Insurance Company, formerly known as First International Life, has never been licensed to do business in the state of New York. Each company was contacted after receiving your letter to confirm that no race based underwriting practices were used. The companies responded that to the extent they were able to review policies and company records, they found that race, creed, color or national origin were never a factor in underwriting policies. In addition, Standard Life provided that attached letter to state that it has never sold policies in New York.

This is to confirm that Guardian reviewed all available policy forms, applications, correspondence letters and compensation schedules dating back to 1896 determine that there was no unlawful discrimination based solely on race, creed, color or national origin in calculating premiums or payment schedules. Guardian is in the process of completing its

review of board of directors and committee minutes. Completion of this review is expected by November 2, 2000 and will be forwarded to you immediately.

4. Your letter requested information regarding Guardian's affiliate, Guardian Insurance and Annuity Company (GIAC). GIAC is a Delaware domiciled stock company founded in 1970. As stated in our previous response to you, GIAC did not sell life insurance until 1986. GIAC has never unlawfully discriminated based solely on race, creed, color or national origin in underwriting, policies, applications or compensation schedules.
5. It is important to note that Guardian and GIAC do consider the length of time a foreign born individual has resided in the United States. This practice is applied uniformly regardless of the individual's country of origin. This practice seeks to prevent the fraudulent purchase of life insurance policies by individuals who come to the United States to purchase life insurance quickly and then return to their country of origin to submit fraudulent claims.
6. Finally, please find a sworn statement from Joseph D. Sargent, CEO affirming the information contained in this letter for both Guardian and GIAC.

In accordance with Section 87 and 89 of The Freedom of Information Law, we request that this response remain confidential.

Thank you for this opportunity to clarify the above issues. If you would like to discuss this matter in more detail, please feel free to contact me at (212) 598-7435.

Sincerely,

Kimberly Preston



August 14, 2000

Doris Vitiello
Guardian Life Insurance Company of America
7 Hanover Square
New York, NY 10004-2616

Re: NAIC Resolution on Race-Based Underwriting Criteria
First International Life Insurance Company

Dear Ms. Vitiello:

This letter will serve as certification with regard to a block of life business purchased by Guardian Life from Standard Life Insurance Company of Indiana (the "First International Block"), for which the state of New York has requested a statement with regard to historical race-based underwriting policies. Standard Life continues to serve as an administrator for these policies for Guardian Life's benefit.

First International Life Insurance Company, from which Standard Life purchased this block of business, has never been licensed to write business in the state of New York and has, to our knowledge, never underwritten or sold a policy in New York. Therefore, it is our belief that the NAIC race-based underwriting survey, as applied in and by the New York Department of Insurance, would not apply to any policies in the First International Block.

If you have any other questions or concerns, please feel free to contact me.

Very truly yours,

Jeffrey M. Macy
Assistant Vice President of Compliance
Standard Life Insurance Company of Indiana

cc: Ms. Janet Taylor



Joseph D. Sargent, CLU
President
and Chief Executive Officer

State of New York

SS:

County of New York

Joseph D. Sargent, President and Chief Executive Officer of The Guardian Life Insurance Company of America, and The Guardian Insurance & Annuity Company, Inc., being duly sworn, deposes and says that, to the best of his information, knowledge and belief, the attached Report, having no additional attachments, is true and complete and not misleading and contains the most accurate information available at this time of its submission.

~~Joseph D. Sargent, CLU~~
President and Chief Executive Officer
The Guardian Life Insurance Company
The Guardian Insurance & Annuity
Company, Inc.

Subscribed and sworn to before me this

26 day of February, 2000

Notary Public

ARLENE M. WETLER
Notary Public, State of New York
No. 30-4617666
Qualified in Nassau County
Certified in New York County
Commission Expires July 31, 2001

Guardian's November 6, 2000 Supplemental Response
(Exhibit D)



Kimberly Preston
Senior Attorney

November 6, 2000

Mrs. Ruth Gumaer
Principal Insurance Examiner- Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004

RECEIVED
NEW YORK STATE
INSURANCE DEPARTMENT
OCT 07 2000
LIFE BUREAU N.Y.C.

Re: Guardian Life Insurance Company of America ("Guardian")
Guardian Insurance & Annuity Company ("GIAC")
Supplement No. 1 to Circular Letter No. 19 (2000)

Dear Mrs. Gumaer:

This letter is meant to supplement Guardian/GIAC's letter to you dated October 26, 2000.

Please find the attached affidavit from Mr. Joseph A. Caruso, Vice President & Corporate Secretary. The affidavit confirms that selected Board of Director and Committee minutes indicate no unlawful discrimination based on race. The definition of race also includes creed, color or national origin.

We respectfully request that the information contained herein and all prior submissions on this subject remain confidential under the protections of the Freedom of Information Law.

Sincerely,

Kimberly Preston

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

SECRETARY'S CERTIFICATION
RELATING TO USE OF RACE OR NATIONAL ORIGIN
IN THE CALCULATION OF RATES AND OTHER MATTERS

STATE OF NEW YORK

)SS

COUNTY OF NEW YORK)

07 2000

LIFE BUREAU N.Y.C.

Joseph A. Caruso, being duly sworn, deposes and states:

That I am the duly elected, qualified and acting Vice President & Corporate Secretary of The Guardian Life Insurance Company of America (The Guardian or The Company), a mutual insurance corporation duly organized and existing under and by virtue of the Laws of the State of New York and that I am personally familiar with the facts herein certified and duly authorized to certify same on behalf of The Company:

That I have personally examined the minutes of the Insurance Committee of the Board of Directors of The Company and its predecessor, The Germania Life Insurance Company, of which I am the authorized custodian, for the meeting held in November of the following years: 1887, 1902, 1910, 1930, 1940, 1950, 1960, 1970, 1980 and 1990. These minutes having been selected because they deal with the Committee's recommendations to the Board for significant changes in underwriting and claim practices and the payment of Annual Dividends to policyholders:

That I have personally examined the minutes of the meetings of the Board of Directors of The Company and its predecessor, The Germania Life Insurance Company, of which I am the authorized custodian for the meetings held in November of the following years: 1890, 1900, 1910, 1930, 1940, 1950, 1960, 1970, 1980 and 1990. These minutes having been selected because they deal with the Board's approval of Annual Dividends to policyholders and other significant policyholder related matters:

That I have also personally examined various Rate Books and Policy Manuals from The Company's archives, over which I am the duly authorized custodian, from the following years: 1922, 1929, 1939, 1951, 1957 and 1982, which manuals were randomly selected for review:

That I found no reference or mention in any of the aforementioned documents of The Guardian Life Insurance Company of America or its predecessor, The Germania Life Insurance Company, that an individual's race or national origin was ever used by The Company as a criteria for the calculation of policyholders' rates, evaluation of underwriting risk or the payment of Policyholder Dividends:

IN TESTIMONY WHEREOF I have hereunto affixed my official signature and the seal of The Guardian Life Insurance Company of America in the City of New York on this 3rd day of November, 2000

SEAL

BY

Joseph A. Caruso
Vice President & Corporate Secretary
November 3, 2000

Berkshire's July 31, 2000 Response to Supplement No. 1
to Circular Letter No. 19 (2000)

(Exhibit E)



Berkshire

Berkshire Life Insurance Company

James W. Zilinski
President and Chief Executive Officer

AUG 03 2000

July 31, 2000

LIFE BUREAU N.Y.C.

Mrs. Ruth Gumaer
Principal Insurance Examiner-Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004

Re: Race-Based Underwriting Report per New York Circular Letter No. 19 (2000)

Dear Mrs. Gumaer:

Berkshire Life Insurance Company is in receipt of and has reviewed the above-referenced Circular Letter (including Supplement No.1). After careful review of this subject matter, Berkshire Life is notifying your Department that Berkshire Life, to the best of its knowledge, has never engaged in race-based underwriting practices.

The scope of our review in making this determination involved internal discussions with relevant key business individuals possessing significant historical company knowledge. With respect to our document availability, document and data retrieval was seriously considered however, at this time Berkshire Life does not have the capability to access any historical material that is relevant to this subject matter.

Thank you for your time on this matter. If there are any questions regarding this matter, please do not hesitate to call the Company's contact for this report, Julia Leedham Rindfuss at (413) 499-4321 x560.

State of Massachusetts }

County of Berkshire

James W. Zilinski, President (Chief Executive Officer), of Berkshire Life Insurance Company, being duly sworn, deposes and says that, to the best of his information, knowledge and belief, this Report is true and complete and not misleading and contains the most accurate information available at the time of its submission.

James W. Zilinski, President

Subscribed and sworn to before this

31st Day of July, 2000

Notary Public

Department's October 16, 2000 Request for
Additional Information

(Exhibit F)



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

October 16, 2000

Mr. James Zilinski
President and Chief Executive Officer
Berkshire Life Insurance Company
700 South Street
Pittsfield, Massachusetts 01201

Re: Berkshire Life Insurance Company ("Berkshire Life")
Supplement No. 1 to Circular Letter No. 19 (2000)

Dear Mr. Zilinski

We have completed our review of your organization's submission made pursuant to Supplement No. 1 to Circular Letter No. 19 (2000).

The Supplement directed each domestic and foreign life insurer to review its past and current underwriting practices regarding race-based underwriting and report its findings to the Department. In addition, the Supplement indicated that all relevant documents, including certain documents specified in the Supplement, should be included in the insurer's review.

The filed report indicated that the scope of Berkshire Life's review included only internal discussions with relevant key individuals possessing significant historical knowledge. The filed report also indicates that "With respect to our document availability, document and data retrieval was seriously considered, however, at this time Berkshire Life does not have the capability to access any historical material that is relevant to this subject matter."

Please be advised that Berkshire Life's review of race-based underwriting was insufficient and the submitted report is unacceptable. Berkshire Life is directed to review its past and current underwriting practices regarding race-based underwriting as required by Supplement No.1 to Circular Letter No. 19 (2000) and report its findings to the Department. The Supplement requires that the report discuss the scope of the insurer's review and document availability, among other issues. In addition, the Supplement states that the report should discuss the insurer's findings with regard to the marketing and/or sale of business directly issued by the insurer and business acquired by the insurer as a result of assumption, merger, acquisition, consolidation or purchase. If no business has been acquired, the report should indicate so. Also, the filed report should discuss findings relative to practices based upon an insured's color, creed or national origin in addition to race.

A report of your organization's findings as required by the Supplement, **accompanied by a jurat** in the form specified in Supplement No. 1 of Circular Letter No. 19 (2000), must be filed **no later than 15 days** from receipt of this letter. Failure to do so may result in disciplinary actions.

Please direct any questions and your response to:

Mrs. Ruth Gumaer
Principal Insurance Examiner – Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004
Phone: (212) 480-4763 Fax: (212) 480-5329
E-mail: rgumaer@ins.state.ny.us

Very truly yours,

Ruth Gumaer
Principal Insurance Examiner

Berkshire's November 2, 2000 Supplemental Response
(Exhibit G)



Berkshire

Berkshire Life Insurance Company

James W. Zilinski

President and Chief Executive Officer

November 2, 2000

Mrs. Ruth Gumaer
Principal Insurance Examiner-Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004

Re: Race-Based Underwriting Report per New York Circular Letter No. 19 (2000)

Dear Mrs. Gumaer:

Berkshire Life Insurance Company is in receipt of your letter dated October 16, 2000 disapproving our July 31, 2000 Race-Based Underwriting Report per Circular Letter 19 (including Supplement No.1). After a careful re-review of this subject matter, Berkshire Life is again notifying your Department that Berkshire Life, to the best of its knowledge, has never engaged in race-based underwriting practices including targeting sales to minorities or discouraging sales to minorities.

The scope of our review in making this determination involved not only internal discussions with relevant key business individuals possessing significant historical company knowledge, but a review of *known and available* underwriting and pricing materials, including:

- Premium Rate Manuals and Rate Charts
- A sampling of policies issued in the early 1960s.
- State Department Filing Records 1917-Present (Note: review revealed a 1950's applications, which asked applicant's race. These applications were state approved.)
- Historical product development material.
- Reinsurance records
- Sampling of product manuals from 1910 – present (Note: these manuals contain underwriting guidelines and plan code information).

Any other relevant materials, which might contain further information are no longer retrievable either in hard copy or data storage.

Department's November 28, 2000 Request for Additional
Information
(Exhibit H)



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

November 28, 2000

Mr. David Kalib
General Counsel
Berkshire Life Insurance Company
700 South Street
Pittsfield, Massachusetts 01201

Re: Berkshire Life Insurance Company ("Berkshire Life")
Supplement No. 1 to Circular Letter No. 19 (2000)

Dear Mr. Kalib:

We have completed our review of Berkshire Life's revised Race-Based Underwriting Report made pursuant to Supplement No. 1 to Circular Letter No. 19 (2000), submitted by letter dated November 3, 2000.

As discussed with you in a telephone conversation on November 21, 2000, additional information is still required. Based upon our review of the revised report, we have the following additional comments and queries:

1. The revised report discussed the review of certain known and available underwriting and pricing materials. The time period covered by some of the cited materials - premium rate manuals and rate charts, historical product development material and reinsurance records - was not indicated. For each of these materials, please indicate, in the revised report, the time period covered by the material reviewed.
2. The revised report indicated that a sampling of policies issued in the early 1960's was included in Berkshire Life's review of known and available underwriting and pricing materials. According to Department records, Berkshire Life was licensed in New York in 1864. If not previously reviewed, Berkshire Life is directed to review older issues in New York which currently remain in force and include, in the revised report, its findings relative to practices based upon an insured's race, color, creed or national origin. Also, please state, in the revised report, the year of issue of the oldest policy of life insurance which is currently in force that was issued in New York by Berkshire Life.
3. The Supplement directed that all relevant documents, including, but not limited to, rate charts, mortality tables, labor negotiation documents with distribution force unions, agent and broker contracts, compensation schedules, underwriting and agent manuals, applications, policy form filings, board of directors (and committee) minutes, and internal

memoranda should be included in the insurer's review of race-based underwriting practices. The revised report indicated that any relevant materials other than the listed known and available underwriting and pricing materials were no longer retrievable. It was noted that the listing of known and available materials did not include agent contracts, compensation schedules or manuals, underwriting manuals and board of directors (and committee) minutes. Please indicate, in the revised report, if such materials were included in Berkshire Life's review. If such materials were not reviewed because the materials were no longer retrievable, please indicate the record retention of such documents. If the materials were retrievable but not previously reviewed, Berkshire Life is directed to review such materials and include, in the revised report, its findings relative to practices based upon an insured's race, color, creed or national origin.

A revised report of Berkshire Life's findings as required by the Supplement, **accompanied by a jurat** in the form specified in Supplement No. 1 of Circular Letter No. 19 (2000), must be filed **no later than 15 days** from receipt of this letter. Failure to do so may result in disciplinary actions.

Please direct any questions and your response to:

Mrs. Ruth Gumaer
Principal Insurance Examiner – Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004
Phone: (212) 480-4763 Fax: (212) 480-5329
E-mail: rgumaer@ins.state.ny.us

Very truly yours,

Ruth Gumaer
Principal Insurance Examiner

Berkshire's December 8, 2000 Supplemental Response
(Exhibit I)

Berkshire Life Insurance Company

December 8, 2000

**Mrs. Ruth Gumaer
Principal Insurance Examiner-Life Bureau
New York State Insurance Department
25 Beaver Street
New York, New York 10004**

**RE: Revised Race-Based Underwriting Report
Supplement 1 to New York Circular Letter No. 19 (2000)**

Dear Mrs. Gumaer:

Berkshire Life Insurance Company is in receipt of your letter dated November 28, 2000 regarding our submission of a November 2, 2000 Race-Based Underwriting Report as required by Supplement 1 to Circular Letter No. 19. After a thorough review of this subject matter, Berkshire Life is again notifying the Department that Berkshire Life, to the best of its knowledge and belief, has never engaged in race-based underwriting practices based solely on an insured's race, color, creed or national origin.

The scope of our review in making this determination involved a thorough review of all relevant company documents and internal discussions and interviews with relevant key business individuals possessing significant historical company knowledge. Specifically included in this review were the following documents and materials:

- Premium Rate Manuals and Rate Charts dating from 1886 through the present;
2. Product Manuals dating from 1910 through the present (Note: Some of the referenced product manuals contain underwriting guidelines and plan code information);
- 3 Underwriting Guidelines and Manuals as available in the above-referenced Product Manuals and Underwriting Manuals dating from 1933 through 1970;
- 4 State Department Filing Records from 1917 through the present (Note: Our review revealed a 1950's application that asked applicant's race. These applications were state approved.);
5. Historical Product Development Material dating from 1934 through 1939 and 1949 through 1969;

6. Mortality Tables dating from 1933 through 1980;
7. Reinsurance records dating from 1931 through 1987;
8. Board Minutes and Finance Committee Meeting Minutes dating from 1923 through the present;
9. Agent and Broker Contracts and Compensation Schedules dating from 1945 through the present; and
10. A sampling of insurance policies was also conducted. The oldest in-force life insurance policy issued by Berkshire Life Insurance Company in New York dates back to 1923. That policy and a number of policies selected at random dating from the 1920's through the 1960's were also reviewed.

To the best of our knowledge and belief, any other relevant materials are no longer retrievable either in hard copy or data storage.

The review of all relevant company documents and internal discussions and interviews with relevant key business individuals possessing significant historical company knowledge did not reveal any practice, on the part of Berkshire Life Insurance Company, to refuse to insure; limit the amount, extent or kind of coverage; charge or collect higher premiums or rates; make or require any rebate upon the amount paid; assign substandard risk classifications; credit or provide lower dividends, policy benefits or nonforfeiture values; make any distinction as to policy terms or conditions; impose greater underwriting requirements (neither medical nor non-medical); nor fix any fees or commissions to encourage or discourage the writing or renewing of a specific type of policy based upon an insured's race, color, creed or national origin.

This review was made on business that Berkshire Life Insurance Company marketed and sold including Ordinary Whole Life, Term Life and Accident & Health Insurance. Please note that Berkshire Life did not ever sell, and currently does not sell, Industrial or Burial Insurance.

Finally, Berkshire Life Insurance Company has not acquired any business as a result of assumption, merger, acquisition, consolidation or purchase. Therefore, this review could not encompass such business.

Based on the above statements and review, Berkshire Life did not identify any race-based underwriting practices in which it may have engaged nor currently engages in. In the event we should come across information differing from what has been represented, we will notify the Department immediately.

Mrs. Ruth Gumaer
New York State Insurance Department

- 3 -

December 8, 2000

Thank you for your time and consideration on this issue. If there are any questions regarding this matter, please do not hesitate to call the Company's contact for this report Laura H. Rotenberg at (413)499-4321 extension 810.

State of Massachusetts)
)
County of Berkshire)

James W. Zilinski, President (Chief Executive Officer), of Berkshire Life Insurance Company, being duly sworn, deposes and says that, to the best of his information, knowledge and belief, the attached Report is true and complete and not misleading and contains the most accurate information available at the time of its submission.

James W. Zilinski, President

Subscribed and sworn to before me this

14th day of December 2000

7,
Notary Public
SYNTHIA M. FRIEBOHLE, Notary Public
My Commission Expires August 4, 2006