

SEP 11 2012

FILED

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

STATE OF NEBRASKA	)	
DEPARTMENT OF INSURANCE,	)	CONSENT ORDER
	)	
PETITIONER,	)	
	)	
VS.	)	
	)	
HOMESITE INDEMNITY COMPANY,	)	CAUSE NO. C-1960
	)	
RESPONDENT.	)	
	)	

In order to resolve this matter, the Nebraska Department of Insurance (“Department”), by and through its attorney, Eric Dunning, and Homesite Indemnity Company (“Respondent”) mutually stipulate and agree as follows:

JURISDICTION

1. The Department of Insurance has jurisdiction and control over Respondent pursuant to Neb.Rev.Stat. §44-101.1, et seq.

2. The Department of Insurance has jurisdiction and control over Respondent pursuant to Neb.Rev.Stat. §44-101.1, et seq. The Department has jurisdiction over these matters pursuant to the Unfair Insurance Trade Practices Act, Neb.Rev.Stat. §§ 44-1521 through 44-1535, the Unfair Insurance Claims Settlement Practices Act, Neb.Rev.Stat. §§ 44-1536 through 44-1544, and Chapter 60 of Title 210 of the Nebraska Administrative Code.

3. Respondent was licensed to engage in the business of insurance in the State of Nebraska as a foreign insurer at all times material to this action.

## STIPULATIONS OF FACT

4. The Department initiated this administrative proceeding by filing a petition styled State of Nebraska Department of Insurance vs. Homesite Indemnity Company on July 12, 2012. A copy of the petition was served upon the Respondent's agent for service of process registered with the Department, by certified mail, return receipt requested.

5. The petition alleges that Respondent violated Neb. Rev. Stat. §44-1524 and 44-1525(11) which declares that any of the acts or practices defined in section Neb. Rev. Stat. §44-1525, if committed in violation of section 44-1524, shall be unfair trade practices in the business of insurance. Respondent violated Neb. Rev. Stat. §§ 44-1524 and 44-1525(11) as a result of the following conduct:

- e. On or about September 21, 2011, Karen Dyke, an investigator with the Consumer Affairs Division of the Nebraska Department of Insurance, sent a letter to Respondent in order to investigate a complaint made against Respondent, Department Case Number 11-1062. The letter requested a response within fifteen days citing the statutory requirement that an answer be provided within that time and listed 14 items that must be included in the response. The letter was sent to Homesite Indemnity Company, 99 Bedford Street, Boston, Massachusetts 02111. This was the address to which complaints were directed to Respondent. Respondent did not send a response until October 20, 2011, when it was faxed to the Department, with a hard copy to follow via United States Mail. That response was dated October 14, 2011. Respondent's response letter dated October 14, 2011, was incomplete. In particular, Respondent did not include "a copy of the transcript of calls that came in from the agent and the insured" as requested in Ms. Dyke's September 21, 2011 letter. The October 14, 2011 response from Homesite indicated that "We have requested copies of the transcribed calls into our FNOL Department and will forward them separately." On December 9, 2011 Ms. Dyke indicated that she had not received "a copy of the transcribed calls as requested."
- f. On or about December 30, 2011, Ms. Dyke sent a letter to Respondent in order to investigate a complaint made against Respondent, Department Case Number 11-1341. The letter requested a response within two weeks and listed items that must be included in the response. The letter was sent to Homesite Indemnity Company, 99 Bedford Street, Boston, Massachusetts 02111. This was the address to which complaints were directed to Respondent. Respondent replied on January 12, and January 23, 2012. These responses were incomplete. In

particular the company did not provide a requested explanation regarding payment for metals damages.

- g. On or about June 9, 2011, Ms. Dyke sent a letter to Respondent in order to investigate a complaint made against Respondent, Department Case Number 11-0643. The letter requested a response within fifteen days under a statutory requirement, and listed items that must be included in the response. The letter was sent to Homesite Indemnity Company, 99 Bedford Street, Boston, Massachusetts 02111. This was the address to which complaints were directed to Respondent. An additional request for this information was sent to Respondent July 5, 2011. Respondent replied via facsimile on July 12, 2011, with subsequent documentation received July 12, 2011.
- h. On or about June 13, 2011, Jeanette McArthur, an investigator with the Consumer Affairs Division of the Nebraska Department of Insurance, sent a letter to Respondent in order to investigate a complaint made against Respondent, Department Case Number 11-0651. The letter requested a response within fifteen days under a statutory requirement, and listed items that must be included in the response. The letter was sent to Homesite Indemnity Company, 99 Bedford Street, Boston, Massachusetts 02111. This was the address to which complaints were directed to Respondent. An additional request for this information was sent to Respondent July 8, 2011. Respondent replied via facsimile on July 18, 2011, with a letter dated July 7, 2011, with subsequent documentation received July 21, 2011.
- i. On or about August 15, 2011, Ms. McArthur sent a letter to Respondent in order to investigate a complaint made against Respondent, Department Case Number 11-0908. The letter requested a response within fifteen days under a statutory requirement, and listed items that must be included in the response. The letter was sent to Homesite Indemnity Company, 99 Bedford Street, Boston, Massachusetts 02111. This was the address to which complaints were directed to Respondent. An additional request for this information was sent to Respondent September 12, 2011. Respondent replied on via facsimile on September 19, 2011, with a letter dated September 15, 2011, with subsequent documentation received October 21, 2011.
- j. On or about September 28, 2011, Ms. McArthur, sent a letter to Respondent in order to investigate a complaint made against Respondent, Department Case Number 11-1101. The letter requested a response within fifteen days under a statutory requirement, and listed items that must be included in the response. The letter was sent to Homesite Indemnity Company, 99 Bedford Street, Boston, Massachusetts 02111. This was the address to which complaints were directed to Respondent. An additional request for this information was sent to Respondent October 24, 2011. Respondent replied on via facsimile on October 26, 2011, with a letter dated October 24, 2011, with subsequent documentation received October 28, 2011. These responses were incomplete. In particular the

company did not provide the adjusters name and a complete copy of the adjuster's log, dates and details of contact with complainant, evidence to support compliance with Nebraska Insurance Regulations Chapter 16, and reason for delay.

- k. On or about November 21, 2011, Ms. McArthur sent a letter to Respondent again requesting information regarding Department Case Number 11-1101 that Respondent had advised would be sent via overnight mail, which had not been received by the Department as of the date of the letter. The letter was sent to Homesite Indemnity Company, 99 Bedford Street, Boston, Massachusetts 02111. This was the address to which complaints were directed to Respondent. An additional request for this information was sent to Respondent December 23, 2011. Respondent replied on December 28, 2011.

5. The petition alleges that Respondent violated Neb. Rev. Stat. §44-1539 which declares that any of the acts or practices defined in section Neb. Rev. Stat. §44-1540, if committed in violation of section 44-1539, shall be unfair trade practices in the business of insurance. Respondent violated Neb. Rev. Stat. §44-1540(2) and 210 Neb. Admin. R. & Reg. §§ 60-006.03 and 60-008.02 as a result of the following conduct:

- a. On or about August 15, 2011, Claimant's representative, Dave Gutshall provided an invoice for a replacement cost holdback from Claimant regarding Department Case Number 11-1062. Respondent did not tender payment within fifteen days of this event.
- b. On or about July 27, 2011, Claimant in Department Case Number 11-1023 submitted a supplemental payment request to Respondent. Respondent advised Claimant that an independent adjuster would review the estimate with the Claimant's contractor, and did not communicate with either Claimant or Claimant's contractor until after November 4, 2011.

6. The petition alleges that Respondent violated Neb. Rev. Stat. §44-1539 which declares that any of the acts or practices defined in section Neb. Rev. Stat. §44-1540, if committed in violation of section 44-1539, shall be unfair trade practices in the business of insurance. Respondent violated Neb. Rev. Stat. §44-1540(2) and 210 Neb. Admin. R. & Reg. §§ 06-008.01 and 60-008.04 as a result of the following conduct:

- a. On or about September 2, 2011, Claimant in Department Case Number 11-1341 notified Respondent of a claim. On September 22, 2011, Respondent notified Claimant of the role of the independent adjuster. On September 23, 2011, an independent adjuster inspected the property. On October 21, 2011, Respondent provided a check to Claimant in settlement of the claim. Respondent failed to notify the claimant that the Respondent needed more time to determine whether a claim should be accepted or denied giving the reasons more time is needed between September 2, 2011 and the date the claim was settled, October 21, 2011.

7. The petition alleges that Respondent violated Neb. Rev. Stat. §44-1539 which declares that any of the acts or practices defined in section Neb. Rev. Stat. §44-1540, if committed in violation of section 44-1539, shall be unfair trade practices in the business of insurance. Respondent violated Neb. Rev. Stat. §44-1540(2) and 210 Neb. Admin. R. & Reg. §§ 60-006.03, 60-008.01, and 60-008.04 as a result of the following conduct:

- a. On or about December 5 and December 27, 2011, Claimant in Department Case Number 11-1341 contacted Respondent to inquire about items that had not been included in earlier payments. Respondent did not respond to either email until after the Department of Insurance asked about Respondent's failure to answer the December 5, 2011 email on January 10, 2012.

8. The petition alleges that Respondent violated Neb. Rev. Stat. §44-1539 which declares that any of the acts or practices defined in section Neb. Rev. Stat. §44-1540, if committed in violation of section 44-1539, shall be unfair trade practices in the business of insurance. Respondent violated Neb. Rev. Stat. §44-1540(2) and 210 Neb. Admin. R. & Reg. § 60-008.08 as a result of the following conduct:

- a. In Department Case Number 11-1221, on or about September 12, 2011 Respondent received an email from Claimant objecting to the denial of a portion of the claim. In subsequent correspondence dated September 13, 2011, and twice on September 14, 2011 Respondent failed to notify Claimant that Claimant could have the matter reviewed by the Department of Insurance.

9. The petition alleges that Respondent violated Neb. Rev. Stat. §44-1539 which declares that any of the acts or practices defined in section Neb. Rev. Stat. §44-1540, if committed in violation of section 44-1539, shall be unfair trade practices in the business of insurance. Respondent violated Neb. Rev. Stat. §44-1540(2), 210 Neb. Admin. R. & Reg. §§ 60-006.03 as a result of the following conduct:

- a. In Department Case Number 12-0223, Respondent requested that Claimant resolve an issue regarding a match for siding. Respondent agreed that an adjuster would collect a sample of siding for possible match. Respondent failed to reply to this communication until after Claimant's subsequent contact with Respondent on October 24, 2011.
- b. In Department Case Number 12-502, Claimant sent letters dated July 7 and July 22, 2011. Respondent failed to answer either of these letters, until after a Department inquiry dated May 8, 2012. Respondent stated that this failure was due to an IT issue.

10. The petition alleges that Respondent violated Neb. Rev. Stat. §44-1539 which declares that any of the acts or practices defined in section Neb. Rev. Stat. §44-1540, if committed in violation of section 44-1539, shall be unfair trade practices in the business of insurance. Respondent violated Neb. Rev. Stat. §44-1540(2) and 210 Neb. Admin. R. & Reg. § 60-008.04 as a result of the following conduct:

- a. In Department Case Number 12-0004, on or about January 12, 2012, Respondent received a signed appraisal award, and in a letter dated January 23, 2012, informed the Department of Insurance that a check for \$214.23 had been sent to Claimant. Respondent failed to issue payment until February 20, 2012.

11. Respondent was informed of its right to a public hearing. Respondent waives that right, and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving its right to a public hearing, Respondent also waives its right to confrontation of witnesses, production of evidence, and judicial review.

12. The violations were committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act and Unfair Insurance Claims Settlement Practices Act.

13. Respondent neither admits nor denies the allegations contained in the Petition and restated in paragraphs 5 through 10 above.

#### CONCLUSIONS OF LAW

Respondent's conduct as alleged above constitutes a violation of the Unfair Insurance Trade Practices Act, Neb.Rev.Stat. §§ 44-1521 through 44-1535, the Unfair Insurance Claims Settlement Practices Act, Neb.Rev.Stat. §§ 44-1536 through 44-1544, and Chapter 60 of Title 210 of the Nebraska Administrative Code. The violations were committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act and Unfair Insurance Claims Settlement Practices Act.

#### CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent that:

- (1) Respondent agrees to pay an administrative penalty of \$45,000; and
- (2) The Nebraska Department of Insurance will retain jurisdiction of this matter for the purpose of enabling the Respondent or the Department of Insurance to make application for such further orders as may be necessary.

In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing his or her signature below.

[Signature]  
Eric Dunning #20686  
Attorney for Petitioner  
941 "O" Street, Suite 400  
Lincoln, NE 68508  
(402) 471-2201  
Date: 8-16-12


[Signature]  
Homesite Indemnity Company,  
Respondent President  
Date: 8/22/12

[Signature]  
Attorney for Respondent  
Date: 8/21/2012

State of Mass )  
County of Suffolk ) ss.

On this 23<sup>rd</sup> day of August, 2012, Douglas Battin personally appeared before me on behalf of Homesite Indemnity Company and read this Consent Order, executed the same and acknowledged the same to be his or her voluntary act and deed.

[Signature]  
Notary Public

 MAUREEN FIDLER  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
September 14, 2012



CERTIFICATE OF ADOPTION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of the State of Nebraska Department of Insurance vs. Homesite Indemnity Company, Cause No. C-1960.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
\_\_\_\_\_  
Bruce R. Range  
Director of Insurance

Date: 9-11-2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Respondent by mailing a copy to Respondent through Respondent's Representative, Randall E. Dyen, Agent for Service, at 99 Bedford Street, Boston, Massachusetts 02111-2217 by certified mail, return receipt requested, on this 12<sup>th</sup> day of September 2012 and Respondent's Attorney, Jeffrey Thomas, at 425 W. Capitol Ave., Suite 1800, Little Rock, AR 72201 by First Class United States Mail, on this 6<sup>th</sup> day of September 2012.

  
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