

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF THE
REPORT OF EXAMINATION
OF GIBRALTAR NATIONAL
INSURANCE COMPANY**

A.I.D. NO. 2007- 020

ADOPTION ORDER

Now on this day the matter of the Report of Examination as of December 31, 2005 ("Report") of Gibraltar National Insurance Company, Little Rock, Arkansas, ("Company"), NAIC No. 35360, is taken under consideration by Julie Benafield Bowman, Insurance Commissioner for the State of Arkansas ("Commissioner"), as presented by the Finance Division and Amanda Capps Rose, Associate Counsel, of the Arkansas Insurance Department ("Department"). From the facts, matters and other things before her, the Commissioner finds as follows:

FINDINGS OF FACT

1. That the Commissioner has jurisdiction over the Company and the subject matter involved herein;
2. That the Company is an Arkansas domiciled stock legal reserve insurer authorized to issue contracts of property and casualty (including workers' compensation) and marine insurance;
3. That pursuant to Ark. Code Ann. §§ 23-69-101 and 23-61-201, *et seq.*, the Commissioner authorized and directed the Department to conduct a regular examination of the affairs, transactions, accounts, records and assets of the Company as of December 31, 2005;
4. That said examination was commenced by the Department on March 27, 2006 and completed on December 15, 2006;

5. That the verified Report of Examination was filed with the Department on January 30, 2007. The Report was forwarded to the Company via certified mail on January 30, 2007 and was received by the Company on February 1, 2007;
6. That the Company filed written rebuttal and comments to certain of the findings of the Report with the Department's Finance Division on February 26, 2007; and
7. That the Report of Examination contains the following comments or discrepancies regarding the Company's operation:
 - a. That the Company's lack of controls within its cash processes resulted in errors;
 - b. That the Company's failure to establish a procedure for disclosure of possible conflicts of interest with its officers, directors, and key employees was remedied subsequent to year-end 2005;
 - c. That the Company failed to file a custodial agreement with the Department for bonds held with Raymond James Financial Services, Inc.
 - d. That the Company reported the purchase of said bonds at the settlement date rather than the trade date, which is not in accordance with SSAP #26, paragraph 4, and that the Company used a percentage amount instead of the actual par value when reporting the bonds on Schedule DA;
 - e. That the Company did not record an accrual for investment income as of December 31, 2005;
 - f. That the Company's failure to obtain a current appraisal on its Bowman Road property was remedied in June 2006;

- g. That the Company should report rental income and rental expense comparable to other real estate in the area in accordance with SSAP #40 in future financial statement filings;
- h. That the Company's stock certificate did not state the correct Company name or owner, and that no stock certificate was issued in relation to the stock dividend transaction that occurred in 2003;
- i. That the Company wrote surety bonds during the examination period and was not authorized to write that line of business, resulting in a violation of Ark. Code Ann. § 23-63-201;
- j. That the Company's per policy risk of \$250,000 exceeds the amount allowable under Ark. Code Ann. § 23-63-701;
- k. That the Company's failure to provide the Department with minutes of the annual stockholders and board of directors meetings was remedied on July 24, 2006;
- l. That the Company did not carry a fidelity bond or other fidelity coverage on any officers or employees during the examination period;
- m. That the Company entered into six administrative agreements with commonly owned entities without filing the agreements with the Department for approval and that on October 30, 2006 the agreements were filed with the Department and disapproved;
- n. That the Company is in violation of Ark. Code Ann. § 23-63-207, which requires the Company to maintain a minimum special surplus of not less than 15% of the paid-in capital as reported in its last preceding annual statement. The Company subsequently remedied this violation of Ark. Code Ann. § 23-63-207;

- o. That the Company was unable to provide information needed to confirm the reinsurance premium deposits from the Company to Fidelity Property and Casualty Insurance Company (“Fidelity”);
- p. That the Company discovered that its prior president, while an officer, was involved in the diversion of claim payments, and that the Company sustained no loss as a result of the diversion;
- q. That the Company has not maintained satisfactory evidence of compliance with Department Rule 43, § 7 regarding acknowledgement of pertinent communication and that the Company has not complied with Department Rule 43, § 6 regarding documentation relative to the Company’s claim files. The Company has instituted operational changes that have improved the Company’s response to and resolution of claims;
- r. That the Company’s violation of Ark. Code Ann. § 23-66-510 for failure to implement antifraud initiatives was subsequently remedied;
- s. That the Company failed to submit to the Commissioner its complaint handling procedures and a complete complaint register as required by Ark. Code Ann. § 23-66-206;
- t. That the Company included premium receivables as of December 31, 2005 that exceeded ninety (90) days, which is not in accordance with SSAP #6, paragraph 9(a). This failure to comply with SSAP #6, paragraph 9(a) was subsequently remedied;
- u. That the Company included an asset that does not meet the criteria for an admitted asset under SSAP #4, paragraphs 2 and 3. The asset has subsequently been non-admitted and written off the Company’s General Ledger;

- v. That the Company included outdated receivables that are likely uncollectible and, therefore, should be non-admitted. The balances have subsequently been non-admitted and written off the Company's General Ledger in accordance with SSAP #25, paragraph 6 and SSAP #5;
- w. That as of December 31, 2005, the Company's loss reserves and loss adjustment expenses showed a significant under reserving of the loss reserves. The Company has subsequently remedied the under reserving; and
- x. That the Company has complied with the Agreed Order entered into between the Company, Edward Harvey, and the Department on October 19, 2006 by curing the Company's statutory impairment.

CONCLUSIONS OF LAW

- 1. That the Commissioner and the Department have jurisdiction over the parties and the subject matter contained herein; and
- 2. That this Order has been properly entered in accordance with the Arkansas Insurance Code and Department Rules.

THEREFORE, pursuant to the provisions of Ark. Code Ann. § 23-61-205, the Commissioner hereby orders:

- 1. That the Examination Report, as filed with the Department, is hereby adopted;
- 2. That, with regard to the items in Findings of Fact, above:
 - a. The Company is to implement controls within its cash processes to prevent errors such as those cited in the Report;

- b. The Company is to report subsequent purchases of bonds at the trade date rather than the settlement date in accordance with SSAP #26, paragraph 4.
 - c. The Company is to report due and accrued investment income in future financial statements in accordance with SSAP #34;
 - d. The Company is to report rental income and rental expense comparable to other real estate in the area in future financial statements in accordance with SSAP #40;
 - e. The Company is to replace its stock certificate #1 to reflect the correct Company name and owner and that the Company is to issue a new stock certificate regarding the 2003 stock dividend transaction;
 - f. The Company is to comply with the provisions of Ark. Code Ann. § 23-63-701 concerning the allowable per policy risk;
 - g. That the Company assist the Department in obtaining the information and documentation necessary to confirm the reinsurance premium deposits received by Fidelity from the Company;
 - h. That the Company maintain documentation or other evidence of compliance with Department Rule 43, §§ 6 and 7;
 - i. That the Company is to submit to the Commissioner its complaint handling procedures and a complete copy of its complaint register pursuant to Ark. Code Ann. § 23-66-206.
3. That the Department shall forward a copy of this Order and the adopted Examination Report to the Company via certified mail and that the mailing to the Company shall include specimen affidavit forms for the Company's directors to use in acknowledgement of the receipt of the mailing and its enclosures;

4. That within twenty (20) days of its receipt of this Order and the adopted Examination Report, the Company shall file with the Department affidavits executed by each of its Directors stating under oath that they have received a copy of this Order and the adopted Examination Report, as required by Ark. Code Ann. §23-61-205(b)(1);
5. That the adopted Examination Report will be open for public inspection upon the expiration of thirty (30) days from the Company's receipt of this Order; and
6. That the Department, as a matter of course, reserves the right to consider other administrative proceedings against the Company at a later date, although none are contemplated at this time.

IT IS SO ORDERED this 12th day of April, 2007.


JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS