

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



Phone: (360) 725-7000  
www.insurance.wa.gov  
**FILED**

OFFICE OF  
INSURANCE COMMISSIONER

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*In The Matter Of:* )  
 )  
FEDERAL INSURANCE COMPANY, )  
PACIFIC INDEMNITY COMPANY, )  
GREAT NORTHERN INSURANCE CO., )  
EXECUTIVE RISK INDEMNITY, INC., )  
VIGILANT INSURANCE COMPANY, )  
NORTHWESTERN PACIFIC INDEMNITY CO. )  
 )  
Authorized Insurers, )

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer  
Nos. 10-0209 and 10-0210

STIPULATION AND ORDER  
TERMINATING ADJUDICATIVE  
PROCEEDING

STIPULATION

Pursuant to RCW 34.05.060, the Office of Insurance Commissioner ("OIC"), by and through its undersigned representative, Charles Brown, and Federal Insurance Company, Pacific Indemnity Company, Great Northern Insurance Company, Executive Risk Indemnity, Inc., Vigilant Insurance Company, and Northwestern Pacific Indemnity Company ("Companies"), by and through their undersigned attorney, Tom Jones, hereby stipulate and agree that this matter has been fully settled, that the parties' settlement is reflected in Consent Order 11-0009, a true copy of which is attached hereto, and that the subjoined Order terminating this adjudicative proceeding as settled may be entered forthwith and without further notice to either party.

*Charles D. Brown*  
Charles D. Brown, OIC Staff Attorney

*Tom Jones*  
Tom Jones, WSBA (# 13141)  
Of Counsel for Respondent Companies

**ORDER**

This matter having come on before the undersigned Chief Hearing Officer of the State of Washington Office of Insurance Commissioner pursuant to the foregoing Stipulation and the Chief Hearing Officer having reviewed said Stipulation and deeming herself fully advised in the premises, NOW, THEREFORE,

1. Pursuant to the parties' stipulation and the terms of Consent Order 11-0009, OIC Order No 10-0210 is vacated without prejudice;
2. OIC Docket Numbers 10-0210 and 10-0209 are hereby closed and dismissed as settled.

SIGNED AND ENTERED AT TUMWATER, WASHINGTON, this 21<sup>st</sup> day of January, 2011.

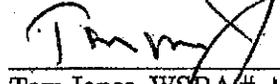


PATRICIA D. PETERSEN  
Chief Hearing Officer  
Office of Insurance Commissioner

Presented by:

  
Charles D. Brown, OIC Staff Attorney

Approved for Entry/Notice of  
Presentation Waived:

  
Tom Jones, WSBA # 13141  
Of Counsel for Respondent Companies



OFFICE OF  
INSURANCE COMMISSIONER

|                                    |   |                |
|------------------------------------|---|----------------|
| <i>In The Matter Of:</i>           | ) |                |
|                                    | ) |                |
| FEDERAL INSURANCE COMPANY,         | ) | No. 11-0009    |
| PACIFIC INDEMNITY COMPANY,         | ) |                |
| GREAT NORTHERN INSURANCE CO.,      | ) | CONSENT ORDER  |
| EXECUTIVE RISK INDEMNITY, INC.,    | ) | LEVYING A FINE |
| VIGILANT INSURANCE COMPANY,        | ) |                |
| NORTHWESTERN PACIFIC INDEMNITY CO. | ) |                |
|                                    | ) |                |
| Authorized Insurers,               | ) |                |

*Comes Now the Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.02.080 and RCW 48.05.185, and having reviewed the official records and files of the Office of the Insurance Commissioner, makes the following:*

**FINDINGS OF FACT:**

1. Federal Insurance Company, Pacific Indemnity Company, Great Northern Insurance Company, Executive Risk Indemnity, Inc., Vigilant Insurance Company, and Northwestern Pacific Indemnity Company are property and casualty insurers authorized to do business in the State of Washington and are hereafter referred to as the "Companies."
2. The Companies were subject to a market conduct examination performed by the OIC covering the period from January 1, 1998, through September 30, 1998. Insurance Code violations found in said examination resulted in the entry of Consent Order Levying Fine No. D 2000-04, which included both an imposed and suspended fine and a Compliance Plan requiring semi-annual self-audits of the areas involved in the violations.
3. The Companies' failures to document the application of commercial rating schedules and failures to provide the reasons for applying schedule rating debits or credits were among the violations that were the subject of Consent Order Levying Fine No. D 2000-04 and of the Compliance Plan's self-audits. Continuing violations reported under the Compliance Plan, including the Companies' continued high rate of failures to document the application of commercial rating schedules and failures to provide the reasons for applying schedule rating debits or credits, resulted in Order Imposing Suspended Fine No. D03-147.



4. The Companies were subject to a market conduct examination performed by the Office of Insurance Commissioner (OIC) covering the period from June 1, 2002 through May 31, 2003. The examination found, among other violations, that the Companies failed to document the application of commercial rating schedules and to provide the reasons for applying schedule rating debits or credits. These violations resulted in the entry in 2007 of Consent Order Levying Fine D07-289, which included a fine and a Compliance Plan ("2007 Compliance Plan") requiring, among other things, semi-annual self-audits of the Companies' compliance with WAC 284-24-100 and RCW 48.19.040. By letter dated July 1, 2008, the OIC increased the number of self-audits by requiring two (2) additional self-audits.
5. The Companies conducted self-audits of sample files for the period June 2008 – June 2010 as required by the 2007 Compliance Plan.
6. The Companies' self-audits required by the 2007 Compliance Plan again found errors in the sample files that were reviewed, which errors resulted in further violations of WAC 284-24-070, WAC 284-24-100 and RCW 48.19.040. The Companies provided the results of their self-audits to the OIC as required by the 2007 Compliance Plan.
7. On November 8, 2010, the OIC issued Order No. 10-0209 providing notice to the Companies of the OIC's intent to request imposition of a fine relating to the violations referenced above in paragraph 4.
8. On November 8, 2010, the OIC issued Order No. 10-0210 seeking to suspend the Companies' authority to write new business in the State of Washington for a period of nine months, as a result of the violations referenced above in paragraph 4. The suspension of the Companies' Certificates of Authority as to new business writings was to be effective as of November 18, 2010.
9. On November 9, 2010, the Companies filed a demand for a hearing from Order No. 10-0210 and for consolidation of the hearings on Order No. 10-0209 with the hearing on Order No. 10-0210. The demand for the hearing resulted in a stay of the suspension order referenced above in paragraph 8 and, as a result, the suspension order did not take effect on November 18, 2010.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

#### CONCLUSIONS OF LAW

1. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license.
2. The Companies' use of rates that were not in accordance with the Companies' rate filings then in effect as reflected in the Companies' self-audits under the 2007 Compliance Plan constitute multiple violations of RCW 48.19.040.

3. The Companies' failures to document their applications of their filed schedule rating plan as reflected in the Companies' self-audits under the 2007 Compliance Plan constitute multiple violations of WAC 284-24-070.
4. The Companies' failures to document their applications of their filed commercial rating schedules and failures to provide the reasons for applying schedule rating debits or credits as reflected in the Companies' self-audits under the 2007 Compliance Plan constitute multiple violations of WAC 284-24-100.

### CONSENT TO ORDER

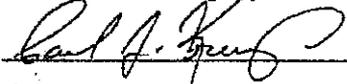
NOW, THEREFORE, the Companies consent to the following in consideration of their desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of the Companies' payment of a fine and such other terms and conditions as are set forth below:

1. The Companies admit the foregoing Findings of Fact and Conclusions of Law as they pertain to these facts, consent to the entry of this Order, and waive further administrative or judicial challenge to the OIC's actions with respect to Order No. 10-0209 and Order No. 10-0210.
2. By agreement of the parties, the Insurance Commissioner will impose a fine of \$1,068,000 and suspend \$534,000 of that on the conditions that:
  - a. Within thirty days of the entry of this Order, the Companies agree to pay to the OIC a fine in the amount of \$534,000. Failure to pay said fine shall constitute grounds for revocation of the Companies' Certificates of Authority and for recovery of the full fine, including the suspended portion.
  - b. The Companies carry out the provisions of, and fully comply with, the Compliance Plan set forth in Exhibit A, which, among other things, will require that the Companies conduct certain semi-annual self-audits.
  - c. The Companies commit no further violations of the statutes and regulations that are the subject of this Order for a period of three years from the date this Order is entered. The Insurance Commissioner will not impose the balance of this fine or take action against the Companies' Certificates of Authority should the Companies commit isolated or de minimis violations. For purposes of this Consent Order, isolated or de minimis shall mean error levels not exceeding the tolerance levels for non-claim procedures found in the NAIC Market Conduct Examiners Handbook edition current as of the date of this Order. The Companies nevertheless commit to rectifying all violations including isolated, de minimis violations as soon as practicable once they are discovered.
3. Upon payment of the above mentioned fine, the OIC agrees that it will vacate without prejudice Order No. 10-0210 suspending the Companies' Certificates of Authority for the errors found during the Companies' prior self-audits, as referenced in the "Findings of Fact."

4. The Companies' failure to timely pay the fine and to adhere to the conditions shall constitute grounds for suspension and/or revocation of the Companies' Certificates of Authority and shall result in the recovery of the entire fine, including both the suspended and unsuspended amounts, through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington. Notwithstanding the foregoing, the Companies shall retain all of their legal rights to contest any suspension or revocation of their Certificates of Authority.

EXECUTED this 21<sup>st</sup> day of January, 2011.

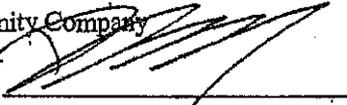
Federal Insurance Company

By: 

Printed Name: Paul J. Krump

Typed Corporate Title: Chairman, President & CEO

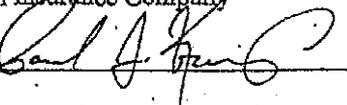
Pacific Indemnity Company

By: 

Printed Name: Dino E. Robusto

Typed Corporate Title: Chairman

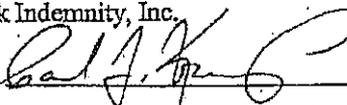
Great Northern Insurance Company

By: 

Printed Name: Paul J. Krump

Typed Corporate Title: Chairman

Executive Risk Indemnity, Inc.

By: 

Printed Name: Paul J. Krump

Typed Corporate Title: Chairman

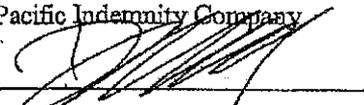
Vigilant Insurance Company

By: 

Printed Name: Dino E. Robusto

Typed Corporate Title: Chairman

Northwestern Pacific Indemnity Company

By: 

Printed Name: Dino E. Robusto

Typed Corporate Title: Chairman

#### ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. Federal Insurance Company, Pacific Indemnity Company, Great Northern Insurance Company, Executive Risk Indemnity, Inc., Vigilant Insurance Company, and Northwestern Pacific Indemnity Company are ordered to pay a fine in the amount of \$1,068,000 of which amount the sum of \$534,000 is suspended for three years from the date of entry of this Order on the condition that the Companies commit no further violations that are not isolated or de minimis violations of the statutes and regulations that are the subject of this Order for the next three years and on condition that the Companies successfully carry out their obligations under the Compliance Plan attached hereto as Exhibit "A." The Companies' failure to timely pay the fine and to adhere to the conditions shall constitute grounds for suspension and/or revocation of the Companies' Certificates of Authority and shall result in the recovery of the entire fine, including both the suspended and unsuspended amounts, through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington. Notwithstanding the foregoing, the Companies shall retain all of their legal rights to contest any suspension or revocation of their Certificates of Authority.

2. The Companies shall comply with and carry out the Compliance Plan set forth in Exhibit A hereto, which Compliance Plan is hereby incorporated into this Order by reference as though fully set forth herein.

3. The payment liability and compliance obligations of the Companies under this Order are joint and several. The Companies' failure to pay the fine imposed above within thirty days of entry of this Order shall result in the revocation of the Companies' Certificates of Authority, and in the recovery of the amount of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

4. Upon payment of the above mentioned fine, the OIC will vacate without prejudice Order No. 10-0210 suspending the Companies' Certificates of Authority for the errors found during the Companies' prior self-audits, as referenced in the foregoing "Findings of Fact."

ENTERED AT TUMWATER, WASHINGTON, this 21<sup>st</sup> day of January, 2011.

MIKE KREIDLER,  
Insurance Commissioner

By: Charles D. Brown  
Charles D. Brown  
Staff Attorney  
Legal Affairs Division

**COMPLIANCE PLAN**  
**EXHIBIT "A"**

**A. Purpose of and Consideration for the Plan**

Federal Insurance Company, Pacific Indemnity Company, Great Northern Insurance Company, Executive Risk Indemnity, Inc., Vigilant Insurance Company, and Northwestern Pacific Indemnity Company (hereinafter "Companies") enter into this Compliance Plan with the Office of the Insurance Commissioner ("OIC") for the State of Washington to promote compliance by the Companies with the requirements of the laws and regulations of the State of Washington. The Companies are also entering into Consent Order No. 11-0009 with OIC ("Consent Order"). This Plan is attached to the Consent Order and is fully incorporated into said Consent Order, and the Companies' obligations under this Compliance Plan are made a part of the Consent Order and constitute obligations under said Consent Order as though this Compliance Plan and the Companies' obligations under it were fully set forth in said Consent Order.

**B. Term of Plan**

The effective date of this Plan shall be the date of entry of the Consent Order, on which date this Plan shall become final and binding. The Companies' obligations under this Compliance Plan shall continue from its effective date until the last required compliance audit is completed in 2014 and the results have been reported to the OIC.

**C. Compliance Plan**

**1. Internal Audit**

a. **Information to OIC:** The Companies will conduct five semi-annual audits, the first during the first quarter of 2012 with four successive audits to be conducted semi-annually thereafter. The first audit shall examine new business written during the last quarter of 2011. The second semi-annual audit will examine new and renewal business produced in the first half of 2012. The third semi-annual audit will examine new and renewal business produced in the second half of 2012, the fourth will examine new and renewal business produced in the first half of 2013, and the fifth semi-annual audit will examine new and renewal business produced in the second half of 2013.

b. The audits will focus on the areas of violation which are the subject of the subpoenaed Consent Order. Copies of each internal audit report on the semi-annual audits to be performed pursuant to this Plan shall be provided to Christine Tribe of the OIC Legal Affairs Division within thirty business days of the report being issued. Reports shall be issued no later than thirty calendar days following the completion of each audit.

c. Internal Audit Obligations: The Companies shall provide their staff conducting the audit with the Consent Order and shall direct their audit personnel to include the areas of violation in the semi-annual audits conducted pursuant to this Compliance Plan.

d. Audit Scope: Each semi-annual audit shall encompass at least fifty (50) files, or all of the files if there are less than fifty available, for each of the three areas of violations listed in the Consent Order. Each file audited must involve Washington insureds. These files shall be randomly selected from all subject commercial policies issued to Washington insureds and the randomness of the selection process shall be documented. The commercial policies encompassed in the audit will include package, automobile, excess, umbrella, boiler and machinery, D&O (profit and not-for-profit), fiduciary, E&O, employment practices liability and crime.

e. Correction of Exceptions: Any exception or deficiency identified by the internal audits conducted pursuant to this Plan shall be corrected. The Companies agree to advise OIC within thirty (30) days of the audit report of any corrective measures contemplated to address any such exceptions or deficiencies or any other areas requiring correction. The OIC shall then review these measure(s) and notify the Companies of any comments associated thereto within thirty (30) days. Unless the OIC requests modifications to the proposed corrective measure(s), the Companies shall have thirty (30) days from the end of the OIC's review period to implement the measure(s). However, should the Companies need longer than thirty (30) days to correct any exception or deficiency, the Companies may contact the OIC Legal Affairs Division and request an extension to the thirty (30) day requirement.

## 2. Additional Compliance Actions

a. For insureds headquartered in Washington State, the Companies intend to make the rate and rule filings and business process changes needed to implement a default standard writing company that does not offer a schedule rating or similar variable rating plans. Upon implementation of the default standard writing company, use of other writing companies with filed variable rating plans must be authorized by specified senior commercial lines managers who have been trained in Washington State compliance requirements.

b. The Companies will establish a dedicated compliance assurance team for Washington State.

c. The Companies will revise some of their rate filings in an effort to reduce the number of programs that offer variable rating plans that require documentation.

d. The Companies will implement changes and enhancements to the current systems designed to improve documentation of the use of commercial rating plans.

e. The Companies commit to include enhanced rating documentation/compliance functionality in future rating systems, where feasible.

f. The Companies agree to prepare and deliver training in Washington State compliance issues to employees involved in the underwriting and rating of policies issued to Washington State insureds, to the members of the dedicated compliance assurance team for Washington State, and to the senior commercial lines managers authorized to approve the use of variable rating for Washington State insureds.

g. The Companies will report the completion of the steps set forth in paragraphs 2a through 2e to the OIC as these steps are completed and will include in their semi-annual audit reports a summary description of the training that was given during the audit period. These reports shall be provided to Christine Tribe of the OIC Legal Affairs Division with a copy to Sally Eastman of the Market Oversight section of the OIC Company Supervision Division.

Office of Insurance Commissioner  
Attn: Sally Eastman, Chief Market Conduct Examiner  
The Central Building, Suite 650  
810 3<sup>rd</sup> Avenue  
Seattle, WA 98104  
(206) 464-7474

Office of Insurance Commissioner  
Attn: Christine Tribe, Paralegal  
PO Box 40255  
Olympia, WA 98504-0255  
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