

IN THE DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION
STATE OF MISSOURI

In Re:)
) Case No. 09-0430514C
Universal Casualty Company,)

ANSWER TO STATEMENT OF CHARGES,
SUMMARY CEASE AND DESIST ORDER & ORDER TO SHOW CAUSE

COMES NOW Universal Casualty Company (hereinafter "UCC"), by and through counsel English & Monaco, P.C., and for its Answer and affirmative defenses to the Statement of Charges, Summary Cease and Desist Order and Order to Show Cause (hereinafter "statement of charges") filed by the Director of the Department of Insurance, Financial Institutions and Professional Registration (hereinafter "Department") states as follows:

JURISDICTION AND RELEVANT STATUTES

1. UCC admits that Section 375.881 states, in part, as set forth in the Statement of Charges filed by the Department;
2. UCC admits that Section 375.144 states, as set out in paragraph 2 of the Department's Statement of Charges; further answering, UCC admits that Section 375.145, 374.046 and 374.144 state or states in part as set out in paragraph 2 of the

Department's Statement of Charges; further answering, UCC admits a violation of Section 375.144 is a level four violation pursuant to Section 374.049.

3. UCC admits that Section 375.445 RSMo states in part as set out in paragraph 3 of the Department's Statement of Charges; further answering, UCC admits a violation of Section 375.144 is a level four violation pursuant to Section 374.044;

4. UCC admits that Section 375.1005 states in part as set out in paragraph 4 of the Department's Statement of Charges;

5. UCC admits that Section 375.1007 states in part as set out in paragraph 5 of the Department's Statement of Charges;

6. UCC admits that 20 CSR 100-1.030 states in part as set out in paragraph 6 of the Department's Statement of Charges; UCC denies all other allegations set out in paragraph 6 of the Department's Statement of Charges;

7. UCC admits that 20 CSR 10-1.050 states in part as set out in paragraph 7 of the Department's Statement of Charges; UCC denies all other allegations in paragraph 7 of the Department's Statement of Charges;

8. UCC admits that Section 375.1010 states in part as set out in paragraph 8 of the Department's Statement of Charges;

9. UCC admits that Section 375.1012 states in part as set out in paragraph 9 of the Department's Statement of Charges;

10. UCC admits that Section 374.046 states in part as set out in paragraph 10 of the Department's Statement of Charges; UCC denies all other allegations in paragraph 10 of the Department's Statement of Charges;

11. UCC admits that Section 374.047 RSMo states in part as set out in paragraph 11 of the Department's Statement of Charges;

12. UCC admits that Section 374.049 RSMO and Section 374.280 RSMo authorize the Director to impose a monetary penalty or forfeiture "depending on the level of the violation" payable to the State of Missouri;

13. UCC denies the allegation as set out in paragraph 13 of the Department's Statement of Charges;

14. UCC admits it is an insurance company organized pursuant to the laws of the State of Illinois and transacting business in the State of Missouri pursuant to a Certificate of Authority issued by the Director of the Department of Insurance, Financial Institutions and Professional Registration of the State of Missouri.

COUNT I

Having fully answered paragraphs 1 through 14 of the Department's Statement of Charges, UCC hereby incorporates its previous answers to paragraphs 1 through 14 as if fully set forth herein; UCC further denies the allegations set out in heading to Count 1 of the Department's Statement of Charges;

15. UCC denies the allegations set out in paragraph 15 of Count 1 of the Department's Statement of Charges;

16. UCC denies the allegations set out in paragraph 16 of Count 1 of the Department's Statement of Charges;

WHEREFORE, having fully answered Count I of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be granted, for its costs and fees and for such other relief as the court deems just and proper

COUNT II

UCC hereby incorporates its answers to paragraph 1 through 16 of the Department's Statement of Charges and its answer to the heading of Count I of the Department's Statement of Charges as if fully set forth herein; UCC further denies the allegations set forth in the heading of Count II of the Department's Statement of Charges

17. UCC denies the allegations set out in paragraph 17 of Count II of the Department's Statement of Charges;

18. UCC denies the allegations set out in paragraph 18 of Count II of the Department's Statement of Charges.

WHEREFORE, having fully answered Count II of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be

granted, for its costs and fees and for such other relief as the court deems just and proper

COUNT III

UCC hereby incorporates its answers to paragraph 1 through 18 of the Department's Statement of Charges and its answers to the headings of Counts I and Count II of the Department's Statement of Charges as if fully set forth herein; UCC further denies the allegations set forth in the heading of Count III of the Department's Statement of Charges;

19. UCC denies the allegations as set out in paragraph 19 of Count III of the Department's Statement of Charges;

20 UCC denies the allegations as set out in paragraph 20 of Count III of the Department's Statement of Charges.

WHEREFORE, having fully answered Count III of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be granted, for its costs and fees and for such other relief as the court deems just and proper

COUNT IV

UCC hereby incorporates by references its answers to paragraphs 1 through 20 of the Department's Statement of Charges and its answers to the headings contained in Counts I through III of the Department's Statement of Charges as if fully set forth herein;

further, UCC denies the allegations contained in the heading of Count IV of the Department's Statement of Charges;

21. UCC denies the allegations as set out in paragraph 21 of the Department's Statement of Charges;

22. UCC denies the allegations as set out in paragraph 22 of the Department's Statement of Charges;

23. UCC denies the allegations as set out in paragraph 23 of the Department's Statement of Charges;

24. UCC denies the allegations as set out in paragraph 24 of the Department's Statement of Charges.

WHEREFORE, having fully answered Count IV of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be granted, for its costs and fees and for such other relief as the court deems just and proper

COUNT V

UCC hereby incorporates by reference its answers to paragraphs 1 through 24 of the Department's Statement of Charges and its answers to the headings contained in Counts I through IV of the Department's Statement of Charges and hereby denies the allegations contained in the heading of Count V of the Department's Statement of Charges;

25. UCC denies the allegations as set out in paragraph 25 of the Department's Statement of Charges;

26. UCC denies the allegations as set out in paragraph 26 of the Department's Statement of Charges.

WHEREFORE, having fully answered Count V of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be granted, for its costs and fees and for such other relief as the court deems just and proper.

COUNT VI

UCC hereby incorporates by reference its answers to paragraphs 1 through 26 of and its answers to the headings contained in Counts I through V of the Department's Statement of Charges; UCC denies the allegations set forth in the heading of Count VI of the Department's Statement of Charges;

27. UCC denies the allegations as set out in paragraph 27 of the Department's Statement of Charges;

28. UCC denies the allegations as set out in paragraph 28 of the Department's Statement of Charges.

WHEREFORE, having fully answered Count VI of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be

granted; for its costs and fees and for such other relief as the court deems just and proper.

COUNT VII

UCC hereby incorporates by reference its answers to paragraphs 1 through 28 of the Department's Statement of Charges and its answers to the headings contained in Counts I through VI of the Department's Statement of Charges and hereby denies the allegations contained in the heading of Count VII of the Department's Statement of Charges;

29. UCC denies the allegations contained in paragraph 29 of the Departments Statement of Charges;

30. UCC denies the allegations contained in paragraph 30 of the Departments Statement of Charges.

WHEREFORE, having fully answered Count VII of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be granted, for its costs and fees and for such other relief as the court deems just and proper.

COUNT VIII

UCC hereby incorporates by reference its answers to paragraphs 1 through 30 of the Department's Statement of Charges and its answers to the heading contained in

Counts I through VII of Department's Statement of Charges: UCC hereby denies the allegations contained in the heading of Count VIII of the Department's Statement of Charges;

31. UCC denies the allegations contained in paragraph 31 of the Department's Statement of Charges;

32. UCC denies the allegations contained in paragraph 32 of the Department's Statement of Charges;

33. UCC denies the allegations contained in paragraph 33 of the Department's Statement of Charges;

34. UCC denies the allegations contained in paragraph 34 of the Department's Statement of Charges;

WHEREFORE, having fully answered Count VIII of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be granted, for its costs and fees and for such other relief as the court deems just and proper.

COUNT IX

UCC hereby incorporates by reference its answers to the headings contained in Counts I through VIII of Department's Statement of Charges: UCC hereby denies the

allegations contained in the heading of Count X of the Department's Statement of Charges;

35. UCC hereby incorporates by reference its answers to paragraphs 1 through 34 of the Department's Statement of Charges as if fully set forth herein;

36. UCC denies the allegations as set out in paragraph 36 of the Department's Statement of Charges;

37. UCC denies the allegations as set out in paragraph 37 of the Department's Statement of Charges;

38. UCC denies the allegations as set out in paragraph 38 of the Department's Statement of Charges;

WHEREFORE, having fully answered Count IX of the Department's Statement of Charges, UCC moves to dismiss same for failure to state a claim upon which relief can be granted, for its costs and fees and for such other relief as the court deems just and proper.

COUNT X

UCC hereby incorporates by reference its answers to the heading contained in Counts I through IX of Department's Statement of Charges: UCC hereby denies the allegations contained in the heading of Count X of the Department's Statement of Charges;

39. UCC hereby incorporates by reference its answers to paragraphs 1 through 38 of the Department's Statement of Charges as if fully set forth herein;

40. UCC denies the allegations as set out in paragraph 40 of the Department's Statement of Charges;

VIOLATIONS ARE CONTINUING IN NATURE

1) UCC denies the allegations that such violations are continuing in nature with respect to the paragraph labeled 1 under the heading "Violations are Continuing in Nature";

2) UCC denies the allegations contained in the paragraph labeled 2 under the heading "Violations are Continuing in Nature".

CONCLUSIONS OF LAW

1) UCC denies the allegations contained in the paragraph labeled 1 under the heading "Conclusions of Law";

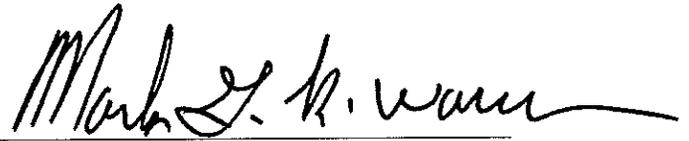
2) UCC denies the allegations contained in the paragraph labeled 2 under the heading "Conclusions of Law".

WHEREFORE, having fully answered all allegations contained in the

Department's Statement of Charges, UCC prays said Statement of Charges be dismissed, for its costs and fees and hereby requests a hearing in this matter and for such other relief as the Court deems just and proper.

Respectfully Submitted,

ENGLISH & MONACO, P.C.



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ATTORNEYS FOR DEFENDANT

AFFIRMATIVE DEFENSES AND RESPONSE PURSUANT TO 20 CSR 800-1.060

COMES NOW Universal Casualty Company (hereinafter “UCC”) by and through counsel English & Monaco, P.C., and for its Affirmative Defenses and Response, pursuant to 20 CSR 800-1.060 to the Statement of Charges, Summary Cease and Desist Order and Order to Show Cause filed by the Director of the Department of Insurance, Financial Institutions and Professional Registration (hereinafter “Department”) states as follows:

1. The Department bases its Summary Cease and Desist Order upon Section 374.046.4, apparently upon a violation of Section 375.144;
2. Further, the Department’s petition in Count IX alleges that UCC conducted fraudulent business practices, a violation of Section 375.445 RSMo;
3. The Department’s petition in Count X, paragraph 40 alleges that UCC’s conduct operated as a “fraud or deceit” in violation of Section 375.144(4). Further, in Count X, paragraph 1 under the heading of “Violations Are Continuing in Nature”, the Department alleges that UCC’s conduct “operates as a fraud upon both first party and third party claimants.” Further, the Summary Cease and Desist Order issued by the Department alleges in paragraph “f.” that UCC is conducting business in a fraudulent manner, and alleges in paragraph “g.” that UCC is engaging in acts, practices or course of business which “operate as a fraud”.
4. Rule 55.15 of the Missouri Rules of Civil Procedure states that “all

averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity...”.

5. With respect to the allegations of fraud in the Department’s petition, the Department fails to aver the circumstances constituting fraud with particularity as to any of the Consumer Affairs Division complaint files cited in Counts I, II, III, IV, VI, VIII, IX or X;

6. In its Summary Cease and Desist Order, the Department avers that UCC is conducting business in a fraudulent manner in paragraph “f.”, and avers that UCC is engaging in acts, practices or courses of business which “operate as fraud;” however, it fails to aver with particularity the circumstances constituting fraud;

7. Therefore, the Department’s petition fails to state a claim upon which relief can be granted with respect to the counts noted above;

8. The Department’s Summary Cease and Desist Order fails to comply with Section 374.046.4 because the requirements of Section 375.144 necessary to issue a Summary Cease and Desist Order to the extent that said Summary Cease and Desist Order alleges fraud fails to meet the requirements of Rule 55.15 of the Missouri Rules of Civil Procedure;

WHEREFORE, because the Department’s petition and its Summary Cease and

Desist Order with respect to the Sections noted above do not comply with the Missouri Rules of Civil Procedure, they fail to state a claim upon which relief can be granted, and therefore such counts should be dismissed, the Department's petition should be dismissed, and the Department's Summary Cease and Desist Order should be rescinded; and for such other relief as the Court deems just and proper.

Respectfully Submitted,

ENGLISH & MONACO, P.C.


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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Statement of Charges, Summary Cease and Desist Order and Order to Show Cause was hand delivered this 9th day of July, 2009, to: Tamara Kopp, Missouri Department of Insurance, Financial Institutions and Professional Registration, 301 W. High Street, Jefferson City, MO 65109.


MARK G. R. WARREN

allegations set out in paragraph e of the Summary Cease and Desist Order;

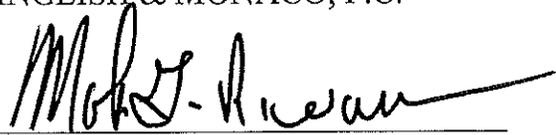
f. UCC denies that it has ever conducted business fraudulently, failed to carry out its contracts in good faith, or habitually and as matter of business practice compelled claimants under policies or liability judgment creditors of the insured to either accept less than the amount due under the terms of the policy or resort to litigation against the company to secure payment of the amount due;

g. UCC denies that it has ever acted in a manner as set forth in paragraph g of the Summary Cease and Desist Order;

h. UCC denies it has ever engaged in acts, practices, omissions and courses of business which violate Sections 375.144, 375.445, and 375.1005.

WHEREFORE, having fully answered the Summary Cease and Desist Order, UCC hereby respectfully requests that a hearing be held upon the matter set forth in this Order, that this Order be dismissed, for its costs and fees, and for such other relief as the Court deems just and proper.

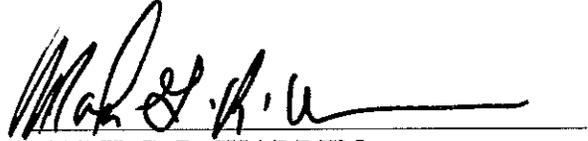
Respectfully Submitted,
ENGLISH & MONACO, P.C.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer and Request for Hearing Pursuant to Section 374.046.5 of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri Summary Cease and Desist Order was hand delivered this 9th day of July, 2009, to: Tamara Kopp, Missouri Department of Insurance, Financial Institutions and Professional Registration, 301 W. High Street, Jefferson City, MO 65109.


MARK G. R. WARREN