

FEB 8 2001

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY CP

In the Matter of:

**MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY,**

NAIC #65935;

Respondent.

) Docket No. 01A-036-INS

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) **CONSENT ORDER**

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Examiners for the Department of Insurance (the "Department") conducted a market conduct examination of Massachusetts Mutual Life Insurance Company ("MassMutual"). The Report of the Examination of the Market Conduct Affairs of MassMutual, dated July 9, 1998 alleges that MassMutual has violated A.R.S. §§ 20-448.01, 20-1110, 20-1226, 20-2110, and A.A.C. R20-6-202, R20-6-211, R20-6-215, R20-6-707, and R20-6-1203.

MassMutual wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. MassMutual is authorized to transact life and disability insurance pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a market conduct examination of MassMutual. The on-site examination covered the time period from April 15, 1995 through April 15, 1998, and was concluded on July 9, 1998. Based on the findings the Examiners prepared the "Report of Examination of the Market Conduct Affairs of Massachusetts Mutual Life Insurance Company" dated July 9, 1998.

1 3. The Department does not allege that any of the acts of MassMutual were
2 intentional violations of Arizona Statutes or Administrative Rules.

3 4. The Examiners reviewed all advertising provided by MassMutual in response
4 to the Examiners' request and found MassMutual failed to file 28 variable contract and
5 five non variable sales and marketing materials prior to their use in Arizona.

6 5. The Examiners reviewed 50 of 4,234 life insurance policies issued by the
7 Company during the time frame of the examination and found MassMutual issued seven
8 life insurance policies with death benefits exclusions other than suicide.

9 6. The Examiners reviewed 19 of 175 life insurance policies issued with higher
10 than standard rates during the time frame of the examination and found as follows:

11 a. MassMutual failed to provide eight applicants with a Summary of
12 Rights.

13 b. MassMutual failed to send any written notice to six applicants and
14 therefore provided neither the specific reason for the adverse underwriting decision nor
15 a Summary of Rights.

16 7. The Examiners reviewed 22 life insurance policies that contained Company
17 HIV testing consent form N201AZ. The form used had been filed and approved, but
18 had not been revised after the adoption of A.A.C. R20-6-1203(C)(8) to show the time
19 period during which release provisions are effective.

20 8. The Examiners reviewed 50 of 162 life insurance policies rejected during the
21 time frame of the examination and found as follows:

22 a. MassMutual failed to provide ten applicants with a Summary of Rights,
23 in the event of an adverse underwriting decision. Eight of the ten notification letters did
24 not give a specific reason for the adverse underwriting decision.

25 b. MassMutual did not use an HIV testing consent form as prescribed by

1 the Director in five of 33 files where HIV testing was indicated. The form used by Mass
2 Mutual was filed and approved but did not give the period during which release
3 provisions are effective.

4 c. MassMutual had HIV tests done for three applicants prior to the signing
5 of a HIV testing consent form prescribed by the Director.

6 9. The Examiners reviewed 38 of the 40 external replacement life insurance
7 policies wherein the existing and proposed policies are written by different companies
8 and found as follows:

9 a. MassMutual failed to include with 21 policies, in either the policy or in a
10 separate written notice that is delivered with the policy, that the applicant has the right to
11 an unconditional refund of all premiums paid, which right may be exercised within a
12 period of twenty days from the date of delivery of the policy. MassMutual believed in 20
13 of the policies, since the replacing contract was a variable life policy that the
14 transactions were exempt from compliance with the replacement rules.

15 b. MassMutual failed to require from the agent with eight applications for
16 life insurance a copy of the "Notice Regarding Replacement of Life Insurance".
17 MassMutual believed in seven of the policies, since the replacing contract was a
18 variable life policy that the transactions were exempt from compliance with the
19 replacement rules.

20 c. MassMutual did not send to the existing insurer a "Notice Regarding
21 Replacement of Life Insurance" within three working days of the date the application
22 was received at its home office in 22 of the files. MassMutual believed in 19 of the
23 policies, since the replacing contract was a variable life policy that the transactions were
24 exempt from compliance with the replacement rules.

25 d. MassMutual, as replacing insurer, did not send the Policy Summary to

1 the existing insurer within three working days of the policy issue date in three files.

2 e. MassMutual, as the replacing insurer, failed to maintain a copy of the
3 Policy Summary for at least three years or until conclusion of the next succeeding
4 regular examination by the Insurance Department of its state of domicile, whichever is
5 later, in two files.

6 f. MassMutual, as the replacing insurer, furnished Policy Summaries to
7 the existing insurer in 11 files that did not contain a date when the Policy Summary was
8 prepared.

9 10. The Examiners reviewed 11 internal replacements, wherein the existing and
10 proposed policies are issued by the same company and found as follows:

11 a. MassMutual failed to require with or as part of two applications a
12 statement signed by an agent as to whether he or she knows a replacement is or may
13 be involved in the transaction.

14 b. MassMutual failed to maintain a copy of the Policy Summary in three
15 files for at least three years or until conclusion of the next succeeding regular
16 examination by the Insurance Department of its state of domicile, whichever is later.

17 c. MassMutual failed to require from the agent a "Notice Regarding
18 Replacement of Life Insurance" with three applications. MassMutual believed in all
19 three of the applications, since the replacing contract was a variable life policy that the
20 transactions were exempt from compliance with the replacement rules.

21 d. MassMutual failed to include with seven policies, in either the policy or in a
22 separate written notice that is delivered with the policy, that the applicant has the right to
23 an unconditional refund of all premiums paid, which right may be exercised within a
24 period of twenty days from the date of delivery of the policy. MassMutual believed in all
25 seven of the applications, since the replacing contract was a variable life policy that the

1 transactions were exempt from compliance with the replacement rules.

2 11. The Examiners reviewed 50 of 526 disability income insurance policies
3 issued and found MassMutual failed to provide seven applicants with a Summary of
4 Rights, where an adverse underwriting decision was made. Two of the seven files had
5 no documentation that a letter had been sent.

6 12. The Examiners reviewed 13 of 86 disability income policy declinations and
7 found as follows: MassMutual failed to provide 13 applicants with a Summary of Rights,
8 where an adverse underwriting decision was made.

9 13. The Examiners reviewed seven of seven disability income policy
10 applications that were declined by the Company through Connecticut Mutual and found
11 as follows:

12 a. MassMutual failed to provide seven applicants with a Summary of
13 Rights following the declination.

14 b. MassMutual failed to provide three applicants with a specific reason for
15 the declination.

16 **CONCLUSIONS OF LAW**

17 1. MassMutual violated A.A.C. R20-6-707(D)(11)(c) by not filing sales and
18 marketing materials concerning variable life insurance.

19 2. MassMutual violated A.R.S. §20-1110(E) by failing to file advertising forms
20 concerning life insurance other than variable.

21 3. MassMutual, as replacing insurer, violated A.A.C. R20-6-215(F)(3)(b) by
22 failing to provide the preparation date of the Policy Summary which it provided to the
23 existing insurer.

24 4. MassMutual violated A.R.S. §20-2110(A) by failing to give applicants for
25 insurance notice of adverse underwriting decisions that included:

1 a. The specific reasons for the adverse underwriting.

2 b. A Summary of Rights as required by A.R.S. §§20-2108 and 20-2109.

3 6. MassMutual violated A.R.S. §20-1226(A) by using death benefit exclusions
4 of avocational activities.

5 7. MassMutual violated A.A.C. R20-6-215(F)(3)(c) by failing to send to the
6 existing insurer "Notice Regarding Replacement of Life Insurance" within three working
7 days of the date the application was received.

8 8. MassMutual violated A.A.C. R20-6-1203(C)(8) by using an HIV testing
9 consent form that did not specify the time period during which release provisions are
10 effective.

11 9. MassMutual violated A.R.S. §20-448.01(B) by:

12 a. Performing the HIV test prior to the HIV testing consent forms being
13 reviewed and signed by the applicant.

14 b. Failing to obtain written consent from the subject of an HIV-related test
15 on a form as prescribed by the Director.

16 10. MassMutual violated A.A.C. R20-6-215(F)(3)(d) by failing to provide in
17 either the policy or in a separate notice that is delivered with the policy that the applicant
18 has a right to an unconditional refund of all premiums paid, which right may be
19 exercised within a period of 20 days commencing from the date of delivery of the policy.

20 11. MassMutual violated A.A.C. R20-6-215(F)(3)(a) by failing to require with the
21 application from the agent a copy of the "Notice Regarding Replacement of Life
22 Insurance".

23 12. MassMutual, as replacing insurer, violated A.A.C. R20-6-215(F)(3)(d) by
24 failing to send a Policy Summary to the existing insurer within three business days of
25 the policy issue date when replacement was involved.

1 13. MassMutual violated A.A.C. R20-6-215(F)(3)(f) by failing, as replacing
2 insurer, to maintain a copy of the Policy Summary for at least three years or until the
3 conclusion of the next succeeding examination by the insurance department of its state
4 of domicile, whichever is later.

5 14. MassMutual violated A.A.C. R20-6-215(F)(3)(e) by failing, as replacing
6 insurer and existing insurer, to provide in its policy or in a separate written notice that is
7 delivered with the policy that the applicant has the right to an unconditional refund of all
8 premiums paid, which right may be exercised within a period of twenty days
9 commencing from the date of delivery of the policy.

10 15. Grounds exist for the entry of the following Order, in accordance with A.R.S.
11 §§20-220 and 20-2117.

12 **ORDER**

13 **IT IS ORDERED THAT:**

14 1. Massachusetts Mutual Life Insurance Company shall cease and desist from
15 committing the following practices:

16 a. Using marketing and advertising materials for variable life insurance
17 that were not filed.

18 b. Using unfiled marketing and advertising material for life insurance
19 other than variable life insurance.

20 c. Failing to send a dated Policy Summary to the existing insurer where a
21 replacement of life insurance is involved.

22 d. Failing to provide written notice of the specific reason to the applicant
23 for an adverse underwriting decision.

24 e. Failing to provide a Summary of Rights in its written notice to the
25 applicant when an adverse underwriting decision is made.

1 f. Using death benefits exclusions of avocational activities in its life
2 insurance policies.

3 g. Using an HIV testing consent form that did not specify the time period
4 during which release provisions are effective.

5 h. Testing applicants for HIV prior to the applicants signing an HIV testing
6 consent form.

7 i. Failing to advise applicants, where replacement of existing insurance is
8 involved, that the applicant has a right to an unconditional refund of all premiums paid,
9 which right may be exercised within twenty days commencing from the date of delivery
10 of the policy.

11 j. Failing to require from the agent, when replacing existing life insurance,
12 with or as part of the application a copy of the "Notice Regarding Replacement of Life
13 Insurance".

14 k. Failing to send to the existing insurer a "Notice Regarding
15 Replacement of Life Insurance" within three working days from receipt of the application
16 for insurance.

17 l. Failing to maintain, as the replacing insurer, a copy of the Policy
18 Summary for three years or until the conclusion of the next succeeding regular
19 examination by the insurance department of domicile, whichever is later.

20 m. Failing, as the replacing insurer, to send a copy of the Policy Summary
21 to the existing insurer within three working days of the policy issue date.

22 2. Within 90 days of the filed date of this Order, Massachusetts Mutual Life
23 Insurance Company shall submit to the Arizona Department of Insurance, for approval,
24 evidence that corrections have been implemented and communicated to the appropriate
25 personnel, regarding all of the items listed above in Paragraph 1 of the Order section of

1 this Consent Order. Evidence of corrective action and communication thereof includes,
2 but is not limited to, memos, bulletins, E-mails, correspondence, procedures manuals,
3 print screens, and training materials.

4 3. The Department shall be permitted, through authorized representatives, to
5 verify that Massachusetts Mutual Life Insurance Company has complied with all
6 provisions of this Order.

7 5. Massachusetts Mutual Life Insurance Company shall pay a civil
8 penalty of \$15,000 to the Director for deposit in the State General Fund in accordance
9 with A.R.S. §20-220(B). The civil penalty shall be provided to the Market Conduct
10 Examinations Section of the Department prior to the filing of this Order.

1 5. The Report of Market Conduct Affairs of Massachusetts Mutual Life
2 Insurance Company as of July 9, 1998, including the letter submitted in response to the
3 Report of Examination, shall be filed with the Department after the Director has filed this
4 Order.

5 DATED at Phoenix, Arizona this 7th day of February, 2001.

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9 Charles R. Cohen
10 Director of Insurance

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2 **CONSENT TO ORDER**

3 1. Massachusetts Mutual Life Insurance Company has reviewed the foregoing
4 Order.

5 2. Massachusetts Mutual Life Insurance Company admits the jurisdiction of the
6 Director of Insurance, State of Arizona, admits the foregoing Findings of Fact, and
7 consents to the entry of the Conclusions of Law and Order.

8 3. Massachusetts Mutual Life Insurance Company is aware of the right to a
9 hearing, at which it may be represented by counsel, present evidence, and cross-
10 examine witnesses. Massachusetts Mutual Life Insurance Company irrevocably waives
11 the right to such notice and hearing and to any court appeals related to this Order.

12 4. Massachusetts Mutual Life Insurance Company states that no promise of
13 any kind or nature whatsoever was made to it to induce it to enter into this Consent
14 Order and that it has entered into this Consent Order voluntarily.

15 5. Massachusetts Mutual Life Insurance Company acknowledges that the
16 acceptance of this Order by the Director of the Arizona Department of Insurance is
17 solely for the purpose of settling this matter and does not preclude any other agency or
18 officer of this state or its subdivisions or any other person from instituting proceedings,
19 whether civil, criminal, or administrative, as may be appropriate now or in the future.

20 6. James E. Miller, who holds the office of Executive Vice Pres at
21 Massachusetts Mutual Life Insurance Company is authorized to enter into this Order for
22 it and on its behalf.

23 **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**

24 02-01-01
Date

By:

James E. Miller

1 COPY of the foregoing mailed/delivered
This 8th day of February 2001, to:

2
3 Sara Begley
Deputy Director
4 Mary Butterfield
Assistant Director
5 Consumer Affairs Division
Paul J. Hogan
6 Chief Market Conduct Examiner
Market Conduct Examinations Division
7 Deloris E. Williamson
Assistant Director
8 Rates & Regulations Division
9 Steve Ferguson
Assistant Director
10 Financial Affairs Division
Alexandra Shafer
11 Assistant Director
Life & Health Division
12 Nancy Howse
Chief Financial Examiner
13 Terry L Cooper
Fraud Unit Chief
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18 MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY
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