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In the Matter of

First American Title Insurance Company

and

**First American Title Insurance
Company of New York**

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ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of Executive Law § 63 (12), General Business Law § 349 and the common law of the State of New York, the office of Eliot Spitzer, Attorney General of the State of New York (“OAG”) caused an investigation to be made of First American Title Insurance Company and its insurance subsidiaries (collectively, “FAT”) including First American Title Insurance Company of New York (“FATICONY”) relating to the payment of rebates and certain referral fees in or from the State of New York, and Howard Mills, the Superintendent of Insurance of the State of New York (“Superintendent”) and the New York State Insurance Department (“NYSID”), pursuant to the provisions of New York Insurance Law §§ 305, 309, 310, 2301 *et seq.* and §§ 6401 *et seq.*, conducted an investigation of FAT on the same subject matter (together, both investigations are referred to as the “Investigation”) and conducted an examination of FATICONY on the subject matter of the Investigation and the manner in which FAT conducts its business practices and fulfills its contractual obligations to policyholders and claimants. Based upon the Investigation the following findings have been made:

BACKGROUND

FAT is one of the three largest title insurance companies in New York and nationally. FAT's market share for 2005 was 22.94% of title insurance business written in New York.

As part of a statutory scheme designed to protect consumers, New York law prohibits title insurers from paying rebates to their customers or referral fees to their customers' representatives. FAT, however, has paid rebates to large commercial customers and referral fees to certain commercial customers' representatives. FAT has also failed to implement any policies, procedures, training or controls designed to ensure that it complies with New York law.

A. New York's Title Insurance Laws

New York State employs a fixed rate schedule that must be filed with and approved by the NYSID. The filed rates are meant to ensure that (a) title insurance rates are set at a reasonable level and reflect the true costs of providing that insurance, (b) title insurers remain solvent and earn a reasonable profit, and (c) consumers are treated equally by title insurance companies. Thus, it is illegal in New York for title insurance companies to charge rates deviating from their filed rate schedules. Insurance Law § 2314.

In furtherance of its consumer protection objective, New York law prohibits the payment of any (a) rebates from the premiums collected based on filed title insurance rates and (b) referral fees to any representative of the insured. These rebate and referral fee prohibitions were passed by the New York Legislature in 1975 in order to reduce the cost of title insurance. Insurance Law § 6409(d) provides that:

No title insurance corporation or any other person acting for or on behalf of it, shall make any rebate of any portion of the fee, premium or charge made, or pay or give to any applicant for insurance, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or the prospective owner, lessee, or mortgagee of the real property or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any title insurance business.

In recommending these prohibitions, the then Superintendent of Insurance explained:

Lawyers and real estate brokers now receive commissions of up to 15% or more of the title insurance premiums, despite their being otherwise compensated for their services in the real estate transaction. An elimination of these commissions will reduce title insurance costs to consumers. . . .

Memorandum from John P. Gemma, Acting Superintendent of Insurance, to the Governor of the State of New York (June 6, 1975) (“Memorandum to the Governor”). *See also* Memorandum from the State of New York Insurance Department, to the Counsel of the Governor of the State of New York, “Ins. Dept. #4-75” (discussing Legislative Proposal No. 4, 1975).

Section 349 of the New York General Business Law (“GBL”) empowers the OAG to seek injunctive relief when any person or entity has engaged in deceptive acts or practices in the conduct of any business. Section 350-d of the GBL empowers the OAG to seek, *inter alia*, civil penalties in the amount of \$500 for each violation of section 349, the Deceptive Practices Statute. Finally, Executive Law §§ 63(12) and 63(15) empower the OAG to seek injunctive and equitable relief when any person or business entity has engaged in or otherwise demonstrated repeated fraudulent or illegal acts in the transaction of business.

B. FAT’s Violations of New York Law

FAT has violated New York law by paying illegal rebates and referral fees.

1. Illegal Rebates: FAT's Rate Blends

FAT gives illegal rebates to sophisticated real estate developers by using the New York rates as a basis for subsidizing discounts on business transacted in states that do not require a fixed rate schedule. The result is what are called “rate blends.”

a. Rate Blends

In the most common type of rate blend transaction, the developer pays the full regulated New York rate to a title insurer, and receives discounted or free title insurance in unregulated states in return. Thus, the rates of regulated states like New York are “blended” with the rates of unregulated states, resulting in a lower charge (or in some cases, even no charge at all) for title insurance outside of New York.

In these transactions the blended rate is based on the full premium required by New York and the other regulated states involved in the transaction plus a heavily discounted amount for the properties in unregulated states. In some cases, the rates in the unregulated state are reduced to zero.

When FAT collected the full regulated premium for the New York property on a multi-state transaction and zero premium for a property in an unregulated state, the FAT office in the unregulated state needed money to issue a policy, put up reserves for potential losses and pay appropriate state premium taxes. These expenses are paid out of the overall proceeds from the blended rate transaction.

FAT has engaged in dozens of blended rate transactions involving New York properties.

b. Delayed Blends

A second type of rate blend occurs when a developer is only purchasing a single large New York property. Since there is no immediately available out-of-state fee to discount or “zero out,” the title insurer simply gives the developer a credit for future use, *i.e.*, a “delayed blend.” To do this, the title insurer collects the New York filed rate premium from the developer and immediately deposits a portion thereof in an escrow account to be applied against that developer’s future purchase of title insurance policies outside New York – in essence a coupon for free or reduced title insurance on the developer’s next out-of-state transaction in an unregulated state.

The Talon Group (“Talon”), a division of FATICONY has engaged in at least one delayed blend transaction involving a New York property. In early 2004, Talon entered into a delayed blend transaction with a large commercial customer memorialized in a letter agreement dated February 5, 2004. Talon induced the customer to purchase a \$400 million policy with over \$1 million in premium on a nuclear power plant in Wayne County, New York by granting the customer a “\$600 million [liability] credit for owner’s title insurance on future transactions in unregulated states.”

2. FAT’s Illegal Referral Fees

FAT’s second violation of New York law involves paying illegal referral fees in commercial transactions. As discussed above, New York Insurance Law § 6409(d), prohibits the payment of referral fees by title insurers to representatives of the insured. Payments to representatives of the insured are allowed only if that representative is providing

“substantial services” to the title insurer and then only if the payment for such “substantial services” is reasonable.

In several instances, FATICONY has paid referral fees in commercial matters to representatives of the insured who did not provide substantial services to FATICONY.

Based on these factual allegations, the OAG and NYSID allege that FAT has violated New York law, including Executive Law § 63 (12), General Business Law § 349, New York Insurance Law § 2301 *et seq.* and § 6401 *et seq.*, and the common law of the State of New York, by paying illegal rebates and referral fees.

FAT has been and is continuing to cooperate with the Investigation.

Under this Assurance of Discontinuance (the “Assurance”) and corresponding Stipulation with the NYSID (the “Stipulation”), FAT will implement a number of business reforms governing its conduct.

By entering into this Assurance, the OAG resolves all issues uncovered to date, including all issues related to illegal rebates and referral fees, in the Investigation concerning FAT, including the conduct of FAT’s subsidiaries, directors, officers and employees.

The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest and is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding.

The NYSID and FAT will, simultaneously with the signing of the Assurance, enter into a Stipulation to resolve all issues uncovered to date in the Investigation, but not including any issues in the NYSID’s current examination of FATICONY.

This Assurance is entered into solely for the purpose of resolving the Investigation with regard to FAT, and is not intended to be used for any other purpose.

Without admitting or denying any of the above allegations or findings, FAT is entering into this Assurance and the Stipulation.

NOW THEREFORE, the OAG and FAT hereby enter into this Assurance and agree as follows:

PENALTY

1. On or before June 30, 2006, FATICONY shall pay \$2 million as a fine, by wire transfer to the State of New York. This penalty is imposed for all of the improper conduct described in this Assurance and the Stipulation.

BUSINESS REFORMS

2. Within 60 days of the date of this Assurance (or such other date as specified below), FAT shall undertake the following business reforms. FAT will not undertake any transaction for the purpose of circumventing the prohibitions contained in this Assurance and the Stipulation.

PROHIBITION OF ILLEGAL REBATES AND REFERRAL FEES

3. FAT shall immediately cease paying illegal (a) rebates and (b) referral fees as described in this Assurance.

RATE REDUCTIONS AND RATE HEARINGS

4. Concurrently with execution of this Assurance, FATICONY shall cause to be filed with the NYSID an application for a downward deviation from current title insurance rates

on file with the NYSID, together with all supporting information necessary for review by the NYSID for a rate reduction of 15% on all purchase transactions in New York involving liability levels up to \$1 million. Upon approval by the Superintendent, these rate reductions shall remain in effect until hearings on industry-wide rates are conducted by the NYSID in 2006, at which point all rates may be adjusted as the Superintendent deems appropriate.

RATE CALCULATION WEB SITE

5. FAT shall also develop a web site for its customers. The web site shall contain rate information sufficient to inform the insured of the total of the New York premium and all endorsements and fees for each title insurance policy for real property located in the State of New York. FAT shall have this system fully operational by no later than September 1, 2006.

6. Beginning no later than September 1, 2006, for all transactions involving real property located in the State of New York, FAT shall notify or cause its title agents to notify the insured in writing, at the time the insured or its representative orders any title insurance, of the web site referred to in paragraph 5 and the information available on the site.

PROHIBITION OF CLOSING "ADD-ONS"

7. FAT shall require a certification from the title agents in connection with each transaction involving real property located in the State of New York that the insured has paid the title agent only the premium for the title policy in accordance with the insurer's filed rates in New York and charges for necessary services performed in connection with the issuance of the title policy as permitted under the applicable approved rate manual in New York and *not* any additional charges of any kind, including but not limited to the payment of cash tips at the

closing. If the rate manual does not specify how much may be charged for a service, the charge shall be reasonably related to the work performed and shall not be excessive. Nothing in this paragraph shall preclude a title agent from performing additional services that may be required by the lender or other party but which are not necessary services performed in connection with the issuance of the title policy; provided, however, that the title agent certifies that it has provided a clear notice to the insured that such additional services are not performed in connection with the issuance of the title policy and has advised the insured that the issuance of the title policy is not dependent upon the agent performing such additional services.

8. FAT agrees to monitor and maintain adequate records for all transactions involving real property located in the State of New York to identify charges that are added to the customer's bill at closing by title agents, in order to prevent such added charges from being incurred by the customer.

COMPLIANCE PROCEDURES

9. FAT shall review its internal control and system information structures, including but not limited to, operational and financial reporting controls of FAT in the United States and develop policies, procedures and training programs, acceptable to the NYSID and OAG, to ensure compliance with New York state law, including but not limited to those relating to rebates, referral fees, proper calculations of premiums, and proper financial reporting. FAT shall also develop policies and an employee training program, acceptable to the NYSID and OAG, prohibiting excessive gifts and entertainment related to transactions involving real property located in the State of New York. A report of FAT's review, an appropriate remediation plan

and timetable for full implementation, shall be provided to the OAG and NYSID by September 30, 2006.

COOPERATION WITH THE NYSID

10. FAT commits that it and its insurance subsidiaries will implement a record retention policy, within 30 days of signing this Assurance and the Stipulation, to ensure compliance with applicable record retention requirements, including but not limited to the responsibility of the insurer for the maintenance of files for policies issued by agents, and ensure that all files contain documentation necessary to properly rate the policies. FAT further commits to maintain and provide to the NYSID, upon its request, complete files, including correspondence and e-mails, and payment records. FAT commits that it will authorize its independent auditors and direct its internal auditors to make available to the NYSID upon request all workpapers of FAT's auditors.

11. FAT commits that it and its insurance subsidiaries will cooperate fully with all examinations and on all other regulatory requests and will respond to all NYSID inquiries in a prompt, timely and complete manner, subject to applicable laws, and will provide appropriate staff during examinations in order to provide timely responses. Failure to respond to the NYSID in a timely manner, as required by this paragraph, will constitute violations of this Assurance, the Stipulation and the Insurance Law.

12. FAT commits that the Chair of its Audit Committee and any of its insurance subsidiaries, if requested, will meet with the NYSID and/or a designated official of the NYSID on an annual basis or more frequently as deemed necessary by the NYSID.

COOPERATION WITH THE OAG

13. FAT commits that it and its insurance subsidiaries shall fully and promptly cooperate with the OAG with regard to the Investigation, and related proceedings and actions, of any other person, corporation or entity, including but not limited to FAT's current and former employees, concerning the insurance industry. FAT commits that it and its insurance subsidiaries shall use their best efforts to ensure that all its officers, directors, employees, and agents also fully and promptly cooperate with the OAG in the Investigation and related proceedings and actions. Cooperation shall include without limitation: (a) production voluntarily and without service of subpoena of any information and all documents or other tangible evidence reasonably requested by the OAG, and any compilations or summaries of information or data that the OAG reasonably requests be prepared; (b) without the necessity of a subpoena, having FAT and its insurance subsidiaries officers, directors, employees and agents attend any proceedings at which the presence of any such persons is requested by the OAG and having such persons answer any and all inquiries that may be put by the OAG to any of them at any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings); (c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession relevant to all inquiries reasonably made by the OAG concerning any fraudulent or criminal conduct whatsoever about which it has any knowledge or information; (d) in the event any document is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by FAT indicating: (i) the type of document; (ii) the date of the

document; (iii) the author and recipient of the document; (iv) the general subject matter of the document; (v) the reason for withholding the document; and (vi) the Bates number or range of the withheld document. The OAG may challenge such claim in any forum of his choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by FAT, its officers, directors, employees, or agents; and (e) FAT shall not jeopardize the safety of any investigator or the confidentiality of any aspect of the investigation, including sharing or disclosing evidence, documents, or other information with others during the course of the investigation, without the consent of the OAG. Nothing herein shall prevent FAT from providing such evidence to other regulators, or as otherwise required by law.

14. FAT shall comply fully with the terms of this Assurance. If FAT violates the terms of paragraph 13 in any material respect, as determined solely by the OAG: (a) the OAG may pursue any action, criminal or civil, against any entity for any crime it has committed, as authorized by law, without limitation; (b) as to any criminal prosecution brought by the OAG for violation of law committed within six years prior to the date of this Assurance or for any violation committed on or after the date of this Assurance, FAT shall waive any claim that such prosecution is time barred on grounds of speedy trial or speedy arraignment or the statute of limitations.

OTHER PROVISIONS

15. FAT commits that it shall not seek or accept, directly or indirectly, indemnification pursuant to any insurance policy, with regard to the penalty payable pursuant to

this Assurance and the Stipulation, nor shall it seek to recoup any portion thereof through future rate increases.

16. The OAG agrees that any prior approval required under the terms of this Assurance shall not be unreasonably withheld.

17. This Assurance is not intended to disqualify FAT or any of its current employees from engaging in any business in New York or in any other jurisdiction. Nothing in this Assurance or the Stipulation shall relieve FAT of obligations imposed by any applicable state insurance law or regulations or other applicable law.

18. This Assurance shall not confer any rights upon any persons or entities besides the OAG and FAT.

19. FAT shall maintain custody of, or make arrangements to have maintained, all documents and records related to this matter for a period of not less than six years.

20. Pursuant to the terms of Executive Law § 63(15), in the event this Assurance is violated, evidence of such violation shall constitute *prima facie* proof of violation of Executive Law § 63 (12), General Business Law § 349, New York Insurance Law § 2301 *et seq.* and § 6401 *et seq.*, and the common law of the State of New York, in any civil action or proceeding thereafter commenced by the OAG; provided further, that if in such a proceeding it shall be determined that there has been a violation of this Assurance, such finding shall constitute a fraudulent and unlawful practice under Executive Law § 63 (12), General Business Law § 349, and New York Insurance Law § 2301 *et seq.* and § 6401 *et seq.*, and the OAG may seek an order permanently enjoining FAT from further violating said statutes.

21. The OAG may make such application as appropriate to enforce or interpret the provisions of this Assurance, or in the alternative, maintain any action, either civil or criminal, for such other and further relief as the OAG may determine is proper and necessary for the enforcement of this Assurance.

22. In any application or in any such action, facsimile transmission of a copy of any papers to current counsel for FAT shall be good and sufficient service on FAT unless it designates, in a writing to the OAG, another person to receive service by facsimile transmission on behalf of FAT.

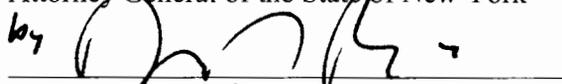
23. Facsimile transmission of a copy of this Assurance to counsel for FAT shall be good and sufficient service on FAT.

24. This Assurance shall be governed by the laws of the State of New York.

25. This Assurance may be executed in counterparts.

Executed this 22nd day of May, 2006.

ELIOT SPITZER
Attorney General of the State of New York

by 

120 Broadway, 25th Floor
New York, New York 10271

FIRST AMERICAN TILE INSURANCE COMPANY

By: _____

Name: _____

FIRST AMERICAN TILE INSURANCE COMPANY OF NEW YORK

By: _____

Name: _____

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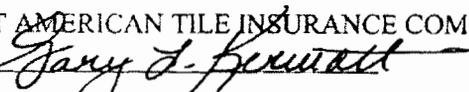
Executed this 22nd day of May, 2006.

ELIOT SPITZER
Attorney General of the State of New York

120 Broadway, 25th Floor
New York, New York 10271

FIRST AMERICAN TILE INSURANCE COMPANY

By:

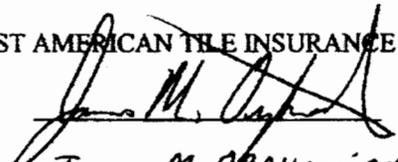


Name:

Gary L. Kermott

FIRST AMERICAN TILE INSURANCE COMPANY OF NEW YORK

By:



Name: JAMES M. ORPHANIDES

J.M.O. 5/2/06