

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ERIE INSURANCE COMPANY)
 OF NEW YORK; ERIE INSURANCE)
 COMPANY; ERIE INDEMNITY)
 COMPANY,)
 Defendants.)
 _____)

Civil Action No.

CONSENT DECREE

I. INTRODUCTION

A. Background.

1. This Consent Decree is entered among the United States ("Plaintiff"), the Erie Insurance Company of New York, the Erie Insurance Company, and the Erie Indemnity Company ("Defendants").
2. This action is brought to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 ("Fair Housing Act" or "FHA"), 42 U.S.C. §§ 3601 *et seq.* It is brought on behalf of the Fair Housing Council of Central New York pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).
3. Defendant Erie Indemnity Company is a Pennsylvania corporation that owns the Erie Insurance Company and the Erie Insurance Company of New York, which do business in

New York State.

4. Defendant Erie Insurance Company is a Pennsylvania insurance business corporation licensed to sell insurance in New York State, and engaged in the sale of homeowner's and renter's insurance in New York State.
5. Defendant Erie Insurance Company of New York is a New York corporation licensed to sell insurance in New York State, and engaged in the sale of homeowner's and renter's insurance in New York State.
6. During the period January 1, 1999, through at least June 30, 2004, Defendants offered homeowner's and renter's insurance policies for sale in New York State. Defendants marketed these policies in Upstate New York.
7. The United States contends that there are racially segregated housing patterns in communities in Upstate New York.
8. Defendants sell homeowner's and renter's insurance policies to consumers through independent insurance agents affiliated with Defendants. Defendants' Ultracover homeowner's policy offered broader coverage than the Extracover homeowner's policy.
9. Defendants choose agents with whom to affiliate and engage in an agent appointment process that includes extensive discussions with the prospective agent. The appointment process includes the submission to Defendants of the prospective agent's business plan and may include a background check of the prospective agent. Once engaged, Defendants' relationship to the agencies that sell Erie insurance policies is governed by an Agency Agreement. Defendants supply underwriting software to the agencies for the quotation and writing of policies, provide the agencies with training manuals on Erie

procedures and with marketing materials such as brochures and television advertisements, and review the agencies annually to increase profitability.

10. The United States contends that during the time period January 1, 1999, through at least June 30, 2004, Defendants selected agents and operated their insurance business in a manner that produced disparities in their market share and the types of homeowner's policies they sold between neighborhoods with lower percentages of African American population and those with greater percentages of African American population. Were this case to proceed to trial, the United States would expect to produce evidence showing that:

- a. As the percentage of black population increases, there are fewer agents selling Defendants' homeowner's and renter's insurance policies.
- b. As the percentage of black population increases, Defendants' share of the homeowner's insurance market decreases.
- c. As the percentage of black population increases, Defendants' share of the renter's insurance market decreases.
- d. As the percentage of black population increases, the percentage of Erie policies that are Ultracover policies decreases.

11. The United States further contends that the totality of Defendants' policies and practices, which resulted in the statistically significant disparities described above, constitutes the redlining of neighborhoods with substantial black population in Upstate New York for Defendants' homeowner's and renter's insurance business.

B. Consent of the Parties to Entry of this Decree.

12. The parties agree that the Court has subject matter jurisdiction over the claims in this civil action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o). Upon approval of this Consent Decree by the Court, the case shall be dismissed without prejudice. The Court shall retain jurisdiction over this action for the duration of this Decree to enforce its terms, after which time dismissal shall be with prejudice with no further action necessary.
13. There have been no factual findings or adjudication with respect to the matters alleged by the United States. The United States and the Defendants (together "the Parties") have agreed, as indicated by the signatures below, that this matter should be resolved without the time and expense of further proceedings or an evidentiary hearing, and have entered into this Decree voluntarily to resolve the claims alleged by the United States and avoid the risks and burdens of litigation. Accordingly, the execution of this Decree is not, and is not to be considered as, an admission or finding of any violation of the Fair Housing Act by the Defendants. Rather, the Parties have entered into this Decree to resolve voluntarily the claims asserted by the United States to avoid protracted and costly litigation. The Parties further agree that this Consent Order represents a full settlement of this matter.
14. The Defendants assert that they have at all times complied with the provisions of the Fair Housing Act and have treated all customers and potential customers equally regardless of race. Defendants deny that they engaged in any discrimination and specifically deny that they violated the Fair Housing Act, or that there is any credible statistical evidence supporting the contentions made by the United States.

15. The provisions of this Decree shall apply to the Defendants, their employees, agents, assigns, successors-in-interest, and all persons in active concert or participation with them.
16. This Decree is effective immediately upon its entry by the Court. For purposes of this Decree, the phrase "date of this Decree" shall refer to the date on which the Court enters this Decree.
17. As indicated by the signatures below, all parties agree to the entry of this Consent Decree.

Therefore, it is hereby **ORDERED, ADJUDGED** and **DECREED**:

II. GENERAL INJUNCTION

18. For the term of this Decree, the Defendants, their officers, agents, employees, representatives, assignees, successors, and all persons in active concert or participation with them, are hereby enjoined from engaging in any act or practice that discriminates on the basis of race in the provision of homeowner's or renter's insurance, including imposing on the basis of race different terms or conditions in the availability or sale of homeowner's or renter's insurance.
19. The Defendants shall take all reasonable, practicable steps, including, but not limited to, those specified below, to ensure that all types of homeowner's and renter's policies they offer are made available and marketed in Census blocks with black population of 30% or greater ("target Census blocks") on no less favorable a basis than in Census blocks with black population of less than 30%, so that all persons throughout New York State will have an equal opportunity to purchase homeowner's and renter's insurance from the

Defendants.¹

III. TRAINING AND STAFF

20. The Defendants shall employ a full-time Director of Diversity and Community Outreach whose primary responsibilities will include overseeing efforts to increase the sale of homeowner's and renter's insurance in target Census blocks and compliance with this Decree. The Director shall review efforts to market and sell Erie products in target Census blocks; coordinate the Defendants' involvement in community outreach programs; serve as a resource to insurance agents to encourage sales within target Census blocks; devise sales strategies to assist agents in selling more policies in the target Census blocks; oversee the training of insurance agents with respect to the need to comply with the FHA; and report directly to the Defendants' board of directors on the progress of these initiatives at least quarterly, and make recommended changes in these programs to increase their effectiveness.
21. Within one-hundred eighty (180) days of the entry of this Decree, the Defendants shall provide training, approved in advance by the United States, to all insurance agents who sell or market Erie products in the state of New York to ensure that they are acting in a nondiscriminatory manner with respect to the sale or marketing of Erie products. In addition, for the duration of this Decree, all new Erie insurance agents appointed in New York State shall receive the same training within sixty (60) days after their appointment

¹ For purposes of this Decree, "target Census blocks" shall refer to any Census block in New York State, excluding the greater New York City area (meaning New York City, Long Island, and the suburban counties north of New York City, including Putnam, Rockland, and Westchester Counties), where the African-American population is 30% or greater.

to sell Erie insurance products. The training shall specifically address the agents' and the Defendants' responsibilities under the FHA, and their responsibilities under this Decree. The Defendants shall bear any expenses associated with the training. Within ninety (90) days after the entry of this Decree, the Defendants shall furnish counsel for the United States with a copy of the training materials regarding fair housing. The United States shall have thirty (30) days to approve the training materials. The parties shall endeavor in good faith to resolve any differences over the terms of the training. In the event they are unsuccessful, either party may seek a resolution from the Court. Such training shall be offered at locations reasonably convenient to the business operations of the insurance agents, which may include Internet-based training sessions. Annually thereafter, the Defendants shall offer similar training to all insurance agents who sell or market Erie products in the state of New York to ensure that they are acting in a nondiscriminatory manner with respect to the sale or marketing of Erie products, and shall strongly encourage the insurance agents to participate in the training.

22. Within one-hundred eighty (180) days of the entry of this Decree, the Defendants shall provide all agents who sell or market Erie products in the state of New York with an explanation and copies of this Decree, and allow an opportunity for those agents to have any questions concerning the Decree answered.
23. The Defendants shall inform each employee and current insurance sales agent that the Defendants cannot lawfully, and will not, reprimand, penalize, or otherwise retaliate in any way against any person who provides information regarding the Defendants' compliance with this Decree or the FHA.

24. The Defendants shall describe the provisions of this Decree in the first "Erie Indemnity Company Annual Report" published after the effective date of this Decree.
25. No provision of this Decree requires the Defendants to issue or underwrite any homeowner's or renter's insurance policy that provides coverage for a property that fails to meet the Defendants' underwriting guidelines which shall be consistent with New York law and the Fair Housing Act.

IV. MONETARY RELIEF

26. Within thirty (30) days following the entry of this Decree, the Defendants shall pay \$225,000 in monetary damages to the Fair Housing Council of Central New York ("FHCCNY"), inclusive of attorneys' fees and costs, provided that no amount shall be paid pursuant to this paragraph until the FHCCNY has executed and delivered to counsel for the United States and Erie the release contained at Appendix A.

V. ADVERTISING AND OUTREACH

27. The Defendants shall expand their marketing, advertising, and outreach programs to improve their performance in meeting the insurance needs of the residents of target Census blocks in New York State. Over the term of this Decree, the Defendants shall spend \$140,000 on the targeted advertising and marketing campaign described in subparagraphs (a)-(c), below. This program shall be specifically targeted to generate additional sales of homeowner's and renter's insurance in target Census blocks in New York State. All advertising undertaken pursuant to the terms of this Decree shall be at the Defendants' expense, at no cost to their agents, and shall commence within thirty (30) days following the entry of this Decree. This program shall include, at a minimum, the

following components:

- a. *Print Media.* During each year of this Decree, in addition to any other print advertising, the Defendants shall advertise at least once per month in at least one print medium specifically directed to African-American readers in New York State.
 - b. *Radio.* During each year of this Decree, the Defendants shall place radio advertisements, at least once per month, on at least one African-American-oriented radio station in each of Albany, Erie, Monroe, and Onondaga counties.
 - c. *Promotional Materials.* The Defendants shall create point-of-distribution materials, such as posters and brochures, targeted toward target Census blocks. During each year of this Decree the Defendants shall make these promotional materials available for placement in the offices of all insurance agents who sell or market Erie products in New York State.
28. All of the Defendants' print advertising and promotional materials shall contain an equal housing opportunity logo, slogan, or statement. All of the Defendants' radio and television advertisements shall include the statement, "equal opportunity insurer."

VI. EVALUATING AND MONITORING COMPLIANCE

29. For the duration of this Decree, the Defendants shall retain all records relating to their obligations under this Decree, including, but not limited to, records of all sales of homeowner's and renter's insurance policies in target Census blocks in New York State, and records of their advertising, outreach, and other compliance activities. The United States shall have the right to review and copy such records upon request.

30. Beginning ninety (90) days after the entry of this Decree, and every one-hundred eighty (180) days thereafter, the Defendants shall report, in writing, to the United States on their progress in fulfilling the goals of this Decree. The Defendants shall also submit a final report on their progress in fulfilling the goals of this Decree no later than ninety (90) days before the expiration of this Decree.²
31. Each report described in the preceding paragraph shall provide a complete account of the Defendants' efforts to comply with this Decree during the previous one-hundred eighty (180) days; an objective assessment of the extent to which each obligation was met; an explanation of why the Defendants fell short of meeting any of their obligations; and any recommendations for additional actions to achieve the goals of this Decree. Each report shall include, at least, the following:
- a. reports of the Director of Diversity and Community Outreach (employed pursuant to paragraph 20 of this Consent Decree);
 - b. a description of each type of homeowner's and renter's insurance policy offered in New York State by Defendants during the reporting period, including information about the nature and scope of coverage and applicable deductibles;
 - c. Erie policy data relating to Erie insurance policies sold or renewed throughout New York State, including in target Census blocks; this data shall be provided in an electronic format and shall include, at a minimum, the fields provided by

² For purposes of this Decree, all submissions to the United States or its counsel should be submitted to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Attn: DJ# 175-50-55, Fax: 202-514-1116, or as otherwise directed by the United States.

Defendants to the Department of Housing and Urban Development and the Department of Justice relating to policies issued or in force between January 1, 1999 through June 30, 2004;

- d. a list of agents who received training pursuant to paragraph 21 of this Decree and copies of all agendas and training materials used or distributed during such training sessions;
- e. a description of advertising and outreach efforts made pursuant to paragraph 28, including copies of print advertising, and promotional materials, and transcripts of radio advertising, as well as details regarding the distribution of each.

VII. REMEDIES FOR NON-PERFORMANCE

- 32. The parties to this Consent Decree shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Defendants to perform, in a timely manner, any act required by this Decree or otherwise for the Defendants to fail to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.
- 33. This Decree shall be in effect for three (3) years and one hundred eighty (180) days from the date of its entry. The United States may move the Court to extend the duration of this Decree in the interests of justice.
- 34. The Defendants' compliance with the terms of this Decree shall fully and finally resolve

all claims of the United States relating to the Defendant's alleged violations of the FHA as alleged in this action, including all claims for equitable relief, monetary damages, and penalties.

VIII. COSTS OF LITIGATION

35. The United States and the Defendants shall each bear their own costs and attorneys' fees associated with this litigation.

IX. TIME FOR PERFORMANCE

36. Any time limits for performance imposed by this Decree may be extended by mutual written agreement of the parties.

IT IS SO ORDERED:

This ___ day of _____, 2008

United States District Judge

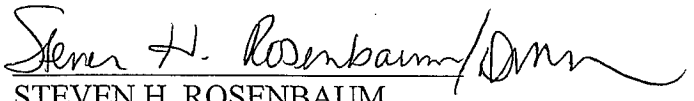
The undersigned apply for and consent to the entry of this Decree:

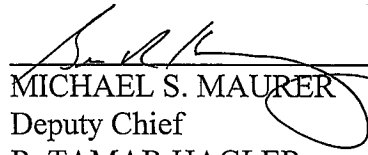
For the United States

TERRANCE P. FLYNN
United States Attorney

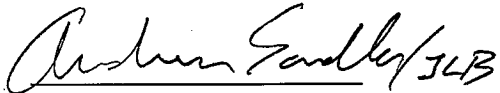
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For the Defendants

Handwritten signature in cursive script, appearing to read "Andrew Sandler/JLB".

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
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Plaintiff,)	
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v.)	Civil Action No.
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ERIE INSURANCE COMPANY)	
OF NEW YORK; ERIE INSURANCE)	
COMPANY; ERIE INDEMNITY)	
COMPANY,)	
Defendants.)	

APPENDIX A: FULL AND FINAL RELEASE OF CLAIMS

I, _____, on behalf of the Fair Housing Council of Central New York, pursuant to the terms, provisions, and conditions of the Consent Decree approved by the United States District Court for the Western District of New York on _____, 2008 in the case of United States v. Erie Insurance Company, et al., ("lawsuit") and in consideration of the *Letter Agreement Between Erie and Fair Housing Council of Central New York* do fully, finally and forever release, discharge, and hold harmless the Erie Insurance Company of New York, the Erie Insurance Company, and the Erie Indemnity Company (hereinafter "Defendants"), along with their insurers, attorneys, related companies, principals, predecessors, successors, assigns, affiliates, partners, directors, officers, agents, independent insurance agents, employers, shareholders, subsidiaries, employees, former employees, heirs, executors, and administrators and any persons acting under their respective direction or control (hereinafter "Releasees"), from any and all fair housing claims set forth, or which could have been set forth, in the Complaint in this lawsuit that I may have against Defendants or any of the Releasees for any of Defendants' actions or statements related to those claims through the date of this Consent Decree and *Letter Agreement Between Erie and Fair Housing Council of Central New York*, including claims for damages (both compensatory and punitive), costs, fines and attorneys' fees.

I affirm that the only consideration for signing this Full and Final Release of Claims are the terms stated in the Consent Decree and *Letter Agreement Between Erie and Fair Housing Council of Central New York*. I have accepted the terms of this Release, the *Letter Agreement*, and the Consent Decree because I believe them to be a fair and reasonable settlement and for no other reason. This Release, the Consent Decree, and the *Letter Agreement* contain and constitute the entire understanding and agreement between the parties.

NAME (PRINT)

SIGNATURE

DATE