

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

ALLMERICA FINANCIAL BENEFIT INSURANCE COMPANY

Howell, Michigan

**AS OF
April 21, 2004**

COMMONWEALTH OF PENNSYLVANIA



**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: June 18, 2004

ALLMERICA FINANCIAL BENEFIT INSURANCE COMPANY

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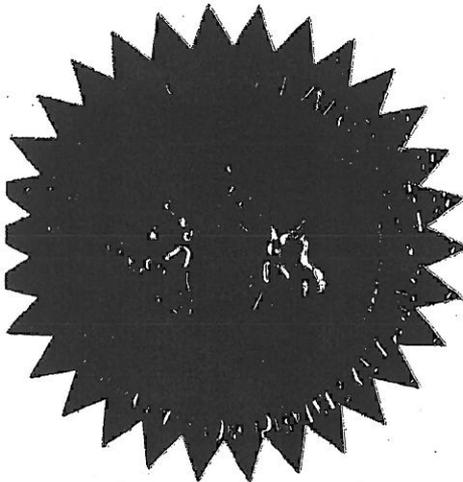
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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 29 day of April, 2002, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Randolph L. Rohrbaugh, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.





M. Diane Koken
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
ALLMERICA FINANCIAL BENEFIT : Sections 623 and 903(a) of the
INSURANCE COMPANY : Insurance Department Act, Act of
440 Lincoln Street : May 17, 1921, P.L. 789, No. 285
Worcester, MA 01653 : (40 P.S. §§ 253 and 323.3)
: :
: Act 1990-6, Sections 1705(a)(1)(d) and
: 1705(a)(1)(3), 1731(b) and (c), 1734,
: 1738(d)(1) and (2), 1791, 1791.1(a),
: 1791.1(b), 1792(b)(1), 1793(b)(1)(2),
: 1799.3(a) and 1822 (Title 75, Pa.C.S.
: §§ 1705, 1731, 1734, 1738, 1791, 1792,
: 1793, 1799 and 1822)
: :
: Sections 2002(c)(3), 2003(a)(1),
: 2003(a)(10), 2003(a)(13), 2003(a)(14),
: 2003(d), 2006(2), 2006(3), and 2008(b)
: of Act 68 of 1998 (40 P.S. §§
: 991.2002, 2003, 2006 and 2008)
: :
: Section 354 of the Insurance Company
: Law, Act of May 17, 1921, P.L. 682,
: No. 284 (40 P.S. § 477b)
: :
: Section 5(a)(11) of the Unfair Insurance
: Practices Act, Act of July 22, 1974,
: P.L. 589, No. 205 (40 P.S. § 1171.5)
: :
: Title 31, Pennsylvania Code, Sections
: 61.10(c), 61.13, 62.3(f)(5), 67.33(b)(1),
: 69.22(c), 69.52(b), 69.53(a), 146.3,
: 146.5(a), and 146.6
: :
: Title 75, Pennsylvania Consolidated
: Statutes, Sections 1117(a), 1716 and
: 1797(b)(1)
: :
Respondent. : Docket No. MC04-04-031

CONSENT ORDER

AND NOW, this 18th day of June, 2004, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order shall have the full force and effect of an order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra. or other applicable law.

FINDINGS OF FACT

3. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is Allmerica Financial Benefit Insurance Company, and maintains its address at 440 Lincoln Street, Worcester, Massachusetts 01653.

- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2002 through June 30, 2003.
- (c) On April 21, 2004, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on May 20, 2004.
- (e) After consideration of the May 20, 2004 response, the Insurance Department has modified the Examination Report as attached.
- (f) The Examination Report notes violations of the following:
 - (i) Section 623 of the Insurance Department Act, No. 285 (40 P.S. § 253), which prohibits doing business with unlicensed brokers;
 - (ii) Section 903(a) of the Insurance Department Act, No. 285 (40 P.S. § 323.3), which requires every company subject to examination keep all records and documents relating to its business in such manner as may be required in order that the Department may verify whether the company has complied with the laws of this Commonwealth;

(iii) Section 1705(a)(1)(d) and (3) of Act 1990-6, Title 75, Pa.C.S.

§ 1705(a)(1)(d) and (3), which requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy, to provide each applicant an opportunity to elect a tort option. If the named insured does not indicate a choice in 20 days, the insurer shall send an identical second notice. If the named insured has not responded to either notice, the named insured and those he is empowered by this section are presumed to have chosen the full tort option;

(iv) Section 1731(b) and (c) of Act 1990-6, Title 75, Pa.C.S. § 1731(b) and (c), which requires the insurer to advise that named insured shall be informed that he may exercise the waiver for uninsured and underinsured motorist coverage by signing written rejection forms;

(v) Section 1734 of Act 1990-6, Title 75, Pa.C.S. § 1734, which requires a named insured may request in writing the issuance of coverages under Section 1731 (relating to availability, scope and amount of coverage) in amount equal to or less than the limits of liability for bodily injury:

- (vi) Section 1738(d)(1) and (2) of Act 1990-6, Title 75, Pa.C.S. § 1738, which requires the named insured to be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms;

- (vii) Section 1791 of Act 1990-6, Title 75, Pa.C.S. § 1791, which states it shall be presumed that the insured has been advised of the benefits available under this chapter provided the notice is given to the insured at time of application;

- (viii) Section 1791.1(a) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the Commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-point type: “The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage in excess of the limits required by law are provided only at your request as enhancements to basic coverages.” The insurer shall provide the itemized invoice to the insured in conjunction with

the declaration of coverage limits and premiums for the insured's existing coverages;

- (ix) Section 1791.1(b) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance;
- (x) Section 1792(b)(1) of Act 1990-6, Title 75, Pa.C.S. § 1792, which requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it;
- (xi) Section 1793(b)(1)(2) of Act 1990-6, Title 75, Pa.C.S. § 1793, which requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage;

- (xii) Section 1799.3 (a) of Act 1990-6, Title 75, Pa. C.S. § 1799, which prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,050 in excess of any self insured retention or deductible applicable to the named insured;

- (xiii) Title 75, Pennsylvania Consolidated Statutes, Section 1822, which requires a fraud warning notice on all new applications, claim forms and renewals: “Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, shall be subject to imprisonment for up to seven years and payment of a fine up to \$15,000.”

- (xiv) Section 2002(c)(3) of Act 68 of 1998 (40 P.S. § 991.2003), which requires that an insurer supply the insured with a written statement of the reason for cancellation. While most of Act 68 does not apply to new policies cancelled in the first 60 days, the company must provide 15 days of notice of cancellation;

- (xv) Section 2003(a)(1) of Act 68 of 1998 (40 P.S. § 991.2003), which prohibits an insurer from canceling or refusing to write or renew a policy of

automobile insurance for any of the following reasons: Age. Under Pennsylvania law, requiring a minimum period of driving experience in order to be eligible to obtain automobile insurance constitutes a *per se* unlawful criterion based upon age. *See, e.g., Aetna v. Commonwealth, Insurance Department*, 606 A.2d 553 (Pa. Cmwlth. 1992), *rev'd on other grounds*, 536 Pa. 105, 638 A.2d 194 (1994); *Travelers v. Commonwealth, Insurance Department*, 440 A.2d 645 (Pa. Cmwlth. 1981);

- (xvi) Section 2003(a)(10) of Act 68 of 1998 (40 P.S. § 991.2003), which prohibits an insurer from canceling or refusing to write or renew a policy of automobile insurance for any of the following reasons: Lawful occupation, including military service;
- (xvii) Section 2003(a)(13) of Act 68 of 1998 (40 P.S. § 991.2003), which prohibits an insurer from canceling or refusing to write or renew a policy of automobile insurance for any of the following reasons: The company is using not-at-fault accidents, in general, as criteria for refusal to write a policy of automobile insurance. Their guideline states: “Unacceptable Risks – Claim History – Not at fault accidents – Maximum 2.”
- (xviii) Section 2003(a)(14) of Act 68 of 1998 (40 P.S. § 991.2003), which prohibits an insurer from canceling or refusing to write or renew a policy of automobile insurance for any of the following reasons: Any claim under the

comprehensive portion of the policy unless intentionally caused by the insured. Their guideline states: “Unacceptable Risks – Claim History – A frequency of comprehensive losses is unacceptable.”

- (xix) Section 2003(d) of Act 68 (40 P.S. § 991.2003), which requires that subsequent to the twelve-month period after notice of termination given to an agent, an insurer may not cancel or refuse to renew existing policies written through the terminated agent without offering each such insured coverage on a direct basis or offering to refer the insured to one or more new agents in the event the terminated agent could not find a suitable insurer acceptable to the policyholder for such business. The offer need not be made if the insurer could have cancelled or non-renewed the policy had the agency relationship continued. If the insurer retains ownership of the expirations of such policies,

- (xx) Section 2006(2) of Act 68 of 1998 (40 P.S. § 991.2006), which requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the date, not less than 60 days after the date of the mailing or delivery, on which cancellation shall become effective. When the policy is being cancelled for nonpayment of premium, the effective date may be 15 days from the date of mailing or delivery;

- (xxi) Section 2006(3) of Act 68 of 1998 (40 P.S. § 991.2006), which requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the specific reason or reasons of the insurer for cancellation;
- (xxii) Section 2008(b) of Act 68 of 1998 (40 P.S. § 991.2008), which requires any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Commissioner that he review the action of the insurer in refusing to write a policy for the applicant;
- (xxiii) Section 354 of the Insurance Company Law (40 P.S. § 477b), which prohibits issuing, selling, or disposing of any policy, contract or certificate until the forms have been submitted to, and formally approved by, the Insurance Commissioner;
- (xxiv) Section 5(a)(11) of the Unfair Insurance Practices Act, No. 205 (40 P.S. § 1171.5), which requires a complete record of all complaints received during the preceding four years;
- (xxv) Title 31, Pennsylvania Code, Section 61.10(c), which states the 60-day period referred to in Act 68 is intended to provide insurers a reasonable period of

time to investigate thoroughly a particular risk, while extending coverage during the period of investigation. Should an insurer conclude that it does not wish to remain on the risk, it may cancel the policy. An insured who has been cancelled by an insurer during this 60-day period may obtain from the insurer the reasons for the actions of the insurer and may request a review by the Department as set forth in Section 8(b) of Act 68;

- (xxvi) Title 31, Pennsylvania Code, Section 61.13, which requires each insurer to maintain records of the number of cancellations and refusals to write or renew policies and the reasons therefore, and shall file with the Department, a report summarizing the record of all such actions;
- (xxvii) Title 31, Pennsylvania Code, Section 62.3(f)(5), which requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value;
- (xxviii) Title 31, Pennsylvania Code, Section 67.33(b)(1), which prohibits an insurer from assessing a premium surcharge for the payment of a claim arising from one or more accidents where the insured was not at-fault in causing or contributing to the accident;
- (xxix) Title 31, Pennsylvania Code, Section 69.22(c), which requires if an insured's first-party limits have been exhausted, the insurer shall, within 30 days of the

receipt of the provider's bill, provide notice to the provider and the insured that the first-party benefits have been exhausted;

(xxx) Title 31, Pennsylvania Code, Section 69.52(b), which requires an insurer to make a referral to a PRO within 90 days of the insurer's receipt of sufficient documentation supporting the bill. An insurer shall pay bills for care that are not referred to a PRO within 30 days after the insurer receives sufficient documentation supporting the bill. If an insurer makes its referral after the 30th day and on or before the 90th day, the provider's bill for care shall be paid;

(xxxii) Title 31, Pennsylvania Code, Section 69.53(a), which requires that a PRO shall contract, in writing, jointly and separately with an insurer for the provision of peer review services;

(xxxiii) Title 31, Pennsylvania Code, Section 146.3, which requires claim files contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed;

(xxxiiii) Title 31, Pennsylvania Code, Section 146.5(a), which requires every insurer, upon receiving notification of a claim, shall, within 10 working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgment is made by means other than writing,

an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer, dating from the time the insurer receives notice;

(xxxiv) Title 31, Pennsylvania Code, Section 146.6, which requires complete investigation of a claim within thirty days after notification of a claim. If such investigation cannot reasonably be completed within such time, provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected, within thirty days and every forty-five days thereafter;

(xxxv) Title 75, Pennsylvania Consolidated Statutes, Section 1117(a), which requires any owner who transfers a vehicle to be salvaged must assign the certificate of title to the person to whom the vehicle is transferred. The transferee shall immediately present the assigned certificate of title to the Department with an application for a certificate of salvage;

(xxxvi) Title 75, Pennsylvania Consolidated Statutes, Section 1716, states that benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the amount of benefits. If reasonable proof is not supplied as to all benefits, the portion supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer.

Overdue benefits shall bear interest at the rate of 12% per annum from the date the benefits become due. In the event the insurer is found to have acted in an unreasonable manner in refusing to pay the benefits when due, the insurer shall pay, in addition to the benefits owed and the interest thereon, a reasonable attorney fee based upon actual time expended; and

(xxxvii) Title 75, Pennsylvania Consolidated Statutes, Section 1797(b)(1), which requires a peer review plan for challenges to reasonableness and necessity of treatment and the insurer shall contract jointly and separately with any peer review organization for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner makes the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Violations of Section 623 of the Insurance Department Act (40 P.S. § 253) are punishable by the following, under Section 639 of the Insurance Department Act (40 P.S. § 279):

- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act.
 - (iii) issue an order to cease and desist.
 - (iv) impose such other conditions as the department may deem appropriate.
- (c) Respondent's violations of Sections 2002(c)(3), 2003(a)(1), 2003(a)(10), 2003(a)(13), 2003(a)(14), 2003(d), 2006(2), 2006(3) and 2008(b) of Act 68 of 1998 are punishable by the following, under Section 2013 of the Act (40 P.S. § 991.2013): Any individual or insurer who violates any of the provisions of this article may be sentenced to pay a fine not to exceed five thousand dollars (\$5,000.00).
- (d) Respondent's violations of Section 354 of The Insurance Company Law are punishable by the following, under Section 354 of The Insurance Company Law (40 P.S. § 477b):
- (i) suspension or revocation of the license(s) of Respondent;

- (ii) refusal, for a period not to exceed one year thereafter, to issue a new license to Respondent;
 - (iii) imposition of a fine of not more than one thousand dollars (\$1,000.00) for each act in violation of the Act.
- (e) Respondent's violations of Section 5(a)(11) of the Unfair Insurance Practices Act, No. 205 (40 P.S. § 1171.5) are punishable by the following, under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9):
 - (i) cease and desist from engaging in the prohibited activity;
 - (ii) suspension or revocation of the license(s) of Respondent.
- (f) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 - 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:
 - (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);

- (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

- (g) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.3, 146.5(a) and 146.6 are punishable under Section 9 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9), as described above.

- (h) Respondent's violations of Title 75, Pennsylvania Consolidated Statutes, Section 1117(a) are punishable under Section (f) of Section 1117, which provides any person violating the provisions of subsections (a) or (e) is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$200 for each violation.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.

- (b) Respondent shall file an affidavit stating under oath that it will provide each of its directors, at the next scheduled directors meeting, a copy of the adopted Report and related Orders. Such affidavit shall be submitted within thirty (30) days of the date of this Order.
- (c) Respondent shall comply with all recommendations contained in the attached Report.
- (d) Respondent shall pay One Hundred and Ten Thousand Dollars (\$110,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.
- (e) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1311 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

6. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein may pursue any and all legal remedies available, including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in

any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

7. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or a duly authorized Deputy

Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner.

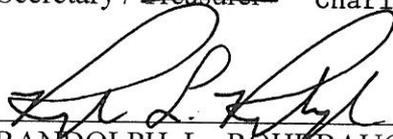
BY: ALLMERICA FINANCIAL BENEFIT
INSURANCE COMPANY, Respondent



~~President / Vice President~~ Bruce A. Letizia



~~Secretary / Treasurer~~ Charles F. Cronin



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

I. INTRODUCTION

The market conduct examination was conducted at Allmerica Financial Benefit Insurance Company's offices located in Atlanta, Georgia from January 5, 2004, through January 23, 2004. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was identified. This enables Company management to review those areas of concern in order to determine the potential impact upon Company operations or future compliance. A violation is any instance of Company activity that does not comply with an insurance statute or regulation. Violations contained in the Report may result in imposition of penalties.

In certain areas of review listed in this Report, the examiners will refer to "error ratio." This error ratio is calculated by dividing the number of policies with violations by the total number of policies reviewed. For example, if 100 policies are reviewed and it is determined that there are 20 violations on 10 policies, the error ratio would be 10%.

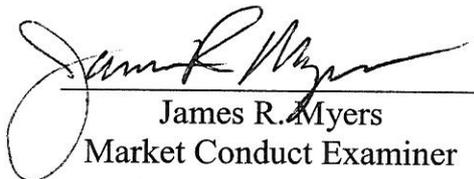
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel to discuss the various types of violations identified during the examination and review written summaries provided on the violations found.

The courtesy and cooperation extended by the officers and employees of the Company during the course of the examination is hereby acknowledged.

The undersigned participated in this examination and in preparation of this Report.



Chester A. Derk, Jr., AIE, HIA
Market Conduct Division Chief



James R. Myers
Market Conduct Examiner



M. Katherine Sutton
Market Conduct Examiner

II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Allmerica Financial Benefit Insurance Company hereinafter referred to as "Company," at their office located in Atlanta, Georgia.

The examination was conducted pursuant to Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of July 1, 2002, through June 30, 2003, unless otherwise noted. The purpose of the examination was to determine the Company's compliance with Pennsylvania insurance laws and regulations.

The examination focused on Company operations in the following areas:

1. Personal Automobile
 - Underwriting - Appropriate and timely notices of nonrenewal, mid-term cancellations, 60-day cancellations and declinations.
 - Rating - Proper use of all classification and rating plans and procedures.
2. Personal Lines Property
 - Underwriting – Appropriate and timely notices of nonrenewal, mid-term cancellations, 60-day cancellations and declinations.
 - Rating – Proper use of all classification and rating plans and procedures.
3. Dwelling Fire
 - Rating – Proper use of all classification and rating plans and procedures.
4. Claims
5. Forms

6. Advertising

7. Complaints

8. Licensing

III. COMPANY HISTORY AND LICENSING

Allmerica Financial Benefit Insurance Company was incorporated June 4, 1976, as American Excel Insurance Company, which was declared insolvent by court order in May 1988. Reliance Insurance Company purchased the company as a shell in April 1991, and renamed it Firemark Insurance Company. On January 17, 1996, the Company was acquired by Hanover Insurance Company of Worcester, MA. The current title was adopted on February 22, 1996

Firemark Insurance Company redomesticated from Iowa to Pennsylvania effective March 31, 1994. On January 17, 1996, the Hanover Insurance Company acquired 100% of the issued and outstanding common stock of the Company from Reliance Insurance Company. Allmerica Financial Benefit Insurance Company was redomesticated from Pennsylvania to Michigan on December 28, 2000.

LICENSING

Allmerica Financial Benefit Insurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2003. The Company is licensed in 44 states and the District of Columbia. The Company's 2002 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$2,557,927. Premium volume related to the areas of this review were: Fire and Allied lines \$3,863., Private Passenger Automobile Direct Written Premium was reported as Private Passenger Auto No-Fault (personal injury protection) \$201,060., Private Passenger Auto Liability \$1,035,869., and Private Passenger Auto Physical Damage \$1,313,871.

IV. UNDERWRITING PRACTICES AND PROCEDURES

As part of the examination, the Company was requested to supply underwriting guides, bulletins, directives or other forms of underwriting procedure communications for each line of business being reviewed. Underwriting guides were furnished for private passenger automobile. The purpose of this review was to identify any inconsistencies which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature.

The following violations were noted:

1 Violation Act 68, Section 2003(a)(1) [40 P.S. §991.2003(a)(1)]

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the following reasons: Age. The Company is using age as criteria for refusal to write a policy of automobile insurance in the following instance: Unacceptable vehicles and usage – any operator under 25 must be IRL 4 or lower

1 Violation Act 68, Section 2003(a)(10) [40 P.S. §991.2003(a)(10)]

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the following reasons: Lawful occupation (including military service). The company is using military service as a criteria for refusal to write a policy. Their guideline states: “Unacceptable Operators – Persons who are military personnel not permanently stationed in the state.

1 Violation Act 68, Section 2003(a)(13) [40 P.S. §991.2003(a)(13)]

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the reasons specified in 2003(a)(13). The Company is using not at-fault accidents, in general, as criteria for refusal to write a policy of automobile insurance. Their guideline states: “Unacceptable Risks – Claim History – Not at fault accidents – Maximum 2.”

1 Violation Act 68, Section 2003(a)(14) [40 P.S. §991.2003(a)(14)]

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the following reasons: Any claim under the comprehensive portion of the policy unless intentional caused by the insured. The Company is using comprehensive losses as criteria for refusal to write a policy of automobile insurance. Their guideline states: “Unacceptable Risks – Claim History – A frequency of comprehensive losses is unacceptable.”

V. UNDERWRITING

A. Private Passenger Automobile

1. 60-Day Cancellations

A 60-day cancellation is considered to be any policy, which was cancelled within the first 60 days of the inception date of the policy.

The primary purpose of the review was to determine compliance with Act 68, Section 2003 (40 P.S. §991.2003), which establishes conditions under which action by the insurer is prohibited. These files were also reviewed for compliance with Act 68, Section 2002(b)(3) [40 P.S. §991.2002(b)(3)], which requires an insurer who cancels a policy of automobile insurance in the first 60 days, to supply the insured with a written statement of the reason for cancellation.

From the universe of 145 personal automobile files identified as being cancelled in the first 60 days of new business, 75 policies were selected for review. Of the 75 files selected, 67 were received and reviewed. The 68 violations were based on 47 files resulting in an error ratio of 63%.

The following findings were made:

1 Violation Act 68, Section 2002(c)(3) [40 P.S. §991.2002(c)(3)]

Requires that an insurer supply the insured with a written statement of the reason for cancellation. While most of Act 68 does not apply to new policies cancelled in the first 60 days, the Company must provide 15 days notice of cancellation. Two adjudications, Tampa v. State Farm (P91-06-01, 1992) and Gorba v. Allstate (P92-02-92, 1993), uphold

the 15 day notice requirement. The violation noted was for policies cancelled within the first 60 days of new business inception date and did not give 15 days notice of cancellation.

12 Violations Act 68, Section 2003(a)(1) [40 P.S. §991.2003(a)(1)]

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the following reasons: (1) Age. The 12 violations noted were the result of using driving experience as a reason for cancellation.

1 Violation Act 68, Section 2003(a)(13) [40 P.S. §991.2003(a)(13)]

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the following reasons: (13) Any accident which occurred under the following conditions: Not at-fault accidents. The violation noted was the result of the Company using not at-fault accidents as a reason for cancellation.

6 Violations Act 68, Section 2003(a)(14) [40 P.S. §991.2003(a)(14)]

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the following reasons: (14) Any claim under the comprehensive portion of the policy unless such loss was intentionally caused by the insured. The 6 violations noted were the result of the company using comprehensive losses as a reason for cancellation.

1 Violation Title 31, Pa. Code, Section §61.10(c)

The 60-day period referred to in Act 68 is intended to provide insurers a reasonable period of time to investigate thoroughly a particular risk, while extending coverage during the period of investigation. Should an insurer conclude that it does not wish to remain on the risk, it may cancel the policy. An insured who has been cancelled by an insurer during this 60-day period may obtain from the insurer the reasons for the actions of the insurer and may request a review by the Insurance Department as set forth in Section 8(b) of Act 68.

AND

Act 68, Section 2008(b) [40 P.S. §991.2008(b)]

Requires that any applicant for a policy who is refused such policy by an insurer shall be given a written notice of the refusal to write by the insurer. The notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. The violation noted was for failure to provide a specific reason for refusal to write.

37 Violations Act 68, Section 2008(b) [40 P.S. §991.2008(b)]

Requires that any applicant for a policy who is refused such policy by an insurer shall be given a written notice of the refusal to write by the insurer. The notice shall state within 30 days of receipt of the notice the applicant may request in writing to the Insurance Commissioner that he review the action of the insurer in canceling a policy. The 37 violations

noted were for failure to provide notice of request for review by the Insurance Commissioner.

2 Violations Title 31, Pa. Code, Section §61.13

Requires each insurer to maintain records of the number of cancellations and refusals to write or renew policies and the reasons therefore, and shall file with the Insurance Department, a report summarizing the record of all such actions. The Company failed to maintain records for cancellations and refusals to write or renew and file a summarizing report to the Insurance Department for the period ending December 31, 2002, and for the period ending June 30, 2003.

8 Violations Insurance Department Act, Section 903(a) [40 P.S. §323.3]

Requires every company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the Department in its discretion, may require in order that its authorized representatives may ascertain whether the company or person has complied with the laws of the Commonwealth. The 8 violations noted were for failure to provide the requested files for examination.

2. Mid-term Cancellations

A mid-term cancellation is any policy that terminates at any time other than the normal twelve-month policy anniversary date.

The primary purpose of the review was to determine compliance with Act 68, Section 2003 (40 P.S. §991.2003), which establishes conditions under which action by the insurer is prohibited, and Section 2006 (40 P.S. §991.2006), which establishes the requirements which must be met regarding the form and conditions of the cancellation notice.

The universe of 30 private passenger automobile files identified as mid-term cancellations by the Company was selected for review. Of the 30 files selected, 21 were received and reviewed. The 10 violations were based on 10 files, resulting in an error ratio of 33%

The following findings were made:

1 Violation Act 68, Section 2006(2) [40 P.S. §991.2006(2)]

Requires an insurer to deliver or mail to the named insured a cancellation notice and state the date, not less than sixty (60) days after the date of the mailing or delivery, on which cancellation shall become effective. When the policy is being cancelled for the nonpayment of premium, the effective date may be fifteen (15) days from the date of mailing or delivery. The violation noted did not provide 15 days notice of cancellation.

9 Violations Insurance Department Act, Section 903(a) [40 P.S. §323.3]

Requires every company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs

in such manner and for such time periods as the Department in its discretion, may require in order that its authorized representatives may ascertain whether the company or person has complied with the laws of the Commonwealth. The 9 violations noted were for failure to provide the requested files for examination.

3. Nonrenewals

A nonrenewal is considered to be any policy that was not renewed, for a specific reason, at the normal twelve-month policy anniversary date.

The purpose of the review was to determine compliance with Act 68, Section 2003 (40 P.S. §991.2003), which establishes conditions under which action by the insurer is prohibited, and Section 2006 (40 P.S. §991.2006), which establishes the requirements which must be met regarding the form and conditions of the cancellation notice.

The universe of 22 private passenger automobile policies which were nonrenewed during the experience period was selected for review. All 22 files requested were received and reviewed. The 8 violations noted were based on 8 files, resulting in an error ratio of 36%.

The following findings were made:

2 Violations Act 68, Section 2006(2) [40 P.S. §991.2006(2)]

Requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the date, not less than sixty (60) days after the date of the mailing or delivery, on which cancellation shall become effective. When the policy is being

cancelled for the nonpayment of premium, the effective date may be fifteen (15) days from the date of mailing or delivery. The 2 violations noted did not provide 60 days notice of nonrenewal.

1 Violation Act 68, Section 2006(3) [40 P.S. §991.2006(3)]

Requires an insurer to give proper notice of intent to nonrenew. The notice shall state the specific reason or reasons for the nonrenewal. The violation noted was the result of not giving a specific reason for nonrenewal.

5 Violations Act 68, Section 2003(d)[40 P.S. §991.2003(d)]

States that subsequent to the twelve (12) month period after notice of termination given to an agent, an insurer may not cancel or refuse to renew existing policies written through the terminated agent without offering each insured coverage on a direct basis or offering to refer the insured to another agent. The 5 violations noted were for the nonrenewal of policies due to agent no longer represents Company.

4. Declinations

A declination is any application that is received by the Company and was declined to be written.

The primary purpose of the review was to determine compliance with Act 68, Section 2003 [40 P.S. §991.2003], which establishes conditions under which action by the insurer is prohibited.

The Company reported no files were identified as declinations during the experience period.

4. Rescissions

A rescission is a policy that was cancelled back to the original inception date and no coverage was afforded.

The primary purpose of the review was to determine compliance with Act 68, Section 2003 (40 P.S. §991.2003), which establishes conditions under which action by the insurer is prohibited and Section 2006 (40 P.S. §991.2006), which establishes the requirements which must be met regarding the form and conditions of the cancellation notice

The Company reported no files were identified as rescissions during the experience period.

5. Renewals

A renewal is considered to be any policy, which was previously written by the Company and renewed on the normal twelve-month anniversary date.

The purpose of the review was to measure compliance with Act 86, Section 1 [40 P.S. §3401], which requires 30 days advance notice of an increase in renewal premium.

The universe of 12 tenant occupied dwelling fire policies , which were renewed during the experience period was selected for review. All 12 files selected were received and reviewed. No violations were noted.

B. Private Passenger Automobile – Assigned Risk

The Company is an excused carrier under the assigned risk Limited Assignment Distribution procedure. Under this procedure groups of companies not under common ownership or management may form a Limited Assignment Distribution (LAD) arrangement. Each LAD arrangement has one servicing company, which writes assigned risk business on behalf of those members, which choose to buy out from their private passenger quota. As part of this arrangement the Company wrote no assigned risk business during the experience period.

VI. RATING

A. Private Passenger Automobile

The purpose of the review for new business and renewals was to measure compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time. Files were also reviewed to determine compliance with Act 68, Section 2005(c) (40 P.S. §991.2005(c)), which requires insurers to provide to insureds a detailed statement of the components of a premium and shall specifically show the amount of surcharge or other additional amount that is charged as a result of a claim having been made under a policy of insurance, or as a result of any other factors.

The Company processes and issues personal automobile policies using an automated system. In order to verify the automated system, several policies were manually rated to ensure the computer had been programmed correctly. Once the computer programming had been verified, only the input data needed to be verified. By reviewing base premiums, territory assignments, rating symbols, classifications and surcharge disclosures, the examiners were able to determine compliance with the Company's filed and approved rating plans.

1. New Business

New business, for the purpose of this examination, is defined as policies written for the first time by the Company during the experience period.

Private Passenger Automobile – New Business Without Surcharges

From the universe of 543 personal automobile policies identified as new business without surcharges by the Company, 100 files were selected for review. All 100 files were received and reviewed. The 945 violations were based on 543 files, resulting in an error ratio of 100%.

The following findings were made:

50 Violations Act 1990-6, Section 8, Title 75, Pa. C.S. §1705(a)(1) & (3)

Requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to elect a tort option. If the named insured does not indicate a choice in 20 days, the insurer shall send an identical second notice. If the named insured has not responded to either notice, the named insured and those he is empowered by this section are presumed to have chosen the full tort option. The 50 violations noted were the result of policies issued with limited tort and no evidence of a signed limited tort selection form.

9 Violations Act 1990-6, Section 9, Title 75, Pa. C.S. §1731(b)(c)

Requires the insurer to advise that named insured shall be informed that he may exercise the waiver for uninsured and underinsured motorist coverage by signing written rejection forms. The 9 violations noted were the result of policies written without uninsured and underinsured motorist coverage and absent signed rejection forms for uninsured and underinsured motorist coverage.

35 Violations Act 1990-6, Section 12, Title 75, Pa. C.S. §1738(d)(1) & (2)

Requires the insurer to advise that named insured shall be informed that he may exercise the waiver for stacked uninsured and underinsured motorist coverage by signing written rejection forms. The 35 violations noted were the result of policies written without stacked uninsured and underinsured motorist coverage and absent signed rejection forms for nonstacked uninsured and underinsured motorist coverage.

13 Violations Act 1990-6, Section 18, Title 75, Pa. C.S. §1792(b)(1)

Requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500.00 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it. The 13 violations noted were the result of not having the required signed statement from the insured.

91 Violations Act 1990-6, Section 16, Title 75, Pa. C.S. §1791

It shall be presumed that the insured has been advised of the benefits available under this chapter provided the notice is given to the insured at the time of application. The 91 violations were for failure to provide the required notice at the time of application.

91 Violations Act 1990-6, Section 17, Title 75, Pa. C.S. §1791.1(a)

Requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the Commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-point type: “The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage or coverages in excess of the limits required by law are provided only at your request as enhancements to basic coverages.” The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured’s existing coverages. The 91 violations noted were result of not having a minimum coverage invoice on the declarations.

91 Violations Act 1990-6, Section 17, Title 75, Pa. C.S. §1791.1(b)

Requires that in addition to the invoice required, an insurer must, at the time of application and every renewal thereafter, provide to an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The 91 violations noted were the result of the Company not providing the required notice of tort options at the time of application.

22 Violations Act 1990-6, Section 18, Title 75, Pa. C.S. §1734

A named insured may request in writing the issuance of coverages under Section 1731 (relating to availability, scope and amount of coverage) in amount equal to or less than the limits of liability for bodily injury. The 22 violations noted did not contain a written request for lower limits of liability.

543 Violations Title 75, Pa. C.S. §1793(b)(1)(2)

Requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The 543 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan at the time of application.

Private Passenger Automobile – New Business With Surcharges

The Company was asked to identify files that were written as new business and surcharged as a result of accidents or violations. From the universe of 239 policies written new with surcharges, 75 files were selected for review. All 75 files requested were received and reviewed. The 544 violations noted were based on 239 files, resulting in an error ratio of 100%.

The following findings were made:

48 Violations Act 1990-6, Section 8, Title 75, Pa. C.S. §1705(a)(1)&(3)

Requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to elect a tort option. If the named insured does not indicate a choice in 20 days, the insurer shall send an identical second notice. If the named insured has not responded to either notice, the named insured and those he is empowered by this section are presumed to have chosen the full tort option. The 48 violations noted were the result of policies issued with limited tort and no evidence of a signed limited tort selection form.

5 Violations Act 1990-6, Section 9, Title 75, Pa. C.S. §1731(b)(c)

Requires the insurer to advise that named insured shall be informed that he may exercise the waiver for uninsured and underinsured motorist coverage by signing written rejection forms. The 5 violations noted were the result of the Company not advising the insured of his right to reject coverage and sign the mandated rejection forms for uninsured and underinsured motorist coverage

11 Violations Act 1990-6, Section 18, Title 75, Pa. C.S. §1734

A named insured may request in writing the issuance of coverages under Section 1731(relating to availability, scope and amount of coverage) in amount equal to or less than the limits of liability for bodily injury. The 11 violations noted did not contain a written request for lower limits of liability.

33 Violations Act 1990-6, Section 12, Title 75, Pa. C.S. §1738(d)(1) & (2)

Requires the insurer to advise that named insured shall be informed that he may exercise the waiver for stacked uninsured and underinsured motorist coverage by signing written rejection forms. The 33 violations noted were the result of policies written without stacked uninsured and underinsured motorist coverage and absent signed rejection forms for nonstacked uninsured and underinsured motorist coverage.

67 Violations Act 1990-6, Section 16, Title 75, Pa C.S. §1791

It shall be presumed that the insured has been advised of the benefits available under this chapter provided the notice is given to the insured at the time of application. The 67 violations were for failure to provide the required notice at the time of application.

67 Violations Act 1990-6, Section 17, Title 75, Pa C.S. §1791.1(a)

Requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the Commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-point type: "The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage or coverages in

excess of the limits required by law are provided only at your request as enhancements to basic coverages.” The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured’s existing coverages. The 67 violations noted were the result of not having a minimum coverage invoice on the declarations.

67 Violations Act 1990-6, Section 17, Title 75, Pa C.S. §1791.1(b)

Requires that in addition to the invoice required, an insurer must, at the time of application and every renewal thereafter, provide to an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The 67 violations noted were the result of the Company not providing the required notice of tort options at the time of application.

7 Violations Act 1990-6, Section 18, Title 75, Pa. C.S. §1792(b)(1)

Requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500.00 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it. The 7 violations noted were the result of not having the required signed statement from the insured.

239 Violations Title 75, Pa. C.S. §1793(b)(1)(2)

Requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The 239 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan.

2. Renewals

A renewal is considered to be any policy, which was previously written by the Company and renewed on the normal twelve-month anniversary date.

Private Passenger Automobile – Renewals Without Surcharges

From the universe of 1,242 private passenger automobile policies renewed during the experience period, 125 files without surcharges were selected for review. All 125 files selected were received and reviewed. The 2,484 violations noted were based on the 1,242 files, resulting in an error ratio of 100%.

The following findings were made:

1,242 Violations Title 75, Pa. C.S. §1793(b)(1)(2)

Requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once

annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The 1,242 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan.

1,242 Violations Act 1990-6, Section 17, Title 75, Pa. C.S §1791.1(b)

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The 1,242 violations were the result of the Company not providing the notice of tort options to the insured at the time of renewal.

Private Passenger Automobile – Renewals With Surcharges

The Company was asked to identify files that were renewed and surcharged as a result of accidents or violations. From the universe of 453 policies renewed with surcharges, 75 files were selected for review. All 75 files requested were received and reviewed. The 906 violations were based on the entire universe of 453 files, resulting in an error ratio of 100%.

The following findings were made:

453 Violations Title 75, Pa. C.S. §1793(b)(1)(2)

Requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The 453

violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan at the time of renewal.

453 Violations Act 1990-6, Section 17, Title 75, Pa. C.S §1791.1(b)

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The 453 violations were the result of the Company not providing the notice of tort options to the insured at the time of renewal.

Private Passenger Automobile – Renewals In a Higher Plan

The Company did not report any automobile policies renewed in a higher rating plan during the experience period.

B. Private Passenger Automobile – Assigned Risk

The Company is an excused carrier under the assigned risk Limited Assignment Distribution procedure. Under this procedure groups of companies not under common ownership or management may form a Limited Assignment Distribution (LAD) arrangement. Each LAD arrangement has one servicing company, which writes assigned risk business on behalf of those members, which choose to buy out from their private passenger quota. As part of this arrangement, the Company wrote no assigned risk business during the experience period.

C. Dwelling Fire

1. New Business

New business, for the purpose of this examination, was defined as policies written for the first time by the Company during the experience period.

The purpose of the review was to measure compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time.

The universe of 3 dwelling fire policies written as new business during the experience period was selected for review. All 3 files selected were received and reviewed. No violations were noted.

VII. CLAIMS

The Company was requested to provide copies of all established written claim handling procedures utilized during the experience period. Written claim handling procedures were received and reviewed for any inconsistencies, which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. No violations were noted.

The Claims review consisted of the following areas of review:

- A. Automobile Property Damage Claims
- B. Automobile Comprehensive Claims
- C. Automobile Collision Claims
- D. Automobile Total Loss Claims
- E. Automobile First Party Medical Claims
- F. Automobile First Party Medical Claims Referred to a PRO

The primary purpose of the review was to determine compliance with Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices. The files were also reviewed to determine compliance with Act 205, Section 4 (40 P.S. §1171.4) and Section 5(a)(10)(vi) [40 P.S. §1171.5(a)(10)(vi)], Unfair Insurance Practices Act.

A. Automobile Property Damage Claims

From the universe of 203 private passenger automobile property damage claims reported during the experience period, 75 claim files were selected for review. All 75 files requested were received and reviewed. The 13 violations noted were based on the 11 files, resulting in an error ratio of 15%.

The following findings were made:

2 Violations Title 31, Pa. Code, Section 146.3

The claim files of the insurer shall be subject to examination by the Commissioner or by duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed. The 2 violations noted were the result of incomplete files.

3 Violations Title 31, Pa. Code, Section 146.5(a)

Every insurer, upon receiving notification of a claim, shall, within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer, dating from the time the insurer receives notice. The 3 violations were the result of the Company not acknowledging the claim within 10 working days.

8 Violations Title 31, Pa. Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The

8 violations noted were the result of not providing the claimant with a reasonable written explanation for the delay within 30 days after notification of the claim and 45 days thereafter.

B. Automobile Comprehensive Claims

From the universe of 249 private passenger automobile comprehensive claims reported during the experience period, 50 claim files were selected for review. All 50 files requested were received and reviewed. The 3 violations noted were based on 3 files, resulting in an error ratio of 6%.

The following violations were noted:

3 Violations Title 31, Pa. Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The 3 violations noted were the result of not providing the claimant with a reasonable written explanation for the delay within 30 days after notification of the claim and 45 days thereafter.

C. Automobile Collision Claims

From the universe of 297 private passenger automobile collision claims reported during the experience period, 100

claim files were selected for review. All 100 files requested were received and reviewed. There no violations noted.

D. Automobile Total Loss Claims

The universe of 25 private passenger automobile total loss claims reported during the experience period, was selected for review. All 25 files requested were received and reviewed. The 12 violations were based on 12 files, resulting in an error ratio of 48%.

The following findings were made:

3 Violations Title 31, Pa. Code, Section 62.3(f)(5)

Requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value. The 3 violations noted did not have sales tax included in the replacement value of the vehicle.

9 Violations Title 75, Pa. C.S. §1117(a)

Requires any owner who transfers a vehicle to be salvaged must assign the certificate of title to the person to whom the vehicle is transferred. The transferee shall immediately present the assigned certificate of title to the department with an application for a certificate of salvage. The 9 violations noted were the result of salvage certificates not being obtained prior to payment.

E. Automobile First Party Medical Claims

The universe of 22 private passenger automobile first party medical claims reported during the experience period was selected for review. The 22 files

requested were received and reviewed. The 3 violations noted were based on 2 files, resulting in an error ratio of 9%.

The following findings were made:

1 Violation Title 31, Pa. Code, Section 69.22(c)

Requires if an insured's first-party limits have been exhausted, the insurer shall, within 30 days of the receipt of the provider's bill, provide notice to the provider and the insured that the first-party benefits have been exhausted. The violation noted was for failure to send the insured a copy of notice that the first-party limits have been exhausted.

1 Violation Title 31, Pa. Code, Section 69.52(b)

Requires an insurer to pay bills for care that are not referred to a Peer Review Organization within 30 days after the insurer receives sufficient documentation supporting the bill. The violation noted was the result of the bill was not paid within 30 days.

1 Violation Title 75, Pa. C.S. §1716

Payment of Benefits. Benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the amount of benefits. If reasonable proof is not supplied as to all benefits, the portion supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Overdue benefits shall bear interest at the rate of 12% per annum from the date the benefits become due. In the event the insurer is found to have acted in an unreasonable

manner in refusing to pay the benefits when due, the insurer shall pay, in addition to the benefits owed and the interest thereon, a reasonable attorney fee based upon actual time expended. The violation noted was the result of the Company not paying interest on a first party medical bill not paid within 30 days.

F. Automobile First Party Medical Claims Referred to a PRO

The Company did not report any First Party Medical claims referred to a peer review organization during the experience period. The Company was requested to supply all signed contracts in place with a peer review organization. The Company indicated they did not have any First Party Medical claims that were referred to a peer review organization.

The following violation was noted.

1 Violation Title 31, Pa. Code, Section 69.53(a)

Requires that a PRO shall contract, in writing, jointly and separately with an insurer for the provision of peer review services.

AND

Act 1990-6, Title 75, Pa. C.S. §1797(b)(1)

Requires a peer review plan for challenges to reasonableness and necessity of treatment and the insurer shall contract jointly and separately with any peer review organization for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person.

The violation noted was for failure of the Company to have a contract in place with a Peer Review Organization.

G. Property – Dwelling Fire Claims

The universe of 2 dwelling fire claims reported during the experience period was selected for review. The 2 files requested were received and reviewed.

No violations were noted.

VIII. FORMS

Throughout the course of the examination, all underwriting files were reviewed to identify the policy forms used in order to verify compliance with Insurance Company Law, Section 354 (40 P.S. §477b), Approval of Policies, Contracts, etc., Prohibiting the Use Thereof Unless Approved. During the experience period of the examination, Section 354 provided that it shall be unlawful for any insurance company to issue, sell, or dispose of any policy contract or certificate covering fire, marine, title and all forms of casualty insurance or use applications, riders, or endorsements in connection therewith, until the forms have been submitted to and formally approved by the Insurance Commissioner. All underwriting and claim files were also reviewed to verify compliance with Act 165 of 1994 [18 Pa. CS §4117(k)(1)] and Act 6 of 1990 [75 Pa. CS §1822] which requires all insurers to provide an insurance fraud notice on all applications for insurance, all claims forms and all renewals of coverage.

The following findings were made:

Automobile Rating – New Business Without Surcharges

91 Violations Act 1990-6, Title 75, Pa. C.S. §1822

Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: “Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.” The 91 violations were the result of policies

being issued during the experience period absent the fraud statement on the application.

Automobile Rating – New Business With Surcharges

67 Violations Act 1990-6, Title 75, Pa. C.S. §1822

Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: “Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.” The 67 violations were the result of policies being issued during the experience period absent the fraud statement on the application.

Automobile Rating – Renewals Without Surcharges

1,242 Violations Insurance Company Law, Section 354 [40 P.S. §477b]

Requires that before any insurance company doing business in the Commonwealth to issue, sell, contract all forms of casualty insurance, or use applications, riders, or endorsements, in connection therewith, file forms of the same for approval by the Insurance Commissioner. The 1,242 violations noted were the result of unapproved declaration forms.

Automobile Rating – Renewal With Surcharges

453 Violations Insurance Company Law, Section 354 [40 P.S. §477b]

Requires that before any insurance company doing business in the Commonwealth to issue, sell, contract all forms of casualty insurance, or use applications, riders, or endorsements, in connection therewith, file forms of the same for approval by the Insurance Commissioner. The 453 violations noted were the result of unapproved declaration forms.

Automobile – First Party Medical Claims

5 Violations Act 1990-6, Title 75, Pa. C.S. §1822

Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: “Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.” The 5 violations were the result of claims forms being used during the experience period absent the fraud statement.

IX. ADVERTISING

The Company was requested to provide copies of all advertising, sales material and internet advertisements in use during the experience period.

The purpose of this review was to determine compliance with Act 205, Section 5 [40 P.S. §1171.5], which defines unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as well as Title 31, Pennsylvania Code, Section 51.2(c) and Section 51.61.

The Company provided 12 pieces of advertising, which included brochures, direct mailers and magazine ads. Internet advertising was also reviewed. No violations were noted.

X. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of their consumer complaint logs for the preceding four years. The Company identified a universe of 15 consumer complaints received during the experience period and provided all consumer complaint logs requested. All 15 files were selected and reviewed.

The purpose of the review was to determine compliance with the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). Section 5(a)(11) of the Act requires a Company to maintain a complete record of all complaints received during the preceding four years. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint.

The following findings were made:

2 Violations Act 68, Section 2003(a)(13) [40 P.S. §991.2003(a)(13)]

An insurer may not cancel or refuse to write a policy of automobile insurance for a not at-fault accident. The 2 violations resulted because the Company nonrenewed the policies because of a not at-fault accident.

1 Violation Act 1990-6, Section 19, Title 75, Pa. C.S. §1799.3(a)

Prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less

than \$1,050 in excess of any self insured retention or deductible applicable to the named insured.

AND

Title 31, Pa. Code, Section 67.33(b)(1)

An insurer may not assess a premium surcharge for the payment of a claim arising from one or more accidents where the insured was not at-fault in causing or contributing to the accident. The file noted contained improper surcharges applied to the policy, which resulted in an overcharge of \$441.00.

1 Violation Act 205, Section 5(a)(11) [40 P.S. §1171.5(a)(11)]

Requires any person to maintain a complete record of all complaints which it has received during the preceding four years. This record shall indicate that total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint. For the purposes of this paragraph, "complaint" means any written communication primarily expressing a grievance. The complaint register did not include an accurate record of all complaints

The following synopsis reflects the nature of the 15 complaints that were reviewed.

• 8	Cancellation/Nonrenewal	53%
• 4	Rates/Premium	27%
• 3	Claims	20%
<hr/>		<hr/>
15		100%

XI. LICENSING

In order to determine compliance by the Company and its agency force with the licensing requirements applicable to Section 605 (40 P.S. §235) and Section 623 (40 P.S. §253) of the Insurance Department Act, the Company was requested to furnish a list of all active agents during the experience period and a listing of all agents terminated during the experience period. Underwriting files, applications, agency contracts and commission statements were also checked to verify proper licensing and appointment.

The following findings were made:

14 Violations Insurance Department Act, Section 605 [40 P.S. §235] Doing Business with Unlicensed Brokers. Any entity or the appointed agent of any entity accepting applications or orders for insurance or securing any insurance business through anyone acting without a license commits a misdemeanor of the third degree.

The following producers were found to be writing policies and were not found in the Insurance Department records as having an appointment by the Company and/or possessing a brokers license.

Couch Bransdorf
Rork Agency
One Ten Brokers
Wooley Group
Jacbi Associates, Inc
Palmer-Goodell
Sapers & Wollack

Condon & Bergen Insurance

Franey, Parr & Muha

Lubin, Schwartz & Goldman

Schielke Insurance Agency

Angel Dixon

Lanisha Hayden

Buchi Osakwe

XII. RECOMMENDATIONS

The recommendations made below identify corrective measures the Department finds necessary as a result of the number of some violations, or the nature and severity of other statutory or regulatory violations, noted in the Report.

1. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices so that the violations noted in the Report do not occur in the future.
2. The Company must review Title 31, Pa. Code, Section 69.52(b) with its claim staff to ensure that first party medical bills are paid within 30 days.
3. The Company must review Title 75, Pa. C.S. §1716 regarding first party medical claims, which have not been paid within 30 days. Those claims that have not been paid within 30 days shall bear interest at the rate of 12% annum from the date the benefits become due. The interest amount must be paid to the insureds and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.
4. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to elect a tort option and that signed tort option selection forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Act 1990-6, Section 8, Title 75 Pa. C.S. §1705(a)(1)(3) do not occur in the future.

5. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to exercise the waiver for uninsured and underinsured motorist coverage forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Act 1990-6, Section 9, Title 75 Pa. C.S. §1731(b)(c) do not occur in the future.
6. The Company must revise underwriting procedures to ensure that the insured is aware that there is an additional cost for purchasing a lower deductible for collision coverage. This is to ensure that violations noted under Act 1990-6, Section 18, Title 75, Pa. C.S. §1792(b)(1) do not occur in the future.
7. The Company must revise underwriting procedures to ensure that the insured is aware that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms. This is to ensure that violations noted under Act 1990-6, Section 12, Title 75, Pa. C.S. §1738(c)(d)(1) and (2) do not occur in the future.
8. The Company must ensure that all applications for insurance, claim forms and renewals contain a statement that clearly states in substance the following: “Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete information or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.” This is to ensure that violations

noted under Act 1990-6, Title 75, Pa. C.S. §1822 do not occur in the future.

9. The Company must review and revise internal control procedures to ensure compliance with cancellation notice requirements of Act 68, Sections 2006 and 2008 [40 P.S. §991.2006 and 2008] so that the violations noted in the Report do not occur in the future.
10. The Company must review Title 75, Pa C.S. §1793(b) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure plan as noted in the Report do not occur in the future.
11. The Company must review Act 1990-6, Section 17, Title 75, Pa. C.S. §1791.1(a) and (b) to ensure that violations of providing an itemized invoice listing minimum coverages and tort options at the time of application and every renewal thereafter as noted in the Report do not occur in the future.
12. The Company must review Act 1990-6, Section 16, Title 75, Pa. C.S. §1791 to ensure that the notice of available benefit is given to the insured at the time of application as noted in the Report.
13. The Company must review Act 1990-6, Section 18, Title 75, Pa. C.S. §1734 to ensure that the insured signs a request for lower limits of liability for uninsured and underinsured motorist coverage and a copy kept in files as noted in the Report.

14. The Company must review Title 31, Pa Code, Section 61.13 to ensure that reports for cancellations and refusals to write or renew policies are submitted to the Insurance Department as noted in the Report.
15. The Company must ensure all agents, agencies and brokers are properly licensed and appointed, as required by Section 623 [40 P.S. §253] of the Insurance Department Act, prior to accepting any business from an agent or broker.
16. The Company must revise and reissue their underwriting guidelines for use in Pennsylvania to ensure that the guidelines do not exclude applicants from being eligible to obtain insurance for reasons established in Section 2003 of Act 68 [40 P.S. §991.2003].
17. The Company must review Title 31, Pa Code Section 62.3(f)(5) to ensure that sales tax is included with total loss payments. The Company must also submit proof, within 30 days of the Report issue date, that payment of omitted sales tax has been made.

XIII. COMPANY RESPONSE



May 20, 2004

Chester A. Derk Jr., AIE, HIA
Market Conduct Division Chief
Pennsylvania Department of Insurance
Bureau of Enforcement
1321 Strawberry Square
Harrisburg PA 17120

**Re: Examination Warrant Number: 03-M22-025
Allmerica Financial Benefit Insurance Company**

Dear Mr. Derk:

This is in response to your letter to me dated April 21, 2004. Thank you for the opportunity to review and respond to the Examination Report (the "Report"). This report has been shared with and carefully reviewed by Senior Management and our Chief Compliance Officer.

As you are aware, Allmerica Financial Benefit Insurance Company ("AFB") has a very limited presence in the Commonwealth of Pennsylvania. In fact, as noted in the Report, the Company's 2002 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$2,557,927. The vast majority of this limited premium volume is written in the private passenger auto lines under AFB's mass merchandising program.

While we are disappointed in the examination results we are committed to addressing those areas of concern noted in the Report that remain outstanding. Certain issues, primarily those pertaining to underwriting and complaint handling had been corrected well in advance of this examination but did not fall within the scope of the period under review. Other issues, such as the fraud warning language on renewals and the issuance of surcharge disclosure plan notices have already been corrected and other corrective actions are in progress.

A detailed summary of our corrective actions and efforts to comply with the Department's Recommendations will be provided under separate cover.

The only exception we have to the Report is Recommendation #4. We believe this was accidentally included as a result of a word processing error and should be removed. It is an area reviewed during the examination for which no exceptions were found.

440 Lincoln Street, Worcester, Massachusetts 01653, Phone 508-855-1000, Fax 508-853-6332

First Allmerica Financial Life Insurance Company • Allmerica Financial Life Insurance and Annuity Company (licensed in all states except NY & HI)
Allmerica Trust Company, N.A. • Allmerica Investments, Inc. • Allmerica Investment Management Company, Inc.
The Hanover Insurance Company • AMGRO, Inc. • Allmerica Financial Alliance Insurance Company
Allmerica Asset Management, Inc. • Allmerica Financial Benefit Insurance Company • Sterling Risk Management Services, Inc.
Citizens Corporation • Citizens Insurance Company of America • Citizens Management Inc.

Chester A. Derk, Jr., AIA, HIA
May 20, 2004
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We wish to thank Examiners Jim Myers and Kay Sutton for the professionally and efficient manner in which they conducted the examination. Even more, we appreciate the positive and helpful manner in which they interacted with our staff. We certainly learned a lot from our time with them and during the exit conference we had with you.

Very truly yours,



Dawn Murphy
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