



**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT**

MARKET CONDUCT  
EXAMINATION REPORT

OF

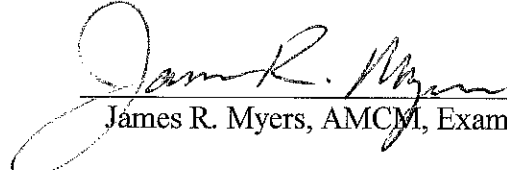
**AMERICAN INDEPENDENT  
INSURANCE COMPANY**  
Conshohocken, PA

As of: February 4, 2016  
Issued: March 29, 2016

**BUREAU OF MARKET ACTIONS  
PROPERTY AND CASUALTY DIVISION**

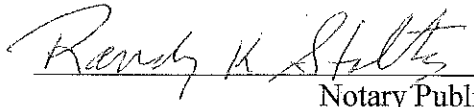
VERIFICATION

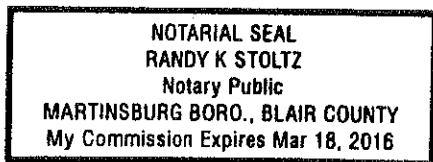
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).

  
James R. Myers, AMCM, Examiner-In-Charge

Sworn to and Subscribed Before me

This 30 Day of DECEMBER, 2015

  
Notary Public



**AMERICAN INDEPENDENT INSURANCE COMPANY**

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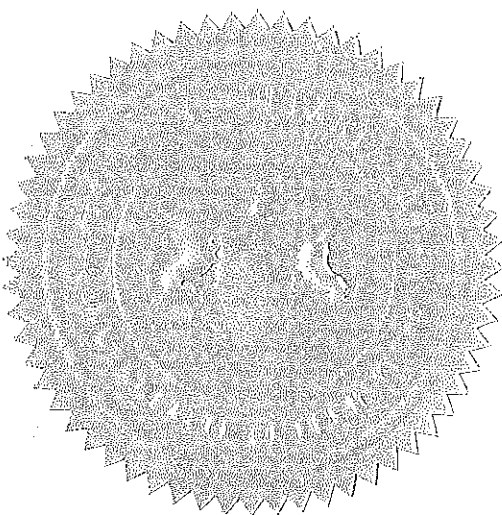
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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

**ORDER**

AND NOW, this 13<sup>th</sup> day of November, 2015, 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 Christopher R. Monahan, 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.



Teresa D. Miller  
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
AMERICAN INDEPENDENT	:	40 P.S. §§310.41a(a) and 310.71
INSURANCE COMPANY	:	
2018 Powers Ferry Rd, STE 400	:	40 P.S. §1184(h)
Atlanta, GA 30339	:	
	:	18 Pa. C.S. §4117(k)(1)
	:	
	:	31 Pa. Code §§62.3(b), 67.33(b)(1)
	:	and 146.6
	:	
	:	75 Pa. C.S. §§1705(a)(4), 1731(b) & (c)
	:	1738(d)(1) & (2) and 1799.3(a)
	:	
	:	
Respondent.	:	Docket No. MC16-02-022

CONSENT ORDER

AND NOW, this 29<sup>th</sup> day of March, 2016, this Order is hereby issued by the Insurance Department 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 Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is American Independent Insurance Company, and maintains its address at 2018 Powers Ferry Rd, STE 400, Atlanta, GA 30339.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the experience period from July 1, 2014 through June 30, 2015.
- (c) On February 4, 2016, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on March 1, 2016.

(e) The Market Conduct Examination of Respondent revealed violations of the following:

- (i) 40 P.S. §310.41a(a), prohibits any entity or the appointed agent of any entity from transacting the business of insurance through anyone acting without an insurance producer license;
- (ii) 40 P.S. §310.71, prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act;
- (iii) 40 P.S. §1184(h), 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 this Commonwealth and prohibits an insurer from making or issuing a contract or policy with rates other than those approved;
- (iv) 18 Pa. C.S. §4117(k)(1), states any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties;

- (v) 31 Pa. Code §62.3(b), states an appraisal shall contain a statement that costs above the appraised amount shall be the responsibility of the vehicle owner. An appraisal shall contain a statement informing the customer that may elect their own repair shop. A statement shall be provided informing the consumer which repair facilities will be able to repair the vehicle. Incidental charges known at the time of the appraisal shall be disclosed. The appraisal shall contain a date, if any, after which towing and storage charges shall be the responsibility of the consumer;
- (vi) 31 Pa. Code §67.33(b)(1), states 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;
- (vii) 31 Pa. Code §146.6, states that if an investigation cannot be completed within thirty (30) days, and every forty-five (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;
- (viii) 75 Pa. C.S. §1705(a)(4), requires every insurer, prior to the first issuance of a private passenger motor vehicle liability insurance policy to provide each applicant with the notice required by paragraph (1). A policy may not be issued until the applicant has been provided an opportunity to elect a tort



option. The notice shall be standardized form as adopted by the Commissioner;

- (ix) 75 Pa. C.S. §1731(b) & (c), requires that the named insured shall be informed that uninsured and underinsured motorist coverage may be rejected by signing a written rejection form;
- (x) 75 Pa. C.S. §1738(d)(1) & (2), 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;
- (xi) 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 \$1550 in excess of any self-insured retention or deductible applicable to the named insured.

#### CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
  
- (b) Respondent's violations of 40 P.S. §§310.41a(a) and 310.71 are punishable by the following, under (40 P.S. §310.91):
  - (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) an order to cease and desist; and
  - (iv) any other conditions as the Commissioner deems appropriate.
  
- (c) Violations of 40 P.S. §1184(h) are punishable under Section 16 of the Act:
  - (i) imposition of a civil penalty not to exceed \$50 for each violation or not more than \$500 for each such willful violation;
  - (ii) suspension of the license of any insurer which fails to comply with an Order of the Commissioner within the time limited by such Order, or any extension thereof which the Commissioner may grant.

- (d) Respondent's violations of 31 Pa. Code §146.6 are punishable under Sections 1 through 5 and Section 9 of the Unfair Insurance Practices Act (40 P.S. §§1171.1 – 1171.5 and 1171.9):
- (i) cease and desist from engaging in the prohibited activity;
  - (ii) suspension or revocation of the license(s) of Respondent.
- (e) In addition to any penalties imposed by the Commissioner for Respondent's violations of 40 P.S. §§1171.1 – 1171.5, the Commissioner may, under (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).

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department 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 pay Ten Thousand Dollars (\$10,000) in settlement of all violations contained in the Report.
- (c) Payment of this matter shall be made to the Commonwealth of Pennsylvania. Payment should be directed to April Phelps, Insurance Department, Bureau of Market Actions, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.
- (d) 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.
- (e) Respondent shall comply with all recommendations contained in the attached Report.

6. In the event the Insurance Department 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 Insurance Department 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 Department 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 Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department 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 Insurance Department. Only the Insurance Commissioner or a duly authorized delegee 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 delegee.

BY: AMERICAN INDEPENDENT  
INSURANCE COMPANY  
Respondent

  
\_\_\_\_\_  
President / Vice President

  
\_\_\_\_\_  
Secretary / Treasurer

  
\_\_\_\_\_  
CHRISTOPHER R. MONAHAN  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania

## I. INTRODUCTION

The Market Conduct Re-Examination was conducted at American Independent Insurance Company, hereinafter referred to as the “Company”, offices located in Atlanta, Georgia from September 14, 2015, through September 17, 2015, and in Conshohocken, Pennsylvania from October 19, 2015, through October 22, 2015. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

The Pennsylvania Market Conduct Re-Examination Report, hereinafter referred to as the “Report”, generally notes only those items to which the Department, after review, takes exception. However, the 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 re-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.

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

The following examiners participated in this re-examination and in preparation of the Report.

Kelly Krakowski, MCM  
Market Conduct Division Chief  
Pennsylvania Insurance Department

James R Myers, AMCM  
Market Conduct Examiner  
INS Regulatory Insurance Services

Linda Miller, MCM  
Market Conduct Examiner  
INS Regulatory Insurance Services



## **II. SCOPE OF EXAMINATION**

The Market Conduct Re-Examination was conducted on American Independent Insurance Company at their offices in Atlanta, Georgia and Conshohocken, Pennsylvania. The re-examination was conducted pursuant to Sections 903 & 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of July 1, 2014 through June 30, 2015, unless otherwise noted. The purpose of the re-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. Private Passenger Automobile
  - Underwriting - Appropriate and timely notices of nonrenewal, midterm cancellations and 60-day cancellations
  - Rating – Proper use of all classification and rating plans and procedures
2. Claims
3. Consumer Complaints
4. Licensing

### III. COMPANY HISTORY AND LICENSING

American Independent Insurance Company was incorporated under the laws of Pennsylvania on June 22, 1971, and commenced business on January 3, 1972.

#### LICENSING

American Independent Insurance Company's Certificate of Authority to write business in the Commonwealth was issued on January 3, 1972. The Company is licensed in Delaware, Florida, Georgia, Illinois, Kentucky, Maryland, Pennsylvania, South Carolina, Tennessee and Virginia. The Company's 2014 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$26,673,077. Premium volume related to the areas of this review was: Private Passenger Automobile Direct Written Premium was reported as Private Passenger Auto No-Fault (personal injury protection) \$7,133,137, Private Passenger Auto Liability \$15,404,334 and Private Passenger Physical Damage \$4,135,606.

#### **IV. UNDERWRITING PRACTICES AND PROCEDURES**

As part of the re-examination, the Company was requested to supply manuals, 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. No violations were noted.

## 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(c)(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 6,488 private passenger automobile files identified as being cancelled in the first 60 days of new business, 75 files were selected for review. All 75 files selected were received and reviewed. No violations were noted.

#### 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 Act 68, Section 2006 (40 P.S.

§991.2006), which establishes the requirements which must be met regarding the form and conditions of the cancellation notice.

From the universe of 10,817 private passenger automobile policies which were cancelled during the experience period, 75 files were selected for review. All 75 files selected were received and reviewed. No violations were noted.

### 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 Act 68, Section 2006 (40 P.S. §991.2006), which establishes the requirements which must be met regarding the form and conditions of the cancellation notice.

From the universe of 2,041 private passenger automobile files identified as nonrenewals by the Company, 25 files were selected for review. All 25 files selected were received and reviewed. No violations were noted.

## VI. RATING

### **A. Private Passenger Automobile**

#### 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.

The primary purpose of the review was to measure compliance with The Casualty and Surety Rate Regulatory Act, Section 4(a) and (h) (40 P.S. §1184(a), (h)), 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 that time. Files were also reviewed to determine compliance with all provisions of the Motor Vehicle Financial Responsibility Law (75 Pa. C.S. §1701-1799.7) and Act 68, Section 2005(c) (40 P.S. §991.2005(c)), which requires insurers to provide a detailed statement of the components of a premium and to 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 has 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.

Private Passenger Automobiles – New Business without Surcharges

From the universe of 16,842 private passenger automobile policies identified as new business without surcharges by the Company, 35 files were selected for review. All 35 files selected were received and reviewed. The 4 violations noted were based on 4 files, resulting in an error ratio of 11%.

The following findings were made:

*3 Violations 40 P.S. §1184(h)*

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 of issue. The 2 violations were the result of policies being issued without proper documentation for homeowner and prior insurance discounts which resulted in undercharges of \$108.00. One violation was the result of the policy being issued with limited tort coverage when the insured signed for full tort coverage.

*1 Violation 75 Pa. C.S. §1705(a)(4)*

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. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option. The violation noted was the result of a policy issued with limited tort and no evidence of a signed limited tort selection form.

The following Concerns were noted:

**CONCERN:** The Company provides information regarding collision coverage for rental vehicles on the first page of the policy jacket. The Company should provide the notice on the first page of the declaration page.

**CONCERN:** The Company used the fraud language in 75 Pa. C.S. §1822 on applications. It is recommended the Company use the fraud warning in 18 Pa. C.S. §4117(k)(1) and must be verbatim.

Private Passenger Automobile – New Business with Surcharges

From the universe of 729 private passenger automobile policies identified as new business with surcharges by the Company, 35 files were selected for review. All 35 files selected were received and reviewed. The 11 violations noted were based on 9 files, resulting in an error ratio of 26%.

The following findings were made:

*4 Violations 40 P.S. §1184(h)*

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 of issue. Three violations were the result of policies being issued without proper documentation for homeowner and prior insurance discounts which resulted in undercharges of \$317. One violation was the result of the policy being issued with limited tort coverage when the insured signed for full tort coverage.

*2 Violations 18 Pa. C.S. §4117(k)(1)*

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. The 2 violations noted were the result of the Company not providing the fraud warning at the time of application.

*1 Violation 75 Pa. C.S. §1731(b) & (c)*

The named insured shall be informed that he may reject uninsured and underinsured motorist coverage by signing a written rejection form. The violation noted was the result of the policy being issued without uninsured and underinsured motorist coverage and no evidence of a signed written rejection form in the file.

*1 Violation 75 Pa. C.S. §1738(d)(1)&(2)*

The named insured shall be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms. The Company did not provide the signed rejection form of stacked limits for uninsured and underinsured motorists coverage for the file noted.

*3 Violations 75 Pa. C.S. §1799.3(a)*

*31 Pa. Code §67.33(b)(1)*

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 \$1,550 in excess of any self-insured retention or deductible applicable to the named insured. 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 3 files noted contained an improper accident surcharge applied to the policy, which resulted in overcharges of \$243.

The following Concerns were noted:

**CONCERN:** The Company provides information regarding collision coverage for rental vehicles on the first page of the policy jacket. The Company should provide the notice on the first page of the declaration page.

**CONCERN:** The Company used the fraud language in 75 Pa. C.S. §1822 on applications. It is recommended the Company use the fraud warning in 18 Pa. C.S. §4117(k)(1) and must be verbatim.

## 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.

The purpose of the review was to measure compliance with The Casualty and Surety Rate Regulatory Act, Section 4(a) and (h) (40 P.S. §1184(a), (h)), 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 that time. Files were also reviewed to determine compliance with all provisions of the Motor Vehicle Financial Responsibility Law (75 Pa. C.S. §1701-1799.7) and Act 68, Section 2005(c) (40 P.S. §991.2005(c)), which requires insurers to provide a detailed statement of the components of a premium and to 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 has 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.

Private Passenger Automobile – Renewals without Surcharges

From the universe of 11,361 private passenger automobiles identified as renewals without surcharges, 10 files were selected for review. All 10 files selected were received and reviewed. The two (2) violations noted were based on two (2) files, resulting in an error ratio of 20%.

The following findings were made:

*2 Violations 40 P.S. §1184(h)*

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 of issue. The 2 violations were the result of policies being issued without proper documentation for homeowner and prior insurance discounts which resulted in undercharges of \$303.

**CONCERN:** The Company provides information regarding collision coverage for rental vehicles on the second page of the declarations page. The Company should provide the notice on the first page of the declaration page.

Private Passenger Automobile – Renewals with Surcharges

From the universe of 476 private passenger automobile policies identified as renewals with surcharges, 35 files were selected for review. All 35 files selected were received and reviewed. The 12 violations noted were based on 11 files, resulting in an error ratio of 31%.

The following findings were made:

*10 Violations 40 P.S. §1184(h)*

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 of issue. The 10 violations were the result of policies being issued without proper documentation for homeowner and prior insurance discounts which resulted in undercharges of \$2,447.

*2 Violations 75 Pa. C.S. §1799.3(a)*

*31Pa. Code §67.33(b)(1)*

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 \$1,550 in excess of any self insured retention or deductible applicable to the named insured. 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 2 files noted contained an improper accident surcharge applied to the policy, which resulted in overcharges of \$925.

**CONCERN:** The Company provides information regarding collision coverage for rental vehicles on the second page of the declarations page. The Company should provide the notice on the first page of the declaration page.

## 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 for appraisals and direct repair programs were received and reviewed for any inconsistencies, which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. It has been noted the Company does not maintain written claim handling procedures for training purposes or day to day handling of claims.

The claims review consisted of the following areas of review:

- A. Automobile Property Damage Claims
- B. Automobile Collision Claims
- C. Automobile Comprehensive Claims
- D. Automobile Total Loss Claims
- E. Automobile First Party Benefit Claims

The primary purpose of the review was to determine compliance with 31 Pa. 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) of the Unfair Insurance Practices Act (40 P.S. §1171.5(a)(10)(vi)).

### **A. Automobile Property Damage Claims**

From the universe of 2,755 private passenger automobile property damage claims reported during the experience period, 40 files were selected for review. All 40 files selected were received and reviewed. The violation noted resulted in an error ratio of 3%.

The following finding was made:

*1 Violation 31 Pa. Code §62.3(b)*

An appraisal shall contain a statement that costs above the appraised amount shall be the responsibility of the vehicle owner. An appraisal shall contain a statement informing the customer that they may elect their own repair shop. A statement shall be provided informing the consumer which repair facilities will be able to repair the vehicle. Incidental charges known at the time of the appraisal shall be disclosed. The appraisal shall contain a date, if any, after which towing and storage charges shall be the responsibility of the consumer. The violation was the result of the Company not providing all required disclosures on the appraisal.

**B. Private Passenger Automobile – Collision Claims**

From the universe of 1,065 private passenger automobile collision claims reported during the experience period, 25 files were selected for review. All 25 files selected were received and reviewed. No violations were noted.

**C. Private Passenger Automobile – Comprehensive Claims**

From the universe of 198 private passenger automobile comprehensive claims reported during the experience period, 10 files were selected for review. All 10 files selected were received and reviewed. The 2 violations noted were based on 2 files, resulting in an error ratio of 20%.

The following findings were made:



*1 Violation 31 Pa. Code §62.3(b)*

An appraisal shall contain a statement that cost above the appraised amount shall be the responsibility of the vehicle owner. An appraisal shall contain a statement informing the customer that they may elect their own repair shop. A statement shall be provided informing the consumer which repair facilities will be able to repair the vehicle. Incidental charges known at the time of the appraisal shall be disclosed. The appraisal shall contain a date, if any, after which towing and storage charges shall be the responsibility of the consumer. The violation was the result of the Company not providing all required disclosures on the appraisal.

*1 Violation 31 Pa. Code §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 Company did not provide timely status letters for the file noted above

**D. Private Passenger Automobile – Total Loss Claims**

From the universe of 225 private passenger automobile total loss claims reported during the experience period, 25 files were selected for review. All 25 files selected were received and reviewed. The violation noted resulted in an error ratio of 4%.

The following finding was made:

*1 Violation 31 Pa. Code §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 Company did not provide timely status letters for the file noted.

**E. Private Passenger Automobile – First Party Benefit Claims**

From the universe of 1,595 private passenger automobile first party medical claims reported during the experience period, 35 files were selected for review. All 35 files were received and reviewed. No violations were noted.

### VIII. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of their complaint logs for the preceding four years. The Company identified 66 consumer complaints received during the experience period and provided all complaint logs requested. Of the 66 consumer complaints received, 25 files were selected for review. All 25 files selected were received and reviewed.

The purpose of the review was to determine compliance with the Unfair Insurance Practices Act, (40 P.S. §§1171.1-1171.5). Section 5(a)(11) of the Act (40 P.S. §1171.5(a)(11)), 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 individual complaint files were received for the relevancy to applicable statutes and to verify compliance with 31 Pa. Code §146.5(b)(c).

The following findings were made:

#### *2 Violations 31 Pa. Code §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 Company did not provide timely status letters for the two claims noted.

**CONCERN:** In one (1) of the 25 complaint files reviewed, the Company received an inquiry or a complaint from the Department and did not respond within 15 working days. It is recommended the Company respond to a Department company or inquiry within 15 working days.

The following synopsis reflects the nature of the 25 complaints that were reviewed:

19	Claims Related	76 %
<u>6</u>	Cancellations	<u>24 %</u>
25		100%

## IX. LICENSING

In order to determine compliance by the Company and its agency force with the licensing requirements applicable to Section 641-A(a) and Section 671-A of the Insurance Department Act No. 147 (40 P.S. §§310.41a(a), 310.71), the Company was requested to furnish a list of all active producers during the experience period and a listing of all producers terminated during the experience period.

Underwriting and rating files were checked to verify proper licensing and appointment.

The following findings were made:

*1 Violation 40 P.S. §310.41a(a)*

Any insurance entity or licensee accepting applications or orders for insurance from any person or securing any insurance business that was sold, solicited or negotiated by any person acting without an insurance producer license shall be subject to civil penalty of no more than \$5,000.00 per violation in accordance with this act. This section shall not prohibit an insurer from accepting an insurance application directly from a consumer or prohibit the payment or receipt of referral fees in accordance with this act.

The following producer was found to be writing and /or soliciting policies but was not found in Insurance Department records as holding a Pennsylvania producer license.

Sean Laughlin t/a Best Insurance of Delaware Valley

*1 Violation 40 P.S. §310.71*

(a) Representative of the insurer – An insurance producer shall not act on behalf of or as a representative of the insurer unless the insurance producer is appointed by the insurer. An insurance producer not acting as a representative of an insurer is not required to be appointed.

(b) Representative of the consumer – An insurance producer acting on behalf of or representing an insurance consumer shall execute a written agreement with the insurance consumer prior to representing or acting on their behalf that:

- (1) Delineates the services to be provided; and
- (2) Provides full and complete disclosure of the fee to be paid to the insurance producer by the insurance consumer.

(c) Notification to Department – An insurer that appoints an insurance producer shall file with the Department a notice of appointment. The notice shall state for which companies within the insurer's holding company system or group the appointment is made.

(d) Termination of appointment – Once appointed, an insurance producer shall remain appointed by an insurer until such time as the insurer terminates the appointment in writing to the insurance producer or until the insurance producer's license is suspended, revoked or otherwise terminated.

(e) Appointment fee – An appointment fee of \$15 will be billed annually to the insurer for each producer appointed by the insurer during the preceding calendar year regardless of the length of time the producer held the appointment with the insurer. The appointment fee may be modified by regulation.

(f) Reporting – An insurer shall, upon request, certify to the Department the names of all licensees appointed by the insurer.

The following producer was found to be writing policies but was not found in Insurance Department records as having an appointment. The Company failed to file a notice of appointment and submit appointment fees to the Department.

Diallo Brothers LLC D/B/A Sodian International Group

## X. 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 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 75 Pa. C.S. §1705(a)(4) do not occur in the future.
2. 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 75 Pa. C.S. §1731(b) & (c) do not occur in the future.
3. 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 75 Pa. C.S. §1738(d)(1) and (2) do not occur in the future.

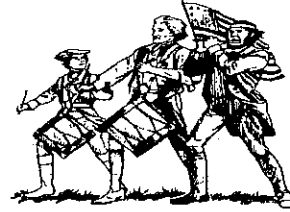


4. The Company must review 40 P.S. §1184(h) and take appropriate measures to ensure the automobile rating violations listed in the report do not occur in the future.
5. The premium overcharges noted in the rating section of this report must be refunded to the insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the report issue date.
6. The Company must review 75 Pa. C.S. §1799.3(a) and 31 Pa. Code §67.33(b)(1) to ensure that a policy is not surcharged 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 \$1,550 in excess of any self-insured retention or deductible applicable to the named insured.
7. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of 31 Pa. Code §146, Unfair Claims Settlement Practices, so that the violations relating to status letters, as noted in the Report, do not occur in the future.
8. The Company must review 31 Pa. Code §62.3(b) with its claim staff to ensure that the consumer receives all required disclosures on appraisals.
9. The Company must ensure all producers are properly licensed and appointed, as required by 40 P.S. §310.41(a) and 40 P.S. §310.71 of the Insurance Department Act No. 147, prior to accepting any business from any producer.

10. The Company must review 18 Pa. C.S. §4117(k)(1) to ensure that violations regarding the requirement of a fraud warning on all applications and claim forms, as noted in the Report, do not occur in the future.

**XI. COMPANY RESPONSE**

March 1, 2016



AMERICAN INDEPENDENT INSURANCE COMPANY

Kelly Krakowski  
Chief, Property & Casualty Division  
Pennsylvania Insurance Department  
Bureau of Market Actions  
1371 Strawberry Square  
Harrisburg, PA 17120

RE: American Independent Insurance Company  
Market Conduct Examination  
Warrant Number: 15-M08-015

Dear Ms. Krakowski:

American Independent Insurance Company (the "Company") is in receipt of your letter dated February 4, 2016, and the Department's Report of Examination covering the period of July 1, 2014, through June 20, 2015 (the "Report"). Kindly accept this letter as the Company's response to the Report.

As you know, the Company serves the unique segment of the market, namely, the non-standard automobile insurance market, in which most of its customers are interested in purchasing just the minimum level of statutory coverage. We value the opportunity to fill this significant market need and strive to maintain this coverage at affordable levels and in a very consumer friendly environment.

Our response below addresses each of the Department's recommendations starting on page 26 of the report. Although we believe the exceptions noted in the Report relate mostly to categories of either human error (which we believe are statistically insignificant) or the differing interpretations of Pennsylvania law, we accept the Report constructively in an effort to improve our procedures, and the Company is implementing the recommendations of the Department to further strengthen our compliance. To the extent the Department views certain matters to be a violation of Pennsylvania law, given the circumstances, the Company respectfully submits that none of such actions should be viewed as an intentional violation of the law or any general pattern or practice of noncompliance.

The Company appreciates the professional courtesy of your staff through the examination process. We look forward to working with you to reach a mutually agreeable resolution in the Report. If you have any questions in connection with the letter or you require any further information, please do not hesitate to call me.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Bruce Arneson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bruce Arneson  
President  
American Independent Insurance Company

1400 Union Meeting Road, Suite 250  
Blue Bell, PA 19422  
Phone: 610-832-4940 Fax: 610-832-1147

## XI. COMPANY RESPONSE TO 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 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 75 Pa. C.S. §1705(a)(4) do not occur in the future.

*Company Response:* Agents will continue to retain a copy of all signed Tort Option Notice forms with the signed application for their records. The agent will submit to underwriting a copy of all signed Tort Option Notice forms with the signed application for examination upon request. The Company's Pennsylvania Marketing Reps will also remind agents of the importance of providing prospective insureds the opportunity to elect a tort option and obtaining signatures on these forms and retaining them. Additionally, the Company will perform random audits on agent records for all insured signed forms.

2. 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 75 Pa. C.S. §1731(b) & (c) do not occur in the future.

*Company Response:* Agents will continue to retain a copy of all signed UM and UIM coverage rejection forms with the signed application for their records. The agent will submit to underwriting a copy of all signed UM and UIM coverage rejection forms with the signed application for examination upon request. The

*Company's Pennsylvania Marketing Reps will also remind agents of the importance of providing prospective insureds the opportunity to exercise the waiver for UM and UIM coverage forms and obtaining signatures on these forms and retaining them. Additionally, the Company will perform random audits on agent records for all insured signed forms.*

3. 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 75 Pa. C.S. §1738(d)(1) and (2) do not occur in the future.

*Company Response:* *Agents will be reminded to retain a copy of all signed UM and UIM stacking rejection forms with the signed application and with any endorsements to add a vehicle to the policy for their records. The agent will submit to underwriting a copy of all signed UM and UIM stacking rejection forms with the signed application for examination upon request. The Company's Pennsylvania Marketing Reps will also remind agents of the importance of making prospective insureds aware that they may exercise the waiver of stacked limits for UM and UIM coverage by signing written rejection forms. Additionally, the Company will perform random audits on agent records for all insured signed forms.*

4. The Company must review 40 P.S. §1184(h) and take appropriate measures to ensure the automobile rating violations listed in the report do not occur in the future.

*Company Response:*

*(1) The agent will submit all documentation necessary for all discounts including homeowner and prior insurance discounts to The Company or the discount will be removed. The agent will retain a copy of a documentation submitted to the Company in their records for examination upon request.*

*(2) Underwriting will obtain the signed tort forms from the agent to verify the tort*

*selection by the insured. If the tort selection does not match the insureds signed selection, then underwriting will uprate the policy appropriately.*

*(3) The Company is using the Fraud language requirement from Act 165 rather than Act 6 on applications which is permitted per Commissioner Notice of May 19, 1995. The Company will file for approval a revised Application (in the near future) that contains a correction to the Fraud language to match Act 6.*

*(4) The Company has implemented the automated process of MVR/Clue Reconciliation which validates that any claims amounts must exceed the PA threshold of \$1,550 for an accident to be surcharged on a policy.*

*(5) The Company has moved the existing notice of "NOTICE: IF YOU BUY COLLISION COVERAGE, IT DOES NOT APPLY TO VEHICLES RENTED FOR BUSINESS USE OR FOR 6 MONTHS OR MORE." towards the top of the first page of all Declaration Pages and was released into production effective 11/4/2015. This will ensure that the notice does not move to the second page of the Declaration Page.*

*(6) The Company is using the Fraud language requirement from Act 165 rather than Act 6 on applications which are permitted per Commissioner Notice of May 19, 1995. The Company will file for approval May 1<sup>st</sup>, 2016 a revised Application that contains a correction to the Fraud language to match Act 6.*

5. The premium overcharges noted in the rating section of this report must be refunded to the insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the report issue date.

*Company Response:* *Refunds were remitted to the insured on February 29, 2016, for the five policies cited:*

- 1. 5755088 in the amount of \$47.00*
- 2. 5810950 in the amount of \$36.00*
- 3. 5887465 in the amount of \$160.00*
- 4. 4400471 in the amount of \$751.00*
- 5. 5659074 in the amount of \$174.00*

6. The Company must review 75 Pa. C.S. §1799.3(a) and 31 Pa. Code §67.33(b)(1) to ensure that a policy is not surcharged 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 \$1,550 in excess of any self-insured retention or deductible applicable to the named insured.

*Company Response: The Company has implemented the automated process of MVR/Clue Reconciliation which validates that any claims amounts must exceed the PA threshold of \$1,550 for an accident to be surcharged on a policy.*

7. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of 31 Pa. Code §146, Unfair Claims Settlement Practices, so that the violations relating to status letters, as noted in the Report, do not occur in the future.

*Company Response: These violations occurred in isolated instances where the claim files were closed prior to all issues being addressed. This prevented the status letters from being generated. We have now discussed this issue with our staff to ensure these violations do not occur in the future.*

8. The Company must review 31 Pa. Code §62.3(b) with its claim staff to ensure that the consumer receives all required disclosures on appraisals.

*Company Response: The Company has communicated the requirements of 31 Pa. Code §62.3(b) with its independent appraisal companies to ensure the required language is included on each vehicle appraisal.*

9. The Company must ensure all producers are properly licensed and appointed, as required by 40 P.S. §310.41(a) and 40 P.S. §310.71 of the Insurance Department Act No. 147, prior to accepting any business from any producer.

*Company Response: The Company will verify the agency / agent license status on*



*the Departments website during the appointment process and will not allow access for submission of business unless proper licensing is provided.*

10. The Company must review 18 Pa. C.S. §4117(k)(1) to ensure that violations regarding the requirement of a fraud warning on all applications and claim forms, as noted in the Report, do not occur in the future.

*Company Response: The Company has ensured that the fraud language mandated by 18 Pa. C.S. §4117(k)(1) is correctly appearing on all claim forms.*