

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**CALIFORNIA CASUALTY INDEMNITY  
EXCHANGE**

San Mateo, California

**AS OF  
March 1, 2006**

**COMMONWEALTH OF PENNSYLVANIA**



**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

**Issued: April 19, 2006**

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).

  
\_\_\_\_\_  
Jerry L. Houston, Examiner-In-Charge

Sworn to and Subscribed Before me

This 6 Day of February, 2006

  
\_\_\_\_\_  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
THERESA M. SENECA, Notary Public  
City of Harrisburg, Dauphin County  
My Commission Expires Aug. 15, 2008

# CALIFORNIA CASUALTY INDEMNITY EXCHANGE

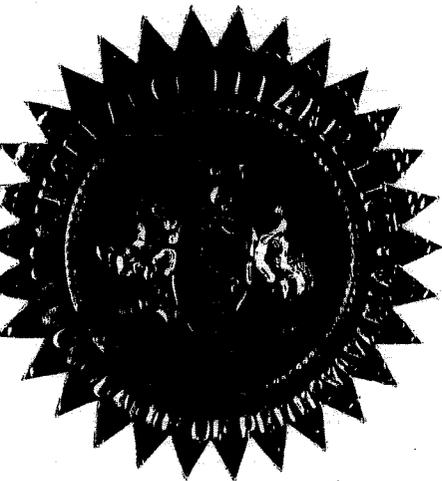
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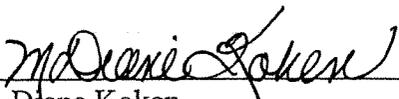
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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

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:  
: :  
CALIFORNIA CASUALTY : Section 671-A of Act 147 of 2002  
INDEMNITY EXCHANGE : (40 P.S. § 310.71)  
1900 Alameda de las Pulgas :  
San Mateo, CA 94403 : Section 903(a) of the Insurance  
: Department Act, Act of May 17, 1921,  
: P.L. 682, No. 284 (40 P.S. § 323.3)  
: :  
: Sections 4(a) and 4(h) of the Act of  
: June 11, 1947, P.L. 538, No. 246  
: (40 P.S. §§ 1184)  
: :  
: Title 75, Pennsylvania Consolidated  
: Statutes, Sections 1161(a) and (b)  
: :  
: Act 1990-6, Sections 1705(a)(1) & (4),  
: 1716, 1725, 1734, 1738(c)(d)(1) and  
: (2), 1791, 1791.1(a) and (b), 1792(b)(1),  
: 1793(b), and 1799.3(d) (Title 75,  
: Pa.C.S. §§ 1705, 1716, 1725, 1734,  
: 1738, 1791, 1792, 1793 and 1799)  
: :  
: Sections 5(a)(9) and 5(a)(7)(iii) of the  
: Unfair Insurance Practices Act, Act of  
: July 22, 1974, P.L. 589, No. 205 (40  
: P.S. §§ 1171.5)  
: :  
: Sections 2003(a)(1), 2003(b), 2006(2),  
: (3), (4), (6) and (7), and 2008(b)  
: of Act 68 of 1998 (40 P.S.  
: §§991.2003, 991.2006 and 991.2008)  
: :  
: Title 31, Pennsylvania Code, Sections  
: 59.9(b), 69.22(c), 69.52(b), 146.5(b),  
: 146.6 and 146.7(a)(1)  
: :  
: Title 75, Pennsylvania Consolidated  
: Statutes, Section 1822  
: :  
Respondent. : Docket No. MC06-03-038

CONSENT ORDER

AND NOW, this 19<sup>th</sup> day of April, 2006, 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 California Casualty Indemnity Exchange, and maintains its address at 1900 Alameda de las Pulgas, San Mateo, California 94403.

- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2004 through June 30, 2005.
- (c) On March 1, 2006, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on March 30, 2006.
- (e) The Examination Report notes violations of the following:
- (i) Section 671-A of Act 147 of 2002 prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act (40 P.S. § 310.71).
  - (ii) Section 903(a) of the Insurance Department Act, No. 285 (40 P.S. § 323.3), which requires every company or person subject to examination 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 may require, in order that its representatives may ascertain whether the company has complied with the laws of the Commonwealth;

- (iii) Sections 4(a) and 4(h) of the Casualty and Surety Rate Regulatory Act, No. 246 (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 this Commonwealth and prohibits an insurer from making or issuing a contract or policy with rates other than those approved;
  
- (iv) Section 1161(a) and (b) of Title 75, Pa. C.S., which states an insurer who owns, possesses or transfers a vehicle located or registered in the Commonwealth which qualifies as a salvage vehicle shall make application to the Department for a certificate of salvage for that vehicle;
  
- (v) Sections 1705(a)(1) & (4) of Act 1990-6, Title 75, Pa.C.S. § 1705, 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. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option;
  
- (vi) Section 1716 of Act 1990-6, Title 75, Pa. C.S. § 1716, which requires 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;

(vii) Section 1725 of Act 1990-6, Title 75, Pa.C.S. § 1725, which requires every motor vehicle insurance policy to contain a notice whether the policy covers collision damage to rental vehicles, and any limitations on such coverage. The notice shall be written in clear, plain language and shall be printed on the first page of the policy in boldface capital letters;

(viii) 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:

(ix) Section 1738(c)(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;

- (x) Section 1791 of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires the company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten point type at the time of application for original coverage;
- (xi) 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 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;
- (xii) Section 1791.1(b) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires an insurer to provide an insured with a notice of the availability of two alternatives of full tort insurance and limited tort insurance;

- (xiii) 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;
- (xiv) Section 1793(b) 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 deliver the plan to each insured 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;
- (xv) Section 1799.3(d) of Act 1990-6, Title 75, Pa.C.S. § 1799, which requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the named insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect;

- (xvi) Section 5(a)(7)(iii) of Act 205 (40 P.S. § 1171.5), which defines and prohibits unfair methods of competition as making or permitting any unfair discrimination between individuals of the same class and essentially the same hazard with regard to underwriting standards and practices or eligibility requirements by reason of race, religion, nationality or ethnic group, age, sex, family size, occupation, place of residence or marital status;
- (xvii) Section 5(a)(9) of Act 205 (40 P.S. §1171.5), which defines an unfair act or practice as: (9) cancelling any policy of insurance covering owner-occupied private residential properties or personal property of individuals that has been in force for 60 days or more or refusing to renew any such policy unless the policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the company; or there has been a substantial change or increase in hazard in the risk assumed by the company subsequent to the date the policy was issued; or there is a substantial increase in hazards insured against by reason of willful or negligent acts or omissions by the insured; or the insured has failed to pay any premium whether such premium is payable directly to the company or its agent or indirectly under any premium finance plan or extension of credit; or for any other reasons approved by the Commissioner pursuant to rules and regulations promulgated by the Commissioner. No cancellation or refusal to renew by any person shall

be effective unless a written notice of the cancellation or refusal to renew is received by the insured whether at the address shown in the policy or at a forwarding address;

- (xviii) Section 2003(a)(1) of Act 68 of 1998 (40 P.S. § 991.2006), which prohibits an insurer from canceling or refusing to write or renew a policy of automobile insurance for any of the following reasons: Age;
- (xix) Section 2003(b) of Act 68 of 1998 (40 P.S. § 991.2003), which states that an insurer may not cancel or refuse to renew a policy of automobile insurance on the basis of one accident within the 36 month period prior to the upcoming anniversary date of the policy;
- (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 2006(4) of Act 68 of 1998 (40 P.S. § 991.2006), which requires the insurer to advise the insured of his right to request in writing, within 30 days of the receipt of the notice of cancellation, that the Commissioner review the action of the insurer;
- (xxiii) Section 2006(6) of Act 68 of 1998 (40 P.S. § 991.2006), which requires that a cancellation notice advise the insured that he must obtain compulsory automobile insurance coverage if he operates or registers a motor vehicle in this Commonwealth and that the insurer is notifying the Department of Transportation that the insurance is being cancelled and the insured must notify the Department of Transportation that he has replaced said coverage;
- (xxiv) Section 2006(7) of Act 68 of 1998 (40 P.S. § 991.2006), which requires that a cancellation notice clearly state that when coverage is to be terminated due to nonresponse to a citation imposed under 75 Pa.C.S. § 1533, or nonpayment of a fine or penalty imposed under that section, coverage shall not terminate if the insured provides the insurer with proof that the insured has responded to all citations and paid all fines and penalties and that he has done so on or before the termination date of the policy;
- (xxv) 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;

(xxvi) Title 31, Pennsylvania Code, Section 59.9(b), which requires an insurer give at least 30 days notice of termination and provided it gives notice no later than the 60<sup>th</sup> day;

(xxvii) Title 31, Pennsylvania Code, Section 69.22(c), which requires the insurer, when an insured's first-party limits have been exhausted, to provide notice to the provider and the insured within 30 days of the receipt of the provider's bill;

(xxviii) Title 31, Pennsylvania Code, Section 69.52(b), which requires an insurer to pay medical bills for care that are not referred to a Peer Review Organization within 30 days after the insurer receives sufficient documentation supporting the bill;

- (xxix) Title 31, Pennsylvania Code, Section 146.5(b), which requires every insurer, upon receipt of any inquiry from the Department respecting a claim shall, within 15 working days of receipt of such inquiry, furnish the Department with an adequate response to the inquiry;
- (xxx) Title 31, Pennsylvania Code, Section 146.6, requires that 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;
- (xxxi) Title 31, Pennsylvania Code, Section 146.7(a)(1), which requires within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition or exclusion unless reference to such provision, condition or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial; and

(xxxii) Title 75, Pennsylvania Consolidated Statutes, Section 1822, which requires 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 any 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 \$15,000.00.

#### 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) Respondent's violations of Section 671-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (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) Respondent's violations of Sections 4(a) and (h) of the Casualty and Surety Rate Regulatory Act, No. 246 (40 P.S. § 1184) are punishable under Section 16 of the Casualty and Surety Rate Regulatory Act:

- (i) imposition of a civil penalty not to exceed \$50 for each violation or not more than \$500 for each such wilful 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 Sections 5(a)(7)(iii) and 5(a)(9) 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.

- (e) 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).
- (f) Respondent's violations of Sections 2003, 2006 and 2008 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).
- (g) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.5, 146.6 and 146.7 are punishable under Sections 9, 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9, 1171.10 and 1171.11), as stated above.

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 Forty-Five Thousand Dollars (\$45,000.00) 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, 1227 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.

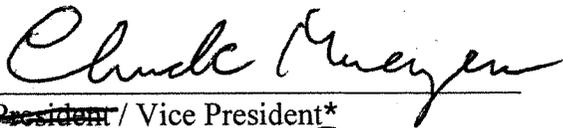
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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.

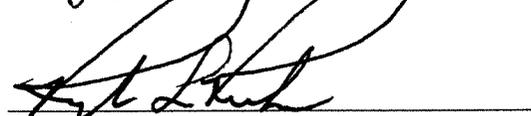
10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

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: CALIFORNIA CASUALTY INDEMNITY  
EXCHANGE, Respondent

  
~~President~~ / Vice President\*

  
Secretary \* Treasurer

  
RANDOLPH L. ROHRBAUGH  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania

\*of California Casualty Management Company, Attorney-in-Fact  
for Respondent

## I. INTRODUCTION

The market conduct examination was conducted at California Casualty Indemnity Exchange's office located in Colorado Springs, Colorado, from September 12, 2005, through October 21, 2005. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

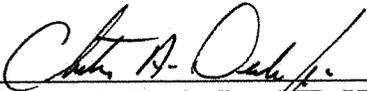
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was 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.

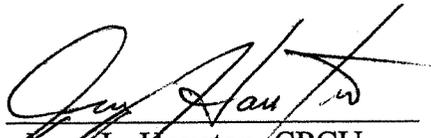
In certain areas of review listed in this Report, the examiners will refer to "error ratio." This error ratio is calculated by dividing the number of policies with violations by the total number of policies reviewed. For example, if 100 policies are reviewed and it is determined that there are 20 violations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

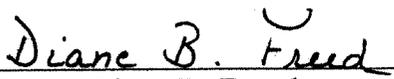
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel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

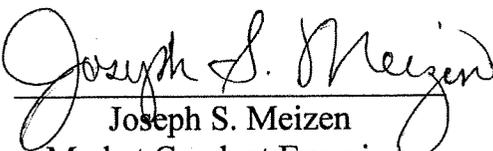
The courtesy and cooperation extended by the officers and employees of the Company during the course of the examination is hereby acknowledged.

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

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

  
\_\_\_\_\_  
Jerry L. Houston, CPCU  
Market Conduct Examiner

  
\_\_\_\_\_  
Diane B. Freed  
Market Conduct Examiner

  
\_\_\_\_\_  
Joseph S. Meizen  
Market Conduct Examiner

## II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on California Casualty Indemnity Exchange, hereinafter referred to as "Company," at their office located in Colorado Springs, Colorado. 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, 2004, through June 30, 2005, 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. Private Passenger Automobile
  - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations and declinations.
  - Rating – Proper use of all classification and rating plans and procedures.
  
2. Homeowners
  - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations and 60-day cancellations.
  - Rating – Proper use of all classification and rating plans and procedures.
  
3. Dwelling Fire
  - Underwriting – Appropriate and timely notices of midterm cancellations and 60-day cancellations.
  - 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**

California Casualty Indemnity Exchange was organized and began business on January 1, 1914. The attorney-in-fact and manager is California Casualty Management Company, a California corporation, most of whose stockholders and directors are directly associated in the management and conduct of the business. The name of the attorney-in-fact was changed from Index Underwriters, Inc., to its present form on July 1, 1969. The exchange was granted a certificate of perpetual non-assessability as of February 17, 1966, under the 1965 amendment to the California Insurance Code.

#### **LICENSING**

California Casualty Indemnity Exchange's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2005. The Company is licensed in the District of Columbia and all states except Alaska, Michigan, Mississippi and New Jersey. The Company's 2004 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$5,958,909. Premium volume related to the areas of this review were: Homeowners multiple peril \$444,774 and Private Passenger Automobile Direct Written Premium was reported as Other Private Passenger Automobile Liability \$3,136,376 and Private Passenger Automobile Physical Damage \$2,373,163.

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

As part of the 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 and personal lines property, including homeowner and dwelling fire. 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 findings were made:

*1 Violation Act 205, Section 5(a)(7)(iii) [40 P.S. §1171.5(a)(7)(iii)]*

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined. "Unfair Methods of Competition" and "Unfair or Deceptive Practices" in the business of insurance means: Unfairly discriminating by means of: Making or permitting any unfair discrimination between individuals of the same class and essentially the same hazard with regard to underwriting standards and practices or eligibility requirements by reason of race, religion, nationality or ethnic group, age, sex, family size, occupation, place of residence or marital status. The Company's underwriting guidelines indicated the following: "Age to Contract: Named insured age 18 or older is acceptable."

*1 Violation Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)]*

Prohibits canceling any policy of insurance covering owner-occupied private residential properties or personal property of individuals that has been in force for sixty days or more or refusing

to renew any such policy unless the policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the company; or there has been a substantial change or increase in hazard in the risk assumed by the company subsequent to the date the policy was issued; or there is a substantial increase in hazards insured against by reason of willful or negligent acts or omissions by the insured; or the insured has failed to pay any premium when due or for any other reasons approved by the Commissioner. The Company's homeowner guidelines indicate that more than two qualified losses in the last 3 years is unacceptable for renewals. Nonrenewing a policy based on losses is not an acceptable reason.

## 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.

The universe of 52 private passenger automobile files identified as being cancelled in the first 60 days of new business was selected for review. All 52 files selected were received and reviewed. The 13 violations noted were based on 12 files, resulting in an error ratio of 23%.

The following findings were made:

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

Discrimination Prohibited. An insurer may not cancel or refuse to write or renew a policy of automobile insurance for age. The 2 files noted were cancelled due to being licensed less than one year and less than one year of U.S. driving experience.

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

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 Insurance Commissioner that he review the action of the insurer in refusing to write a policy for the applicant. The Company did not provide the required 30 days for the insured to request review by the Insurance Commissioner. The Company's form indicated the insured had 10 days.

2. Midterm Cancellations

A midterm 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.

From the universe of 291 private passenger automobile files identified as midterm cancellations by the Company, 100 files were selected for review. All 100 files selected were received and reviewed. The 84 violations noted were based on 28 files, resulting in an error ratio of 28%.

The following findings were made:

*28 Violations Act 68, Section 2006(4) [40 P.S. §991.2006(4)]*

Requires that a cancellation notice advise the insured of his right to request in writing that the Insurance Commissioner review the action of the insurer. The Company did not provide the required 30 days for the insured to request review by the Insurance Commissioner. The Company's form indicated the insured had only 10 days.

*28 Violations Act 68, Section 2006(6) [40 P.S. §991.2006(6)]*

Requires that a cancellation notice advise the insured that he must obtain compulsory automobile insurance coverage if he operates or registers a motor vehicle in this Commonwealth and that the insurer is notifying the Department of Transportation that the insurance is being cancelled and the insured must notify the Department of Transportation that he has replaced said coverage. The Company did not provide the required information on the cancellation notice for the 28 files noted.

*28 Violations Act 68, Section 2006(7) [40 P.S. §991.2006(7)]*

Requires that a cancellation notice clearly state that when coverage is to be terminated due to nonresponse to a citation imposed under 75 Pa. C.S. §1533 (relating to suspension of operating privilege for failure to respond to a citation) or nonpayment of a fine or penalty imposed under that section, coverage shall not terminate if the insured provides the insurer with proof that the insured has responded to all

citations and paid all fines and penalties and that he has done so on or before the termination date of the policy. The Company did not provide the required information on the cancellation notice for the 28 files 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 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 14 private passenger automobile files identified as nonrenewals by the Company was selected for review. All 14 files selected were received and reviewed. The 2 violations noted were based on 2 files, resulting in an error ratio of 14%.

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 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. The Company 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 deliver or mail to the named insured a nonrenewal notice and state the specific reason or reasons of the insurer for cancellation. The Company did not provide a specific reason for nonrenewal for the file noted.

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 universe of 13 private passenger automobile files identified as being declined by the Company during the experience period was selected for review. Of the 13 files requested, 6 files were received and reviewed. The 13 violations noted were based on 13 files, resulting in an error ratio of 100%.

The following findings were made:

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

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 Insurance

Commissioner that he review the action of the insurer in refusing to write a policy for the applicant. The Company did not provide a specific reason for refusal and did not provide the required 30 days for the insured to request review by the Insurance Commissioner.

*7 Violations Insurance Department Act, Section 903(a) [40 P.S. §323.3]*  
Requires every company subject to examination to keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its business in such manner and for such time as may be required in order that the Department may readily verify whether the Company has complied with the laws of this Commonwealth. The 7 files noted were not produced by the Company.

#### **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. Homeowners**

##### **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 205, Unfair Insurance Practices Act, Section 5(a)(7)(iii) [40 P.S. §1171.5(a)(7)(iii)], which prohibits an insurer from canceling a policy for discriminatory reasons and Title 31, Pennsylvania Code, Section 59.9(b), which requires an insurer who cancels a policy in the first 60 days to provide at least 30 days notice of the termination.

The universe of 26 homeowner policies, which were cancelled within the first 60 days of new business was selected for review. All 26 files selected were received and reviewed. The 2 violations noted were based on 2 files, resulting in an error ratio of 8%.

The following findings were made:

*2 Violations Title 31, Pa. Code, Section 59.9(b)*

Requires an insurer give at least 30 days notice of termination and provided it gives notice no later than the 60<sup>th</sup> day. The Company did not provide the required 30 days notice of cancellation for the 2 files noted.

2. Midterm Cancellations

A midterm cancellation is any policy termination that occurs at any time other than the twelve-month policy anniversary date.

The primary purpose of the review was to determine personal lines compliance with Act 205, Unfair Insurance Practices Act, Section 5(a)(9) [40 P.S. §1171.5(a)(9)], which establishes the conditions under which

cancellation of a policy is permissible along with the form requirements of the cancellation notice.

From the universe of 114 homeowner policies which were cancelled midterm during the experience period, 75 files were selected for review. All 75 files requested were received and reviewed. No violations were noted.

### 3. Nonrenewals

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

The primary purpose of the review was to determine personal lines compliance with Act 205, Unfair Insurance Practices Act, Section 5(a)(9) [40 P.S. §1171.5(a)(9)], which establishes the conditions under which cancellation of a policy is permissible along with the form requirements of the nonrenewal notice.

The universe of 6 homeowner policies which were nonrenewed during the experience period was selected for review. All 6 files requested were received and reviewed. The 3 violations noted were based on 3 files, resulting in an error ratio of 50%.

The following findings were made:

#### *3 Violations Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)]*

Prohibits canceling any policy of insurance covering owner-occupied private residential properties or personal property of individuals that has been in force for sixty days or more or

refusing to renew any such policy unless the policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the company; or there has been a substantial change or increase in hazard in the risk assumed by the company subsequent to the date the policy was issued; or there is a substantial increase in hazards insured against by reason of willful or negligent acts or omissions by the insured; or the insured has failed to pay any premium when due or for any other reasons approved by the Commissioner. The Company did not provide a proper reason for nonrenewal for the 3 files noted.

#### **D. Dwelling Fire**

##### **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 205, Unfair Insurance Practices Act, Section 5(a)(7)(iii) [40 P.S. §1171.5(a)(7)(iii)], which prohibits an insurer from canceling a policy for discriminatory reasons and Title 31, Pennsylvania Code, Section 59.9(b), which requires an insurer who cancels a policy in the first 60 days to provide at least 30 days notice of the termination.

The universe of 1 dwelling fire policy, which was cancelled within the first 60 days of new business was selected for review. The file selected was received and reviewed. No violations were noted.

## 2. Midterm Cancellations

A midterm cancellation is any policy termination that occurs at any time other than the twelve-month policy anniversary date.

The primary purpose of the review was to determine personal lines compliance with Act 205, Unfair Insurance Practices Act, Section 5(a)(9) [40 P.S. §1171.5(a)(9)], which establishes the conditions under which cancellation of a policy is permissible along with the form requirements of the cancellation notice.

The universe of 3 dwelling fire policies which were cancelled midterm during the experience period was selected for review. The 3 files requested 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 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 that time. Files were also reviewed to determine compliance with all provisions of Act 6 of 1990 and 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.

Private Passenger Automobile – New Business Without Surcharges

From the universe of 1,580 private passenger automobile policies identified as new business without surcharges by the Company, 100 files were selected for review. All 100 files requested were received and reviewed. The 7,907 violations noted were based on the universe of 1,580 files, resulting in an error ratio of 100%.

The following findings were made:

*1,580 Violations 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 Company did not provide the notice of tort options to the insured at the time of application.

*1,580 Violations 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 Company did not provide the insured with the itemized invoice listing the minimum motor vehicle coverage and the premium charge to purchase minimum mandated coverages at the time of application.

*1,580 Violations Title 75, Pa. C.S. §1793(b)*

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 the plan 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 1,580 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan at the time of application.

*1,580 Violations Title 75, Pa. C.S. §1791*

Requires the Company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten-point type at the time of application for original coverage. The Company did not provide the required wording at the time of application.

*1,580 Violations Title 75, Pa. C.S. 1725*

Every motor vehicle insurance policy shall contain a notice as to whether the policy covers collision damage to rental vehicles, and any limitations on such coverage. The notice shall be written in clear, plain language and shall be printed on the first page of the policy in boldface capital letters. The Company failed to provide the rental car collision notice on the first page of the policy.

*1 Violation 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 violation noted was the result of not having the required signed statement from the insured.

*1 Violation Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40 P.S. §1184)*

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 file noted was rated incorrectly and resulted in an overcharge of \$30.

*1 Violation Title 75, Pa. C.S. §1738(c)(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.

*4 Violations Title 75, Pa. C.S. §1705(a)(1)&(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 4 violations noted were the result of policies issued with limited tort and no evidence of a signed limited tort selection form.

Private Passenger Automobile – New Business With Surcharges

From the universe of 332 private passenger automobile policies identified as new business with surcharges, 100 files were selected for review. All 100 files requested were received and reviewed. The 1,996 violations noted were based on the universe of 332 files, resulting in an error ratio of 100%.

The following findings were made:

*332 Violations 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 Company did not provide the notice of tort options to the insured at the time of application.

*332 Violations 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 Company did not provide the insured with the itemized invoice listing the minimum motor vehicle coverage and the premium charge to purchase minimum mandated coverages at the time of application.

*332 Violations Title 75, Pa. C.S. §1793(b)*

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 the plan 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 332 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan at the time of application.

*332 Violations Title 75, Pa. C.S. §1791*

Requires the Company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten-point type at the time of application for original coverage. The Company did not provide the required wording at the time of application.

*332 Violations Title 75, Pa. C.S. 1725*

Every motor vehicle insurance policy shall contain a notice as to whether the policy covers collision damage to rental vehicles, and any limitations on such coverage. The notice shall be written in clear, plain language and shall be printed on the first page of the policy in boldface capital letters. The Company failed to provide the rental car collision notice on the first page of the policy.

*332 Violations Title 75, Pa. C.S. §1799.3(d)*

Requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect. The Company did not inform the insured of the amount and manner in which the surcharge, rate penalty or driver record point assignment was made.

*1 Violation 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 an amount equal to or less than the limits of liability for bodily injury. The file noted did not contain a written request for lower limits of liability.

*2 Violations Title 75, Pa. C.S. §1738(c)(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 2 files noted.

*1 Violation Title 75, Pa. C.S. §1705(a)(1)&(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 file noted was issued with limited tort and no evidence of a signed limited tort selection form was in the file.

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 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.

#### Private Passenger Automobile – Renewals Without Surcharges

From the universe of 2,429 private passenger automobile policies renewed without surcharges during the experience period, 75 files were selected for review. All 75 files selected were received and reviewed. The 2,429 violations noted were based on the universe of 2,429 files, resulting in an error ratio of 100%.

The following findings were made:

#### *2,429 Violations Title 75, Pa. C.S. 1725*

Every motor vehicle insurance policy shall contain a notice as to whether the policy covers collision damage to rental vehicles, and any limitations on such coverage. The notice shall be written in clear, plain language and shall be printed on the first page of the policy in boldface capital letters. The Company failed to provide the rental car collision notice on the first page of the policy.

**Concern:** The Company is currently not itemizing the premium amounts by coverage for the invoice required under Title 75, Pa. C.S. §1791.1(a). The Company must implement this procedure going forward.

### Private Passenger Automobile – Renewals With Surcharges

From the universe of 580 private passenger automobile policies renewed with surcharges during the experience period, 100 files were selected for review. All 100 files selected were received and reviewed. The 1,160 violations noted were based on the universe of 580 files, resulting in an error ratio of 100%

The following findings were made:

#### *580 Violations Title 75, Pa. C.S. 1725*

Every motor vehicle insurance policy shall contain a notice as to whether the policy covers collision damage to rental vehicles, and any limitations on such coverage. The notice shall be written in clear, plain language and shall be printed on the first page of the policy in boldface capital letters. The Company failed to provide the rental car collision notice on the first page of the policy.

#### *580 Violations Title 75, Pa. C.S. §1799.3(d)*

Requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect. The Company did not inform the insured of the amount and manner in which the surcharge, rate penalty or driver record point assignment was made.

**Concern:** The Company is currently not itemizing the premium amounts by coverage for the invoice required by Title 75, Pa. C.S. §1791.1(a). The Company must implement this procedure going forward.

## **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. Homeowners**

### **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.

### Homeowner Rating – New Business Without Surcharges

From the universe of 673 homeowner policies written as new business without surcharges during the experience period, 74 files were selected for review. All 74 files were received and reviewed. No violations were noted.

### Homeowner Rating – New Business With Surcharges

The universe of 16 homeowner policies written as new business with surcharges during the experience period was selected for review. All 16 files selected were received and reviewed. No violations were noted.

## 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 determine 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.

### Homeowner Rating – Renewals Without Surcharges

From the universe of 771 homeowner policies renewed without surcharges during the experience period, 49 files were selected for review. All 49 files selected were received and reviewed. The violation noted resulted in an error ratio of 2%.

The following finding was made:

*1 Violation Act 246, The Casualty and Surety Rate Regulatory Act,  
Section 4 (40 P.S. §1184)*

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 Company rated the policy incorrectly which resulted in an overcharge of \$65.

Homeowner Rating – Renewals With Surcharges

The universe of 16 homeowner policies renewed with surcharges during the experience period was selected for review. All 16 files selected were received and reviewed. No violations were noted.

**D. 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.

#### Dwelling Fire Rating – New Business Without Surcharges

The universe of 12 dwelling fire policies written as new business without surcharges was selected for review. All 12 files selected were received and reviewed. No violations were noted.

#### Dwelling Fire Rating – New Business With Surcharges

The universe of 1 dwelling fire policy written as new business with surcharges was selected for review. The file selected was received and reviewed. No violations were noted.

## 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 determine 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.

#### Dwelling Fire Rating – Renewals Without Surcharges

The universe of 10 dwelling fire policies renewed during the experience period was selected for review. All 10 files requested 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
- G. Homeowner Claims

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 248 private passenger automobile property damage claims reported during the experience period, 75 files were selected for review. All 75 files requested were received and reviewed. The 7 violations noted were based on 6 files, resulting in an error ratio of 8%.

The following findings were made:

*6 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 Company did not provide timely status letters for the 6 claims noted.

*1 Violation Title 31, Pa. Code, Section 146.7(a)(1)*

Within 15 working days after receipt by the insurer or properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. The violation noted resulted from failure to accept or deny the claim within 15 working days after proof of loss was received.

**B. Automobile Comprehensive Claims**

From the universe of 181 private passenger automobile comprehensive claims reported during the experience period, 50 files were selected for review. All 50 files requested were received and reviewed. No violations were noted.

**C. Automobile Collision Claims**

From the universe of 338 private passenger automobile collision claims reported during the experience period, 75 files were selected for review.

All 75 files requested were received and reviewed. The 3 violations noted were based on 3 files, resulting in an error ratio of 4%.

The following findings were made:

*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 Company did not provide timely status letters for the 3 claims noted.

**D. Automobile Total Loss Claims**

From the universe of 121 private passenger automobile total loss claims reported during the experience period, 85 files were selected for review. All 85 files selected were received and reviewed. The 12 violations noted were based on 12 files, resulting in an error ratio of 14%.

The following findings were made:

*2 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 Company did not provide timely status letters for the 2 claims noted.

*10 Violations Title 75, Pa. C.S. §1161(a)&(b) – Certificate of Salvage Required.*

(a) General rule – Except as provided in Sections 1162 and 1163, a person, including an insurer or self-insurer as defined in Section 1702 (relating to definitions), who owns, possesses or transfers a vehicle located or registered in the Commonwealth which qualifies as a salvage vehicle shall make application to the Department for a certificate of salvage for that vehicle.

(b) Application for certificate of salvage. – An owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. Except as provided in Section 1163, the transferee shall immediately present the assigned certificate of title to the Department or an authorized agent of the Department with an application for a certificate of salvage upon a form furnished and prescribed by the Department. An insurer as defined in Section 1702 to which title to a vehicle is assigned upon payment to the insured or claimant of the replacement value of a vehicle shall be regarded as a transferee under this subsection. The 10 files noted did not reflect a salvage title was obtained.

## **E. Automobile First Party Medical Claims**

From the universe of 157 private passenger automobile first party medical claims reported during the experience period, 75 files were selected for review. All 75 files requested were received and reviewed. The 11 violations noted were based on 6 files, resulting in an error ratio of 8%.

The following findings were made:

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

Requires the insurer when an insured's first-party limits have been exhausted, to provide notice to the provider and the insured within 30 days of the receipt of the provider's bill. The violation noted was due to the insurer not notifying the insured that the first-party limits have been exhausted.

### *5 Violations 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 5 violations noted resulted because the bills were not paid within 30 days.

### *5 Violations 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 5 violations are the result of the Company not paying first party medical bills within 30 days.

#### **F. Automobile First Party Medical Claims Referred to a PRO**

The Company was requested to furnish a list of first party medical claims that were referred to a peer review organization. No claims were reported. The Company was also asked to provide a copy of all peer review contracts in place during the experience period. A contract was received and reviewed. No violations were noted.

#### **G. Homeowner Claims**

The universe of 16 homeowner claims reported during the experience period was selected for review. All 16 files selected were received and reviewed. The 6 violations noted were based on 6 files, resulting in an error ratio of 38%.

The following findings were made:

##### *6 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 Company did not provide timely status letters for the 6 claims 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 Title 75, Pa. C.S. §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

*1,580 Violations 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 Company did not provide the fraud warning at the time of application.

### Automobile Rating – New Business With Surcharges

*332 Violations 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 Company did not provide the fraud warning at the time of application.

### Automobile Rating – Renewals Without Surcharges

*2,429 Violations 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 Company did not provide the fraud warning at the time of renewal.

### Automobile Rating – Renewals With Surcharges

*580 Violations 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 Company did not provide the fraud warning at the time of renewal.

## *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 50 pieces of advertising which included direct mailers, newspaper advertisements and brochures. 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 11 consumer complaints received during the experience period and provided all consumer complaint logs requested. The 11 complaint files were requested, received 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:

*1 Violation Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)]*

Prohibits canceling any policy of insurance covering owner-occupied private residential properties or personal property of individuals that has been in force for sixty days or more or refusing to renew any such policy unless the policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the company; or there has been a substantial change or increase in hazard in the risk assumed by the company subsequent to the date the policy was issued; or there is a substantial increase in hazards insured against by reason of willful or negligent acts or omissions by the insured; or the insured has failed to pay any

premium when due or for any other reasons approved by the Commissioner. The Company nonrenewed a policy for an improper reason.

*1 Violation Title 31, Pa. Code, Section 146.5(b)*

Every insurer, upon receipt of any inquiry from the Department respecting a claim shall, within 15 working days of receipt of such inquiry, furnish the Department with an adequate response to the inquiry. The Company did not respond to the Department within 15 working days.

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

States that an insurer may not cancel or refuse to renew a policy of automobile insurance on the basis of one accident within the thirty-six (36) month period prior to the upcoming anniversary date of the policy. The Company nonrenewed the policy based on one accident.

The following synopsis reflects the nature of the 11 complaints that were reviewed.

• 8	Cancellation/Nonrenewal	73%
• 2	Claims Related	18%
• 1	Billing	9%
<hr/>		<hr/>
11		100%

## XI. LICENSING

In order to determine compliance by the Company and its agency force with the licensing requirements applicable to Section 641.1(a) [40 P.S. §310.41(a) and Section 671-A [40 P.S. §310.71] of the Insurance Department Act No. 147, 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 files were checked to verify proper licensing and appointment.

The following finding was made:

*1 Violation Insurance Department Act, No. 147, Section 671-A*

*(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 \$12.50 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.

Phillip Oyler

## **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 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.
2. The Company must review and revise internal control procedures to ensure compliance with Section 2003(a)(1) of Act 68 [40 P.S. §991.2003(a)(1)].
3. The Company must reinforce its internal underwriting controls to ensure that all records and documents are maintained in accordance with Insurance Department Act, Section 903(a) [40 P.S. §323.3], so that violations noted in the Report do not occur in the future.
4. The Company must review Title 31, Pa. Code, Section 59.9(b) to ensure that violations regarding the requirements for cancellation notices, as noted in the Report, do not occur in the future.
5. The Company must review Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)] to ensure compliance with nonrenewal notice requirements so that the violations noted in the Report do not occur in the future.

6. The Company must review 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 as noted in the Report do not occur in the future.
7. The Company must review Title 75, Pa. C.S. §1791 to ensure that the notice of available benefits is given to the insured at the time of application as noted in the Report.
8. 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 at the time of application, as noted in the Report, do not occur in the future.
9. When a surcharge is imposed on a private passenger automobile policy the Company must include specifics of accidents and citations and give notice to the insured. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Title 75, Pa. C.S. §1799.3(d) do not occur in the future.
10. 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 Title 75, Pa. C.S. §1705(a)(1)(4) do not occur in the future.

11. 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 and that signed forms are retained with the underwriting file. This is to ensure that violations noted under Title 75, Pa. C.S. §1738(d)(1) and (2) do not occur in the future.
12. The Company must review Act 246, Section 4 [40 P.S. §1184] and take appropriate measures to ensure the rating violations listed in the report do not occur in the future.
13. 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.
14. The Company must review Title 75, Pa. C.S. §1725 to ensure that a notice as to whether the policy covers collision damage to rental vehicles, and any limitations on such coverage shall be printed on the first page of the policy in boldface capital letters.
15. 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 relating to status letters, claim acceptance and denials and response to claim inquiries, as noted in the Report, do not occur in the future.

16. 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. 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 as required by Title 75, Pa. C.S. §1716. The interest amount must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.
17. The Company must review Title 75, Pa. C.S. §1161(a)&(b) with its claim staff to ensure that salvage certificates are obtained and are retained with the claim file.
18. The Company must ensure that all applications 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 Title 75, Pa. C.S. §1822 do not occur in the future.
19. The Company must ensure all producers are properly licensed and appointed, as required by Section 671-A [40 P.S. §310.71] of the Insurance Department Act No. 147, prior to accepting any business from a producer.

20. The Company must revise and reissue their underwriting guidelines for use in Pennsylvania to ensure that the homeowner guidelines do not indicate that losses are unacceptable for renewals.

21. 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 based on age.

**XIII. COMPANY RESPONSE**



# California Casualty Management Co.

1900 Alameda de las Pulgas  
San Mateo, CA 94403-1298  
PO Box M  
San Mateo, CA 94402-0080  
(650) 574-4000

March 29, 2006

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

**VIA UPS NEXT DAY**

Re: Examination Warrant Number 05-M19-67  
California Casualty Indemnity Exchange  
Company Response to Report of Examination

Dear Mr. Derk:

The Company's Response to the Report of Examination is enclosed. The responses are presented in the order of the Recommendations made by the Department in Section XII of the Report.

We appreciate the courtesies shown by you and the on-site examiners.

Sincerely,

James R. Englese  
Vice President  
Deputy General Counsel

JRE:mb  
Enclosure

cc: Chuck Muenzen (w)

**RECEIVED**  
**INSURANCE DEPT.**

**MAR 30 2006**

**BUREAU OF ENFORCEMENT**

Attorney in Fact and Manager

California Casualty Indemnity Exchange

California Casualty Insurance Co.

California Casualty & Fire Insurance Co.

California Casualty General Insurance Co.

California Casualty Compensation Insurance Co.

**CALIFORNIA CASUALTY INDEMNITY EXCHANGE  
COMPANY RESPONSE TO EXAMINATION WARRANT 05-M19-67**

Recommendation #1

*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.*

Company Response to Recommendation #1

Due to an oversight, some of the declination/cancel notices sent by the Company contained a misprint listing 10 days instead of 30 days for the policyholder to request review by the Insurance Commissioner, and omitted other required information. **This error has been fixed.**

Recommendation #2

*The Company must review and revise internal control procedures to ensure compliance with Section 2003(a)(1) of Act 68 [40 P.S. §991.2003(a)(1)].*

Company Response to Recommendation #2

Pennsylvania law prohibits an insurer from canceling or refusing to write due to the prospect/policyholder's age. The Company has used "years licensed" and "years of driving experience" as criteria to determine eligibility. As the Department is aware, there may be a correlation between age and these two criteria, but these criteria are not equivalent to age. With respect to these criteria, the Company treats the 55-year old who first receives his license the same as a teenager receiving his first license. Age is not considered. **While the Company respectfully disagrees with the Department that age means "years licensed" and "years of driving experience," the Company has revised its Pennsylvania eligibility rules to discontinue use of these criteria.**

Recommendation #3

*The Company must reinforce its internal underwriting controls to ensure that all records and documents are maintained in accordance with Insurance Department Act, Section 903(a) [40 P.S. §323.3], so that violations noted in the Report do not occur in the future.*

Company Response to Recommendation #3

This is a recordkeeping issue. The files the Company did not produce for the Examiners had already been electronically archived, and the retrieval cost outweighed the benefit of producing them. **In the future, the Company's electronic archive will maintain archived declination files in the same manner as policy documents, making them more accessible to Examiners.**

Recommendation #4

*The Company must review Title 31, Pa. Code, Section 59.9(b) to ensure that violations regarding the requirements for cancellation notices, as noted in the Report, do not occur in the future.*

Company Response to Recommendation #4

This recommendation refers to 2 homeowners policy cancellations that were prepared manually by the Company. Those two notices were not provided within the time required by law. **These were isolated incidents requiring no system changes. The Company will reinforce the homeowners insurance cancellation requirements.**

Recommendation #5

*The Company must review Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)] to ensure compliance with nonrenewal notice requirements so that the violations noted in the Report do not occur in the future.*

Company Response to Recommendation #5

**The Company has revised its Pennsylvania homeowners acceptability guidelines by adding the following sentence for clarification: "On existing policies, state law may not permit us to cancel or non-renew risks that are unacceptable as defined in the acceptability charts."**

Recommendation #6

*The Company must review 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 as noted in the Report do not occur in the future.*

Company Response to Recommendation #6

As noted in the Report, several Pennsylvania laws require insurance companies to provide to prospects certain notices/disclosures, including available tort option

descriptions and premiums, minimum motor vehicle coverages and premiums, surcharge plan and available benefits and limits. According to these laws, the notices/disclosures must be provided “at the time of application.” This seemingly simple Legislative directive becomes a bit of a quagmire when one applies it to the many alternative distribution systems that exist today. The phrase “at the time of application” only makes literal sense when the prospect is sitting in an agent’s office. In that setting, there is one time of application, and all required notices/disclosures are presented concurrent with the application – at the time of application. This orderly analysis falls apart when insurance is purchased over the phone. Practically speaking, it is not possible to provide the required written notices/disclosures “at the time of application” taken over the telephone. The reason is obvious. Overlaying all of this is the fact that insurance consumers are increasingly choosing to purchase coverage other than by personal visits to an agent’s office.

Because it isn’t realistic for a carrier to provide the required notices/disclosures “at the time” it takes an application over the phone, the Company makes sure that the required forms are distributed, and the forms requiring customer acknowledgement are returned, prior to policy issuance. In the meantime, the Company binds coverage. While the required forms/disclosures are designed to protect the consumer, the ultimate protection for insurance consumers is to have coverage bound as soon as possible. Among other things, this reduces the risk of having even more uninsured drivers on the road.

From a legal standpoint, the phrase “at the time of application” is ambiguous when applied to telephone sales. This means the phrase must be interpreted, or construed, in some way to apply to telephone sales. The reason for this is that strictly applying the phrase “at the time of application” to telephone sales leads to absurd, if not impossible results. One rule of statutory interpretation says that statutes should not be interpreted in a manner that leads to absurd results.

Considering all of the above, the Company believes its current procedures comply with these laws as they should be interpreted to apply to telephone sales.

**After recent discussions with the Department, the Company is exploring ways to satisfy the Department’s concerns.**

Recommendation #7

*The Company must review Title 75, Pa. C.S. §1791 to ensure that the notice of available benefits is given to the insured at the time of application as noted in the Report.*

Company Response to Recommendation #7

**See the Company’s response to Recommendation #6.**

Recommendation #8

*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 at the time of application, as noted in the Report, do not occur in the future.*

Company Response to Recommendation #8

**See the Company's response to Recommendation #6.**

Recommendation #9

*When a surcharge is imposed on a private passenger automobile policy, the Company must include specifics of accidents and citations and give notice to the insured. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Title 75, Pa. C.S. §1799.3(d) do not occur in the future.*

Company Response to Recommendation #9

**The Company will implement the required procedure within 30 days of the Report issue date.**

Recommendation #10

*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 Title 75, Pa. C.S. §1705(a)(1)(4) do not occur in the future.*

Company Response to Recommendation #10

The Department found 5 "violations" out of 200 files reviewed, and 1,912 provided. **These were isolated incidents. No changes to Company procedures are required. Rather, the Company will reinforce the need to obtain and maintain signed tort selection forms.**

Recommendation #11

*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 and that signed forms are retained with the underwriting file. This is to ensure that*

*violations noted under Title 75, Pa. C.S. §1637(d)(1) and (2) do not occur in the future.*

Company Response to Recommendation #11

The Department found 3 “violations” out of 200 files reviewed and 1,912 provided. **These were isolated incidents. No changes to Company procedures are required. Rather, the Company will reinforce the need to obtain and maintain a signed selection/rejection form when selecting stacked or non-stacked UM/UIM.**

Recommendation #12

*The Company must review Act 246, Section 4 [40 P.S. §1184] and take appropriate measures to ensure the rating violations listed in the report do not occur in the future.*

Company Response to Recommendation #12

**Out of all files reviewed and provided, the Department found two rating discrepancies. These were isolated incidents, and no system changes are required.**

Recommendation #13

*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 to Recommendation #13

**The two overcharges noted in the Report have been refunded and proof has been provided to the Department.**

Recommendation #14

*The Company must review Title 75, Pa. C.S. §1725 to ensure that a notice as to whether the policy covers collision damage to rental vehicles, and any limitations on such coverage shall be printed on the first page of the policy in boldface capital letters.*

Company Response to Recommendation #14

The criticism here is whether the Company provided the notice “on the first page of the policy.” The required notice is provided on the Company’s “Your Personal Auto Policy Quick Reference” form, which is the first page in our standard ISO

policy form set. **While the Company believes its current procedures provide the required notice, it now prints the required notice on the policy Declarations Page as well.**

Recommendation #15

*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 relating to status letters, claim acceptance and denials and response to claim inquiries, as noted in the Report, do not occur in the future.*

Company Response to Recommendation #15

Out of 251 claim files reviewed, the Department found 28 instances where the Company did not provide claimants with timely claim status letters. **The Company has reinforced this requirement, and has created a standard letter to be sent to claimants. It should be noted that the criticisms made in the Report did not relate to the Company's acceptance of claims, only to the timeliness of the status letters.**

Recommendation #16

*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. 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 as required by Title 75, Pa. C.S. §1716. The interest amount must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.*

Company Response to Recommendation #16

**The Company is confident that its new process with its bill review vendor will eliminate late payments. Bills are going directly to the vendor for review and payment, pending approval by our staff, cutting processing time, lost bills and other delays. The Company has reinforced the importance of paying the bills in a timely manner.**

Recommendation #17

*The Company must review Title 75, Pa. C.S. §1161(a)&(b) with its claim staff to ensure that salvage certificates are obtained and are retained with the claim file.*

Company Response to Recommendation #17

The problems identified in the Report arose because the Company's vendor was procuring a Salvage Certificate but not forwarding copies to the Company. **The Company now has the ability to print off Salvage Certificates from the vendor's Website. This will be done for every PA total loss. On owner retained salvage, the Company requires the owner to obtain a Salvage Certificate and submit a copy to us before we issue full payment.**

Recommendation #18

*The Company must ensure that all applications 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 Title 75, Pa. C.S. §1822 do not occur in the future.*

Company Response to Recommendation #18

**The Company has developed a new notice containing the fraud warning. This notice will be provided with all new and renewal Pennsylvania business.**

Recommendation #19

*The Company must ensure all producers are properly licensed and appointed, as required by Section 671-A [40 P.S. §310.71] of the Insurance Department Act No. 147, prior to accepting any business from a producer.*

Company Response to Recommendation #19

The Report notes that 1 Company producer was found not to be timely appointed. **This was an isolated incident, and no system or procedure changes are required.**

Recommendation #20

*The Company must revise and reissue their underwriting guidelines for use in Pennsylvania to ensure that the homeowner guidelines do not indicate that losses are unacceptable for renewals.*

Company Response to Recommendation #20

**Please see the Company's response to recommendation #5.**

Recommendation #21

*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 based on age.*

Company Response to Recommendation #21

The Company doesn't write as a named insured anyone under the age of 18. The reason for this is that minors lack the legal capacity to enter into valid contracts. This venerable common law principle is codified in Pennsylvania at 23 P.S. 5151 noting that only individuals who are 18 and over have the right to enter into "binding" and "legally enforceable" contracts in Pennsylvania. This is a familiar concept to every first year law student. The law has long "discriminated" against minors on the basis of their age because of their presumed incapacity to contract. These laws developed to protect minors from unscrupulous vendors. We understand the position of the Department is to require all insurers to enter into insurance contracts with minors even though those contracts are non-binding and unenforceable under Pennsylvania law. **The Company respectfully disagrees with the Department's legal conclusion that it is unlawful age discrimination to refuse to contract with a minor. The Company questions both the legal and practical underpinnings for this requirement, but it has revised its Pennsylvania eligibility rules accordingly.**