

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

CAPITOL INSURANCE COMPANY
North Wales, Pennsylvania

**AS OF
September 27, 2007**

COMMONWEALTH OF PENNSYLVANIA

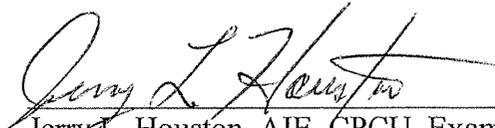


**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: November 8, 2007

VERIFICATION

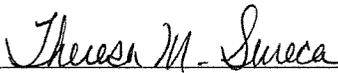
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).



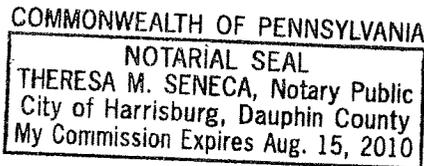
Jerry L. Houston, AIE, CPCU, Examiner-In-Charge

Sworn to and Subscribed Before me

This *10* Day of *September*, 2007



Notary Public



CAPITOL INSURANCE COMPANY

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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 6th day of July, 2007, 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.





Joel S. Ario
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
CAPITOL INSURANCE COMPANY : Section 671-A of Act 147 of 2002
1120 Welsh Road, Suite 220 : (40 P.S. § 310.71)
North Wales, PA 19454 : :
: Sections 4(a) and 4(h) of the Act of
: June 11, 1947, P.L. 538, No. 246
: (40 P.S. §§ 1184)
: :
: Act 1990-6, Sections 1705(a)(4),
: 1716, 1731(b) and (c), 1731(c)(1),
: 1791.1(a) and (b), 1793(b), 1797(b)(1),
: and 1799.3(a) and (d) (Title 75,
: Pa.C.S. §§ 1705, 1716, 1731, 1791,
: 1793, 1797 and 1799)
: :
: Section 4 of the Unfair Insurance
: Practices Act, Act of July 22, 1974,
: P.L. 589, No. 205 (40 P.S. § 1171.5)
: :
: Sections 2003(a)(10), (13) and (14),
: 2005(c) and 2006(3) of Act 68 of
: 1998 (40 P.S. §§991.2003, 991.2005
: and 991.2006)
: :
: Title 31, Pennsylvania Code, Sections
: 62.3(e)(1), 67.33(b)(1), 69.52(b),
: 69.53(a), 69.55(a), 146.5(b), 146.6
: and 146.7(a)(1)
: :
Respondent. : Docket No. MC07-10-012

CONSENT ORDER

AND NOW, this 8th day of *November*, 2007, this Order is hereby
issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant
to the statutes cited above and in disposition of the matter captioned above.

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

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

FINDINGS OF FACT

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

- (a) Respondent is Capitol Insurance Company, and maintains its address at 1120 Welsh Road, Suite 220, North Wales, Pennsylvania 19454.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from January 1, 2006 through December 31, 2006.
- (c) On September 27, 2007, the Insurance Department issued a Market Conduct Examination Report to Respondent.

- (d) A response to the Examination Report was provided by Respondent on March 19, 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) 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;
 - (iii) Sections 1705(a)(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;

- (iv) 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;
- (v) Section 1731(b) and (c) of Act 1990-6, Title 75, Pa.C.S. § 1731(b) and (c), which requires the insurer to advise that named insured shall be informed that he may exercise the waiver for uninsured and underinsured motorist coverage by signing written rejection forms;
- (vi) Section 1731(c)(1) of Act 1990-6, Title 75, Pa.C.S. § 1731(c)(1), which states on policies in which either uninsured or underinsured motorist coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists;

(vii) 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;

(viii) 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;

(ix) 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;

- (x) Section 1797(b)(1) of Act 1990-6, Title 75, Pa.C.S. § 1797, which requires that a peer review plan for challenges to reasonableness and necessity of treatment by the insurer shall contract jointly and separately with any peer review organization for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person;
- (xi) Section 1799.3(a) of Act 1990-6, Title 75, Pa.C.S. § 1799, which prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$950 in excess of any self-insured retention or deductible applicable to the named insured;
- (xii) 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;

- (xiii) Section 4 of Act 205 (40 P.S. § 1171.4), which states no person shall engage in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act;
- (xiv) Section 2003(a)(10) of Act 68 (40 P.S. § 991.2003), which states an insurer may not cancel or refuse to write or renew a policy of automobile insurance due to lawful occupation;
- (xv) Section 2003(a)(13) of Act 68 (40 P.S. § 991.2003), which states an insurer may not cancel or refuse to write or renew a policy of automobile insurance for the following reason: where any driver has more than two not-at-fault accidents in prior 36 months;
- (xvi) Section 2003(a)(14) of Act 68 (40 P.S. § 991.2003), which states an insurer may not cancel or refuse to write or renew a policy of automobile insurance for the following reason:

- (xvii) Section 2005(c) of Act 68 (40 P.S. § 991.2003), which states all insurers shall provide to insureds a detailed statement of the components of a premium and shall specifically show the amount of a 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;

- (xviii) 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;

- (xix) Title 31, Pennsylvania Code, Section 62.3(e)(1), which requires the replacement value of a motor vehicle be calculated by use of the Guide Source Method, the Actual Cost Method or the Dealer Quotation Method;

- (xx) Title 31, Pennsylvania Code, Section 67.33(b)(1), which prohibits an insurer from assessing a premium surcharge for the payment of a claim arising from one or more accidents where the insured was not at-fault in causing or contributing to the accident;

- (xxi) 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;

- (xxii) Title 31, Pennsylvania Code, Section 69.53(a), which requires that a PRO shall contract, in writing, jointly and separately with an insurer for the provision of peer review services;
- (xxiii) Title 31, Pennsylvania Code, Section 69.55(a), which states a PRO shall apply in writing to the Commissioner for approval to contract with an insurer to provide peer review services in accordance with the act and this chapter;
- (xxiv) 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;
- (xxv) 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; and
- (xxvi) 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.

CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Respondent's violations of 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 Section 4 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, 2005 and 2006 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 Insurance Department orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall 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 Twenty-Eight Thousand Dollars (\$28,000.00) 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. Fraser, Office Manager, 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 Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein may pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

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

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

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

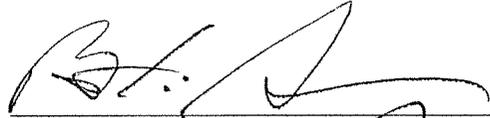
10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

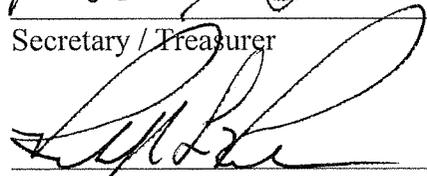
BY: CAPITOL INSURANCE COMPANY,
Respondent



President / Vice President



Secretary / Treasurer



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

I. INTRODUCTION

The market conduct examination was conducted at Capitol Insurance Company's office located in North Wales, Pennsylvania, from May 15, 2007, through June 13, 2007. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

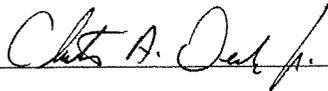
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

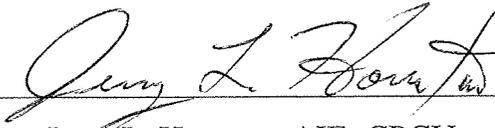
The courtesy and cooperation extended by the officers and employees of the Company during the course of the examination is hereby acknowledged.

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



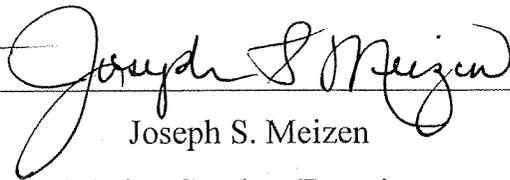
Chester A. Derk, Jr., AIE, HIA

Market Conduct Division Chief



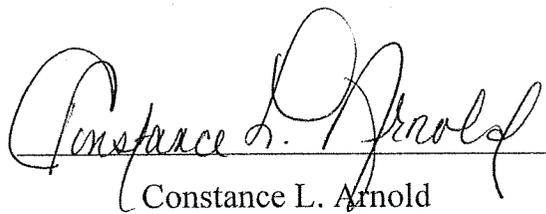
Jerry L. Houston, AIE, CPCU

Market Conduct Examiner



Joseph S. Meizen

Market Conduct Examiner



Constance L. Arnold

Market Conduct Examiner

II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Capitol Insurance Company, hereinafter referred to as “Company,” at their office located in North Wales, Pennsylvania. 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 January 1, 2006, through December 31, 2006, 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 rescissions.
 - Rating – Proper use of all classification and rating plans and procedures.
2. Claims
3. Forms
4. Advertising
5. Complaints
6. Licensing

III. COMPANY HISTORY AND LICENSING

Capitol Insurance Company was incorporated on January 9, 1968, under the laws of the Commonwealth of Pennsylvania and commenced business on November 15, 1968.

LICENSING

Capitol Insurance Company's Certificate of Authority to write business in the Commonwealth was issued on November 15, 1968. The Company is licensed in the Commonwealth of Pennsylvania. The Company's 2006 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$7,899,352. Premium volume related to the areas of this review were: Private Passenger Automobile Direct Written Premium was reported as Private Passenger Automobile Liability \$4,638,720 and Private Passenger Auto Physical Damage \$3,260,632.

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

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance due to lawful occupation. The Company’s underwriting guide dated 11/21/05 lists unacceptable risks as “High risk individuals including entertainers, celebrities or any professional or other individual who is nationally or locally well known”.

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

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the reasons specified in 2003(a)(13). The Company’s underwriting guide dated 11/21/05 lists unacceptable risks as “Risks where any driver has more than 2 not-at-fault accidents in prior 36 months”.

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

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for the following

reason: Any claim under the comprehensive portion of the policy unless such loss was intentionally caused by the insured. The Company's underwriting guide dated 11/21/05 lists unacceptable risks as "Risks providing physical damage coverage with more than three comprehensive losses greater than \$1,150 or one total theft loss in prior 36 months. Maximum of 4 comprehensive losses per household in prior 36 month period".

V. UNDERWRITING

A. Private Passenger Automobile

1. 60-Day Cancellations

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

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

From the universe of 1,150 private passenger automobile files cancelled within the first 60 days of new business, 50 files were selected for review. All 50 files were received and reviewed. No violations were noted.

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 2,809 private passenger automobile files identified as midterm cancellations by the Company, 50 files were selected for review. All 50 files were received and reviewed. No violations were noted.

3. Nonrenewals

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

The purpose of the review was to determine compliance with Act 68, Section 2003 (40 P.S. §991.2003), which establishes conditions under which action by the insurer is prohibited, and 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 208 private passenger automobile files identified as nonrenewals by the Company, 19 files were selected for review. All 19 files were received and reviewed. The 7 violations noted were based on 7 files, resulting in an error ratio of 37%.

The following findings were made:

6 Violations Act 205, Section 4 [40 P.S. §1171.4]

Unfair methods of competition and unfair or deceptive acts or practices prohibited. No person shall engage in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company refused to renew policies based on ineligibility for

physical damage coverages based on age of vehicle or type of vehicle.

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 nonrenewal. The Company failed to provide a specific reason for nonrenewal.

3. Rescissions

A rescission is any policy, which was void *ab initio*.

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 review also determined compliance with the rescission requirements established by the Supreme Court of Pennsylvania in *Erie Insurance Exchange v. Lake*.

From the universe of 224 private passenger automobile files identified as rescissions, 50 files were selected for review. All 50 files were received and reviewed. No violations were noted.

B. Private Passenger Automobile – Assigned Risk

The Company is an excused carrier under the assigned risk Limited Assignment Distribution procedure. Under this procedure groups of companies not under common ownership or management may form a Limited Assignment Distribution (LAD) arrangement. Each LAD arrangement has one servicing company, which writes assigned risk business on behalf of those members, which choose to buy out from their

private passenger quota. As part of this arrangement the Company wrote no assigned risk business during the experience period.

VI. RATING

A. Private Passenger Automobile

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 4,724 private passenger automobile policies identified as new business without surcharges by the Company, 25 files were selected for review. All 25 files were received and reviewed. The 14,174 violations noted were based on the universe of 4,724 files, resulting in an error ratio of 100%.

The following findings were made:

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

The named insured shall be informed that he may reject uninsured and underinsured motorist coverage by signing a written rejection form. The Company failed to provide the signed rejection for uninsured and underinsured motorist coverage.

1 Violation Title 75, Pa. C.S. §1705(a)(4)

Requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option. The violation noted was the result of a policy issued with limited tort and no evidence of a signed limited tort selection form.

4,724 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 failed to provide the required notice at the time of application.

4,724 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 required language in the notice of tort options at the time of application for the 4,724 files noted.

4,724 Violations Title 75, Pa. C.S. §1793(b)

Requires the insurer to provide to the insured a copy of their 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 Company failed to provide a surcharge disclosure plan to the insured at the time of application.

Private Passenger Automobile – New Business With Surcharges

From the universe of 301 private passenger automobile policies identified as new business with surcharges by the Company, 50 files were selected for review. All 50 files were received and reviewed. The 1,206 violations noted were based on the universe of 301 files, resulting in an error ratio of 100%.

The following findings were made:

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 violation noted was the result of a policy issued with limited tort and no evidence of a signed limited tort selection form.

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

The named insured shall be informed that he may reject uninsured and underinsured motorist coverage by signing a written rejection form. The Company provided uninsured and underinsured motorist coverage when the file contained the insured's signed rejection form for uninsured and underinsured motorist coverages.

301 Violations Act 68, Section 2005(c) [40 P.S. §991.2005(c)]

All insurers shall provide to insureds a detailed statement of the components of a premium and shall specifically show the amount of a 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.

AND

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 failed to specifically show the amount of surcharge or rate penalty as required on the 301 files noted.

301 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 failed to provide the itemized invoice to purchase the minimum mandated coverages at the time of application.

301 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.

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

Requires the insurer to provide to the insured a copy of their 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 Company failed to provide the surcharge disclosure plan at the time of application.

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 2,330 private passenger automobile policies renewed without surcharges during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The 1,812 violations noted were based on the universe of 2,330, resulting in an error ratio of 78%.

The following findings were made:

1,812 Violations Title 75, Pa. C.S. §1731(e)(1)

On policies in which either uninsured or underinsured motorist coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. The policy renewals did not reflect the prominent notice as required for the 1,812 files noted.

Private Passenger Automobile – Renewals With Surcharges

From the universe of 322 private passenger automobile policies renewed with surcharges during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 550 violations noted were based on 322 files, resulting in an error ratio of 100%.

The following findings were made:

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

An insurer may not assess a premium surcharge for the payment of a claim arising from one or more accidents where the insured was not at-fault in causing or contributing to the accident.

AND

Title 75, Pa. C.S. §1799.3(a)

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

than \$1,150 in excess of any self insured retention or deductible applicable to the named insured.

AND

*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 cannot verify the accidents were at-fault or that it met the threshold requirement, which resulted in overcharges of \$1,445.

224 Violations Title 75, Pa. C.S. §1731(c)(1)

On policies in which either uninsured or underinsured motorist coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. The policy renewals did not reflect the prominent notice as required for the 224 files noted.

322 Violations Act 68, Section 2005(c) [40 P.S. §991.2005(c)]

All insurers shall provide to insureds a detailed statement of the components of a premium and shall specifically show the amount of a 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.

AND

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 failed to specifically show the amount of surcharge or rate penalty as required.

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.

VII. CLAIMS

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

The Claims review consisted of the following areas of review:

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

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

A. Automobile Property Damage Claims

From the universe of 559 private passenger automobile property damage claims reported during the experience period, 25 files were selected for review. All 25 files 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 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.

B. Automobile Comprehensive Claims

From the universe of 180 private passenger automobile comprehensive claims reported during the experience period, 25 files were selected for review. All 25 files 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 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.

C. Automobile Collision Claims

From the universe of 657 private passenger automobile collision claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The violation noted resulted in an error ratio of 4%.

The following finding was made:

1 Violation 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 a timely status letter for the claim noted.

D. Automobile Total Loss Claims

The universe of 94 private passenger automobile total loss claims reported during the experience period was selected for review. All 94 files were received and reviewed. The 41 violations noted were based on 41 files, resulting in an error ratio of 44%.

The following findings were made:

39 Violations Title 31, Pa. Code, Section 62.3(e)(1)

Requires the replacement value of a motor vehicle be calculated by use of the Guide Source Method, the Actual

Cost Method or the Dealer Quotation Method. The Company did not calculate the replacement value by using one of the 3 approved methods for the 39 files noted. No other deductions may be taken except for salvage and then only if the owner elects to retain the vehicle. The Company deducted towing and/or storage charges from the replacement value of the motor vehicles.

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.

E. Automobile First Party Medical Claims

From the universe of 345 private passenger automobile first party medical claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 7 violations noted was based on 6 files, resulting in an error ratio of 12%.

The following findings were made:

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

Requires an insurer to pay bills for care that are not referred to a Peer Review Organization within 30 days after the insurer receives sufficient documentation supporting the bill. The Company failed to pay medical bills within 30 days.

1 Violation Title 75, Pa. C.S. §1716

Payment of Benefits. Benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the amount of benefits. If reasonable proof is not supplied as to all benefits, the portion supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Overdue benefits shall bear interest at the rate of 12% per annum from the date the benefits become due. In the event the insurer is found to have acted in an unreasonable manner in refusing to pay the benefits when due, the insurer shall pay, in addition to the benefits owed and the interest thereon, a reasonable attorney fee based upon actual time expended. The Company did not pay interest on the claim that was not paid within 30 days.

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.

2 Violations Title 31, Pa. Code, Section 146.7(a)(1)

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. The Company failed to provide the denial letter within 15 working days after proof of loss was received.

F. Automobile First Party Medical Claims Referred to a PRO

Although the Company did not report any automobile first party medical claims referred to a peer review organization, the Company was asked to provide copies of all written contracts it has in place with a peer review organization. The Company did not have a written contract in place with a peer review organization.

The following finding was made:

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

A Peer Review Organization shall contract, in writing, jointly or separately with an insurer for the provision of peer review services as authorized by Act 1990-6 and this chapter.

AND

Title 75, Pa. C.S. §1797(b)(1)

Peer review plan for challenges to reasonableness and necessity of treatment. Peer review plan. Insurers shall contract jointly or separately with any peer review organization established for the purpose of evaluating

treatment, health care services, products or accommodations provided to any injured person. Such evaluation shall be for the purpose of confirming that such treatment, products, services or accommodations conform to the professional standards of performance and are medically necessary. An insurer's challenge must be made to a PRO within 90 days of the insurer's receipt of the provider's bill for treatment or services or may be made at any time for continuing treatment or services.

AND

Title 31, Pa. Code, Section 69.55(a)

A PRO shall apply in writing to the Commissioner for approval to contract with an insurer to provide peer review services in accordance with the act and this Chapter. The Company did not have a written contract in place with an approved peer review organization.

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 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.

No violations were noted.

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 4 pieces of advertising which included brochures and a disk with TV ads. Internet advertising was also reviewed. No violations were noted.

X. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of their consumer complaint logs for the preceding four years. The Company identified 29 consumer complaints received during the experience period and provided all consumer complaint logs requested. All 29 complaint files reported were selected, 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 finding was made:

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

Every insurer, upon receipt of an 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 failed to respond to a Department inquiry in a timely manner.

The following synopsis reflects the nature of the 29 complaints that were reviewed.

• 17	Claims	59%
• 11	Cancellation	38%
• 1	Billing	3%
•		
<hr/>		<hr/>
29		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 findings were made:

24 Violations 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 producers were found to be writing policies but were 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.

Allucci, Joseph J (AIA Insurance Agency)
Anderson Insurance Consultants, Inc.
Andreas, Lillian I
Best Insurance of Delaware (Best ABAT LP)
Burkey, Lyndon L. Insurance Agency, Inc.
Deibler, Paul E
Dimarzio, John Louis
Direct Link Holding Group, LLC
Frantz, Charles R T/A Warren County Insurance Agency
Greater Penn Agency Inc
Guerrini Group Inc

Haney Associates, Inc.
Lillegard Group Inc, The
Maggs & Associates, Inc (Jack Maggs Agency, Inc)
McGlawn & McGlawn, Inc.
M & E Insurance Incorporated
Nice, William R
PH Insurance Agency, Inc.
Philadelphia Insurance Network, Inc.
Smaron Insurance Agency
Snyder Financial Services, Inc.
Winheld, Jan M. (Michael Winheld Agency)
Yesavage Insurance Agency (John M. Yesavage)
Zane Insurance Services

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 nonrenewal notice and refusal to write requirements of Act 68, Section 2006 [40 P.S. §§991.2006], so that the violations noted in the Report do not occur in the future.
2. The Company must review Act 205, Section 4 [40 P.S. §1171.4] and revise internal control procedures to ensure compliance with nonrenewal requirements, so that the violations noted in the Report do not occur in the future.
3. 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.
4. On policies in which either uninsured or underinsured coverage has been rejected, the policy renewal must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. 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. §1731(c)(1) do not occur in the future.

5. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to 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.
6. The Company must review Title 75, Pa. C.S. §1791 to ensure that the notice of available benefits with the required language is given to the insured at the time of application as noted in the Report.
7. The Company must review Title 75, Pa. C.S. §1791.1(a) and (b) to ensure that an itemized invoice listing minimum coverages and tort options is provided at the time of application and every renewal thereafter as noted in the Report do not occur in the future.
8. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to exercise the waiver for uninsured and underinsured motorist coverage forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Title 75, Pa. C.S. §1731(b) & (c) do not occur in the future.
9. When a surcharge is imposed on a private passenger automobile policy the Company must include the amount of the surcharge and the 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) and Act 68, Section 2005(c), do not occur in the future.

10. The Company must review Title 31, Pa. Code, Section 67.33(b)(1) and Title 75, Pa. C.S. §1799.3(a) to ensure that a policy is not surcharged where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,150 in excess of any self-insured retention or deductible applicable to the named insured.
11. The premium overcharges noted in the rating section of this report must be refunded to the insured and proof of such refund must be provided to the Insurance Department within 30 days of the report issue date.
12. The Company must review Act 246, Section 4 [40 P.S. §1184], and take appropriate measures to ensure the automobile rating violations listed in the report do not occur in the future.
13. 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 and denial letters and responding to Department inquiries, as noted in the Report, do not occur in the future.
14. 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.

15. The Company must review Title 31, Pa. Code, Section 62.3(e)(1) with its claim staff to ensure that replacement value of a motor vehicle be calculated by use of the Guide Source Method, the Actual Cost Method or the Dealer Quotation Method. The Company must refund all deductions for towing and storage from the replacement cost of a motor vehicle. Proof of refunds to claimants must be provided to the Insurance Department within 30 days of the Report issue date.

16. The Company must review Title 31, Pa. Code, Sections 69.53(a) and 69.55(a) and Title 75, Pa. C.S. §1797(b)(1) with its claim staff to ensure that a written contract is in place with an approved peer review organization established for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person. Such evaluation shall be for the purpose of confirming that such treatment, products, services or accommodations conform to the professional standards of performance and are medically necessary.

17. The Company must ensure all producers are properly 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 any producer.

18. The Company must revise and reissue their underwriting guidelines for use in Pennsylvania to ensure that the guidelines do not exclude applicants from being eligible to obtain insurance for reasons established in Act 68, Sections 2003(a)(10), (13) and(14) [40 P.S. §991.2003(a)(10), (13) and (14)].

XIII. COMPANY RESPONSE

CAPITOL INSURANCE COMPANY
955 HORSHAM ROAD, SUITE 205
HORSHAM, PA 19044
215-956-9399

October 19, 2007

Mr. Chester A. Derk Jr., AIE, HIA
Commonwealth of Pennsylvania
Insurance Department
Bureau of Enforcement
1321 Strawberry Square
Harrisburg, PA 17120

RE: Examination Warrant Number: 07-M19-022

Dear Mr. Derk:

Capitol Insurance Company and its management has reviewed the Report of Examination covering the period January 1, 2006 through December 31, 2006, as of the close of business on September 27, 2007. Our response to the Examination herewith, will include all corrective actions taken by the Company, as well as arguments to points of disagreement.

Our formal responses are documented in the order in which they are cited in the Examination Report:

IV. Underwriting Practices and Procedures

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

This item has been removed from the Underwriting Guidelines.

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

This item has been removed from the Underwriting Guidelines.

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

This item has been removed from the Underwriting Guidelines.

V. Underwriting

A. Private Passenger Automobile

3. Nonrenewals

6 Violations - Act 205, § 1171.4. Unfair methods of competition and unfair or deceptive acts or practices prohibited.

The company's underwriting guidelines have been changed to reference the Daewoo (this car is no longer in production and parts are extremely difficult to obtain thus making it impractical to

insure). This guideline is part of our BROADCAST TO AGENTS listed on the Capitol Insurance Home Page.

Regarding vehicles over ten years of age, Capitol Insurance will now include in this type of cancellation or non-renewal, an offer to renew without physical damage.

1 Violation - Act 68, Section 2006(3) [40 P.S. §991.2006(3)] - Proper notification of intention to cancel.

Company practice has been changed so that, henceforth, all Non-renewal of policies based on claims history, will specify the dates of the claims and the amounts paid out by the Company.

V1. Rating

A. New Business

1. New Business

New Business Without Surcharges

1 Violation - Title 75, Pa. C.S. §1731(b)&(c)

It is Capitol Insurance policy to have our agents immediately fax to us signed copies of the rejection of UM and UIM coverages. In this case the agent has been uncooperative.

1 Violation - Title 75, Pa. C.S. §1705(a)(4) – Election of tort options.

It is Capitol Insurance Company's policy to have our agent immediately fax to us signed copies of the tort option election form. In this case the agent has been uncooperative.

4724 Violations - Title 75, PA C.S., §1791.1(a) - Invoice.

Capitol Insurance Company now includes on the application form (section 11), the notice and an itemization of the minimum motor vehicle insurance coverage levels mandated, as well as the premium charge for the insured to purchase these coverages,. This will print out automatically when the application is produced for the signature of the applicant. Renewal bills will also include these items.

Comment: Capitol's Declaration page on every policy and on every renewal, has displayed the notice required in this section as well as an itemized listing of the premiums for the minimum coverage. It is not our intent to deceive the applicant, and agents are instructed to review the minimum coverage required by the Commonwealth, as well as the costs associated with those coverages. We believed we were in compliance since every policyholder has the notice and premiums stated right on their Declarations Page.

4724 Violations - Title 75, Pa. C.S., §1791.1(b) - Notice of tort options.

Capitol Insurance Company now provides the Tort Option notice as part of the application form (section 27). This will print out automatically when the application is produced for signature by the applicant.

Comment: Capitol's Tort option notice is included with every policy and on every renewal. The application itself includes a form which allows each applicant to choose the tort option which suits them best. We believed that this form in the application put us in compliance. Apparently, we were wrong. Henceforth, all applicants will be given the Tort Option notice at time of application, and we will continue to provide the notice on every renewal.

4724 Violations - Title 75, Section 1793(b) Surcharge Disclosure Plan.

Capitol Insurance Company now provides the Surcharge Disclosure as part of the application form (section 26). Renewals will continue to include the Surcharge Disclosure.

Comment: Capitol's Surcharge Disclosure is and has been included in every policy and in every renewal. Once again, it was not our intent to deceive the applicant, and agents are instructed to review items which may cause a surcharge to be applied. We believed we were in compliance since every policyholder receives the Surcharge Disclosure with the policy and again at renewal.

Private Passenger Automobile – New Business with Surcharges

1 Violation - Title 75, Pa. C.S. §1705(a)(1) & (4) – Financial responsibility requirements.

Comment: The Producers are under contract to keep all original applications and additional required forms with the understanding they forward same to the Company upon request. However, we were notified that the Producer on this policy is/or was in prison and no one knows where his files are. Therefore, although the insured acknowledges that they rejected UM/UIM coverage, we cannot obtain these forms at this time.

1 Violation - Title 75, Pa. C.S. §1731(b) & (c)

Comment: The Producers are under contract to keep all original applications and additional required forms with the understanding they forward same to the Company upon request. However, we were notified that the Producer on this policy is/or was in prison and no one knows where his files are. Therefore, although the insured acknowledges that they rejected UM/UIM coverage, we cannot obtain these forms at this time.

301 Violations - Act 68, Section 2005(c) [40 P.S. §991.2005(c)] and Title 75, Pa. C.S., §1799.3(d)

Capitol Insurance Company Response: We agree with the finding on 274 violations.

Of the 301 violations reviewed, it was determined that on 27 policies, surcharges were added by the Underwriting Department, after the application was signed and submitted by the producer.

Comment: If the application is submitted by the agent without surcharge and it is later discovered by Underwriting that a surcharge is to be applied, the applicant is notified of the reason for the surcharge and the amount of the surcharge is shown on the premium notice. The system does show the points added if the applicant answers the application questions accurately.

Action taken – We now provide the surcharge being applied. Section 7 of the application shows the points being applied and the amount of the premium surcharge. Where surcharges are assessed by the Underwriting Department, we will continue to notify the insured of the surcharge, the amount of the surcharge, and the reason for the surcharge.

The renewal Dec Page will also show the surcharge amount, if still in effect.

301 Violations - Title 75, Pa. C.S. §1791.1(a) - Invoice.

Capitol Insurance Company now includes on the application form (section 11), the notice and an itemization of the minimum motor vehicle insurance coverage levels mandated, as well as the premium charge for the insured to purchase these coverages. This will print out automatically when the application is produced for signature by the applicant. Renewal bills will also include these items.

301 Violations - Title 75, Pa. C.S. §1791.1(b) - Notice of tort options.

Capitol Insurance Company now provides the Tort notice as part of the application form. This will print out automatically when the application is produced for signature by the applicant.

Capitol's Tort Option notice is included with every policy and on every renewal. Also, the application form includes a form which allows each applicant to choose the tort option which suits them best. We believed that this form in the application put us in compliance. Apparently, we were wrong. Henceforth, all applicants will be given the Tort Option notice at time of application, and on every renewal.

301 Violations - Title 75, Section 1793(b) Surcharge Disclosure Plan.

Capitol Insurance Company now provides the Surcharge Disclosure as part of the application form (section 26). Renewals will continue to include the Surcharge Disclosure.

Comment: Capitol's Surcharge Disclosure is included in every policy and in every renewal. Once again, it was not our intent to deceive the applicant, and agents are instructed to review items which may cause a surcharge to be applied. We believed we were in compliance since every policyholder receives the Surcharge Disclosure with the policy and again at renewal.

2. Renewals

Private Passenger Automobile – Renewals Without Surcharges

1812 Violations - Title 75, Pa. C.S., Section 1731 (c.1)

The Declaration Page for renewals has been changed to show in prominent type, the rejection of UM and/or UIM coverage when those coverages have not been purchased.

Private Passenger Automobile – Renewals With Surcharges

4 Violations - Title 31, Pa. Code, Section 67.33(b) (1) and Title 75, Pa. C.S., §1799.3(a) and Act 246, Section 4(h)

Corrections were made and refunds were sent to the insureds, copies of which were sent to the Department of Insurance.

224 Violations - Title 75, Pa. C.S., Section 1731 (c.1)

Our renewal Declaration Page now shows prominently the rejection of UM/UIM when those coverages have not been purchased.

322 Violations - Act 68, Section 2005(c) [40 P.S. §991.2005(c)] and Title 75, Pa. C.S., §1799.3(d)

The renewal Declaration Page now shows the surcharge amount being added to the premium.

VII. Claims

A. Automobile Property Damage Claims

2 Violations - Title 31, Pa. Code, Section 146.6

It is company policy that all claims must be settled within prescribed time limits or status letters are to be sent as required. This finding has been discussed with our TPA and follow-up procedures adopted.

B. Automobile Comprehensive Claims

2 Violations - Title 31, Pa. Code, Section 146.6

It is company policy that all claims must be settled within prescribed time limits or status letters are to be sent as required. This finding has been discussed with our TPA and follow-up procedures adopted.

C. Automobile Collision Claims

1 Violation - Title 31, Section 146.6

It is company policy that all claims must be settled within prescribed time limits or status letters are to be sent as required. This finding has been discussed with our TPA and follow-up procedures adopted.

D. Automobile Total Loss Claims

39 Violations - Title 31, Pa. Code, Section 62.3(e)(1)

Capitol Insurance Company agrees with this finding.

Capitol Insurance agrees to refund to the insureds cited in the finding, the amount deducted from the total loss evaluation. Copies of the refunds will be forwarded to the Department's Market Conduct Division as ordered in the audit.

E. Automobile First Party Medical Claims

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

1 Violation - Title 75, §1716 – Payment of Benefits

3 Violations - Title 31, Pa. Code, Section 146.6

2 Violations – Title 31, Pa. Code, Section 146.7(a)(1)

Capitol Insurance Company agrees with the findings set forth above regarding First Party Medical Claims, and has instructed its claims management company to adhere to the requirements of the Statutes cited.

F. Automobile First Party Medical Claims Referred to a PRO

1 Violation - Title 31, Pa. Code, Section 69.53(a) and Title 75, Pa. C.S. §1797(b)(1) and Title 31, Pa. Code, Section 69.55(a)

Action taken: On June 21, 2007, Capitol Insurance Company executed a contract with CorVel Corporation to have them serve as our peer review provider. The contract runs for 2 years, can be renewed, and is on an "as needed" basis.

X. Consumer Complaints

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

In order to solve this problem, all responses to the Department of Insurance are being centralized through the same office. All information and dialog will be handled by a two person team in order to track receipt and response to Department Complaints.

X1. Licensing

24 Violations - Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71)

We are in the process of inspecting every existing appointment regarding proper licensing, trading names, correctness of names, etc. We are also reviewing every producer included in our data bank to make sure they are licensed correctly, and that their licenses are current. We are working with Sircon to make sure all appointments and Appointees are listed with them and i.e. the Insurance Department.

X11. Recommendations

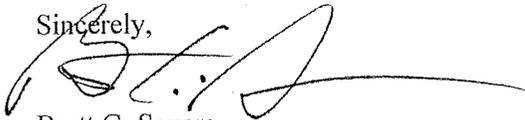
It is imperative that the Insurance Department understands that Capitol Insurance and its Management Team take your recommendations very seriously. We have already implemented changes in forms and procedures that deal directly with recommendations 1 through 12. Corrective actions have been taken in all areas cited in the Examination.

Our responses should in no way be interpreted as contentious or self-serving. We truly appreciate the benefits extended to us by going through the Market Conduct examination. It only serves to make us a better company, and helps us avoid serious problems with our insureds.

We would like to thank the Department of Insurance, its Examiners, and staff for a thorough and very professional way in which this audit was carried out. The information, help and understanding provided have been greatly appreciated.

Thank you for your cooperation.

Sincerely,



Brett G. Sauers
Executive Vice President