

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

**EMPIRE FIRE AND MARINE INSURANCE COMPANY
Omaha, Nebraska**

**AS OF
May 6, 2008**

COMMONWEALTH OF PENNSYLVANIA



**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: June 26, 2008

VERIFICATION

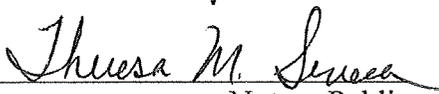
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).



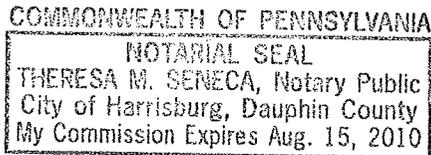
Jerry L. Houston, AIE, CPCU, Examiner-In-Charge

Sworn to and Subscribed Before me

This 14 Day of April, 2008



Notary Public



EMPIRE FIRE AND MARINE INSURANCE COMPANY

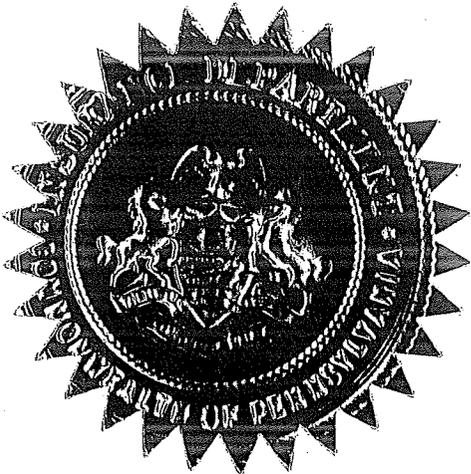
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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

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:
	:	
EMPIRE FIRE AND MARINE	:	Sections 641.1-A and 671-A of Act
INSURANCE COMPANY	:	147 of 2002 (40 P.S. §§ 310.41 and
13810 FNB Parkway	:	310.71)
Omaha, NE 68154	:	
	:	Sections 3(a)(5), 4(a) and 4(b) of
	:	the Act of July 3, 1986, P.L. 396,
	:	No. 86 (40 P.S. §§ 3401, 3402, 3403
	:	and 3404)
	:	
	:	Sections 5(a)(7)(iii), 5(a)(9) and
	:	5(a)(11) of the Unfair Insurance
	:	Practices Act, Act of July 22, 1974,
	:	P.L. 589, No. 205 (40 P.S. §§ 1171.5)
	:	
	:	Title 31, Pennsylvania Code, Sections
	:	113.88, 146.6 and 146.7(a)(1)
	:	
	:	
Respondent.	:	Docket No. MC08-05-011

CONSENT ORDER

AND NOW, this 26th day of June, 2008, 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 Empire Fire and Marine Insurance Company, and maintains its address at 13810 FNB Parkway, Omaha, Nebraska 68154.

(b) A market conduct examination of Respondent was conducted by the Insurance Department covering the experience period from July 1, 2006 through June 30, 2007.

(c) On May 6, 2008, the Insurance Department issued a Market Conduct Examination Report to Respondent.

- (d) A response to the Examination Report was provided by Respondent on June 5, 2008.

- (e) The Examination Report notes violations of the following:
 - (i) Section 641.1-A of Act 147 of 2002 prohibits any entity or the appointed agent of any entity from transacting the business of insurance through anyone acting without an insurance producer license (40 P.S. § 310.41a);

 - (ii) Section 671-A of Act 147 of 2002 (40 P.S. § 310.71), which prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act;

 - (iv) Section 3(a)(5) of Act 86 (40 P.S. § 3403), which requires that a non-renewal notice shall state the specific reasons for the nonrenewal. The reasons shall identify the condition, factor or loss experience which caused the nonrenewal;

 - (v) Section 4(a) of Act 86 (40 P.S. § 3404), which requires that unearned premium must be returned to the insured not later than 10 business days after the effective date of termination where commercial property or casualty risks are cancelled in mid-term by the insurer;

- (vi) Section 4(b) of Act 86 (40 P.S. § 3404), which requires that unearned premium be returned to the insured not later than 30 days after the effective date of termination where commercial property or casualty risks are cancelled in mid-term by the insured;

- (vii) 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;

- (viii) Section 5(a)(9) of Act 205 (40 P.S. § 1171.5), which prohibits cancellation of 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 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;

- (xi) Section 5(a)(11) of the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171.5), which requires a complete record of all complaints received during the preceding four years;

- (x) Title 31, Pennsylvania Code, Section 113.88, which states the reason given for nonrenewal shall be clear and complete. It shall be stated so that a person of average intelligence and education can understand it. Phrases such as “losses” or “underwriting reasons” are not sufficiently specific reasons for nonrenewal;

- (xi) 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

- (xii) 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.

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 Sections 641.1-A and 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 Act 86, Sections 3(a)(5), 4(a) and 4(b) (40 P.S. §§ 3403 and 3404) are punishable under Section 8 (40 P.S. § 3408) of this act by one or more of the following causes of action:

- (i) Order that the insurer cease and desist from the violation.
 - (ii) Impose a fine or not more than \$5,000 for each violation.
- (d) Respondent's violations of Sections 5(a)(7), 5(a)(9) and 5(a)(11) of the Unfair Insurance Practices Act, No. 205 (40 P.S. §§ 1171.5) are punishable by the following, under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9):
- (i) cease and desist from engaging in the prohibited activity;
 - (ii) suspension or revocation of the license(s) of Respondent.
- (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 Title 31, Pennsylvania Code, Sections 146.6 and 146.7(a)(1) 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 Fifteen Thousand Dollars (\$15,000.00) 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 Ginny Marquart, 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 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.

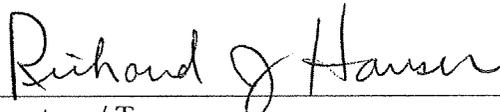
11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law

contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY: EMPIRE FIRE AND MARINE 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 Empire Fire and Marine Insurance Company's office located in Omaha, Nebraska, from October 15, 2007, through November 9, 2007. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

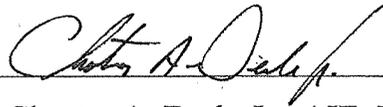
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

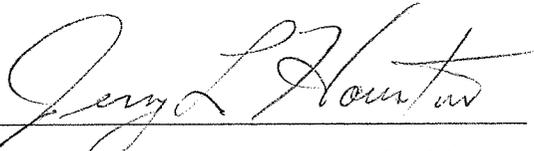
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel 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.

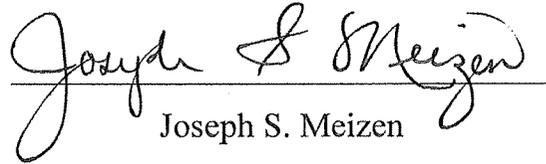
The undersigned participated in this examination and in preparation of this Report.



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 Empire Fire and Marine Insurance Company, hereinafter referred to as “Company,” at their office located in Omaha, Nebraska. 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, 2006, through June 30, 2007, 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. Property
 - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations and 60-day cancellations.
 - Rating – Proper use of all classification and rating plans and procedures.
2. Commercial Property
 - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations, rescissions and renewals.
3. Commercial Automobile
 - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations, rescissions, renewals and declinations.
4. Claims
5. Forms

6. Advertising

7. Complaints

8. Licensing

III. COMPANY HISTORY AND LICENSING

Empire Fire and Marine Insurance Company was incorporated on March 16, 1954, under the laws of Nebraska and began business on July 31, of the same year to succeed the Empire Fire and Marine Automobile Insurance Company. The Company was purchased by the U.S. Branch of Zurich Insurance Company, Zurich, Switzerland, in 1979.

Effective November 15, 1984, the Company was acquired by Universal Underwriters Insurance Company, a Zurich subsidiary. Zurich Holding Company of America, Inc. purchased the Company from Universal Underwriters Insurance Company on December 1, 1986.

Direct ownership is currently held by Zurich American Insurance Company through a transfer of all of the outstanding shares, effective January 1, 1999.

LICENSING

Empire Fire and Marine's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2008. The Company is licensed in all states except Oklahoma. It also operates on a surplus lines or non-admitted basis in Puerto Rico and Oklahoma. The Company's 2007 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$35,937,337. Premium volume related to the areas of this review were: Fire \$271,503; Homeowners Multiple Peril \$1,462,633; Commercial Multiple Peril (Non-liability portion) \$7,698,640; Inland Marine \$561,172; Commercial Automobile Direct Written Premium was reported as Commercial Auto No-Fault (personal injury protection) \$298,264; Other Commercial Auto Liability \$17,776,010 and Commercial Auto Physical Damage \$5,578,356.

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 homeowner and commercial lines. 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 terms “underwriting standards and practices” or “eligibility rules” do not include the promulgation of rates if made or promulgated in accordance with the appropriate rate regulatory act of this Commonwealth and regulations promulgated by the Commissioner pursuant to such act. The homeowner underwriting guidelines unfairly discriminate by eligibility exclusion for occupancy by age/sex/occupation.

2 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's homeowner underwriting guidelines used claims history and breed of dog to make risks ineligible for renewal. Claims history and breed of dog are not acceptable reasons for nonrenewal.

V. UNDERWRITING

A. Property

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.

From the universe of 75 homeowner policies which were cancelled within the first 60 days of new business, 10 files were selected for review. All 10 files were 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.

From the universe of 308 homeowner policies which were cancelled midterm during the experience period, 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, 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.

From the universe of 48 property policies which were nonrenewed 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 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 the 2 files noted for an improper reason.

B. Commercial Property

1. Midterm Cancellations

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

The purpose of the review was to determine compliance with Act 86, Section 2 (40 P.S. §3402), which prohibits cancellation except for specified reasons and Section 3 (40 P.S. §3403), which establishes the requirements, which must be met regarding the form and condition of the cancellation notice.

The universe of 38 commercial property policies cancelled midterm during the experience period was selected for review. The commercial property files consisted of commercial package, commercial inland marine and commercial fire. All 38 files were received and reviewed. The 12 violations noted were based on 12 files, resulting in an error ratio of 32%.

The following findings were made:

12 Violations Act 86, Section 4(b) [40 P.S. §3404(b)]

Requires that unearned premium be returned to the insured not later than 30 days after the effective date of termination where commercial property or casualty risks are cancelled in mid-term by the insured. The Company did not return the unearned premium to the insured within 30 days after the effective date of termination for the 12 files noted.

2. 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 review was conducted to determine compliance with Act 86, Section 3 (40 P.S. §3403), which establishes the requirements that must be met regarding the form and condition of the nonrenewal notice.

The universe of 41 commercial property policies nonrenewed during the experience period was selected for review. The commercial property policies consisted of commercial fire and commercial package. All 41 files were received and reviewed. No violations were noted.

3. Renewals

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

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

From the universe of 232 commercial property policies renewed during the experience period, 67 files were selected for review. The commercial property policies consisted of commercial fire, commercial inland marine and commercial package. All 67 files were received and reviewed. No violations were noted.

4. Declinations

A declination is any application that is received and the Company declines to write the coverage.

The primary purpose of the review was to determine compliance with Act 205, Section 5 [40 P.S. §1171.5], which defined unfair methods of competition and unfair or deceptive acts or practices.

From the universe of 60 commercial property files identified as declinations by the Company during the experience period 25 files were selected for review. All 25 files received and reviewed. No violations were noted.

5. Rescissions

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

The primary purpose of the review was to determine compliance with Act 86.

The universe of 5 commercial property policies identified as rescissions by the Company was selected for review. The commercial files consisted of commercial fire and commercial package. All 5 files were received and reviewed. No violations were noted.

C. Commercial 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 86, Section 7 (40 P.S. §3407), which requires an insurer, who cancels a policy that is in effect less than 60 days, to provide 30 days notice of termination no later than the 60th day unless the policy provides for a longer period of notification.

The universe of 10 commercial automobile policies cancelled within the first 60 days of new business was selected for review. All 10 files were 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 purpose of the review was to determine compliance with Act 86, Section 2 (40 P.S. §3402), which prohibits cancellation except for specified reasons and Section 3 (40 P.S. §3403), which establishes the requirements, which must be met regarding the form and condition of the cancellation notice.

From the universe of 177 commercial automobile policies cancelled midterm during the experience period, 10 files were selected for review. All 10 files were received and reviewed. The 44 violations noted were based on the universe of 177, resulting in an error ratio of 25%.

The following findings were made:

2 Violations Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Requires that a cancellation notice shall state the specific reasons for cancellation. The reasons shall identify the condition, factor or loss experience, which caused the cancellation. The notice shall provide sufficient information or data for the insured to correct the deficiency. The Company did not provide a specific reason for cancellation for the 2 files noted.

39 Violations Act 86, Section 4(b) [40 P.S. §3404(b)]

Requires that unearned premium be returned to the insured not later than 30 days after the effective date of termination where commercial property or casualty risks are cancelled in mid-term by the insured. The Company did not return the unearned premium to the insured within 30 days after the effective date of termination for the 39 files noted.

3 Violations Act 86, Section 4(a) [40 P.S. §3404(a)]

Requires that unearned premium be returned to the insured not later than 10 business days after the effective date of termination where commercial property or casualty risks are cancelled in mid-term by the insurer. The Company did not return the unearned premium to the insured within 10

business days after the effective date of termination for the 3 files noted.

The following concern was noted:

Concern: The Company's producers are returning gross unearned premium to a premium finance company whenever a financed insurance contract is cancelled, instead of being returned directly by the Company. It is specifically required in 40 P.S. §3311, that the insurer shall return unearned premiums that are due to the premium finance company.

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 review was conducted to determine compliance with Act 86, Section 3 (40 P.S. §3403), which establishes the requirements that must be met regarding the form and condition of the nonrenewal notice.

The universe of 37 commercial automobile policies nonrenewed during the experience period was selected for review. All 37 files were received and reviewed. The 3 violations noted were based on 3 files, resulting in an error ratio of 8%.

The following findings were made:

3 Violations Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Requires that a nonrenewal notice shall state the specific reasons for the nonrenewal. The reasons shall identify the

condition, factor or loss experience, which caused the nonrenewal. The notice shall provide sufficient information or data for the insured to correct the deficiency.

AND

Title 31, Pa. Code, Section 113.88

The reason given for nonrenewal shall be clear and complete. It shall be stated so that a person of average intelligence and education can understand it. Phrases such as “losses” or “underwriting reasons” are not sufficiently specific reasons for nonrenewal. The Company did not provide a specific reason for nonrenewal for the 3 files noted.

4. Renewals

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

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

From the universe of 907 commercial automobile policies renewed during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

5. Declinations

A declination is any application that is received and the Company declines to write the coverage.

The primary purpose of the review was to determine compliance with Act 205, Section 5 [40 P.S. §1171.5], which defined unfair methods of competition and unfair or deceptive acts or practices.

From the universe of 41 commercial automobile declinations reported by the Company during the experience period, 15 files were selected for review. All 15 files were received and reviewed. No violations were noted.

6. Rescissions

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

The primary purpose of the review was to determine compliance with Act 86.

The universe of 12 commercial automobile policies identified as rescissions by the Company was selected for review. All 12 files were received and reviewed. No violations were noted.

VI. RATING

A. 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 631 homeowner policies written as new business without surcharges during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

The following concern was noted:

Concern: The homeowner's policies are subject to surcharges for losses. Therefore, it is a concern that no surcharge disclosure plan is provided to these policyholders. The disclosure plan should state what surcharge percentage applies for paid losses as provided in the Company's rate filing. Notification of the surcharge disclosure requirement was provided to all companies, in an Important Notice dated 9/18/1998.

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 1,894 homeowner policies renewed without surcharges during the experience period, 50 files were selected for review. All 50 files were received and reviewed. No violations were noted.

The following concern was noted:

Concern: The homeowner's policies are subject to surcharges for losses. Therefore, it is a concern that no surcharge disclosure plan is provided to these policyholders. The disclosure plan should state what surcharge percentage applies for paid losses as provided in the Company's rate filing. Notification of the surcharge disclosure requirement was provided to all companies, in an Important Notice dated 9/18/1998. The Company has a filed and approved surcharge program for their own claims. They did not report any surcharged policies during the experience period.

B. Tenant 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.

Tenant Homeowner Rating – New Business Without Surcharges

The universe of 1 tenant homeowner policy written as new business without surcharges during the experience period was selected for review. The file was received. It was determined that the file was not a tenant homeowner policy, but a homeowner policy with a landlord endorsement attached and therefore was not reviewed.

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 area of review:

A. 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. Homeowner Claims

From the universe of 112 homeowner claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 30 violations noted were based on 24 files, resulting in an error ratio of 48%.

The following findings were made:

22 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 22 claims noted.

8 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 accept or deny the claim within the required number of days for the 8 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)], which requires all insurers to provide an insurance fraud notice on all applications for insurance and all claims forms.

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 77 pieces of advertising in use during the experience period, which included brochures, agent's kits, mail solicitation, t-shirts, hats, pens and newsletters. Internet advertising for agents 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 10 consumer complaints received during the experience period and provided all consumer complaint logs requested. All 10 complaints 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:

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

Requires an insurer to maintain a complete record of all the complaints, which it has 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 time it took to process each complaint. The Company's complaint registers for 2002, 2003, 2004 and 2005 were incomplete. The registers did not include the classification by line of insurance.

1 Violation Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Requires that a cancellation notice shall state the specific reasons for cancellation. The reasons shall identify the condition, factor or loss experience, which caused the cancellation. The notice shall provide sufficient information or data for the insured to correct the deficiency. The Company did not provide a specific reason for nonrenewal.

2 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 nonrenewed the 2 files noted for an improper reason, which included age of the home and claims history.

The following synopsis reflects the nature of the 10 complaints that were reviewed.

•	5	Cancellation/Nonrenewal/Premium	50%
•	5	Claims	50%
	<hr/>		<hr/>
	10		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:

*6 Violations Insurance Department Act, No. 147, Section 641.1A
[40 P.S. §310.41a]*

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

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

Countrywide Insurance Services
Great Lakes Insurance Associates
Minnesota Marketing Center, Inc.
Russ Schiable
Weaver Insurance Agency
West Insurance Agency, Inc.

7 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.

American Management Corp.
AON Private Risk Management Ins. Agency, Inc.
Caputo Ins. Agency, Inc.
Interstate Insurance Management, Inc.
Paul Sprowls Agency, Inc.
Vista Wholesale Insurance Partners, Inc.
Peter J. Zaphiris

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 Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)] to ensure that the violations regarding the requirement for nonrenewal notices, as noted in the Report, does not occur in the future.
2. The Company must review and revise internal control procedures to ensure compliance relative to commercial cancellation and nonrenewal requirements of Act 86, Sections 3 and 4 [40 P.S. §§3403 and 3404], so that the violations noted in the Report do not occur in the future.
3. 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, acceptance and denials as noted in the Report, do not occur in the future.
4. The Company must ensure all producers are properly licensed and appointed, as required by Section 641.1(a) and Section 671-A [40 P.S. §310.41(a) and 40 P.S. §310.71] of the Insurance Department Act No. 147, prior to accepting any business from any producer.

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

6. The Company must review Act 205, Section 5(a)(11) [40 P.S. §1171.5(a)(11)], to ensure that the violations relative to complaint records noted in the Report does not occur in the future.

XIII. COMPANY RESPONSE



June 5, 2008

Commonwealth of Pennsylvania
Insurance Department
Bureau of Enforcement
1227 Strawberry Square
Harrisburg, PA 17120

Attention: Chester A. Derk, Jr.
Market Conduct Division Chief

Re: Examination Warrant Number : 07-M19-046 – Empire Fire and Marine
Insurance Company

Dear Mr. Derk:

Roger Morrison, CPCU
Chief Underwriting Officer
Programs Business
13810 FNB Parkway
Omaha, NE 68154-8003

As required in your letter of May 6, 2008, and as ordered by Examination Warrant
Number 07-M1--046, we offer the following to document compliance. Note that
our response follows the format of the Warrant.

Issue IV. UNDERWRITING PRACTICES AND PROCEDURES

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

Violation: The homeowners underwriting manual unfairly discriminates by
eligibility exclusion for occupancy by age/sex/occupation.

Response: The Company has reviewed the above statute and has revised the
underwriting manual to remove the eligibility exclusion found during the
examination.

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

Violation: Homeowner underwriting guidelines used claims history and breed of
dog to make risks ineligible for renewal.

Response: The Company has reviewed the above statute and has revised
underwriting practices and procedures to ensure that claim history and breed of dog
are not allowed as reasons for nonrenewal.

800-746-3220

www.zurichna.com

Direct Line: 402-963-5146

Fax Number: 402-963-5109

Issue V. UNDERWRITING

Property

Act 205 Section 5(a) (9) {40 P.S. Section 1171.5 (a) (9)}

Violation: Two files noted improper reasons for nonrenewal.

Response: The Company has reviewed the above mentioned statute and the information regarding proper nonrenewal language has been shared with all underwriters and general agents. Nonrenewal notices will be audited for compliance.

Commercial Property

Midterm Cancellation

Act 86. Section 4(b) {40 P.S. Section 3404 (b)}

Violation: Failure to return unearned premium to the insured within 30 days after the effective date of termination for 12 policies.

Response: The Company has reviewed the above mentioned statute and internal control procedures are in place to ensure compliance with this statute.

Commercial Auto

Midterm Cancellations

Act 86. Section 3(a)(5) {40 P.S. Section 3403 (a)(5)}

Violation: No specific reason provided for cancellation for two files.

Response: The Company has reviewed the above mentioned statute and the information regarding proper cancellation language has been shared with all underwriters and general agents. Cancellation notices will be audited for compliance.

Act 86. Section 4(b) {40 P.S. Section 3404 (b)}

Violation: Failure to return the unearned premium to the insured within 30 days after the effective date of termination.

Response: The Company has reviewed the above mentioned statute and internal control procedures are in place to ensure compliance with this statute.

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Commonwealth of Pennsylvania
Insurance Department
June 5, 2008
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Act 86. Section 4(a) {40 P.S. Section 3404 (a)}

Violation: Failure to return unearned premium to the insured within 10 business days after the effective date of termination for 3 files noted.

Response: The Company has reviewed the above mentioned statute and internal control procedures are in place to ensure compliance with this statute.

Nonrenewals

Act 86. Section 3(a) (5) {40 P.S. Section 3403 (a) (5)}

Violation: Failure of nonrenewal notice to state the specific reason for the nonrenewal and failure to give clear and complete reason for nonrenewal.

Response: The Company has reviewed the above mentioned statute and the information regarding proper nonrenewal language has been shared with all underwriters and general agents. Nonrenewal notices will be audited for compliance.

VII. CLAIMS

Homeowners Claims

Title 31 Pa. Code, Section 146.6

Violation: Failure to provide timely status letters for 22 claims.

Response: The Company has instituted performance metrics for each claim handler and claim unit manager to measure compliance with the 30-day status letter requirement required by the above mentioned statute.

Title 31 Pa. Code. Section 146.(a)(1)

Violation: Failure to accept or deny the claim within the required number of days for 8 claims.

Response: The Company has instituted a performance metric for each claim handler and claim unit manager to make sure payment or denial of each claim is handled within 5 days once the properly executed proof of loss is received as required by the above mentioned statute.

X. CONSUMER COMPLAINTS

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

Violation: Complaint register did not include classification by line of insurance.

Response: Effective January 1, 2008, all complaint files are now maintained in a record that allows sorting by line of insurance, nature of each complaint, disposition of the complaint and time it took to process each complaint.

Act 86, Section 3(a)(5) {40 P.S. Section 3403)a) (5)}

Violation: Failure to provide a specific reason for nonrenewal.

Response: The Company has reviewed the above mentioned statute and the information regarding proper nonrenewal language has been shared with all underwriters and general agents.

Act 205, Section 5(a)(9) {40 P.S. Section 1171.5 (a)(9)}

Violation: Nonrenewal of 2 files for improper reason, which included age of the home and claims history.

Response: The Company has reviewed the above mentioned statute and the information regarding proper nonrenewal language has been shared with all underwriters and general agents. Nonrenewal notices will be audited for compliance.

XI. LICENSING

Insurance Department Act, No 147, Section 641.1A {40 P.S. Section 310.42a}

Violation: Six producers were found to be writing and/or soliciting policies but were not found in the Insurance Department records as holding a Pennsylvania producer license.

Response: The Company has revised internal control procedures to ensure all producers are licensed and all appointments are processed prior to business being bound.

Insurance Department Act, No 147, Section 671-A {40 P.S. Section 310.71}

Violation: Six producers were found to be writing policies but were not found in the Insurance Department records as having an appointment.

Chester A. Derk, Jr.
Commonwealth of Pennsylvania
Insurance Department
June 5, 2008
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Response: The Company has revised internal control procedures to ensure all appointments are processed prior to business being bound.

Please advise if you require additional information on any of these issues or if you have additional questions.

Sincerely,

A handwritten signature in black ink that reads "Roger Morrison". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Roger Morrison
Chief Underwriting Officer