

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

**NATIONWIDE AFFINITY INSURANCE
COMPANY OF AMERICA**

Columbus, Ohio

**AS OF
February 17, 2011**

COMMONWEALTH OF PENNSYLVANIA

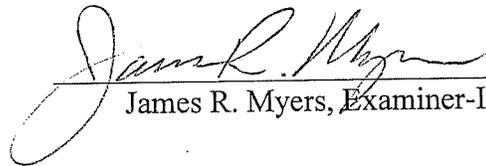


**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: April 5, 2011

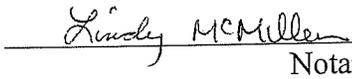
VERIFICATION

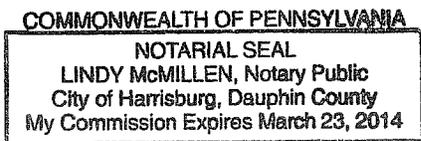
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).


James R. Myers, Examiner-In-Charge

Sworn to and Subscribed Before me

This 20 Day of January, 2011


Lindy McMillen
Notary Public



NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA

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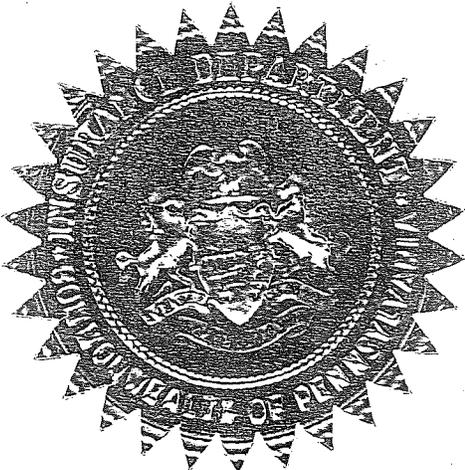
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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 24 day of January, 2011, 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 Ronald A. Gallagher, 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.




Michael F. Consedine
Acting Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
NATIONWIDE AFFINITY INSURANCE :	:	Section 903(a) of the Insurance
COMPANY OF AMERICA :	:	Department Act, Act of May 17,
One West Nationwide Boulevard :	:	1921, P.L. 789, No. 285 (40 P.S.
Columbus, OH 43215 :	:	§323.3)
	:	
	:	Act 1990-6, Sections 1705(b)(1),
	:	1718(c), 1738(c)(d)(1) and (2), 1791,
	:	1791.1(a),(b) and (c), 1793(b), and
	:	1799.3(d) (Title 75, Pa.C.S. §§1791,
	:	1793 and 1799)
	:	
	:	Sections 4(a) and 4(h) of the Act of
	:	June 11, 1947, P.L. 538, No. 246
	:	(40 P.S. §§ 1184)
	:	
	:	Sections 2002(c)(3), 2003(e), 2006,
	:	and 2006(2) of Act 68 of 1998 (40
	:	P.S. §§ 991.2002, 991.2003 and
	:	991.2006)
	:	
	:	Section 5(a)(9) 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
	:	67.33, 146.5(b), (c) and 146.6
	:	
	:	Title 75, Pennsylvania Consolidated
	:	Statutes, Section 1822
	:	
	:	
Respondent.	:	Docket No. MC11-03-018

CONSENT ORDER

AND NOW, this 5th day of April, 2011, 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 Nationwide Affinity Insurance Company of America, and maintains its address at One West Nationwide Boulevard, Columbus, Ohio 43215.

- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from April 1, 2009 through March 31, 2010.
- (c) On February 17, 2011, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on March 18, 2011.
- (e) The Examination Report notes violations of the following:
 - (i) Section 903(a) of the Insurance Department Act (40 P.S. §323.3), which requires every company subject to examination keep all records and documents relating to its business in such manner as may be required in order that the Department may verify whether the company has complied with the laws of this Commonwealth;
 - (ii) Section 1705(b)(1) of Act 1990-6, Title 75, Pa.C.S. §1705, which states the tort option elected by a named insured shall apply to all private passenger motor vehicle policies of the named insured issued by the same insurer and shall continue in force as to all subsequent renewal policies, replacement policies and any other private passenger motor vehicle policies under which the individual is a named insured until the insurer, or its authorized

representative, receives a properly executed form electing the other tort option;

(iii) Section 1718(c) of Act 1990-6, Title 75, Pa.C.S. §1718, which states an insurer or the first named insured may exclude any person or his personal representative from benefits under a policy enumerated in Section 1711 or 1712 when any of the following apply: (1) The person is excluded from coverage while operating a motor vehicle in accordance with the Act of June 5, 1968 (P.L. 140, No. 78), relating to the writing, cancellation of or refusal to renew policies of automobile insurance. (2) The first named insured has requested that the person be excluded from coverage while operating a motor vehicle. This paragraph shall only apply if the excluded person is insured on another policy of motor vehicle liability insurance;

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

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

- (vi) 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;
- (vii) 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;
- (viii) Section 1791.1(c) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires an insurer to provide an insured a notice stating that discounts are available for drivers who meet the requirements of Sections 1799, 1799.1 and 1799.2;

- (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 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;
- (xi) 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;

- (xii) Section 2002(c)(3) of Act 68 of 1998 (40 P.S. §991.2002), which requires that an insurer supply the insured with a written statement of the reason for cancellation;

- (xiii) Section 2003(e) of Act 68 of 1998 (40 P.S. § 991.2003(e)), which states that an insurer may not cancel or refuse to renew a policy of automobile insurance for two or fewer moving violations in any jurisdiction or jurisdictions during a 24 month period when the operator's record indicates that the named insured presently bears five points or fewer;

- (xiv) Section 2006 of Act 68 of 1998 (40 P.S. § 991.2006), which requires that nonrenewal by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the insured a written notice of the cancellation;

- (xv) Section 2006(2) of Act 68 of 1998 (40 P.S. § 991.2006), which prohibits a cancellation or refusal to renew from being effective unless the insurer delivers or mails a written notice of the cancellation or refusal to renew, which will include the date, not less than 60 days after the date of mailing or delivery, on which the cancellation or refusal to renew shall become effective. When the policy is being cancelled or not renewed for reasons set forth in Sections 2004(1) and (2), however, the effective date may be 15 days from the date of mailing or delivery;

- (xvi) 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;
- (xvii) Title 31, Pennsylvania Code, Section 67.33, which states an insurer may assess a premium surcharge on policies where payment of at-fault accidents exceed their approved dollar threshold. An at-fault accident is one where the insured was at fault in causing or contributing to the accident, and the claim resulting from that accident was paid in part or in whole by the insurer;
- (xviii) Title 31, Pennsylvania Code, Section 146.5(b), which states 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;
- (xix) Title 31, Pennsylvania Code, Section 146.5(c), which states an appropriate reply shall be made within ten working days on all other pertinent

communications from a claimant which reasonably suggest that a response is expected;

- (xx) Title 31, Pennsylvania Code, Section 146.6 states that if an investigation cannot 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
- (xxi) Title 75, Pennsylvania Consolidated Statutes, Section 1822, which requires not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states, in substance, the following: Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.00.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the 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 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 willful violation;
- (ii) suspension of the license of any insurer which fails to comply with an Order of the Commissioner within the time limited by such Order, or any extension thereof which the Commissioner may grant.

(c) Respondent's violations of Sections 2002, 2003 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).

(d) Respondent's violations of Section 5(a)(9) of the Unfair Insurance Practices Act, No. 205 (40 P.S. §§ 1171.5) are punishable by the following, under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9):

- (i) cease and desist from engaging in the prohibited activity;
- (ii) suspension or revocation of the license(s) of Respondent.

- (e) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:
- (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);
- (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).
- (f) Respondent's violations of Title 31, Pennsylvania Code, Section 146.5(b), (c) and 146.6 are punishable under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9), as cited 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 Sharon L. Fraser, Bureau of Market Actions, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

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 it 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 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.

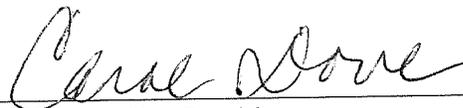
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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.

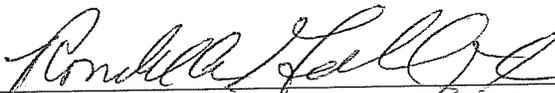
BY: NATIONWIDE AFFINITY INSURANCE
COMPANY OF AMERICA, Respondent



President / Vice President



Secretary / Treasurer



COMMONWEALTH OF PENNSYLVANIA

By: Ronald A. Gallagher, Jr.
Deputy Insurance Commissioner

I. INTRODUCTION

The market conduct examination was conducted at Nationwide Affinity Insurance Company of America office located in Harrisburg, Pennsylvania, from July 19, 2010, through August 19, 2010. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

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

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

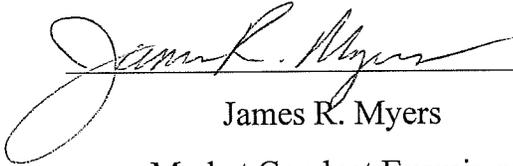
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel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

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

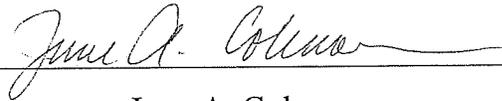
The undersigned participated in this examination and in preparation of this Report.



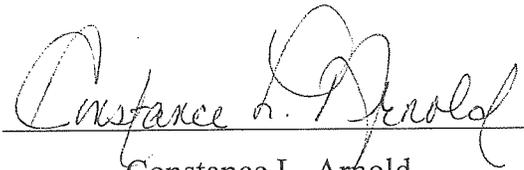
Chester A. Derk, Jr., AIE, HIA
Market Conduct Division Chief



James R. Myers
Market Conduct Examiner



June A. Coleman
Market Conduct Examiner



Constance L. Arnold
Market Conduct Examiner

II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Nationwide Affinity Insurance Company of America, hereinafter referred to as “Company,” at their office located in Harrisburg, 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 April 1, 2009, through March 31, 2010, 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. Forms
3. Complaints

III. COMPANY HISTORY AND LICENSING

Nationwide Affinity Insurance Company of America was organized on May 2, 1924, in the State of Kansas. Pursuant to a Stock Purchase Agreement dated September 19, 2000, Nationwide Mutual Insurance Company acquired 100% of the outstanding capital stock of Waterford Insurance Company. Subsequent to the acquisition, the company changed its name from Waterford Insurance Company to Nationwide Affinity Insurance Company of America. The Company redomesticated to Ohio, effective December 30, 2005. The Company is ultimately owned by Nationwide Mutual Insurance Company.

Nationwide utilizes multiple distribution channels that include exclusive and independent agents, direct sales via telephone and the Internet, as well as, direct marketing to affinity groups.

LICENSING

Nationwide Affinity Insurance Company of America's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2010. The Company is licensed in all states except Hawaii and Michigan. The Company's 2009 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$156,490,637. Premium volume related to the areas of this review were: Private Passenger Automobile Direct Written Premium was reported as Private Passenger Auto No-Fault (personal injury protection) \$16,052,937; Other Private Passenger Auto Liability \$80,187,882 and Private Passenger Auto Physical Damage \$60,208,745.

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. Agency bulletins and 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 finding was made:

1 Violation Title 75, Pa. C.S. §1718(c) – Named driver exclusion. An insurer or the first named insured may exclude any person or his personal representative from benefits under a policy enumerated in Section 1711 or 1712 when any of the following apply: (1) The person is excluded from coverage while operating a motor vehicle in accordance with the Act of June 5, 1968 (P.L. 140, No. 78), relating to the writing, cancellation of or refusal to renew policies of automobile insurance. (2) The first named insured has requested that the person be excluded from coverage while operating a motor vehicle. This paragraph shall only apply if the excluded person is insured on another policy of motor vehicle liability insurance.

AND

Adjudications: Valley Forge/Schuler, PH90-05-21 (1990); Long/State Farm, PH92-05-12 (1993); Zigerman/American Motorist, PH92-10-04 (1994).

The Company's guidelines failed to allow a spouse to be excluded when another auto policy is in force.

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 1,295 private passenger automobile files identified as being cancelled in the first 60 days of new business, 100 files were selected for review. All 100 files were received and reviewed. Of the 100 files reviewed, 2 files were identified as rescissions. The 17 violations noted were based on 17 files, resulting in an error ratio of 17%.

The following findings were made:

16 Violations Act 68, Section 2002(c)(3) [40 P.S. §991.2002(c)(3)]
Adjudications: Tampa v. State Farm (P91-06-01, 1991)
Gorba v. Allstate (P92-02-92, 1993)
Liberty Mutual v. Leibach (P193-01-02 (1994)

Requires that an insurer supply the insured with a written statement of the reason for cancellation. The 16 policies were

cancelled within the first 60 days of new business and did not contain evidence of the required 15 days notice.

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

Adjudications: Tampa v. State Farm (P91-06-01, 1991)

Gorba v. Allstate (P92-02-92, 1993)

Liberty Mutual v. Leibach (P193-01-02 (1994)

Requires that an insurer supply the insured with a written statement of the reason for cancellation.

AND

Insurance Department Act, Section 903(a) (40 P.S. §323.3)

Requires every company subject to examination to keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its business in such manner and for such time as may be required in order that the Department may readily verify whether the Company has complied with the laws of this Commonwealth. The Company failed to provide notice of cancellation or provide the necessary documents to determine compliance.

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 4,082 private passenger automobile files identified as midterm cancellations, 250 files were selected for review. All 250 files were received and reviewed. Of the 250 files reviewed, 177 files were identified as 60-day cancellations and 73 files were identified as midterm cancellations. The 13 violations noted were based on 13 files, resulting in an error ratio of 5%.

The following findings were made:

5 Violations Insurance Department Act, Section 903(a) [40 P.S. §3223.3]

Requires every company subject to examination to keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its business in such manner and for such time as may be required in order that the Department may readily verify whether the Company has complied with the laws of this Commonwealth. The Company failed to provide necessary documents to determine compliance for the 5 files noted.

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

Adjudications: Tampa v. State Farm (P91-06-01, 1991)

Gorba v. Allstate (P92-02-92, 1993)

Liberty Mutual v. Leibach (P193-01-02 (1994)

Requires that an insurer supply the insured with a written statement of the reason for cancellation. The 2 policies were cancelled within the first 60 days of new business and did not contain evidence of the required 15 days notice.

3 Violations Act 68, Section 2006 [40 P.S. §991.2006]

Requires that cancellation by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the insured a written notice of the cancellation. The 3 files noted did not contain any evidence that a cancellation notice was sent to the insured.

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

Requires that cancellation by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the insured a written notice of the cancellation.

AND

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

Requires every company subject to examination to keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its business in such manner and for such time as may be required in order that the Department may readily verify whether the Company has complied with the laws of this Commonwealth. The Company failed to provide a cancellation notice or provide necessary documents to determine compliance.

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

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

may be fifteen (15) days from the date of mailing or delivery. The Company failed to provide 60 days notice of cancellation.

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 85 private passenger automobile files identified as nonrenewals, 25 files were selected for review. All 25 files were received and reviewed. Of the 25 files reviewed, 1 file was identified as a midterm cancellation. The 3 violations noted were based on 3 files resulting in an error ratio of 12%.

The following findings were made:

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

Requires that cancellation by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the insured a written notice of the cancellation. The file noted did not contain any evidence that a cancellation notice was sent to the insured.

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

States that an insurer may not cancel or refuse to renew a policy of automobile insurance for two or fewer moving violations in any jurisdiction or jurisdictions during a twenty-four (24) month period when the operator's record indicates that the named insured presently bears five points or fewer. The Company nonrenewed the 2 files noted for an improper reason. One file had a violation outside the 24 month period and the remaining file was nonrenewed for an adverse driver history record for an excluded driver.

4. 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*.

The universe of 8 private passenger automobile policies that were identified as rescissions during the experience period was selected for review. All 8 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 51,429 private passenger automobile policies identified as new business without surcharges, 25 files were selected for review. All 25 files were received and reviewed. The Company also provided recorded direct sales tapes and internet application processes. The 32,011 violations noted were based on the universe of 51,429 files.

The following findings were made:

4,503 Violations Title 75, Pa. C.S. §1791

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

6,877 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 the insured at the time of application on direct and internet sales.

6,877 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 for direct and internet sales.

6,877 Violations Title 75, Pa. C.S. §1791.1(c)

Requires an insurer to provide an insured a notice stating that discounts are available for drivers who meet the requirements of Sections 1799, 1799.1 and 1799.2. The Company failed to provide the required notice at the time of application for direct and internet sales.

6,877 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 required surcharge plan at the time of application on direct and internet sales.

The following concern was noted:

Concern: The Company had filed and received approval for a change in the format of the declarations page. The approval from the Department was effective 4/9/10; however, upon review of the approved declarations page, it has been noted that the notice for rental car coverage is not in boldface CAPITAL letters as required in Title 75, Pa. C.S. §1725. The Company shall change the format for the rental car coverage to boldface CAPITAL letters going forward.

Private Passenger Automobile - New Business With Surcharges

From the universe of 5,939 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 Company also provided recorded direct sales tapes and internet application processes. The 1,538 violations noted were based on the universe of 5,939 files.

The following findings were made:

1 Violation Title 31, Pa. Code, Section 67.33

Insurers may assess a premium surcharge on policies where payment for at-fault accidents exceed their approved dollar threshold. An at-fault accident is one where the insured was at fault in causing or contributing to the accident, and the claim resulting from that accident was paid in part or in whole

by the insurer. The Company applied an improper surcharge by surcharging the father and the son for the same accident, resulting in an overcharge of \$461.60.

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

Requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect. The Company provided a surcharge disclosure statement for 15 files indicating the amount of the surcharge; however, there were additional dates included on the statement that were not related to the amount being surcharged. The remaining file did not have a surcharge disclosure statement.

201 Violations Title 75, Pa. C.S. §1791

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

330 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 the insured at the time of application on direct and internet sales.

330 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 for direct and internet sales.

330 Violations Title 75, Pa. C.S. §1791.1(c)

Requires an insurer to provide an insured a notice stating that discounts are available for drivers who meet the requirements of Sections 1799, 1799.1 and 1799.2. The Company failed to provide the required notice at the time of application for direct and internet sales.

330 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 required surcharge plan at the time of application on direct and internet sales.

The following concern was noted:

Concern: The Company had filed and received approval for a change in the format of the declarations page. The approval from the Department was effective 4/9/10; however, upon review of the approved declarations page, it has been noted that the notice for rental car coverage is not in boldface CAPITAL letters as required in Title 75, Pa. C.S. §1725. The Company shall change the format for the rental car coverage to boldface CAPITAL letters going forward.

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 22,555 private passenger automobile policies renewed 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 Company had filed and received approval for a change in the format of the declarations page. The approval from the Department was

effective 4/9/10; however, upon review of the approved declarations page, it has been noted that the notice for rental car coverage is not in boldface CAPITAL letters as required in Title 75, Pa. C.S. §1725. The Company shall change the format for the rental car coverage to boldface CAPITAL letters going forward.

Private Passenger Automobile – Renewals With Surcharges

From the universe of 3,604 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 14 violations noted were based on 14 files, resulting in an error ratio of 28%.

The following findings were made:

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

Requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect. The Company provided a surcharge disclosure statement indicating the amount of the surcharge; however, there were additional dates included on the statement that were not related to the amount being surcharged.

The following concern was noted:

Concern: The Company had filed and received approval for a change in the format of the declarations page. The approval from the Department was effective 4/9/10; however, upon review of the approved declarations page, it has been noted that the notice for rental car coverage is not in boldface CAPITAL letters as required in Title 75, Pa. C.S. §1725. The Company shall change the format for the rental car coverage to boldface CAPITAL letters going forward.

B. Private Passenger Automobile – Assigned Risk

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

VII. FORMS

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

The following findings were made:

Automobile Rating – New Business Without Surcharges

4,503 Violations Title 75, Pa. C.S. §1822

Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: "Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000." The Company failed to provide the required fraud warning at the time of application on direct sales calls.

Automobile Rating – New Business With Surcharges

201 Violations Title 75, Pa. C.S. §1822

Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: "Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000." The Company failed to provide the required fraud warning at the time of application on direct sales calls.

VIII. 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 1,103 consumer complaints received during the experience period and provided all consumer complaint logs requested. Of the 1,103 complaint files reported, 100 files were requested, received and reviewed.

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

The following findings were made:

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

Adjudications: Tampa v. State Farm (P91-06-01, 1991)

Gorba v. Allstate (P92-02-92, 1993)

Liberty Mutual v. Leibach (P193-01-02 (1994)

Requires that an insurer supply the insured with a written statement of the reason for cancellation. The 2 policies were cancelled within the first 60 days of new business and did not contain evidence of the required 15 days notice.

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

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

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

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue.

AND

Title 31, Pa. Code, Section 67.33

Insurers may assess a premium surcharge on policies where payment for at-fault accidents exceed their approved dollar threshold. An at-fault accident is one where the insured was at fault in causing or

contributing to the accident, and the claim resulting from that accident was paid in part or in whole by the insurer. The Company applied an improper surcharge by surcharging the father and the son for the same accident, resulting in an overcharge of \$114.20.

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

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue.

AND

Title 75, Pa. C.S. §1705(b)(1) – Election of Tort Options. The tort option elected by a named insured shall apply to all private passenger motor vehicle policies of the named insured issued by the same insurer and shall continue in force as to all subsequent renewal policies, replacement policies and any other private passenger motor vehicle policies under which the individual is a named insured until the insurer, or its authorized representative, receives a properly executed form electing the other tort option. The Company failed to provide rates for limited tort option after receiving the insured's form, resulting in an overcharge of \$286.20.

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

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue.

AND

Title 75, Pa. C.S. 1738(c)(d)(1)&(2)

The named insured shall be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms. The Company failed to provide rates for non-stacked limits of uninsured and underinsured motorist coverage when the insured signed the waiver form, resulting in an overcharge of \$194.20.

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.

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

An appropriate reply shall be made within ten working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected. The Company did not respond to the claimant's complaint within ten working days in the file noted.

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.

The following concerns were noted:

Concern: The Company failed to respond to the Department's inquiries concerning cancellations within 15 days. The Company needs to respond to inquiries within the requested 15 days.

Concern: The Company failed to respond to insureds' inquiries concerning agents within 10 working days. The Company needs to respond to inquiries within 10 days.

Concern: During the experience period, the Company inadvertently mailed cancellation notices to the Insurance Department instead of insureds on two separate occasions, involving 28 insureds. The Company was only made aware of this error, because they were contacted by the Department. The Company needs to make sure that proper procedures are followed to ensure all insureds are mailed a copy of their cancellation notice.

The following synopsis reflects the nature of the 100 complaints that were reviewed.

• 20	Agent	20%
• 29	Cancellation	29%
• 13	Claims Handling	13%
• 11	Premium	11%
• 8	Underwriting	8%
• 19	Miscellaneous	19%
<hr/>		<hr/>
100		100%

IX. RECOMMENDATIONS

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

1. The Company must review and revise internal control procedures to ensure compliance with cancellation and nonrenewal notice requirements of Act 68, Sections 2002, 2003 and 2006 [40 P.S. §991.2002, 2003 and 2006], so that the violations noted in the Report do not occur in the future.
2. The Company must review Title 75, Pa. C.S. §1791 violations to ensure that the notice of available benefits is given to the insured at the time of application as noted in the Report.
3. The Company must review Title 75, Pa. C.S. §1791.1(a) and (b) violations to ensure that an itemized invoice listing minimum coverages and tort options are provided at the time of application, as noted in the Report, and do not occur in the future.
4. The Company must review Title 75, Pa. C.S. §1791.1(c) to ensure that violations regarding the requirement to provide notice to insureds stating that discounts are available for drivers, as noted in the Report, do not occur in the future.
5. 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.

6. The Company must review Title 31, Pa. Code, Section 67.33 to ensure that the violation regarding assessing an improper surcharge does not occur in the future.
7. When a surcharge is imposed on a private passenger automobile policy the Company must specify the manner in which the surcharge was made and clearly identify the amount of the surcharge and give notice to the insured. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Title 75, Pa. C.S. §1799.3(d) do not occur in the future.
8. The Company must revise procedures to ensure that proper rates for nonstacked limits for uninsured and underinsured motorist coverage are provided when the insured signs a rejection of stacked forms. This is to ensure that the violation noted under Title 75, Pa. C.S. §1738(d)(1) and (2) does not occur in the future.
9. The Company must review Act 246, Section 4(a) and (h) [40 P.S. §1184] and take appropriate measures to ensure the rating violations listed in the report do not occur in the future.
10. The premium overcharges noted in the rating section of this report must be refunded to the insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the report issue date.

11. The Company must review Title 75, Pa. C.S. §1705(b)(1) to ensure that the tort option elected by a named insured shall apply to all private passenger motor vehicle policies of the named insured issued by the same insurer and shall continue in force as to all subsequent renewal policies, until the insurer receives a properly executed form electing the other tort option.
12. The Company must review Title 31, Pa. Code, Section 146.5(b) with its claim staff to ensure that all Department inquiries respecting a claim are responded to within 15 working days of receipt of such inquiry.
13. The Company must review Title 31, Pa. Code, Section 146.5(c) with its claim staff to ensure that all pertinent communications from a claimant are responded to within ten working days.
14. 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 violation relating to status letters, as noted in the Report does not occur in the future.
15. The Company must ensure that all applications contain the required fraud warning notice.
16. The Company must review Title 75, 1718(c) to ensure that the violation relative to driver exclusion noted in the Company's underwriting guidelines, as noted in the Report, does not occur in the future.

X. COMPANY RESPONSE



Cheryl L. Davis, MCM, ACS, AIRC
Market Conduct Director

March 17, 2011

Chester A Derk Jr., AIE, HIA
Pennsylvania Insurance Department - Office of Market Regulation
Bureau of Market Conduct – Property and Casualty Division
1227 Strawberry Square
Harrisburg, PA 17120

RE: Draft Market Conduct Report and Exhibits

Mr. Derk:

Thank you once again for providing us with the opportunity to review the Pennsylvania Insurance Department's (hereinafter referred to as "Department") draft market conduct investigation report. Please find enclosed for your review and consideration, the response from Nationwide Affinity Insurance Company of America (hereinafter referred to as "Nationwide" or "Company").

For ease of review, the response has been formatted to include text from Pennsylvania's report followed by notation of where the Company's response is included. In addition, where responses are specific to a business sales channel (agent, direct or internet), we have included this information as well.

If you have any questions or concerns, please feel free to contact me by email at davisc60@nationwide.com or via telephone at (614) 249-4580.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl L. Davis".

Cheryl L. Davis
Market Conduct Director

**Nationwide Response to Pennsylvania NAICOA Draft Market Conduct Report
March 17, 2011**

IX. RECOMMENDATIONS (Pages 31 - 33 of Draft Report)

1. The Company must review and revise internal control procedures to ensure compliance with cancellation and nonrenewal requirements of Act 68, Sections 2002, 2003 and 2006 [40 P.S. §991.2002, 2003 and 2006], so that the violations noted in the Report do not occur in the future.

Company Response:

The Company accepts this recommendation and has revised internal control procedures to ensure compliance with Act 68. All associates handling cancellation notices will be apprised of the Department's findings within 30 days. The Company will also remind all associates within 30 days that 15-days advance notice is required for all 60-day cancellations. The Company has also developed a letter to be issued when rescinding a policy which will go into production on July 8, 2011. Agents will be reminded that they must have documentation on file for all request cancels, transfers and rewrites. Review of cancellation and nonrenewals procedures are included in annual audits by our Compliance Department.

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

Company Response:

The Company accepts this recommendation. On January 1, 2011, the Direct channel introduced a process through which the Notice of Available Benefits and Limits required by Section 1791 will be emailed to the insured prior to binding coverage over the phone. The Direct agent will ask the customer to confirm that they have received and understand the disclosure prior to continuing to the bind process. For any customers who are unwilling or unable to receive the disclosure via email, the disclosure will be mailed to the customer and the binding process will not be completed until the Direct channel is able to confirm the customer's receipt and understanding of the disclosure. This disclosure will continue to be included in the Welcome Packet mailed to the insured post-bind, to ensure the customer also receives a hard-copy.

3. The Company must review Title 75, Pa. C.S. §1791.1(a) and (b) violations to ensure that an itemized invoice listing minimum coverages and tort options are provided at the time of application, as noted in the Report, and do not occur in the future.

Company Response:

- **Internet Sales:** The Company accepts this recommendation. On November 6, 2010, the Internet channel introduced a disclosure feature which includes the itemized invoice listing minimum coverages required by Section 1791.1(a) and

the Notice of Tort Options required by Section 1791.1(b). This disclosure is presented to the Internet customer prior to binding coverage. The customer is asked to acknowledge that the disclosure was viewed prior to proceeding into the final sale. A customer is not able to navigate into the final bind process without affirming that the disclosure was viewed. In addition to the pre-bind disclosure, an electronically signable minimum package invoice document is presented to the customer on-line.

- **Direct Sales:** The Company accepts this recommendation. On January 1, 2011, the Direct channel introduced a process through which the itemized invoice listing minimum coverages required by Section 1791.1(a) is emailed to the insured prior to binding coverage over the phone. As of March 8, 2011, the Notice of Tort Options required by Section 1791.1(b) will be emailed to the insured prior to binding coverage over the phone. In each case, the Direct agent will ask the customer to confirm that they received and understand the disclosure prior to continuing to the bind process. For any customers who are unwilling or unable to receive the disclosure via email, the disclosure will be mailed to the customer and the binding process will not be completed until the Direct channel is able to confirm the customer's receipt and understanding of the disclosure. This disclosure will continue to be included in the Welcome Packet mailed to the insured post-bind to ensure the customer has a hard-copy in their possession.
4. The Company must review Title 75, Pa. C.S. §1791.1(c) to ensure that violations regarding the requirement to provide notice to insureds stating that discounts are available for drivers, as noted in the Report, do not occur in the future.

Company Response:

- **Internet Sales:** The Company accepts this recommendation. On November 6, 2010, the Internet channel introduced a disclosure feature which includes the Notice of Premium Discounts required by Section 1791.1(c). This disclosure is presented to the Internet customer prior to binding coverage. The customer is asked to acknowledge that the disclosure was viewed prior to proceeding into the final sale. A customer is not able to navigate into the final bind process without affirming that the disclosure was viewed. In addition to the pre-bind disclosure, a hardcopy of the Notice of Premium Discounts document is sent to the customer post-bind.
- **Direct Sales:** The Company accepts this recommendation. On January 1, 2011, the Direct channel has introduced a process through which the Notice of Premium Discounts required by Section 1791.1(c) will be emailed to the insured prior to binding coverage over the phone. The Direct agent will ask the customer to confirm that they received and understand the disclosure prior to continuing to the bind process. For any customers who are unwilling or unable to receive the disclosure via email, the disclosure will be mailed to the customer and the binding process will not be completed until the Direct channel is able to confirm the customer's receipt and understanding of the disclosure. This disclosure will continue to be included in the Welcome Packet mailed to the insured post-bind to ensure the customer also receives a hard-copy.

5. The Company must review Title 75, Pa. C.S. §1793(b) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure plan at the time of application, as noted in the Report, do not occur in the future.

Company Response:

- **Internet Sales:** The Company accepts this recommendation. On November 6, 2010, the Internet channel introduced a disclosure feature which includes the Surcharge Disclosure Plan required by Section 1793(b). This disclosure is presented to the Internet customer prior to binding coverage. The customer is asked to acknowledge that the disclosure was viewed prior to proceeding into the final sale. A customer is not able to navigate into the final bind process without affirming that the disclosure was viewed. In addition to the pre-bind disclosure, a hardcopy of the Surcharge Disclosure Plan document is sent to the customer post-bind.
 - **Direct Sales:** The Company accepts this recommendation. On January 1, 2011, the Direct channel introduced a process through which the Surcharge Disclosure Plan required by Section 1793(b) will be emailed to the insured prior to binding coverage over the phone. The Direct agent will ask the customer to confirm that they have received and understand the disclosure prior to continuing to the bind process. For any customers who are unwilling or unable to receive the disclosure via email, the disclosure will be mailed to the customer and the binding process will not be completed until the Direct channel is able to confirm the customer's receipt and understanding of the disclosure. This disclosure will continue to be included in the Welcome Packet mailed to the insured post-bind to ensure the customer also receives a hard-copy.
6. The Company must review Title 31, Pa. Code, Section 67.33 to ensure that the violation regarding assessing an improper surcharge does not occur in the future.

Company Response:

The Company accepts this recommendation. Our Information Technology partners are working on a process to correct this issue to bring the Company into compliance. The Company will notify the Department of the solution implementation date once it has been established.

7. When a surcharge is imposed on a private passenger automobile policy the Company must specify the manner in which the surcharge was made and clearly identify the amount of the surcharge and give notice to the insured. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Title 75, Pa. C.S. §1799.3(d) do not occur in the future.

Company Response:

The Company accepts this recommendation. The system was modified effective January 7, 2011. The company has validated that the correction is in production.

8. The Company must revise procedures to ensure that proper rates for nonstacked limits for uninsured and underinsured motorist coverage are provided when the insured signs a rejection of stacked forms. This is to ensure that the violation noted under Title 75, Pa. C.S. §1783(d)(1) and (2) does not occur in the future.

Company Response:

The Company accepts this recommendation. All associates handling PA Act 6 Forms will be apprised of the Department's findings within 30 days. A process is in place to monitor file activity to ensure we are handling Act 6 Forms appropriately and in accordance with section 1783(d)(1) and (2).

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

Company Response:

The Company accepts this recommendation. A system modification was implemented effective January 7, 2011 for the surcharge amount and notice. The modification was verified in production for the rating violation identified in Recommendation #7. Our Information Technology partners are also working on the system modification in Recommendation #6.

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

Company Response:

All policy credits/refunds have been made with the exception of policy number "5837E 136783". This policy had been archived on our system. We are in the process of restoring the policy in order to generate the refund. We will provide the required proof to the Department once the refund has been processed. Proof of the refunds will be provided under separate cover to the Department.

11. The Company must review Title 75, Pa. C.S. §1705(b)(1) to ensure that the tort option elected by a named insured shall apply to all private passenger motor vehicle policies of the named insured issued by the same insurer and shall continue in force as to all subsequent renewal policies, until the insurer receives a properly executed form electing the other tort option.

Company Response:

All associates handling PA Act 6 Forms will be apprised of the Department's findings within 30 days. A process is in place to monitor file activity to ensure we are handling Act 6 Forms appropriately and accordingly to the statutes cited in this Recommendation.

12. The Company must review Title 31, Pa. Code, Section 146.5(b) with its claim staff to ensure that all Department inquiries respecting a claim are responded to within 15 working days of receipt of such inquiry.

Company Response:

While we believe the two claims complaints cited in this market conduct review were handled timely, Title 31, Pa. Code training occurs annually and with new managers and associates. This training will continue to be held to ensure compliance.

13. The Company must review Title 31, Pa. Code, Section 146.5(c) with its claim staff to ensure that all pertinent communications from a claimant are responded to within ten working days.

Company Response:

Title 31, Pa. Code training occurs annually and with new managers and associates. This training will continue to be held to ensure compliance.

14. 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 violation relating to status letters, as noted in the Report does not occur in the future.

Company Response:

Title 31, Pa. Code training occurs annually and with new managers and associates. This training will continue to be held to ensure compliance.

15. The Company must ensure that all applications contain the required fraud warning notice.

Company Response:

The Company accepts this recommendation. On January 1, 2011, the Direct channel has introduced a process through which the fraud warning notice required by Section 1822 will be emailed to the insured prior to binding coverage over the phone. The Direct agent will ask the customer to confirm that they have received and understand the disclosure prior to continuing to the bind process. For any customers who are unwilling or unable to receive the disclosure via email, the disclosure will be mailed to the customer and the binding process will not be completed until the Direct channel is able to confirm the customer's receipt and understanding of the disclosure. This disclosure will continue to be included in the Welcome Packet mailed to the insured post-bind to ensure the customer also receives a hard-copy.

16. The Company must review Title 75, 1718(c) to ensure that the violation relative to driver exclusion noted in the Company's underwriting guidelines, as noted in the Report, does not occur in the future.

Company Response:

The Company accepts this recommendation. The Insurability Guidelines have been updated effective January 20, 2011. The Spousal Exclusion language now reflects that a spouse may be excluded if there is automobile liability coverage elsewhere.

CONCERN (Pages 16, 19, 20, & 22 of Draft Report)

1. The Company shall change the format for the rental car coverage on the declarations page to boldface CAPITAL letters going forward.

Company Response:

A system modification went into production on September 10, 2010. The declaration page now includes important message in boldface capital letters.

CONCERN (Page 29 of Draft Report)

2. The Company failed to respond to the Department's inquiries concerning cancellations within 15 days.

Company Response:

The Company agrees that the Company's standard business practices were not followed in these instances. Our associates have been reminded to follow Company practices when responding to the Department and that it is critical to respond to the Department's inquiries within 15 days.

CONCERN (Page 29 of Draft Report)

3. The Company failed to respond to the insured's inquiries concerning agents within 10 working days.

Company Response:

The Company agrees that the Company's standard business practices were not followed in this instance. Our associates have been reminded to follow Company practice when responding to the insureds inquiries regarding agents.

CONCERN (Page 29 of Draft Report)

4. During the experience period, the Company inadvertently mailed cancellation notices to the Insurance Department instead of insured on two separate occasions, involving 28 insureds. The Company was only made aware of this error, because they were contacted by the Department. The Company needs to make sure that proper procedures are followed to ensure all insureds are mailed a copy of their cancellation notice.

Company Response:

The Company reviewed its mailing process and immediately took steps to avoid similar errors after this was identified.