

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**NATIONAL GENERAL ASSURANCE  
COMPANY**

Maryland Heights, Missouri

**AS OF  
June 19, 2007**

**COMMONWEALTH OF PENNSYLVANIA**



**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

**Issued: August 3, 2007**

VERIFICATION

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

*June A. Coleman*

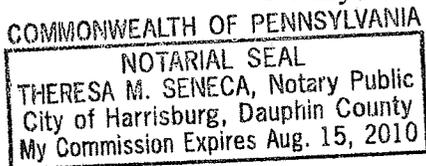
June A. Coleman, Examiner-in-Charge

Sworn to and Subscribed Before me

This 30 Day of *May*, 2007

*Theresa M. Seneca*

Notary Public



# NATIONAL GENERAL ASSURANCE COMPANY

## TABLE OF CONTENTS

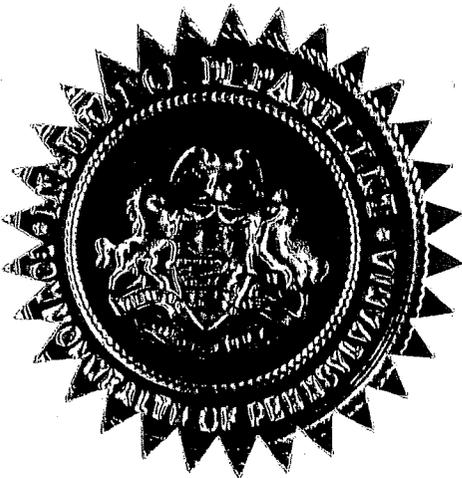
Order		
I.	Introduction.....	1
II.	Scope of Examination.....	3
III.	Company History/Licensing.....	4
IV.	Underwriting Practices and Procedures.....	5
V.	Underwriting	
	A. Private Passenger Automobile.....	6
	B. Assigned Risk.....	9
VI.	Rating	
	A. Private Passenger Automobile.....	10
	B. Assigned Risk.....	18
VII.	Claims.....	19
VIII.	Forms.....	26
IX.	Advertising.....	27
X.	Consumer Complaints.....	28
XI.	Licensing.....	30
XII.	Recommendations.....	33
XIII.	Company Response.....	37

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 6<sup>th</sup> 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:
NATIONAL GENERAL	Sections 641.1-A and 671-A of
ASSURANCE COMPANY	Act 147 of 2002 (40 P.S. §§ 310.41,
500 W. Fifth Street	310.71 and 323.3)
Winston-Salem, NC 27101	Section 903(a) of the Insurance
	Department Act, Act of May 17,
	1921, P.L. 789, No. 285 (40 P.S.
	§ 323.3)
	Sections 4(a) and 4(h) of the Act of
	June 11, 1947, P.L. 538, No. 246
	(40 P.S. §§ 1184)
	Act 1990-6, Sections 1731(b)(c),
	1738(c)(d)(1)(2), 1791, 1791.1(b),
	1792(b)(1), and 1799.3(a), (c) and (d)
	(Title 75, Pa.C.S. §§ 1731, 1738,
	1791, 1792 and 1799)
	Section 5(a)(7)(iii) of the Unfair
	Insurance Practices Act, Act of
	July 22, 1974, P.L. 589, No. 205 (40
	P.S. § 1171.5)
	Sections 2006(3) and 2008(b) of
	Act 68 of 1998 (40 P.S. §§991.2006
	and 991.2008)
	Title 31, Pennsylvania Code, Sections
	62.3(e)(4), 67.33(b)(1), 69.22(c), and
	146.6
	Title 18, Pennsylvania Consolidated
	Statutes, Section 6310.4(d)
	Title 75, Pennsylvania Consolidated
	Statutes, Section 1161(a) and (b),
	and 1822
Respondent.	Docket No. MC07-07-022

CONSENT ORDER

AND NOW, this 3<sup>rd</sup> day of August, 2007, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

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

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

FINDINGS OF FACT

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

- (a) Respondent is National General Assurance Company and maintains its address at 500 West Fifth Street, Winston-Salem, North Carolina 27101.

- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2005 through June 30, 2006.
- (c) On June 19, 2007, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on July 19, 2007.
- (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 prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act (40 P.S. § 310.71).
  - (iii) Section 903(a) of the Insurance Department Act (40 P.S. § 323.3), which requires every company subject to examination to keep all books, records, accounts, papers, documents and any computer or other recordings relating to its property, assets, business and affairs in such manner and for such time

periods as the Department may require in order that its representatives may readily verify the financial condition of the company, and ascertain whether the company has complied with the laws of this Commonwealth;

- (iv) 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;
- (v) Section 1731(b)(c) of Act 1990-6, Title 75, Pa.C.S. § 1731, which requires the insurer to advise that named insured shall be informed that he may exercise the waiver for uninsured and underinsured motorist coverage by signing written rejection forms;
- (vi) Section 1738(c)(d)(1)(2) of Act 1990-6, Title 75, Pa.C.S. § 1738, which requires the insurer to advise that named insured shall be informed that he may exercise the waiver for stacked uninsured and underinsured motorist coverage by signing written rejection forms;
- (vii) 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;

- (viii) Section 1791.1(b) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires an insurer to provide an insured with a notice of the availability of two alternatives of full tort insurance and limited tort insurance;
- (ix) Section 1792(b)(1) of Act 1990-6, Title 75, Pa.C.S. § 1792, which requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it;
- (x) Section 1799.3(a) of Act 1990-6, Title 75, Pa. C.S. § 1799, which prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,150 in excess of any self insured retention or deductible applicable to the named insured;

- (xi) Section 1799.3(c) of Act 1990-6, Title 75, Pa. C.S. § 1799, which states no surcharge, rate penalty or driver record point assignment shall be made as a result of an insurer paying a first party medical claim;
- (xii) Section 1799.3(d) of Act 1990-6, Title 75, Pa.C.S. § 1799, which requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the named insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect;
- (xiii) Section 5(a)(7)(iii) of Act 205 (40 P.S. § 1171.5), which prohibits unfair discrimination of individuals of the same class and 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;
- (xiv) Section 2006(3) of Act 68 of 1998 (40 P.S. § 991.2003), which requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the specific reason or reasons of the insurer for cancellation;

- (xv) Section 2008(b) of Act 68 of 1998 (40 P.S. § 991.2008), which requires any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Commissioner that he review the action of the insurer in refusing to write a policy for the applicant;
- (xvi) Title 31, Pennsylvania Code, Section 62.3(e)(4), which requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value;
- (xvii) Title 31, Pennsylvania Code, Section 67.33(b)(1), which prohibits an insurer from assessing a premium surcharge for the payment of a claim arising from one or more accidents where the insured was not at-fault in causing or contributing to the accident;
- (xviii) Title 31, Pennsylvania Code, Section 69.22(c), which states if an insured's first-party limits have been exhausted, the insurer shall, within 30 days of the receipt of the provider's bill, provide notice to the provider and the insured that the first-party limits have been exhausted;

- (xix) 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;
- (xx) Title 18, Pennsylvania Consolidated Statutes, Section 6310.4(d), which states an insured shall not increase premiums, impose any surcharge or rate penalty, or make any driver record point assignment for automobile insurance, nor shall an insurer cancel or refuse to renew an automobile insurance policy on account of a suspension under this section;
- (xxi) Section 1161(a) and (b) of Title 75, Pa. C.S., which states an insurer who owns, possesses or transfers a vehicle located or registered in the Commonwealth which qualifies as a salvage vehicle shall make application to the Department for a certificate of salvage for that vehicle; and
- (xxii) 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 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 Sections 4(a) and (h) of the Casualty and Surety Rate Regulatory Act, No. 246 (40 P.S. § 1184) are punishable under Section 16 of the Casualty and Surety Rate Regulatory Act:

- (i) imposition of a civil penalty not to exceed \$50 for each violation or not more than \$500 for each such wilful violation;
- (ii) suspension of the license of any insurer which fails to comply with an Order of the Commissioner within the time limited by such Order, or any extension thereof which the Commissioner may grant.

(d) Respondent's violations of Section 5(a)(7)(iii) of the Unfair Insurance Practices Act, No. 205 (40 P.S. §§ 1171.5) are punishable by the following, under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9):

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

(e) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair

Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:

- (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);
  - (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).
- (f) Respondent's violations of Sections 2006 and 2008 of Act 68 of 1998 are punishable by the following, under Section 2013 of the Act (40 P.S. § 991.2013): Any individual or insurer who violates any of the provisions of this article may be sentenced to pay a fine not to exceed five thousand dollars (\$5,000.00).
- (g) Respondent's violations of Title 31, Pennsylvania Code, Section 146.6 is 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 Thirty Thousand Dollars (\$30,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.
- (e) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Office Manager, Bureau of Enforcement, 1227 Strawberry Square,

Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

6. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein may pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

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

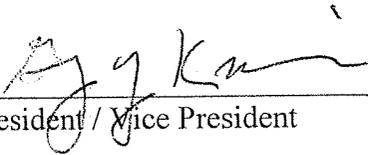
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

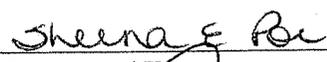
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

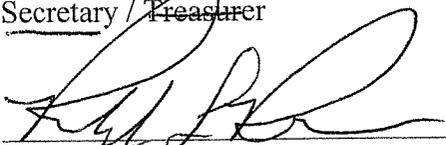
10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Insurance Department. Only the Department 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 Department or a duly authorized delegee.

BY: NATIONAL GENERAL ASSURANCE  
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 National General Assurance Company's office located in Winston Salem, North Carolina, from January 2, 2007, through January 27, 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.

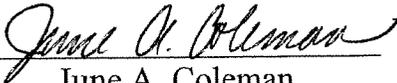
In certain areas of review listed in this Report, the examiners will refer to "error ratio." This error ratio is calculated by dividing the number of policies with violations by the total number of policies reviewed. For example, if 100 policies are reviewed and it is determined that there are 20 violations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

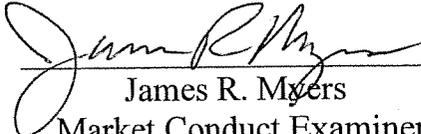
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel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

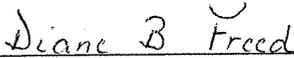
The courtesy and cooperation extended by the officers and employees of the Company during the course of the examination is hereby acknowledged.

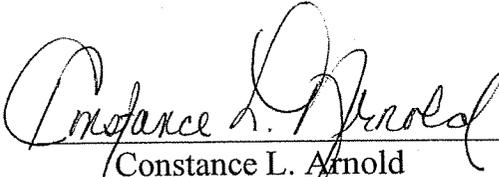
The undersigned participated in this examination and in preparation of this Report.

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

  
\_\_\_\_\_  
June A. Coleman  
Market Conduct Examiner

  
\_\_\_\_\_  
James R. Myers  
Market Conduct Examiner

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

  
\_\_\_\_\_  
Constance L. Arnold  
Market Conduct Examiner

## II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on National General Assurance Company, hereinafter referred to as “Company,” at their office located in Winston Salem, North Carolina. 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, 2005, through June 30, 2006, unless otherwise noted. The purpose of the examination was to determine the Company’s compliance with Pennsylvania insurance laws and regulations.

The examination focused on Company operations in the following areas:

1. Private Passenger Automobile
  - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations and declinations.
  - Rating – Proper use of all classification and rating plans and procedures.
2. Claims
3. Forms
4. Advertising
5. Complaints
6. Licensing

### III. COMPANY HISTORY AND LICENSING

National General Assurance Company was incorporated June 2, 1983, under the laws of Missouri and began underwriting January 1, 1989.

#### LICENSING

National General Assurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2006. The Company is licensed in all states except Hawaii, Maine, Massachusetts, New Hampshire, New Jersey and Vermont. The Company's 2005 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$20,100,558. 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) \$2,354,129; Other Private Passenger Auto Liability \$8,968,726 and Private Passenger Auto Physical Damage \$8,777,703.

#### IV. UNDERWRITING PRACTICES AND PROCEDURES

As part of the examination, the Company was requested to supply manuals, underwriting guides, bulletins, directives or other forms of underwriting procedure communications for each line of business being reviewed. Underwriting guides were furnished for private passenger automobile. The purpose of this review was to identify any inconsistencies which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature.

The following finding was 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 Company’s guideline stated the following: Business Specifications – Other Insurance – Any operator that maintains continuous auto liability insurance with another company, and is at least 21 years old.

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

#### 2. Midterm Cancellations

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

The primary purpose of the review was to determine compliance with Act 68, Section 2003 (40 P.S. §991.2003), which establishes conditions under which action by the insurer is prohibited, and Section 2006 (40 P.S. §991.2006), which establishes the requirements which must be met regarding the form and conditions of the cancellation notice.

From the universe of 537 private passenger automobile files identified as midterm cancellations by the Company, 100 files were selected for review. All 100 files were received and reviewed. No violations were noted.

### 3. Nonrenewals

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

The purpose of the review was to determine compliance with Act 68, Section 2003 (40 P.S. §991.2003), which establishes conditions under which action by the insurer is prohibited, and Section 2006 (40 P.S. §991.2006), which establishes the requirements which must be met regarding the form and conditions of the cancellation notice.

The universe of 11 private passenger automobile files identified as a nonrenewals by the Company was selected for review. All 11 files were received and reviewed. The violation noted resulted in an error ratio of 9%.

The following finding was made:

*1 Violation Act 68, Section 2006(3) [40 P.S. §991.2006(3)]*

Requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the specific reason or reasons of the insurer for cancellation. The Company failed to provide a specific reason for nonrenewal.

### 4. Declinations

A declination is any application that is received by the Company and was declined to be written.

The primary purpose of the review was to determine compliance with Act 68, Section 2003 [40 P.S. §991.2003], which establishes conditions under which action by the insurer is prohibited.

From the universe of 155 private passenger automobile files identified as refusals to write, 75 files were selected for review. Of the 75 files requested, 45 files were received and reviewed. The 52 violations noted were based on 52 files, resulting in an error ratio of 69%.

The following findings were made:

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

Any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Insurance Commissioner that he review the action of the insurer in refusing to write a policy for the applicant. The Company failed to provide a specific reason for refusal to write in the 22 files noted.

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

Requires every company subject to examination to keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its business in such manner and for such time as may be required in order that the

Department may readily verify whether the Company has complied with the laws of this Commonwealth. The Company failed to maintain letters of refusal to write. The Company has not conformed to the Department Notice 2005-09, Retention of Records which states that all general correspondence shall be retained for 5 years.

**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 2,514 private passenger automobile policies identified as new business without surcharges by the Company, 50 files were selected for review. All 50 files were received and reviewed. The 3,734 violations noted were based on 1,860 files, resulting in an error ratio of 74%.

The following findings were made:

*12 Violations Title 75, Pa. C.S. §1738(c)(d)(1)&(2)*

The named insured shall be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms. The Company did not provide the signed rejection form of stacked limits for uninsured and underinsured motorists coverage for the 12 files noted.

*1,860 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 language at the time of application for the 1,860 files noted.

*1,860 Violations Title 75, Pa. C.S §1791.1(b)*

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the required language in the notice of tort options at the time of application for the 1,860 files noted.

*2 Violations Title 75, Pa. C.S. §1792(b)(1)*

Requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500.00 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it. The Company did not provide a signed statement from the insured requesting a deductible lower than \$500 for the 2 files noted.

Private Passenger Automobile – New Business With Surcharges

From the universe of 478 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 725 violations noted were based on 354 files, resulting in an error ratio of 74%.

The following findings were made:

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

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

*15 Violations Title 75, Pa. C.S. §1738(c)(d)(1)&(2)*

The named insured shall be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms. The Company did not provide the signed rejection form of stacked limits for uninsured and underinsured motorists coverage for the 15 files noted.

*354 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 language at the time of application for the 354 files noted.

*354 Violations Title 75, Pa. C.S. §1791.1(b)*

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the required language in the notice of tort options at the time of application for the 354 files noted.

*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. §1799.3(c)*

No surcharge, rate penalty or driver record point assignment shall be made as a result of an insurer paying a first party medical claim. The Company surcharged for an accident that resulted in paying a first party medical claim. This resulted in an overcharge of \$128.

## 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 8,447 private passenger automobile 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.

#### Private Passenger Automobile – Renewals With Surcharges

From the universe of 745 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 292 violations noted were based on 290 files, resulting in an error ratio of 39%.

The following findings were made:

#### *1 Violation Title 31, Pa. Code, Section 67.33*

Circumstances where a premium surcharge can be assessed on a named insured.

*AND*

#### *Title 18, Pa. C.S. §6310.4(d)*

An insured shall not increase premiums, impose any surcharge or rate penalty, or make any driver record point assignment for automobile insurance, nor shall an insurer cancel or refuse to renew an automobile insurance policy on

account of a suspension under this section. The Company surcharged for an underage alcohol conviction not involving a motor vehicle.

*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. §1799.3(a)*

Prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,150 in excess of any self insured retention or deductible applicable to the named insured. The Company surcharged for an accident that did not meet the threshold requirement. This resulted in an overcharge of \$151.

*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. §1799.3(c)*

No surcharge, rate penalty or driver record point assignment shall be made as a result of an insurer paying a first party medical claim. The Company surcharged for an accident that resulted in paying a first party medical claim, which resulted in an overcharge of \$151.

*289 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. Of the 289 violations noted, 12 violations were due to the Company not providing the surcharge amount on the premium notice. The remaining 277 violations resulted from not providing specific information on the premium notice prior to December 6, 2005, pertaining to dates and clarification between accidents and violations which result in a surcharge.

## **B. Private Passenger Automobile – Assigned Risk**

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

## VII. CLAIMS

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

The Claims review consisted of the following areas of review:

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

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

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

From the universe of 1,066 private passenger automobile property damage claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. Of the 50 files reviewed, 4 were identified as total loss claims. The 3 violations noted were based on 2 files, resulting in an error ratio of 4%.

The following findings were made:

*1 Violation Title 31, Pa. Code, Section 62.3(e)(4)*

Requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value. The file noted did not have the applicable sales tax included in the replacement value of the vehicle.

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

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

(b) Application for certificate of salvage. – An owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. Except as provided in Section 1163, the transferee shall immediately present the assigned certificate of title to the Department or an authorized agent of the Department with an application for a certificate of salvage upon a form furnished and prescribed by the Department. An insurer as defined in Section 1702 to which title to a vehicle is assigned upon payment to the insured or claimant of the replacement value of a vehicle shall be regarded as a transferee under this subsection. The 2 files

noted did not reflect a salvage title was obtained. The Company also failed to have the claimant show evidence of the issued certificate of salvage before paying the vehicle replacement value when the possession of the vehicle was owner retained.

#### **B. Automobile Comprehensive Claims**

From the universe of 1,182 private passenger automobile comprehensive claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### **C. Automobile Collision Claims**

From the universe of 1,802 private passenger automobile collision claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. Of the 50 files reviewed, 3 files were identified as a total loss collision claim. The 3 violations noted were based on 3 files, resulting in an error ratio of 6%.

The following findings were made:

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

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

make application to the Department for a certificate of salvage for that vehicle.

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

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

Every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The Company did not provide timely status letters for the 2 claims noted.

#### **D. Automobile Total Loss Claims**

From the universe of 232 private passenger automobile total loss claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 18 violations noted were based on 14 files, resulting in an error ratio of 28%.

The following findings were made:

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

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

(b) Application for certificate of salvage. – An owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. Except as provided in Section 1163, the transferee shall immediately present the assigned certificate of title to the Department or an authorized agent of the Department with an application for a certificate of salvage upon a form furnished and prescribed by the Department. An insurer as defined in Section 1702 to which title to a vehicle is assigned upon payment to the insured or claimant of the replacement value of a vehicle shall be regarded as a transferee under this subsection. The 7 files

noted did not reflect a Pennsylvania salvage title was obtained.

*3 Violations Title 31, Pa. Code, Section 62.3(e)(4)*

Requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value. The 3 claims noted did not have the applicable sales tax included in the replacement value of the vehicle.

*8 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 a timely status letter for the 8 claims noted.

The following concern was noted:

**Concern:** The Company's claim handling guidelines found at [http://home.gmacinsurance.com/ClaimsRefs/Procedures\\_Guidelines/Salvag ebyState/Pennsylvania.doc](http://home.gmacinsurance.com/ClaimsRefs/Procedures_Guidelines/Salvag ebyState/Pennsylvania.doc) referenced Section 1117 of the Pennsylvania Vehicle Code which was repealed as of December 9, 2002, effective in 60 days. The correct cite should reference Title 75, Pa. C.S. §1161.

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

From the universe of 466 private passenger automobile first party medical claims reported during the experience period, 30 files were selected for review. All 30 files were received and reviewed. The violation noted resulted in an error ratio of 3%.

The following finding was made:

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

Requires the insurer when an insured's first-party limits have been exhausted, to provide notice to the provider and the insured within 30 days of the receipt of the provider's bill. The Company did not provide evidence that a notice of exhausted limits was sent to the provider and the insured.

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

Although the Company did not report any automobile first party medical claims referred to a peer review organization, the Company was asked to provide copies of all contracts it has in place with a peer review organization. The Company provided one contract. No violations were 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 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:

### Claims

#### *2 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 correct fraud warning on a property damage appraisal and an Affidavit of Auto Theft.

## 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 49 pieces of advertising which included pre-approved producer letters and inserts. Internet advertising was also reviewed. No violations were noted.

## X. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of their consumer complaint logs for the preceding four years. The Company identified 16 consumer complaints received during the experience period and provided all consumer complaint logs requested. All 16 complaint files reported were selected, received and reviewed.

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

The following findings were made:

*1 Violation Act 68, Section 2006(3) [40 P.S. §991.2006(3)]*

Requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the specific reason or reasons of the insurer for cancellation. The Company failed to provide a specific reason for nonrenewal.

*1 Violation Title 31, Pa. Code, Section 67.33*

Circumstances where a premium surcharge can be assessed on a named insured.

*AND*

*Title 18, Pa. C.S. §6310.4(d)*

An insured shall not increase premiums, impose any surcharge or rate penalty, or make any driver record point assignment for automobile insurance, nor shall an insurer cancel or refuse to renew an automobile insurance policy on account of a suspension under this section. The Company surcharged for an underage alcohol conviction not involving a motor vehicle.

*3 Violations 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. Of the 3 violations noted, 1 file was improperly rated due to a single incident underage alcohol conviction. The remaining 2 violations were due to an unlicensed driver being rated and was disputed by the insured. The Company should have offered an exclusion for the unlicensed driver and rated the policy appropriately. These violations resulted in overcharges of \$298.

The following synopsis reflects the nature of the 16 complaints that were reviewed.

• 7	Cancellation/Nonrenewal	44%
• 6	Premium Increase	38%
• 3	Underwriting	18%
<hr/>		<hr/>
16		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:

*3 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.

Sharon K. Eagan  
Karen Grady  
Donna L. McPeak

*3 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.

Tanya N. Dallas  
Laurie E. Kimmel  
Raphael Gallardo

## *XII. RECOMMENDATIONS*

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

1. The Company must review and revise internal control procedures to ensure compliance with nonrenewal notice and refusal to write requirements of Act 68, Sections 2006 and 2008 [40 P.S. §§991.2006 and 991.2008], 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 to ensure that the notice of available benefits with the required language is given to the insured at the time of application as noted in the Report.
3. The Company must review Title 75, Pa. C.S. §1791.1(b) to ensure that the notice of tort options with the required language is provided at the time of application as noted in the Report and does not occur in the future.
4. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to exercise the waiver for uninsured and underinsured motorist coverage forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Title 75, Pa. C.S. §1731(b) & (c) do not occur in the future.

5. The Company must revise underwriting procedures to ensure that the insured is aware that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms and retaining them with the underwriting file. This is to ensure that violations noted under Title 75, Pa. C.S. §1738(d)(1) and (2) do not occur in the future.
6. The Company must revise underwriting procedures to ensure that the insured is aware that there is an additional cost for purchasing a lower deductible for collision coverage. This is to ensure that violations noted under Title 75, Pa. C.S. §1792(b)(1) do not occur in the future.
7. When a surcharge is imposed on a private passenger automobile policy the Company must include the amount of the surcharge and the specifics of accidents and citations and give notice to the insured. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Title 75, Pa. C.S. §1799.3(d) do not occur in the future.
8. The Company must review Title 75, Pa. C.S. §1799.3(a) to ensure that a policy is not surcharged where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,150 in excess of any self-insured retention or deductible applicable to the named insured.
9. The Company must review Title 75, Pa. C.S. §1799.3(c) to ensure that a policy is not surcharged as a result of an insurer paying a first party medical claim.

10. The premium overcharges noted in the rating section of this report must be refunded to the insured and proof of such refund must be provided to the Insurance Department within 30 days of the report issue date.
11. The Company must review Act 246, Section 4 [40 P.S. §1184], and take appropriate measures to ensure the automobile rating violations listed in the report do not occur in the future.
12. 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, as noted in the Report, do not occur in the future.
13. The Company must review Title 75, Pa. C.S. §1161(a)&(b) with its claim staff to ensure that Pennsylvania salvage certificates are obtained and are retained with the claim file.
14. The Company must review Title 31, Pa. Code, Section 62.3(e)(4) with its claim staff to ensure that the applicable sales tax is included in the replacement value of a motor vehicle. The Company must review all claims where sales tax was not included in the replacement value of a motor vehicle. The sales tax must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.

15. The Company must 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.
  
16. 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)].
  
17. The Company must ensure that all claim forms contain the required fraud warning notice.

**XIII. COMPANY RESPONSE**

July 18, 2007

Mr. Chet Derk Jr., AIE, HIA  
Market Conduct Division Chief  
Commonwealth of Pennsylvania  
Insurance Department  
Bureau of Enforcement  
1227 Strawberry Square  
Harrisburg, PA 17120

RE: Examination Warrant Number: 06-M29-018  
National General Assurance Company

Dear Mr. Derk:

On behalf of National General Assurance Company (the "Company" or "We"), please allow this letter to serve as our response to the Report of Examination Warrant Number 06-M29-018 (the "Report"), which was received with your cover letter dated June 19, 2007. We have reviewed the Report and respectfully submit this response.

This response will address the recommendations beginning on page 33 of the Report. The recommendations made in the Report identify measures that the Department believes are necessary as a result of the number or the nature of the alleged violations noted in the Report. With respect to the other exceptions covered in the Report, but not addressed in the recommendations or within this response, we wish to note that the remaining areas typically involve a single or statistically insignificant number of unique errors and not a trend. Those exceptions are a reflection of human error or deviation from National General Assurance Company's established procedures and practices and do not require material institutional corrective actions. We have nonetheless taken steps to minimize the recurrence of these issues in the future.

We have organized our response in relation to the recommendations set forth in the Report as follows:

1. While the Company accepts the Department's recommendation, we would like to note that a reason was provided to the customers for the particular nonrenewal and the refusals to write specified in the exam. We are currently reviewing the available reasons provided to the customers and making modification to ensure compliance with Pennsylvania's nonrenewal notice and refusal to write requirements.

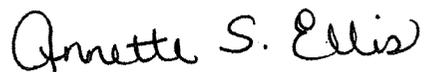
2. The Company accepts the Department's recommendation. We are revising internal procedures to incorporate additional language to the notice of available benefits provided at the time of application through email disclosures where the insured provides an email address.
3. The Company accepts the Department's recommendation. We are revising internal procedures to incorporate additional language to the notice of tort options provided at the time of application through email disclosures where the insured provides an email address.
4. The Company accepts the Department's recommendation and has internally addressed this issue to ensure compliance with the waiver of uninsured and underinsured motorist coverage forms.
5. The Company accepts the Department's recommendation and has internally addressed this issue to ensure the waiver of uninsured and underinsured motorist coverage forms are retained according to Title 75, PA Code, Section 1738 (d) (1) and (2).
6. The Company accepts the Department's recommendation and has reviewed its underwriting procedures to ensure that the insured is notified that there is an additional cost for purchasing a lower deductible for collision coverage. The company has also emphasized the importance of adhering to established procedures.
7. The Company accepts the Department's recommendation and has implemented changes to the surcharge information by providing the insured with the accidents and citations and dates accordingly. We have already complied with this recommendation as these changes were implemented prior to the beginning of this exam.
8. The Company accepts the Department's recommendation. We would note that only one violation was noted in the Report and the overcharge was corrected and the refund was paid to the insured.
9. The Company accepts the Department's recommendation. We would note that only one violation was noted in the Report and the overcharge was corrected and the refund was paid to the insured.

10. The Company accepts the Department's recommendation and has recalculated the three (3) premium overcharges noted in the Report. This impacted two (2) policies and resulted in two (2) refunds that have been paid to the insureds. We will send verification of the refunds as requested under separate cover.
11. The Company accepts the Department's recommendation. We have reviewed our rating procedures to ensure that we are in compliance of Act 246, Section 4 as noted in the Report and emphasized the importance of adhering to established procedures.
12. The Company accepts the Department's recommendation and has reviewed its claims procedures to ensure compliance of claims handling requirements with regard to notices as referenced in Title 31, Pennsylvania Code, Chapter 146. We have also emphasized to the Claims department the importance of complying with these Pennsylvania requirements.
13. The Company accepts the Department's recommendation and has reviewed its claims procedures to ensure compliance of retaining salvage certificates in the claim files. The company has emphasized the importance of adhering to established procedures. We are also communicating with our third party vendor to revise procedures with regard to out of state salvage vehicles that were originally registered in the state of Pennsylvania.
14. The Company accepts the Department's recommendation. We would note that only four (4) violations were noted in the Report and the sales tax was calculated and refunded for three (3) of the violations. The fourth violation resulted in an overpayment to the customer and a refund is not due. We will send verification of these three (3) refunds as requested under separate cover.
15. The Company accepts the Department's recommendation and has reviewed its procedures to ensure that all producers are appointed prior to accepting any business. The Company will also file appropriate notices of appointments and submit applicable appointment fees to the Department.
16. The Company accepts the Department's recommendation and is revising and reissuing internal guidelines to modify our definition of applicants maintaining other insurance coverage.

17. The Company accepts the Department's recommendation and has verified that the required fraud warning language appears on current claims forms.

Thank you for your consideration in this matter and for providing us with an opportunity to respond to the Report. We wish to offer our sincere gratitude to the Department and each individual examiner for the courtesies granted National General Assurance Company throughout the course of this examination.

Sincerely,

A handwritten signature in black ink that reads "Annette S. Ellis". The signature is written in a cursive style with a large initial 'A'.

Annette S. Ellis  
Compliance Supervisor  
GMAC Insurance