

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

UTICA FIRST INSURANCE COMPANY
Oriskany, New York

**AS OF
March 28, 2006**

COMMONWEALTH OF PENNSYLVANIA

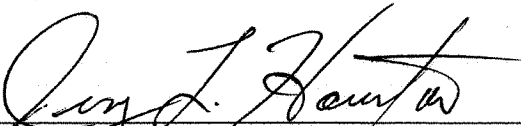


**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: May 10, 2006

VERIFICATION

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



Jerry L. Houston, Examiner-In-Charge

Sworn to and Subscribed Before me

This *13* Day of *March*, 2006



Notary Public

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

THERESA M. SENECA, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires Aug. 15, 2008

UTICA FIRST INSURANCE COMPANY

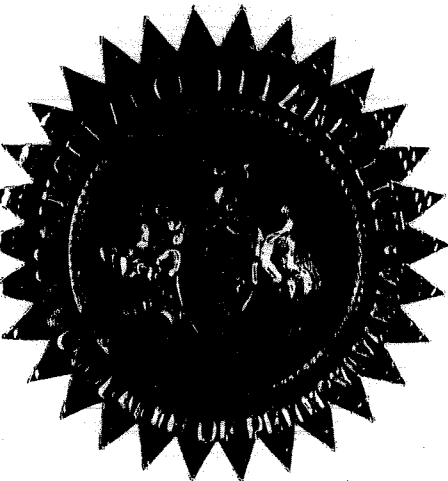
TABLE OF CONTENTS

Order	
I.	Introduction..... 1
II.	Scope of Examination..... 3
III.	Company History/Licensing..... 5
IV.	Underwriting Practices and Procedures..... 6
V.	Underwriting
	A. Personal Lines Property..... 7
	B. Commercial Lines..... 13
VI.	Rating
	A. Homeowners..... 17
	B. Tenant Homeowners..... 19
VII.	Claims..... 21
VIII.	Forms..... 24
IX.	Consumer Complaints..... 25
X.	Advertising..... 27
XI.	Licensing..... 28
XII.	Recommendations..... 29
XIII.	Company Response..... 31

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 29 day of April, 2002, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Randolph L. Rohrbaugh, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.





M. Diane Koken
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
UTICA FIRST INSURANCE	:	Sections 4(a) and 4(h) of the Act of
COMPANY	:	June 11, 1947, P.L. 538, No. 246
5981 Airport Road	:	(40 P.S. § 1184)
Oriskany, NY 13424	:	
	:	Sections 2, 3(a)(5), 4(a) and 7(c) of the
	:	Act of July 3, 1986, P.L. 396, No. 86
	:	(40 P.S. §§ 3402, 3403, 3404 and 3407)
	:	
	:	Sections 5(a)(7)(iii) and 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
	:	59.6(6), 113.88 and 146.7(a)(1)
	:	
Respondent.	:	Docket No. MC06-04-023

CONSENT ORDER

AND NOW, this 10th day of *MAY*, 2006, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

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

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

FINDINGS OF FACT

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

- (a) Respondent is Utica First Insurance Company, and maintains its address at 5981 Airport Road, Oriskany, New York 13424.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2004 through June 30, 2005.
- (c) On March 28, 2006, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on April 20, 2006.

(e) After consideration of the April 20, 2006 response, the Insurance Department has modified the Examination Report as attached.

(f) The Examination Report notes violations of the following:

(i) 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;

(ii) Section 2 of Act 86 (40 P.S. § 3402), which state canceling in midterm a policy of insurance covering commercial property and casualty risks is prohibited for any reason other than the following:

(1) A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy term.

(2) Loss of reinsurance or a substantial decrease in reinsurance has occurred, which loss or decrease shall, at the time of cancellation, be certified to the Insurance Commissioner as directly affecting in-force policies.

- (3) The insured has made a material misrepresentation which affects the insurability of the risk.
- (4) The policy was obtained through fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the company.
- (5) The insured has failed to pay a premium when due, whether the premium is payable directly to the company or its agents or indirectly under a premium finance plan or extension of credit.
- (6) The insured has requested cancellation.
- (7) Material failure to comply with policy terms, conditions or contractual duties.
- (8) Other reasons that the Insurance Commissioner may approve.

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

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

- (v) Section 7(c) of Act 86 (40 P.S. § 3403), which requires that an insurer may cancel the policy provided it gives at least 30 days' notice of the termination and provided it gives notice no later than the 60th day, unless the policy provides for a longer period of notification;

- (vi) Section 5(a)(7)(iii) of Act 205 (40 P.S. § 1171.5), which prohibits discrimination with regard to underwriting standards and practices or eligibility requirements by reason of age;

- (vii) Section 5(a)(9) of Act 205 (40 P.S. § 1171.5), which defines an unfair act or practice as: (9) cancelling any policy of insurance covering owner-occupied private residential properties or personal property of individuals that has been in force for 60 days or more or refusing to renew any such policy unless the policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the company; or there has been a substantial change or increase in hazard in the risk assumed by the company subsequent to the date the policy was issued; or there is a substantial increase in hazards insured against by reason of willful or negligent acts or omissions by the insured; or the insured has failed to pay any premium whether such premium is payable directly to the company or its agent or indirectly under any premium finance plan or extension of credit; or for any other reasons approved by

the Commissioner pursuant to rules and regulations promulgated by the Commissioner. No cancellation or refusal to renew by any person shall be effective unless a written notice of the cancellation or refusal to renew is received by the insured whether at the address shown in the policy or at a forwarding address;

- (viii) Title 31, Pennsylvania Code, Section 59.6(6), which provides if the reason is a substantial change or an increase in hazard, the insurer shall specify the changes or increased hazards it relied on for its actions. If the reason is the failure to pay a premium, the insurer shall specify the amount due, and the due date;
- (ix) Title 31, Pennsylvania Code, Section 113.88, which states the reason given for cancellation shall be clear and complete. It shall be stated so that a person of average intelligence and education can understand it. Phrases such as "losses" or "underwriting reasons" are not sufficiently specific reasons for cancellation; and
- (x) Title 31, Pennsylvania Code, Section 146.7(a)(1), which requires within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition or exclusion unless

reference to such provision, condition or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Respondent's violations of 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.

(c) Respondent's violations of Sections 2, 3, 4 and 7 of Act 86 (40 P.S. §§ 3402, 3403, 3404 and 3407), are punishable under Section 8 (40 P.S. § 3408) of this act by one or more of the following causes of action:

- (i) Order that the insurer cease and desist from the violation.
- (ii) Impose a fine or not more than \$5,000 for each violation.

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

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

(e) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:

- (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);
 - (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).
- (f) Respondent's violations of Title 31, Pennsylvania Code, Section 146.7, are punishable under Sections 9, 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9, 1171.10 and 1171.11), as stated above.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall file an affidavit stating under oath that it will provide each of its directors, at the next scheduled directors meeting, a copy of the adopted

Report and related Orders. Such affidavit shall be submitted within thirty (30) days of the date of this Order.

- (c) Respondent shall comply with all recommendations contained in the attached Report.
- (d) Respondent shall pay Ten Thousand Dollars (\$10,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.
- (e) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

6. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein may pursue any and all legal remedies available,

including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

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

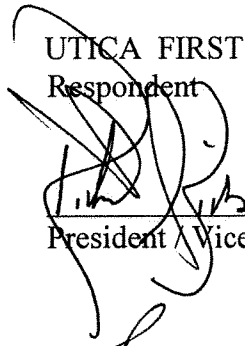
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

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

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

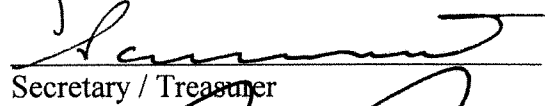
11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this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

BY: UTICA FIRST INSURANCE COMPANY,
Respondent

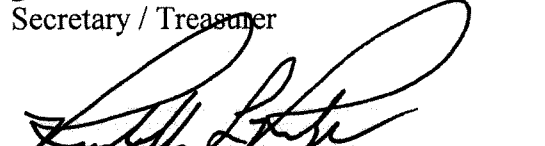


President / CEO

President / Vice President



Secretary / Treasurer



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

I. INTRODUCTION

The market conduct examination was conducted at Utica First Insurance Company's office located in Oriskany, New York, from January 3, 2006, through January 13, 2006. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

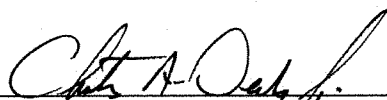
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

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

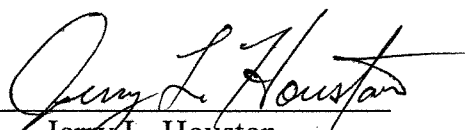
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel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

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

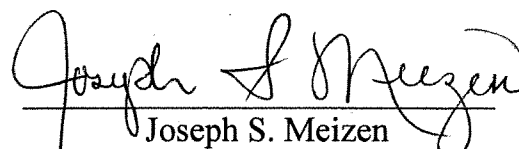
The undersigned participated in this examination and in preparation of this Report.



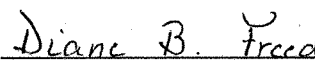
Chester A. Derk, Jr., AIE, HIA
Market Conduct Division Chief



Jerry L. Houston
Market Conduct Examiner



Joseph S. Meizen
Market Conduct Examiner



Diane B. Freed
Market Conduct Examiner

II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Utica First Insurance Company, hereinafter referred to as “Company,” at their office located in Oriskany, New York. The examination was conducted pursuant to Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of July 1, 2004, through June 30, 2005, unless otherwise noted. The purpose of the examination was to determine the Company’s compliance with Pennsylvania insurance laws and regulations.

The examination focused on Company operations in the following areas:

1. Personal Lines Property
 - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations and 60-day cancellations.
 - Rating – Proper use of all classification and rating plans and procedures.
2. Commercial Lines
 - Underwriting – Appropriate and timely notices of nonrenewals, midterm cancellations, 60-day cancellations and renewals.
3. Claims
4. Forms
5. Complaints

6. Advertising

7. Licensing

III. COMPANY HISTORY AND LICENSING

Utica First Insurance Company was incorporated in 1903 as Utica Fire Insurance Company of Oneida County, NY. It is a New York State advance premium cooperative fire insurance company operating under provisions of Section 66 of the insurance law. The governing laws provide that the Company cannot use for expense of management an amount exceeding 42.5% of premium income exclusive of taxes and loss adjustment expenses. Only fire and allied lines of coverages were written prior to 1949. Facilities subsequently were broadened to write general casualty, liability and multiple peril coverages. Effective January 1, 1994, the Company adopted the present title.

LICENSING

Utica First Insurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2005. The Company is licensed in Connecticut, New Jersey, New York, Ohio, Pennsylvania and Rhode Island. The Company's 2004 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$4,463,269. Premium volume related to the areas of this review were: Fire \$3,695; Homeowners multiple peril \$1,653,019; Commercial multiple peril (non-liability portion) \$1,728,163 and Commercial multiple peril (liability portion) \$1,047,176.

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 personal and commercial lines of business. The purpose of this review was to identify any inconsistencies which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature.

The following findings were made:

3 Violations 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 Landlords Package Policy Program Underwriting Guidelines and the Homeowner Guidelines prohibit student occupancies. The Boat owners Underwriting Guidelines prohibit primary operators under the age of 21.

V. UNDERWRITING

A. Personal Lines Property

1. 60-Day Cancellations

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

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

From the universe of 76 personal lines property policies, which were cancelled within the first 60 days of new business, 35 files were selected for review. The property policies consisted of homeowners and tenant homeowners. All 35 files selected were received and reviewed. No violations were noted.

2. Midterm Cancellations

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

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

From the universe of 273 personal lines property policies, which were cancelled midterm during the experience period, 106 files were selected for review. The property policies consisted of homeowners and tenant homeowners. All 106 files requested were received and reviewed. No violations were noted.

3. Nonrenewals

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

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

The universe of 35 homeowner policies which were nonrenewed during the experience period was selected for review. All 35 files requested were received and reviewed. The 24 violations noted were based on 20 files, resulting in an error ratio of 57%.

The following findings were made:

14 Violations Title 31, Pa. Code, Section 59.6(6)

If the reason is a substantial change or an increase in hazard, the insurer shall specify the changes or increased hazards it relied on for its actions. If the reason is the failure to pay a premium, the insurer shall specify the amount due, and the

date when it is due. The stated reason for nonrenewal was not specific for the 14 files noted.

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

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

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

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

in hazard in the risk assumed by the company subsequent to the date the policy was issued; or there is a substantial increase in hazards insured against by reason of willful or negligent acts or omissions by the insured; or the insured has failed to pay any premium when due or for any other reasons approved by the Commissioner.

AND

Adjudication: Cusumano/State Auto, PH96-12-014 (1998).
The request for painting and trimming the garage doors, repairing the garage roof and trimming overgrowth without further evidence does not establish the existence of an increased hazard. The items which allegedly needed repair were merely the symptoms of cosmetic conditions for which corrective measures had been planned and did not by themselves prove existence of hazardous conditions. The 2 files noted were nonrenewed due to peeling paint, which is not a proper reason for nonrenewal.

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

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

the date the policy was issued; or there is a substantial increase in hazards insured against by reason of willful or negligent acts or omissions by the insured; or the insured has failed to pay any premium when due or for any other reasons approved by the Commissioner.

AND

Lititz v. Commissioner, 401 A.2d 606 (Pa. Cmwlth. 1979)

Sapp/Donegal Mutual, P996-08-038 (1998)

A homeowner's mere acquisition of a large dog does not constitute a substantial increase in hazard that justified an insurer's refusal to renew the homeowner's policy. The 3 files noted were nonrenewed based on breed of dog, which is not a proper reason for nonrenewal.

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

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

failed to pay any premium when due or for any other reasons approved by the Commissioner.

AND

Adjudication: Chille v. Old Guard, PH94-10-066 (1995).

When an insurer attempts to cancel due to increased hazard as a result of the insured's failure to comply with company's recommendations to improve property, and when upon subsequent inspection, the changes in condition of property were of a nature that indicated that insured complied with at least some of the company requests and nothing suggested that the level of risk had ever increased from policy inception, renewal, or due to any acts of insured, cancellation violated Act 205.

AND

Adjudication: Rostolsky/Old Guard, P96-08-040 (1999).

A cancellation violates Act 205 when evidence shows that the insureds were attempting to comply with the company recommendations and there is no evidence that the level of risk had ever increased from policy inception, renewal, or due to any acts of the insured. The 4 files noted were nonrenewed for an improper reason. In each of the 4 files noted, there was evidence that the insured was attempting to comply with the company recommendations.

B. Commercial Lines

1. 60-Day Cancellations

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

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

The universe of 33 commercial policies which were cancelled within the first 60 days was selected for review. The commercial policies consisted of commercial package, business owners and artisan package. All 33 files selected were received and reviewed. The 2 violations noted were based on 2 files, resulting in an error ratio of 6%.

The following findings were made:

2 Violations Act 86, Section 7(c) [40 P.S. §3407(c)]

This act does not apply to commercial property and casualty insurance policies that are in effect less than 60 days, unless they are renewals. An insurer may cancel the policy provided it gives at least 30 days' notice of the termination and provided it gives notice no later than the 60th day, unless the policy provides for a longer period of notification. The Company failed to provide at least 30 days' notice of termination to the insured for the 2 files noted.

2. Midterm Cancellations

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

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

From the universe of 160 commercial policies, which were cancelled during the experience period, 83 files were selected for review. The commercial policies consisted of commercial package, business owners, artisan and tenant occupied dwelling fire. All 83 files selected were received and reviewed. The 11 violations noted were based on 11 files, resulting in an error ratio of 13%.

The following findings were made:

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

Requires that unearned premium be returned to the insured not later than 10 business days after the effective date of termination where commercial property or casualty risks are cancelled in mid-term by the insurer. The Company did not return the unearned premium to the insured within 10 business days after the effective date of termination for the 11 files noted.

3. Nonrenewals

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

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

From the universe of 191 commercial policies identified as nonrenewals by the Company, 105 files were selected for review. The commercial policies consisted of tenant occupied dwelling fire, business owners, artisan and commercial package. All 105 files selected were received and reviewed. The 9 violations noted were based on 9 files, resulting in an error ratio of 9%.

The following findings were made:

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

Requires that a nonrenewal notice shall state the specific reasons for the nonrenewal. The reasons shall identify the condition, factor or loss experience, which caused the nonrenewal. The notice shall provide sufficient information or data for the insured to correct the deficiency.

AND

Title 31, Pa. Code, Section 113.88

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

for nonrenewal. The Company did not provide a specific reason for nonrenewal for the 9 files noted.

4. Renewals

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

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

From the universe of 1,128 commercial policies renewed during the experience period, 168 files were selected for review. The commercial policies consisted of tenant occupied dwelling fire, commercial fire, commercial package, business owners and artisan. All 168 files selected were received and reviewed. No violations were noted.

VI. RATING

A. Homeowners

1. New Business

New business, for the purpose of this examination, was defined as policies written for the first time by the Company during the experience period.

The purpose of the review was to measure compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time.

Homeowner Rating – New Business Without Surcharges

From the universe of 507 homeowner policies written as new business without surcharges during the experience period, 50 files were selected for review. All 50 files selected were received and reviewed. No violations were noted.

2. Renewals

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

The purpose of the review was to determine compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan which it proposes to use in the Commonwealth. Also, no insurer shall make or issue

a contract or policy except in accordance with filings or rates which are in effect at the time.

Homeowner Rating – Renewals Without Surcharges

From the universe of 3,038 homeowner policies renewed without surcharges during the experience period, 100 files were selected for review. All 100 files selected were received and reviewed. The 3 violations noted were based on 3 files, resulting in an error ratio of 3%.

The following findings were made:

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. The Company incorrectly rated the 3 files noted which resulted in an overcharge of \$108 and an undercharge of \$86.

Homeowner Rating – Renewals With Surcharges

The universe of 46 homeowner policies renewed with surcharges during the experience period was selected for review. All 46 files selected were received and reviewed. The 10 violations noted were based on 10 files, resulting in an error ratio of 22%.

The following findings were made:

*10 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. The 10 files were rated incorrectly which resulted in overcharges of \$1,343 and undercharges of \$388.

B. Tenant Homeowners

1. New Business

New business, for the purpose of this examination, was defined as policies written for the first time by the Company during the experience period.

The purpose of the review was to measure compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time.

From the universe of 73 tenant homeowner policies written as new business during the experience period, 25 files were selected for review. All 25 files selected were received and reviewed. No violations were noted.

2. Renewals

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

The purpose of the review was to determine compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which 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.

From the universe of 247 tenant homeowner policies renewed during the experience period, 50 files were selected for review. All 50 files requested were received and reviewed. No violations were noted.

VII. CLAIMS

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

The Claims review consisted of the following areas of review:

- A. Homeowner Claims
- B. Tenant Homeowner Claims
- C. Dwelling Fire

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

A. Homeowner Claims

From the universe of 267 homeowner claims reported during the experience period, 50 files were selected for review. All 50 files selected were received and reviewed. The violation noted resulted in an error ratio of 2%.

The following finding was made:

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

Within 15 working days after receipt by the insurer or properly executed proofs of loss, the first-party claimant shall

be advised of the acceptance or denial of the claim by the insurer. The Company did not deny the claim in writing.

Concern: The Company's stated business practice is to send 30 and 45 day status letters on all claims that have not been paid within 30 days of the reported claim. The Company stated this is standard practice since the last market conduct exam 5 years ago. Examples of the form letter have been provided; however, the electronic claim file has not been populated with the image of the status letter for any claim files and the notes of the files did not have an entry date for when the status letter was sent. It is recommended the electronic file reflect a date entry when status letters were sent and the image of the letter captured on the Image Right System.

B. Tenant Homeowner Claims

The universe of 6 tenant homeowner claims reported during the experience period was selected for review. All 6 files selected were received and reviewed. No violations were noted.

C. Dwelling Fire Claims

The universe of 10 dwelling fire claims reported during the experience period was selected for review. All 10 files selected were received and reviewed. The violation noted resulted in an error ratio of 10%.

The following finding was made:

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

Within 15 working days after receipt by the insurer or properly executed proofs of loss, the first-party claimant shall

be advised of the acceptance or denial of the claim by the insurer. The Company did not deny the claim in writing.

VIII. FORMS

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

No violations were noted.

IX. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of their consumer complaint logs for the preceding four years. The Company identified 10 consumer complaints received during the experience period and provided all consumer complaint logs requested. All 10 complaint files reported 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 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 2 files noted were cancelled or nonrenewed for improper reasons.

1 Violation Act 86, Section 2 [40 P.S. §3402]

Grounds for cancellation. Canceling in midterm a policy of insurance covering commercial property and casualty risks is prohibited for any reason other than those enumerated under this section. The file noted was cancelled for other than permitted reasons.

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

•	8	Cancellation/Nonrenewal	80%
•	1	Underwriting	10%
•	1	Billing-Nonpayment	10%
	<hr/>		<hr/>
	10		100%

X. 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 9 pieces of advertising which consisted of product brochures. Internet advertising was also reviewed. No violations were noted.

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. No violations were noted.

XII. RECOMMENDATIONS

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

1. The Company must review Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)] to ensure compliance with cancellation and nonrenewal notice requirements so that the violations noted in the Report do not occur in the future.
2. The Company must review and revise internal control procedures to ensure compliance relative to commercial cancellation and nonrenewal requirements of Act 86, Sections 2, 3, 4 and 7 [40 P.S. §§3402, 3403 3404 and 3407], so that the violations noted in the Report do not occur in the future.
3. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices so that the violations relating to denials as noted in the Report do not occur in the future.
4. The Company must review Act 246, Section 4(a) and (h) [40 P.S. §1184] and take appropriate measures to ensure the homeowner rating violations listed in the report do not occur in the future.

5. 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.

6. The Company must revise and reissue their underwriting guidelines for use in Pennsylvania to ensure that the guidelines do not exclude applicants from being eligible to obtain insurance based on age and students for reasons established in Act 205, Section 5(a)(7)(iii) [40 P.S. §1171.5(a)(7)(iii)].

XII. COMPANY RESPONSE



William C. Bowers, CPCU
Senior Vice President

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

April 19, 2006

UPS OVERNIGHT DELIVERY

RE: Examination Warrant Number 05-M19-081
Company Response, Utica First Insurance Company

Dear Mr. Derk:

We have reviewed your March 28, 2006 Report of Examination and in accordance with Section 905 (40 P.S. Section 323.5) we are hereby responding to the Report.

In Section IV Underwriting Practices and Procedures there was 1 violation cited related to our Homeowners underwriting guidelines prohibiting student occupancies, 1 violation for prohibiting student occupancies in our Landlords Package Policy underwriting guidelines, and 1 violation for prohibiting primary operators under the age of 21 in our Boatowners underwriting guidelines.

- We have amended our Homeowners guidelines to delete references to student occupancy and we will not require supporting coverage.
- We have amended our Homeowners guidelines to delete references to student occupancy.
- We have amended our Boatowners guidelines by omitting any reference to the operator's age.

In Section V. Underwriting A. Personal Lines there were 24 violations for Homeowners policies that were nonrenewed. 14 of these violations were because the reason for nonrenewal was not specific enough, 3 violations on page 9 for nonrenewal notices that you considered to not be an increase in hazard, 3 violations regarding dog breeds being cited as the nonrenewal reason, and 4 violations for nonrenewing for uncompleted property improvement recommendation when there was a contract in place to have such work performed in the future.

- We agreed to the 14 violations and we will include additional detail in our reason for nonrenewal—instead of using a reason like “failure to comply with recommendations” we will say “failure to comply with recommendations—replace roof shingles” etc.

- We agreed to the first violation shown on page 9 of your report that dealt with a risk that had a sign on the front porch that referred to the home being a location for bible studies.
- We agreed on the other two violations on page 9 that peeling paint is not a legitimate increase in hazard.
- We agree to the 3 violations for nonrenewing policies based on the breed of dog(s.)
- We agreed to the 4 violations for uncompleted property repairs since contracts existed for the work to be performed at a future date (after the renewal date.)

In Section V. Underwriting B. Commercial Lines there were 2 violations for failing to give the proper number of days notice for cancellation, 11 violations for failure to return unearned premium to the insured within ten business days, 9 violations for insufficient information on the notice of nonrenewal.

- We agreed to these 2 violations. This was an error on the part of the employee who processed these cancellations and the mistake was addressed with the individual. Furthermore all employees of the Commercial Lines Underwriting Department were reminded of the appropriate number of days and the need to pay greater attention to detail.
- We agreed to the 11 violations for timely return premiums. During the onsite examination we immediately reprogrammed our computer system to reflect the ten day requirement for Pennsylvania insureds and documentation of that change was given to the examiners while they were still on site here.
- We agreed to the 9 violations related to the need for additional detail of the reason for nonrenewal. We had used reasons like “noncompliance with recommendations” or “loss history”, but we are now adding the additional specific detail like “loss history—5 claims in past 3 years” or “noncompliance with recommendations per Utica First’s January 12, 2005 letter to you.”

In Section VI. Rating A. Homeowners there were 3 violations for placement of risks in the wrong rating tier and 10 violations for errors made for loss surcharges.

- We agreed to the 3 violations—copies of due premium refund checks have already been provided to the examiners on February 21, 2006, and one of these risks which was an undercharge will be properly rated at the next renewal date.
- We agreed to the 10 violations for loss surcharge errors. Copies of the premium refund checks have already been given to the examiners on February 21, 2006, and any policies that were undercharged will be properly charged at the next renewal date.

In Section VII. Claims A. & C. there were 2 violations for failure to provide a written claim denial.

- We agreed to the 2 violations which were errors by the adjuster and a departmental meeting with all Claims staff reminded the employees of this requirement.
- A concern of examiners was expressed on page 22 of the Report dealing with the lack of a copy or an image in the claim file of the 30 and 45 day status letters. We

provided proof to the examiners that these status letters are computer-generated, and following the recommendation of the examiners we now are capturing and storing an image in the claim file of each and every such status letter for Pennsylvania claims.

In Section IX. Consumer Complaints there were 4 violations related to midterm cancellations.

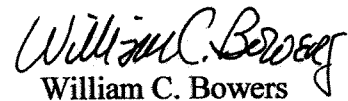
- We agreed to only 1 of these violations—a long tenured policyholder who had owned a Rottweiler for eight years.
- We disagree with and object to the remaining 3 violations.
 1. On page 25 of the Report 1 of the violations was for a policy involving the breed of a dog. We do not believe that such underwriting judgment and risk assessment is in violation of Pennsylvania Insurance Law.
 2. On page 25 of the Report another violation was for midterm cancellation of a Homeowners policy because the home was vacant at the time of a property inspection. The insured complainant claimed that the home was vacant when the policy was first issued so the reason “increase in hazard” was invalid. We have repeatedly objected to this violation and pointed out that the insured committed fraud on the signed application by stating that the home was occupied, and that in the event of a loss we would have been within our contractual and statutory rights to even void the policy ab initio. Whether the notice of cancellation for increase in hazard was sent within or after the first 60 days of the policy period is academic and irrelevant to the facts of the matter.
 3. On page 26 of the Report a violation is cited for our interpretation of an increase in hazard--that being a loaded handgun under the counter in a grocery store frequented by students from the school across the street. Upon receiving the cancellation notice the insured filed a complaint with the Consumer Services Bureau claiming that the handgun had been present there for years and alleging therefore that there was no increase in hazard. Whether an insurer is expected to believe such an assertion by a policyholder/complainant is irrelevant to the provisions of Act 86, Section 2 [40 P.S. §3402] (1). At the time of the complaint we pointed out to the Consumer Services Bureau that our underwriter issued a midterm cancellation notice for an increase in hazard immediately following our receipt of a property inspection done after the renewal date that revealed the presence of the gun. At the time of our inspection for the previous year there was no handgun on the premises. The underwriter acted both appropriately and lawfully. It is our position that Pennsylvania Insurance Law clearly supports an immediate cancellation for increased hazard in such instances:

Act 86, Section 2 [40 P.S. §3402] (1) specifically provides for midterm cancellation for an increased hazard based on the insurer’s *discovery* of such hazard. It states: “A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become *known* during the policy term.” (*emphasis added.*)

We disagree with and object to this violation since the condition material to insurability became known during the policy term and the allowance of the midterm cancellation is specifically provided for in Act 86, Section 2 [40 P.S. §3402] (1). An underwriter of a commercial lines policy has the contractual right to inspect the property at any time and the statutory right to cancel the policy midterm upon discovery of a substantial condition material to insurability. Admittedly discovery of a weapon is a very rare occurrence (perhaps once in a decade) but we want to make the point that there is no statutory prohibition to a commercial underwriter promptly canceling a policy upon discovery of a material increase in hazard.

We have reviewed Section XII. Recommendations of the Report of Examination and have addressed all 6 of the Recommendations in the narrative sections above.

Very truly yours,


William C. Bowers
Senior Vice President