

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**WESTFIELD INSURANCE COMPANY**

Westfield Center, Ohio

**AS OF  
April 15, 2005**

**COMMONWEALTH OF PENNSYLVANIA**

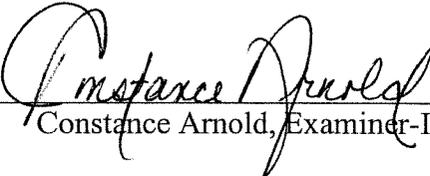


**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

**Issued: June 2, 2005**

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).

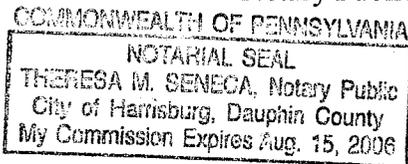
  
\_\_\_\_\_  
Constance Arnold, Examiner-In-Charge

Sworn to and Subscribed Before me

This 11 Day of April, 2005



\_\_\_\_\_  
Notary Public



# WESTFIELD INSURANCE COMPANY

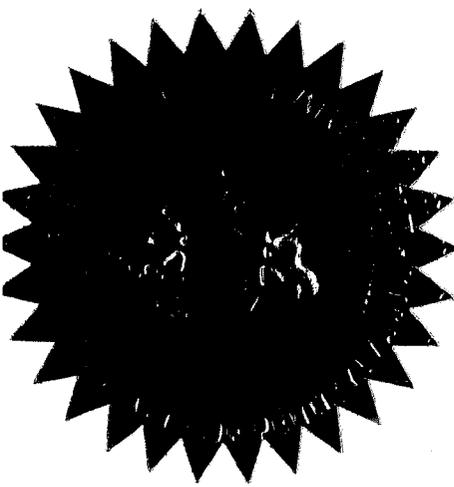
## TABLE OF CONTENTS

Order	
I.	Introduction..... 1
II.	Scope of Examination..... 3
III.	Company History/Licensing..... 5
IV.	Underwriting Practices and Procedures..... 6
V.	Underwriting
	A. Private Passenger Automobile..... 8
	B. Assigned Risk..... 11
	C. Personal Lines Property..... 11
	D. Commercial Automobile..... 15
	E. Commercial Property..... 18
	F. Workers' Compensation..... 22
VI.	Rating
	A. Private Passenger Automobile..... 25
	B. Assigned Risk..... 32
	C. Homeowners..... 33
	D. Dwelling Fire..... 35
VII.	Claims..... 37
VIII.	Forms..... 42
IX.	Advertising..... 43
X.	Consumer Complaints..... 44
XI.	Licensing..... 47
XII.	Recommendations..... 50
XIII.	Company Response..... 54

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  
M. Diane Koken  
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
WESTFIELD INSURANCE	:	Sections 641.1(a) and 671-A of Act
COMPANY	:	147 of 2002 (40 P.S. §§ 310.41 and
One Park Circle	:	310.71)
Westfield Center, OH 44251	:	
	:	Section 903(a) of the Insurance
	:	Department Act, Act of May 17, 1921,
	:	P.L. 682, No. 284 (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 1705(a)(1) & (4),
	:	1716, 1731(b) & (c), 1734, 1791.1(a)
	:	and (b), 1792(b)(1), 1793(b) and
	:	1799.3(a) (Title 75, Pa.C.S. §§ 1705,
	:	1716, 1731, 1734, 1791, 1792, 1793
	:	and 1799)
	:	
	:	Sections 1, 3(a)(2), 3(a)(5), 3(a)(6) and
	:	7(c) of the Act of July 3, 1986, P.L.
	:	396, No. 86 (40 P.S. §§ 3401, 3403
	:	and 3407)
	:	
	:	Sections 5(a)(4), 5(a)(9), 5(a)(9)(ii),
	:	5(a)(9)(iii) and 5(a)(11) of the Unfair
	:	Insurance Practices Act, Act of
	:	July 22, 1974, P.L. 589, No. 205 (40
	:	P.S. §§ 1171.5)
	:	
	:	Sections 2003(a)(1), 2003(a)(13),
	:	2003(a)(14), 2003(b), 2003(d), 2004,
	:	2006 and 2006(2) of Act 68 of 1998
	:	(40 P.S. §§991.2003, 991.2004 and
	:	991.2006)
	:	
	:	

: Title 31, Pennsylvania Code, Sections  
: 59.9(b), 67.33(b)(1), 69.52(b), 113.88  
: and 146.6  
:  
:  
: Title 75, Pennsylvania Consolidated  
: Statutes, Section 1822  
:  
:  
Respondent. : Docket No. MC05-04-024

CONSENT ORDER

AND NOW, this 2<sup>nd</sup> day of June, 2005, 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 Westfield Insurance Company, and maintains its business address at One Park Circle, Westfield Center, Ohio 44251.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2003 through June 30, 2004.
- (c) On April 15, 2005, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on May 16, 2005.
- (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, No. 285 (40 P.S. § 323.3), which requires every company or person subject to examination must keep all books, records, accounts, papers, documents and any or all 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 ascertain whether the company has complied with the laws of the 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) Sections 1705(a)(1) & (4) of Act 1990-6, Title 75, Pa.C.S. § 1705, which requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to

elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option;

(vi) Section 1716 of Act 1990-6, Title 75, Pa. C.S. § 1716, which requires that benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the amount of benefits. If reasonable proof is not supplied as to all benefits, the portion supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Overdue benefits shall bear interest at the rate of 12% per annum from the date the benefits become due. In the event the insurer is found to have acted in an unreasonable manner in refusing to pay the benefits when due, the insurer shall pay, in addition to the benefits owed and the interest thereon, a reasonable attorney fee based upon actual time expended;

(vii) Section 1731(b) and (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;

(viii) Section 1734 of Act 1990-6, Title 75, Pa.C.S. § 1734, which allows a named insured to request in writing the issuance of coverages under Section 1731 in amount equal to or less than the limits of liability for bodily injury;

(ix) Section 1791.1(a) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-point type: “The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage or coverages in excess of the limits required by law are provided only at your request as enhancements to basic coverages.” The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured’s existing coverages;

(x) 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;

(xi) Section 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;

- (xii) Section 1793(b) of Act 1990-6, Title 75, Pa. C.S. § 1793, which requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall deliver the plan to each insured at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage;
- (xiii) Section 1799.3(a) of Act 1990-6, Title 75, Pa.C.S. § 1799, which prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$950 in excess of any self insured retention or deductible applicable to the named insured;
- (xiv) Section 1 of Act 86 (40 P.S. § 3401), which requires a policy of insurance covering property or casualty risks in this Commonwealth shall provide for not less than 30 days advance notice to the named insured of an increase in renewal premium;

- (xv) Section 3(a)(2) of Act 86 (40 P.S. § 3403), which requires that a nonrenewal notice be forwarded directly to the named insured or insureds at least 60 days in advance of the effective date of the termination;
- (xvi) Section 3(a)(5) of Act 86 (40 P.S. § 3403), which requires a nonrenewal notice to provide the specific reason for termination and 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;
- (xvii) Section 3(a)(6) of Act 86 (40 P.S. § 3403), which requires that a nonrenewal notice shall state that at the insured's request, the insurer shall state that at the insured's request, the insurer shall provide loss information to the insured for at least three years or the period of time during which the insurer has provided coverage to the insured, whichever is less;
- (xviii) Section 7(c) of Act 86 (40 P.S. § 3407), which states that 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 60<sup>th</sup> day, unless the policy provides for a longer period of notification;

- (xix) Section 5(a)(4) of Act 205 (40 P.S. § 1171.5), which prohibits entering into any agreement to commit, or by a concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;
- (xx) 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;

- (xxi) Section 5(a)(9)(ii) of Act 205 (40 P.S. §§ 1171.5), which requires that a cancellation notice state the date, not less than 30 days after the date of delivery or mailing on which such cancellation or refusal to renew shall become effective;
- (xxii) Section 5(a)(9)(iii) of the Unfair Insurance Practices Act, No. 205 (40 P.S. § 1171.5), which requires that a cancellation notice shall state the specific reason or reasons of the insurer for cancellation;
- (xxiii) Section 5(a)(11) of the Unfair Insurance Practices Act, No. 205 (40 P.S. § 1171.5), which requires a complete record of all complaints received during the preceding four years;
- (xxiv) Section 2003(a)(1) of Act 68 of 1998 (40 P.S. § 991.2003), which prohibits an insurer from canceling or refusing to write or renew a policy of automobile insurance for any of the following reasons: Age;
- (xxv) Section 2003(a)(13) of Act 68 of 1998 (40 P.S. § 991.2003), which prohibits an insurer from canceling or refusing to write or renew a policy of automobile insurance for any of the reasons stated in this section;
- (xxvi) Section 2003(a)(14) of Act 68 of 1998 (40 P.S. § 991.2003), which prohibits an insurer from canceling or refusing to write or renew a policy

of automobile insurance for any of the following reasons: Any claim under the comprehensive portion of the policy unless intentionally caused by the insured;

(xxvii) Section 2003(b) of Act 68 of 1998 (40 P.S. § 991.2003), which states that an insurer may not cancel or refuse to renew a policy of automobile insurance on the basis of one accident within the 36 month period prior to the upcoming anniversary date of the policy;

(xxviii) Section 2003(d) of Act 68 of 1998 (40 P.S. § 991.2003), which requires that a nonrenewal notice advise the insured of his right to request in writing that the Insurance Commissioner review the action of the insurer;

(xxix) Section 2004 of Act 68 of 1998 (40 P.S. § 991.2004), which requires that no insurer shall cancel a policy of automobile insurance except for nonpayment of premium, suspension or revocation of the named insured's driver license or motor vehicle registration or a determination that the insured has concealed a material fact or has made a material allegation contrary to fact or has made a misrepresentation of material fact and that such concealment, allegation or misrepresentation was material to the acceptance of the risk by the insurer;

- (xxx) Section 2006 of Act 68 of 1998 (40 P.S. § 991.2006), which requires that cancellation by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the insured a written notice of the cancellation;
  
- (xxxii) Section 2006(2) of Act 68 of 1998 (40 P.S. § 991.2006), which requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the specific reason or reasons of the insurer for cancellation;
  
- (xxxiii) Title 31, Pennsylvania Code, Section 59.9(b), which provides an insurer may cancel a policy in the first 60 days but must provide a notice of cancellation to the insured;
  
- (xxxiiii) 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;
  
- (xxxv) Title 31, Pennsylvania Code, Section 69.52(b), which requires an insurer to pay medical bills for care that are not referred to a Peer Review Organization within 30 days after the insurer receives sufficient documentation supporting the bill;

- (xxxv) 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;
- (xxxvi) Title 31, Pennsylvania Code, Section 146.6, requires that every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected; and
- (xxxvii) 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 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 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 Sections 1, 3(a)(2), 3(a)(3), 3(a)(5), 3(a)(6) and 7(c) of Act 86 (40 P.S. §§ 3401, 3403 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.
- (e) Respondent's violations of Sections 5(a)(4), 5(a)(9), 5(a)(9)(i), 5(a)(9)(ii), 5(a)(9)(iii) and 5(a)(11) of the Unfair Insurance Practices Act, No. 205 (40 P.S. §§ 1171.5) are punishable by the following, under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9):
- (i) cease and desist from engaging in the prohibited activity;
  - (ii) suspension or revocation of the license(s) of Respondent.

- (f) 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).
- (g) Respondent's violations of Sections 2003, 2004 and 2006 of Act 68 of 1998 are punishable by the following, under Section 2013 of the Act (40 P.S. § 991.2013): Any individual or insurer who violates any of the provisions of this article may be sentenced to pay a fine not to exceed five thousand dollars (\$5,000.00).
- (h) Respondent's violations of Title 31, Pennsylvania Code, Section 146.6 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 Twenty-Five Thousand Dollars (\$25,000.00) 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.

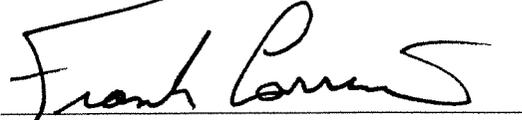
10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

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.

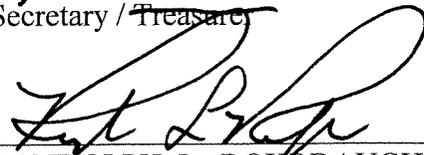
BY: WESTFIELD INSURANCE COMPANY,  
Respondent



\_\_\_\_\_  
President / ~~Vice President~~



\_\_\_\_\_  
Secretary / ~~Treasurer~~



\_\_\_\_\_  
RANDOLPH L. ROHRBAUGH  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania

## I. INTRODUCTION

The market conduct examination was conducted at Westfield Insurance Company's office located in Lancaster, Pennsylvania, from February 2, 2005, through March 2, 2005. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

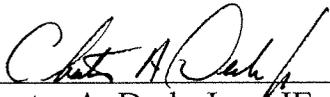
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

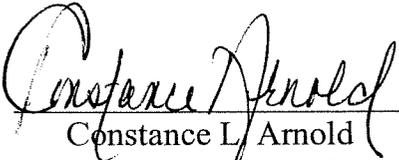
In certain areas of review listed in this Report, the examiners will refer to "error ratio." This error ratio is calculated by dividing the number of policies with violations by the total number of policies reviewed. For example, if 100 policies are reviewed and it is determined that there are 20 violations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

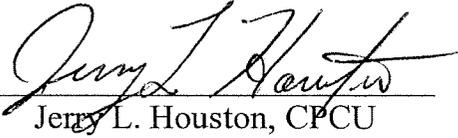
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel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

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

  
\_\_\_\_\_  
Jerry L. Houston, CPCU  
Market Conduct Examiner

## II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Westfield Insurance Company, hereinafter referred to as “Company,” at their office located in Lancaster, Pennsylvania. The examination was conducted pursuant to Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of July 1, 2003, through June 30, 2004, 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 Automobile
  - 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. 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.
  
3. Dwelling Fire
  - Rating – Proper use of all classification and rating plans and procedures.
  
4. Commercial Automobile
  - Underwriting – Appropriate and timely notices of nonrenewals, midterm cancellations, 60-day cancellations and renewals.

5. Commercial Property

- Underwriting – Appropriate and timely notices of nonrenewals, midterm cancellations, 60-day cancellations and renewals.

6. Workers' Compensation

- Underwriting – Appropriate and timely notices of nonrenewals and midterm cancellations.

7. Claims

8. Forms

9. Advertising

10. Complaints

11. Licensing

### III. COMPANY HISTORY AND LICENSING

Westfield Insurance Company was incorporated on July 12, 1929, under the laws of Ohio, and commenced business on July 19, 1929. Operations were conducted under the name Ohio Farmers Indemnity Company from inception until June 12, 1959, when the name was changed to Superior Risk Insurance Company. The present title was adopted on December 15, 1970.

#### LICENSING

Westfield Insurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2005. The Company is licensed in the District of Columbia and all states except Alaska, California, Connecticut, Hawaii, Maine and New Hampshire. The Company's 2003 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$123,405,034. Premium volume related to the areas of this review were: Fire \$962,342; Homeowners multiple peril \$25,387,965; Commercial multiple peril (non-liability portion) \$10,565,619; Commercial multiple peril (liability portion) \$9,790,510; Inland Marine \$3,509,748; Workers' Compensation \$10,271,393; Private Passenger Automobile Direct Written Premium was reported as Private Passenger Auto Liability \$25,533,427 and Private Passenger Auto Physical Damage \$20,338,822; Commercial Automobile Direct Written Premium was reported as Commercial Auto Liability \$8,059,410 and Commercial Auto Physical Damage \$3,635,610.

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

The following findings were made:

*1 Violation Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]*

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance. The personal automobile underwriting guideline listed the following: Driving Experience – principal operators: 3 years or 0 years if on the parent’s policy.

*2 Violations Act 68, Section 2003(a)(1) [40 P.S. §991.2003(a)(1)]*

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the following reasons: Age. The Company’s personal auto underwriting guide lists driving experience for named insureds as 5 years and principal operators 3 years.

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

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for any of the reasons specified in 2003(a)(13). The Company’s guidelines stated the following: “Accidents include all accidents/losses regardless of fault (including comprehensive losses). No more than 1 accident in the past 36 months”.

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

Discrimination Prohibited – (a) An insurer may not cancel or refuse to write or renew a policy of automobile insurance for the following reason: Any claim under the comprehensive portion of the policy unless such loss was intentionally caused by the insured. The Company’s guideline stated the following: “Accidents include all accidents/losses regardless of fault (including comprehensive losses). No more than 1 accident in the past 36 months”.

Note: These issues, although noted as being in place during the experience period of the examination, have been previously resolved through a separate action by the Department.

## 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 602 personal automobile files identified as being cancelled in the first 60 days of new business, 50 files were selected for review. All 50 files selected 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 6,074 private passenger automobile files identified as midterm cancellations by the Company, 100 files were selected for review. All 100 files selected were received and reviewed. The 2 violations noted were based on 2 files, resulting in an error ratio of 2%.

The following findings were made:

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

Requires that cancellation by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the insured a written notice of the cancellation. The 2 files noted did not contain any documentation to indicate when the cancellation notice was mailed to the insured.

3. Nonrenewals

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

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

From the universe of 173 private passenger automobile files identified as nonrenewals by the Company, 50 files were selected for review. All 50

files selected were received and reviewed. The 10 violations noted, were based on 10 files, resulting in an error ratio of 20%.

The following findings were made:

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

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

*9 Violations Act 68, Section 2003(d) [40 P.S. §991.2003(d)]*

States that an insurer may not cancel or refuse to renew existing policies written through the terminated agent without offering each such insured coverage on a direct basis or offering to refer the insured to one or more new agents in the event the terminated agent could not find a suitable insurer acceptable to the policyholder for such business. The 9 files noted were the result of nonrenewal notices being issued for agency termination and did not provide the required information to the insured.

4. Report of Cancellations, Nonrenewals and Refusals to Write

The purpose of the review was to determine compliance with the provisions of Title 31, Pa. Code, Section 61.13 regarding records and reports to the Insurance Department of cancellations, nonrenewals and refusals to write.

The Company was requested to provide copies of reports to the Insurance Department of Private Passenger Automobile policies, which had been cancelled, nonrenewed or refused to be written within the experience period. The Company provided the 2 semi-annual reports for the experience period. No violations were noted.

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

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

## **C. 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 2,356 personal lines property policies, which were cancelled within the first 60 days of new business, 125 files were selected for review. The property policies consisted of homeowners and tenant homeowners. All 125 files selected were received and reviewed. The violation resulted in an error ratio of 1%.

The following finding was made:

*1 Violation Title 31, Pa. Code, Section 59.9(b)*

Requires an insurer give at least 30 days notice of termination and provided it gives notice no later than the 60<sup>th</sup> day. The Company did not provide the required 30 days notice of cancellation.

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 7,084 personal lines property policies, which were cancelled midterm during the experience period, 142 files were selected for review. The property policies consisted of homeowners, tenant homeowners and owner occupied dwelling fire. All 142 files requested

were received and reviewed. The 4 violations noted were based on 4 files, which resulted in an error ratio of 3%.

The following findings were made:

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

Requires that a cancellation notice shall state the date, not less than thirty days after the date of delivery or mailing on which such cancellation or refusal to renew shall become effective. The 3 violations were due to cancellation notices being issued that did not provide the required thirty days.

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

Requires that a cancellation notice shall state the specific reason or reasons of the insurer for cancellation. The violation was due to a cancellation notice being issued that did not provide a specific reason for the cancellation.

### 3. Nonrenewals

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

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

From the universe of 84 personal lines property policies, which were nonrenewed during the experience period, 41 files were selected for review. The property policies consisted of homeowners, tenant homeowners and owner occupied dwelling fire. All 41 files were received and reviewed. The 13 violations noted were based on 13 files, resulting in an error ratio of 32%.

The following findings were made:

*11 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 11 violations were the result of an improper reason applied to nonrenew the policy.

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

Requires that a cancellation notice shall state the specific reason or reasons of the insurer for cancellation. The

violation was due to a nonrenewal notice being issued that did not provide a specific reason for the cancellation.

*1 Violation Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]*

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance. The violation was due to an improper reason for nonrenewal which the Company required supporting coverage.

#### **D. Commercial Automobile**

##### **1. 60-Day Cancellations**

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

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

The universe of 7 commercial automobile policies, which was cancelled within the first 60 days, was selected for review. All 7 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 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 114 commercial automobile policies, which was cancelled during the experience period, 25 files were selected for review. All 25 files selected 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 review was conducted to determine compliance with Act 86, Section 3 (40 P.S. §3403), which establishes the requirements that must be met regarding the form and condition of the nonrenewal notice.

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

The following finding was made:

*1 Violation 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 file noted was absent any evidence this requirement was complied with.

#### 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 669 commercial automobile policies, which were renewed during the experience period, 40 files were selected for review. All 40 files selected were received and reviewed. No violations were noted.

## **E. Commercial 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 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 60<sup>th</sup> day unless the policy provides for a longer period of notification.

From the universe of 62 commercial property policies, which were cancelled within the first 60 days, 26 files were selected for review. The commercial property policies consisted of tenant occupied dwelling fire and commercial package. All 26 files selected were received and reviewed. The violation noted resulted in an error ratio of 4%.

The following finding was made:

#### *1 Violation 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 60<sup>th</sup> day, unless the policy provides for a longer period of notification. The file noted did not give at least 30 days' notice of termination to the insured.

## 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 1,611 commercial property policies, which were cancelled during the experience period, 81 files were selected for review. The commercial policies consisted of commercial package, commercial inland marine, commercial fire and tenant occupied dwelling fire. All 81 files selected were received and reviewed. The 7 violations noted were based on 7 files, resulting in an error ratio of 9%.

The following findings were made:

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

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

AND

### *Title 31, Pa. Code, Section 113.88*

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. The 6 files noted were absent any evidence this requirement was complied with.

*1 Violation Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]*

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance. The Company issued a cancellation notice which required supporting business.

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 137 commercial property policies identified as nonrenewals by the Company, 44 files were selected for review. The commercial policies consisted of tenant occupied dwelling fire, commercial fire, commercial inland marine and commercial package. All 44 files selected were received and reviewed. The 10 violations were based on 9 files, resulting in an error ratio of 20%.

The following findings were made:

*1 Violation Act 86, Section 3(a)(2) [40 P.S. §3403(a)(2)]*

Requires that a nonrenewal notice be forwarded directly to the named insured or insureds at least 60 days in advance of the effective date of the termination. The file noted was absent any evidence this requirement was complied with.

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

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

AND

*Title 31, Pa. Code, Section 113.88*

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. The 7 files noted were absent any evidence this requirement was complied with.

*2 Violations Act 86, Section 3(a)(6) [40 P.S. §3403(a)(6)]*

Requires that a nonrenewal notice shall state that at the insured’s request, the insurer shall provide loss information to the insured for at least three years or the period of time during which the insurer has provided coverage to the insured,

whichever is less. The 2 files noted were absent any evidence this requirement was complied with.

#### 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 7,603 commercial property policies, which were renewed during the experience period, 115 files were selected for review. The commercial property policies consisted of tenant occupied dwelling fire, commercial fire, commercial inland marine and commercial package. All 115 files selected were received and reviewed. No violations were noted.

### **F. Workers Compensation**

#### 1. Midterm Cancellations

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

The purpose of the review was to determine compliance with Insurance Company Law, Section 653 (40 P.S. §813), which prohibits midterm cancellation with exceptions for nonpayment of premium or by request of the insured.

From the universe of 155 workers' compensation policies, cancelled during the experience period, 50 files were selected for review. Of the 50 files selected, 49 were received and reviewed. The violation noted resulted in an error ratio of 2%.

The following finding was made:

*1 Violation 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 file noted was not produced by the Company.

## 2. 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 review was conducted to determine compliance with Act 86, Section 3 (40 P.S. §3403), which establishes notice requirements for nonrenewals.

From the universe of 90 workers' compensation policies, which were nonrenewed during the experience period, 25 files were selected for review. All 25 files selected were received and reviewed. The 7 violations noted were based on 6 files, resulting in an error ratio of 24%.

The following findings were made:

*1 Violation Act 86, Section 3(a)(2) [40 P.S. §3403(a)(2)]*

Requires that a nonrenewal notice be forwarded directly to the named insured or insureds at least 60 days in advance of the effective date of the termination. The file noted was absent any evidence this requirement was complied with.

*6 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 6 files noted were absent any evidence this requirement was complied with.

## 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.

#### Private Passenger Automobile – New Business Without Surcharges

From the universe of 7,115 personal automobile policies identified as new business without surcharges by the Company, 100 files were selected for review. All 100 files requested were received and reviewed. The 21,348 violations were based on the universe of 7,115 files, resulting in an error ratio of 100%.

The following findings were made:

*1 Violation Act 1990-6, Section 9, 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 violation noted was the result of the policy being issued without uninsured and underinsured motorist coverage and no evidence of a signed written rejection form in the file.

*2 Violations Act 1990-6, Section 18, 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 2 violations noted were the result of not having the required signed statement from the insured.

*7,115 Violations Act 1990-6, Section 17, Title 75, Pa. C.S. §1791.1(a)*

Requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the Commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-point type: "The laws of the Commonwealth of

Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage or coverages in excess of the limits required by law are provided only at your request as enhancements to basic coverages.” The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured’s existing coverages. The 7,115 violations noted were the result of the Company not providing the itemized invoice to the insured at the time of application.

*7,115 Violations Act 1990-6, Section 17, Title 75, Pa. C.S §1791.1(b)*

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the notice of tort options to the insured at the time of application.

*7,115 Violations Title 75, Pa. C.S. §1793(b)*

Requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The 7,115 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan at the time of application.

Private Passenger Automobile – New Business With Surcharges

From the universe of 920 personal automobile policy identified as new business with surcharges by the Company, 100 files were selected for review. All 100 files requested were received and reviewed. The 2,770 violations noted were based on the universe of 920 files, resulting in an error ratio of 100%.

The following findings were made:

*5 Violations Act 1990-6, Section 8, Title 75, Pa. C.S. §1705(a)(1)&(4)*

Requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option. The 5 violations noted were the result of a policy issued with limited tort and no evidence of a signed limited tort selection form.

*3 Violations Act 1990-6, Section 18, Title 75, Pa. C.S. §1734*

A named insured may request in writing the issuance of coverages under Section 1731 (relating to availability, scope and amount of coverage) in an amount equal to or less than the limits of liability for bodily injury. The 3 violations noted did not contain a written request for lower limits of liability.

*1 Violation Title 31, Pa. Code, Section 67.33(b)(1)*

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

accident. The file noted contained an improper accident surcharge applied to the policy, which resulted in an overcharge of \$1,132.

*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. The violation was the result of a policy being issued with an improper surcharge which resulted in an overcharge of \$594.

*920 Violations Act 1990-6, Section 17, Title 75, Pa. C.S. §1791.1(a)*

Requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the Commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-point type: “The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage or coverages in excess of the limits required by law are provided only at your

excess of the limits required by law are provided only at your request as enhancements to basic coverages.” The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured’s existing coverages. The 920 files noted were the result of the Company not providing the itemized invoice to the insured at the time of application.

*920 Violations Act 1990-6, Section 17, Title 75, Pa. C.S §1791.1(b)*

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the notice of tort options to the insured at the time of application.

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

Requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The 920 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan at the time of application.

## 2. Renewals

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

The purpose of the review was to measure compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time. Files were also reviewed to determine compliance with Act 68, Section 2005(c) (40 P.S. §991.2005(c)), which requires insurers to provide to insureds a detailed statement of the components of a premium and shall specifically show the amount of surcharge or other additional amount that is charged as a result of a claim having been made under a policy of insurance, or as a result of any other factors.

The Company processes and issues personal automobile policies using an automated system. In order to verify the automated system, several policies were manually rated to ensure the computer had been programmed correctly. Once the computer programming had been verified, only the input data needed to be verified. By reviewing base premiums, territory assignments, rating symbols, classifications and surcharge disclosures, the examiners were able to determine compliance with the Company's filed and approved rating plans.

#### Private Passenger Automobile – Renewals Without Surcharges

From the universe of 29,450 private passenger automobile policies renewed without surcharges during the experience period, 75 files were selected for review. All 75 files selected were received and reviewed. No violations were noted.

### Private Passenger Automobile – Renewals With Surcharges

From the universe of 4,165 private passenger automobile policies renewed with surcharges during the experience period, 100 files were selected for review. All 100 files selected were received and reviewed. The violation noted resulted in an error ratio of 1%.

The following finding was made:

#### *1 Violation Act 1990-6, Section 19, 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 \$1,050 in excess of any self insured retention or deductible applicable to the named insured.

*AND*

#### *Title 31, Pa. Code, Section 67.33(b)(1)*

An insurer may not assess a premium surcharge for the payment of a claim arising from one or more accidents where the insured was not at-fault in causing or contributing to the accident. The file noted contained an improper accident surcharge applied to the policy, which resulted in an overcharge of \$709.

### **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.

## **C. 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.

#### Homeowners – New Business Without Surcharges

From the universe of 21,027 homeowner policies written as new business without surcharges during the experience period, 75 files were selected for review. All 75 files were received and reviewed. No violations were noted.

#### Homeowners – New Business With Surcharges

From the universe of 725 homeowner policies written as new business with surcharges during the experience period, 50 files were selected for review.

From the universe of 725 homeowner policies written as new business with surcharges during the experience period, 50 files were selected for review. All 50 files selected were received and reviewed. No violations were noted.

The following concern was noted:

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

## 2. Renewals

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

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

### Homeowner – Renewals Without Surcharges

From the universe of 41,640 homeowner policies renewed without surcharges during the experience period, 75 files were selected for review.

All 75 files selected were received and reviewed. No violations were noted.

#### Homeowner – Renewals With Surcharges

From the universe of 21,027 homeowner policies renewed with surcharges during the experience period, 75 files were selected for review. All 75 files selected were received and reviewed. No violations were noted.

The following concern was noted:

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

### **D. Dwelling Fire**

#### 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.

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

From the universe of 49 dwelling fire 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 507 dwelling fire policies renewed during the experience period, 25 files were selected for review. All 25 files selected 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. 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
- G. Homeowner Claims
- H. Dwelling Fire Claims

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

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

From the universe of 2,801 private passenger automobile property damage claims reported during the experience period, 100 files were selected for review. All 100 files requested were received and reviewed. No violations were noted.

**B. Automobile Comprehensive Claims**

From the universe of 2,451 private passenger automobile comprehensive claims reported during the experience period, 100 files were selected for review. All 100 files requested were received and reviewed. No violations were noted.

**C. Automobile Collision Claims**

From the universe of 3,635 private passenger automobile collision claims reported during the experience period, 100 files were selected for review. All 100 files requested were received and reviewed. No violations were noted.

**D. Automobile Total Loss Claims**

From the universe of 1,039 private passenger automobile total loss claims reported during the experience period, 100 files were selected for review. All 100 files selected were received and reviewed. No violations were noted.

**E. Automobile First Party Medical Claims**

From the universe of 1,840 private passenger automobile first party medical claims reported during the experience period, 100 claim files were selected for review. All 100 files requested were received and reviewed. The 10 violations noted were based on 5 files, resulting in an error ratio of 5%.

The following findings were made:

*5 Violations Title 31, Pa. Code, Section 69.52(b)*

Requires an insurer to pay bills for care that are not referred to a Peer Review Organization within 30 days after the insurer receives sufficient documentation supporting the bill. The 5 violations noted resulted because the bill was not paid within 30 days.

*5 Violations Title 75, Pa. C.S. §1716*

Payment of Benefits. Benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the amount of benefits. If reasonable proof is not supplied as to all benefits, the portion supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Overdue benefits shall bear interest at the rate of 12% per annum from the date the benefits become due. In the event the insurer is found to have acted in an unreasonable manner in refusing to pay the benefits when due, the insurer shall pay, in addition to the benefits owed and the interest thereon, a reasonable attorney fee based upon actual time expended. The Company did not pay interest on 5 claims that were not paid within 30 days.

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

The universe of 37 automobile first party medical claims that were referred to a peer review organization by the Company was selected for review. All 37 files selected were received and reviewed. The Company was also asked to provide a copy of the all peer review contracts in place during the experience period. The contracts were received and reviewed. No violations were noted.

## **G. Homeowner Claims**

From the universe of 5,406 homeowner claims reported during the experience period, 100 files were selected for review. All 100 files selected were received and reviewed. The violations noted resulted in an error ratio of 1%.

The following finding was made:

### *1 Violation Title 31, Pa. Code, Section 146.6*

Every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The violation noted was absent any evidence this requirement was complied with.

## **H. Dwelling Fire Claims**

The universe of 33 dwelling fire claims reported during the experience period was selected for review. 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 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 2 violations noted were absent any evidence this requirement was complied with.

## 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)] and Act 6 of 1990 [75 Pa. CS §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 finding was made:

*1 Violation Act 1990-6, 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 did not provide the fraud warning on Form CD 193 (Rev. 12-89), the sworn statement in proof of loss.

## **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 54 pieces of advertising which included brochures, agents' kits, mail solicitation and a newsletter. 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 101 consumer complaints received during the experience period and provided all consumer complaint logs requested. Of the 101 complaints reported, 50 complaint files were selected 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 205, Section 5(a)(11) [40 P.S. §1171.5(a)(11)]*

Requires an insurer to maintain a complete record of all the complaints, which it has received during the preceding four years. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and time it took to process each complaint. The violation noted was the result of the Company not maintaining required complaint records for the experience period.

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

States that an insurer may not cancel or refuse to renew a policy of automobile insurance on the basis of one accident within the thirty-

six (36) month period prior to the upcoming anniversary date of the policy. The file noted was the result of a nonrenewal notice being issued based on one accident.

*1 Violation Act 68, Section 2004 [40 P.S. §991.2004]*

Requires that no insurer shall cancel a policy of automobile insurance except for nonpayment of premium, suspension or revocation of the named insured's driver license or motor vehicle registration or a determination that the insured has concealed a material fact or has made a material allegation contrary to fact or has made a misrepresentation of material fact and that such concealment, allegation or misrepresentation was material to the acceptance of the risk by the insurer. The file noted was cancelled for other than permitted reasons.

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

Requires an insurer to deliver or mail to the named insured a cancellation notice and state the date, not less than sixty (60) days after the date of the mailing or delivery, on which cancellation shall become effective. When the policy is being cancelled for the nonpayment of premium, the effective date may be fifteen (15) days from the date of mailing or delivery. The file contained a cancellation notice for nonpayment of premium, but did not provide 15 days from the date of mailing.

*1 Violation Act 86, Section 1 [40 P.S. §3401]*

This section provides that notwithstanding any other provision of law, a policy of insurance covering commercial property or casualty risks in this Commonwealth shall provide for not less than 30 days

advance notice to the named insured of an increase in renewal premium. This section does not apply to policies written on a retrospective rating plan. The file noted was absent any evidence this requirement was complied with.

The following synopsis reflects the nature of the 50 complaints that were reviewed.

• 43	Cancellation/Nonrenewal	86%
• 1	Renewal	2%
• 5	Rates	10%
• 1	Miscellaneous	2%
<hr/> 50		<hr/> 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 agents during the experience period and a listing of all agents terminated during the experience period.

Underwriting files were checked to verify proper licensing and appointment.

The following findings were made:

*7 Violations Insurance Department Act, No. 147, Section 641.1A [40 P.S. §310.41a] Effective 06/04/2003*

(a) Any insured entity or licensee accepting applications or orders for insured 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.

The Griffith Agency, Inc.  
L. Calvin Jones & Company

Agency One Plus, LLC  
W. J. Flaherty Co., Inc.  
Luikart Insurance Agency, Inc.  
Anderson-Campbell Insurance Agency, Inc.  
Frost Insurance Agency, Inc.

*3 Violations Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71)  
Effective 06/04/2003*

(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) Delineate the services to be provided; and

(2) Provide 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.

Gilbert's Ins. Agency, Inc.  
Commerce National Ins. Svc., Inc.  
CBIZ Benefits & Ins. Services

## **XII. RECOMMENDATIONS**

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

1. The Company must review and revise internal procedures to ensure compliance with notice requirements of Act 68, Section 2003(d) [40 P.S. §991.2003(d)] so that the violations regarding offering to write insureds direct as a result of a terminated agent as noted in the Report do not occur in the future.
2. The Company must review and revise internal control procedures to ensure compliance with cancellation notice requirements of Act 68, Sections 2006 [40 P.S. §991.2006], so that the violations noted in the Report do not occur in the future.
3. 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.
4. The Company must review Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)] to ensure that the violation relative to supporting coverage noted in the Report does not occur in the future.
5. The Company must review and revise internal control procedures to ensure compliance relative to commercial cancellation and nonrenewal

requirements of Act 86, Sections 3 and 7 [40 P.S. §§3403 and 3407], so that the violations noted in the Report do not occur in the future.

6. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to elect a tort option and that signed tort option selection forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Act 1990-6, Section 8, Title 75 Pa. C.S. §1705(a)(1)(4) do not occur in the future.
7. The Company must review Title 75, Pa. C.S. 1793(b) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure plan at the time of application, as noted in the Report, do not occur in the future.
8. The Company must review Act 1990-6, Section 17, Title 75, Pa. C.S. §1791.1(a) and (b) to ensure that violations of providing an itemized invoice listing minimum coverages and tort options at the time of application, as noted in the Report, do not occur in the future.
9. The Company must review Act 1990-6, Section 18, Title 75, Pa. C.S. §1734 to ensure that the insured signs a request for lower limits of liability for uninsured and underinsured motorist coverage and a copy kept in files as noted in the Report.
10. The premium overcharges noted in the rating section of this report must be refunded to the insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the report issue date.

13. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices so that the violations relating to status letters, as noted in the Report, do not occur in the future.
14. The Company must review Title 31, Pa. Code, Section 69.52(b) with its claim staff to ensure that first party medical bills are paid within 30 days.
15. To ensure compliance with Title 75, Pa. C.S. §1716, the Company must review the first party medical claims, which have not been paid within 30 days. Those claims that have not been paid within 30 days shall bear interest at the rate of 12% annum from the date the benefits become due. The interest amount must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.
16. The Company must ensure that all claim forms 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 information 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.” This is to ensure that violations noted under Act 1990-6, Title 75, Pa. C.S. §1822 do not occur in the future.

17. 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.

**XIII. COMPANY RESPONSE**

May 13, 2005

**VIA OVERNIGHT MAIL**

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



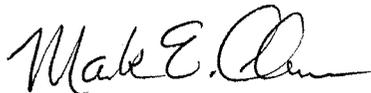
**Re: Westfield Insurance Company – Market Conduct Examination**  
**Examination Warrant Number: 04-M08-023**  
**Experience Period: July 1, 2003 to June 30, 2004**

Dear Mr. Derk:

In regards to the Exit Summary dated April 15, 2005, and Pennsylvania law, enclosed please find our response to the Department's Report of Examination of Westfield Insurance Company, covering the examination period of July 1, 2003 through June 30, 2004. We have taken affirmative steps to resolve the issues raised in the examination and trust that our company's response will reflect that.

On behalf of Westfield Insurance Company, we wish to thank you again for the diligence and professionalism with which Ms. Arnold and Mr. Houston pursued their work during the course of the examination. Should you have any questions, please do not hesitate to contact me at your convenience.

Respectfully Submitted,



Mark E. Cluse  
Corporate Attorney

Attachments

MEC/dkl  
Enclosure

**WESTFIELD INSURANCE COMPANY  
EXAMINATION WARRANT NUMBER 04-M08-023  
COMPANY RESPONSE**

**IV. UNDERWRITING PRACTICES AND PROCEDURES**

Westfield Insurance Company acknowledges the Department's findings and reports that corrective measures were previously taken to eliminate any similar violations in the future.

**V. UNDERWRITING**

**A. Private Passenger Automobile**

Westfield Insurance Company acknowledges the Department's findings and reports that its Personal Lines Underwriting Manager is taking this opportunity to again advise the underwriting staff of the requirements under Act 68, Section 2006 and the necessity for full and consistent compliance. As to those violations under Act 68, Section 2003(d), Westfield Insurance Company previously discovered a procedural flaw internally during the actual period audited, corrected the flaw, amended the procedures and advised underwriters of the correction. The violations cited preceded these corrective measures.

**B. Personal Lines Property**

Westfield Insurance Company acknowledges the Department's findings and reports that its Personal Lines Underwriting Manager is taking this opportunity to again advise the underwriting staff of the cancellation and nonrenewal requirements under Act 205, Sections 5(a)(4) and 5(a)(9)(ii)&(iii)[40 P.S. §1171.5(a)(4), (9)(ii)&(iii)] and the necessity for full and consistent compliance. Furthermore, our personal lines cancellation/nonrenewal manual has been updated to reiterate the importance of these requirements.

As to those violations under Act 205, Section 5(a)(9)[40 P.S. §1171.5(a)(9)], Westfield Insurance Company previously discovered a procedural flaw internally during the actual period audited, corrected the flaw, amended the procedures and advised underwriters of the correction. The violations cited preceded these corrective measures.

**C. Commercial Property**

Westfield Insurance Company acknowledges the Department's findings and reports that its Personal Lines Underwriting Manager is taking this opportunity to again advise the underwriting staff of the cancellation and nonrenewal requirements contained within Act 86, Sections 3(a)(2), 3(a)(5),

3(a)(6) and 7(c) [40 P.S. §§ 3403(a)(2);(a)(5);(a)(6);(c)], Title 31, Pa. Code, Section 113.88 and Act 205, Sections 5(a)(4) and the necessity for full and consistent compliance. Furthermore, our commercial lines cancellation/nonrenewal manual has been updated to reiterate the importance of these requirements.

#### **D. Workers Compensation**

Westfield Insurance Company acknowledges the Department's findings and reports that its Commercial Lines Underwriting Executives are taking this opportunity to again advise the underwriting staff of the cancellation and nonrenewal requirements contained within Act 86, Sections 3(a)(2), 3(a)(5) [40 {P.S. §§ 3403(a)(2) and (a)(5)}] and Title 31, Pa. Code, Section 113.88 and the necessity for full and consistent compliance. Furthermore, our commercial lines cancellation/nonrenewal manual has been updated to reiterate the importance of these requirements.

### **VI. RATING**

#### **A. Private Passenger Automobile**

##### **1. New Business**

##### **Private Passenger Automobile – New Business Without Surcharges**

Westfield Insurance Company acknowledges the Department's findings and reports that its Personal Lines Underwriting Manager and State Sales Manager are issuing a bulletin to both the underwriting staff and our independent agency partners to reiterate the document retention requirements contained within Act 1990-6, Sections 9 and 18, Title 75, Pa.C.S. §§1731(b) & (c) and 1792(b)(1) and the necessity for full and consistent compliance.

As to those violations under Act 1990-6, Section 17, Title 75 Pa.C.S. §§171.1 (a)&(b) and 1793(b), Westfield Insurance Company is currently reprogramming its proprietary application system to automatically generate compliant forms at the time the independent agent commences the application process rather than placing the forms in its new business packet .

##### **Private Passenger Automobile – New Business With Surcharges**

Westfield Insurance Company acknowledges the Department's findings and reports that its Personal Lines Underwriting Manger and State Sales Manager are issuing a bulletin to both the underwriting staff and our independent agency partners to reiterate the document retention requirements contained within Act 1990-6, Section 8, Title 75, Pa.C.S. §§1705(a)(1)&(4) and 1734 and the necessity for full and consistent compliance.

As to the separate violations under Title 31, Pa. Code, Section 67.33(b)(1) and Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40 P.S. §1184, Westfield Insurance Company reports that the improper surcharges were removed, with reimbursement provided to the policyholders for the amount of the overcharge.

As to those violations under Act 1990-6, Section 17, Title 75 Pa.C.S. §§171.1 (a) and(b) and 1793(b), Westfield Insurance Company is currently reprogramming its proprietary application system to automatically generate compliant forms at the time the independent agent commences the application process rather than placing the forms in its new business packet.

## **2. Renewals**

Westfield Insurance Company acknowledges the Department's finding and reports that the improper surcharge was removed, with reimbursement provided to the customer for the amount of the overcharge.

## **VII. CLAIMS**

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

Westfield Insurance Company acknowledges the Department's findings and reports that its Regional Claims Executive is taking this opportunity to again advise the claims adjusters involved of the requirements of Pennsylvania law and the necessity for full and consistent compliance. Additionally, Westfield Insurance Company has issued and mailed checks for payment of interest owed to the five claimants identified by the Department.

### **B. Homeowner Claims**

Westfield Insurance Company acknowledges the Department's finding and report that its Regional Claims Executive is taking this opportunity to again advise the claims adjuster involved of this requirement under Title 31 Pa. Code, Section 146.6 and the necessity for full and consistent compliance.

### **C. Dwelling Fire Claims**

Westfield Insurance Company acknowledges the Department's findings and reports that it Regional Claims Executive is taking this opportunity to again advise the claims adjusters involved of this requirement under Title 31 Pa. Code, Section 146.6 and the necessity for full and consistent compliance.

## **VIII. FORMS**

Westfield Insurance Company acknowledges the Department's finding and reports that it does have an internal procedure to manually affix a fraud warning sticker to all applications and claims forms. The Claims Executive is taking this opportunity to again advise the claims adjuster involved of the requirement under Act 1990-6, 73 Pa.C.S. §1822 and the necessity for full and consistent compliance.

**X. CONSUMER COMPLAINTS**

Westfield Insurance Company acknowledges the Department's findings and reports the following corrective measures. With respect to the finding in violation of Act 205, Section 5(a)(1)[40 P.S. §1171.5(a)(11)], this matter has been resolved through education, training and revised procedures concerning complaint recordkeeping. The cited violation occurred in a calendar year that preceded these corrective measures. With respect to the findings of improper cancellations, the two policies were reinstated.

**XI. LICENSING**

Westfield Insurance Company acknowledges the Department's findings and reports the following corrective measures. For those agencies without Pennsylvania non-resident licenses, formal steps were taken to request those independent agents obtain the proper non-resident licensing. For those agencies that have done so, formal appointments, along with the appropriate fees, were submitted to the Department. Furthermore, procedures are being updated and distributed to our underwriters to emphasize and eliminate these concerns in the future.

For those three agencies without proper appointments, formal notices of appointments, along with the appropriate fees, were submitted to the Department to correct the identified violations.

**XII. RECOMMENDATIONS**

1. Westfield Insurance Company acknowledges this recommendation and reports that it previously discovered a procedural flaw internally during the actual period audited, corrected the flaw, amended the procedures and advised its underwriters of the correction. The violations cited preceded these corrective measures.
2. Westfield Insurance Company acknowledges this recommendation and reports that an internal bulletin has been issued to its policy services and billing personnel responsible for business in Pennsylvania to review our established procedures and reiterate the importance of maintaining documentation to indicate when a cancellation notice is mailed in compliance with Act 68, Sections 2006 [40 P.S. §991.2006].

3. Westfield Insurance Company acknowledges this recommendation and reports that it previously discovered a procedural flaw internally during the actual period audited, corrected the flaw, amended the procedures and advised its underwriters of the correction. The violations cited preceded these corrective measures.
4. Westfield Insurance Company acknowledges this recommendation and reports that its Personal Lines Underwriting Manager is reviewing our established procedures regarding the requirements of Act 205, Section 5(a)(4)[40 P.S. 1171.5 (a)(4)] with our underwriters to express the necessity for full and consistent compliance. We have also taken this opportunity to reiterate the importance of this requirement within our internal underwriter cancellation/nonrenewal manual to ensure that all company underwriters understand that secondary residences in Pennsylvania cannot be nonrenewed simply due to nonrenewal of primary residence in another state.
5. Westfield Insurance Company acknowledges this recommendation and reports that its Commercial Lines Underwriting Managers are reviewing our existing procedures regarding the requirements of Act 86, Sections 3 and 7 [40 P.S. §§3403 and 3407] with our underwriters to express the necessity for full and consistent compliance. We have also taken this opportunity to reiterate the importance of this requirement within our internal commercial underwriter cancellation/nonrenewal manual.
6. Westfield Insurance Company acknowledges this recommendation and reports that its Personal Lines Underwriting Manager and State Sales Manager are issuing an internal bulletin to all Pennsylvania underwriters and to our independent agency partners to reiterate the requirements of Act 1990-6, Section 18, Title 75 Pa.C.S. §1705(a)(1)(4) with respect to maintaining copies of signed tort option selection forms and the necessity for full and consistent compliance.
7. Westfield Insurance Company acknowledges this recommendation and reports that it is currently reprogramming its proprietary application system to automatically generate those forms consistent with Title 75 Pa.C.S. §1793 (b) at the time the independent agent commences the application process.
8. Westfield Insurance Company acknowledges this recommendation and reports that it is currently reprogramming its proprietary application system to automatically generate those forms consistent with Act 1990-6, Section 17, Title 75 Pa.C.S. §1791.1(a) and (b) at the time the independent agent commences the application process.
9. Westfield Insurance Company acknowledges this recommendation and reports that its Pennsylvania Underwriting Manager and State Sales Manger are issuing an internal bulletin to all Pennsylvania underwriters

and to our independent agency partners to reiterate the requirements of Act 1990-6, Section 18, Title 75 Pa.C.S. §1734 with respect to maintaining copies of requests for lower limits of liability and the necessity for full and consistent compliance.

10. Westfield Insurance Company acknowledges this recommendation and reports that all premium overcharges have been refunded, with proof of such refunds being previously provided to the Department.
11. Westfield Insurance Company acknowledges this recommendation and reports that the regional claims executive has reviewed our established procedures regarding Title 31 Pa. Code, Chapter 146 and the submission of timely status letters with the Pennsylvania claims staff to express the necessity for full and consistent compliance.
12. Westfield Insurance Company acknowledges this recommendation and reports that an internal claims bulletin has already been issued to our claims support staff regarding the requirements of Title 31 Pa. Code, Section 69.25(b) and the necessity for full and consistent compliance.
13. Westfield Insurance Company acknowledges this recommendation and reports that all interest due has been paid and proof of such payment has been previously provided to the Department.
14. Westfield Insurance Company acknowledges this recommendation and reports that the regional claims executive has reviewed our established procedures regarding Act 1998-6, Title 75 Pa.C.S. §1822 with the Pennsylvania claims staff to express the necessity for full and consistent compliance.
15. Westfield Insurance Company acknowledges this recommendation and reports that it's Licensing Department is preparing an internal correspondence to the business units to reiterate the requirements of Section 641.1(a) and Section 671-A of the Insurance Department Act No. 147 and the necessity for full and consistent compliance. Additionally, Westfield Insurance Company is forwarding correspondence to those producers who have not, to date, corrected this deficiency to ensure full and immediate compliance.

Respectfully submitted,

Mark E. Cluse  
Corporate Attorney

Attachments