



GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 5, 2013

Scott E. Failor, Esquire  
SVP, P&C Legal Member  
Nationwide Insurance  
One West Nationwide Boulevard  
Columbus, OH 43215-2220

Nationwide Consent Order Docket No. MC13-06-022

Dear Mr. Failor:

Nationwide has notified the Department of Insurance that the above-captioned Consent Order should be modified to more accurately reflect the Nationwide subsidiaries that were the subject of the recent market conduct examination. Specifically, Nationwide advises that it submitted data for its Titan Indemnity Company and Victoria Fire and Casualty Company, and not Titan Insurance Company; which is incorrectly referenced in paragraphs 4(a)(b),(d) and 6(b) of the Order.

Further, the Department is in agreement with Nationwide's proposal to correct 6(b) of the Order by splitting the \$37,500 settlement allocation to Titan Insurance Company equally between the correct companies, Titan Indemnity Company and Victoria Fire and Casualty Company (\$18,750 each).

This is to verify that the Department is amenable to modifying the Order to reflect these corrections. We trust that this satisfies Nationwide's current need to comply with all mandated regulatory reporting on the matter. Should you wish to discuss, please advise.

Regards,

Terrance A. Keating  
Deputy Chief Counsel for Litigation

cc: Christopher R. Monahan  
Director, Bureau of Market Actions

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA  
2013 JUL 23 AM 10:44  
ADMINISTRATIVE HEARINGS OFFICE

IN RE:	:	VIOLATIONS:
	:	
NATIONWIDE MUTUAL	:	Sections 903(a) and 904(b) of the
INSURANCE COMPANY	:	Insurance Department Act, Act of May 17,
NATIONWIDE PROPERTY &	:	1921, P.O.L. 789, No. 285 (40 P.S. §323.4)
CASUALTY INSURANCE	:	
COMPANY	:	Sections 4, 5(a)(5), 5(a)(9), 5(a)(9)(ii),
NATIONWIDE MUTUAL FIRE	:	5(a)(9)(iii), 5(a)(10)(i) & (vi),
INSURANCE COMPANY	:	5(a)(13)(c)(1) of the Unfair Insurance
NATIONWIDE INSURANCE	:	Practices Act, Act of July 22, 1974, P.L.
COMPANY OF AMERICA	:	589, No. 205 (40 P.S. §1171.4 and
NATIONWIDE AFFINITY COMPANY :	:	1171.5)
AMERICA	:	
NATIONWIDE ASSURANCE	:	
COMPANY	:	Sections 4(a) and 4(h) of the Act of
NATIONWIDE GENERAL	:	June 11, 1947, P.L. 538, No. 246 (40
INSURANCE COMPANY	:	P.S. §1184)
TITAN INSURANCE COMPANY	:	
One West Nationwide Boulevard	:	Title 31, Pa. Code, Sections 59.6(6),
Columbus, OH 43215-2220	:	59.9(b), 146.6 and 146.7(a)(1)
	:	
	:	Act 1990-6, Section 1798(a) (Title 75, Pa.
	:	C.S. 1798)
	:	
	:	
Respondents.	:	Docket No. MC13-06-022

CONSENT ORDER

AND NOW, this 23<sup>d</sup> day of July, 2013, this Order is hereby  
issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to  
the statutes cited above and in disposition of the matter captioned above.

1. Respondents hereby admit and acknowledge that they have received proper notice of their rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in this matter, and agree 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.

3. Respondents neither admit nor deny the Findings of Fact or Conclusions of Law contained herein. Respondents deny violating any Pennsylvania Law or Regulation.

#### FINDINGS OF FACT

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

- (a) Respondents are Nationwide Mutual Insurance Company, Nationwide Property & Casualty Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Insurance Company of America, Nationwide Affinity Company of America, Nationwide Assurance Company, Nationwide General Insurance Company and Titan Insurance Company and maintain their address at One West Nationwide Boulevard, Columbus, OH 43215-2220.

(b) The Insurance Department conducted a target market conduct examination of three Respondents, Nationwide Property & Casualty Insurance Company, Nationwide Mutual Fire Insurance Company and Nationwide Insurance Company, covering the experience periods from July 1, 2010 through June 30, 2011 for underwriting/rating and from January 1, 2000 through December 31, 2011 for first party medical claims. Further, the Insurance Department conducted a limited scope target examination of five additional Respondents, Nationwide Insurance Company of America, Nationwide Affinity Company of America, Nationwide Assurance Company, Nationwide General Insurance Company and Titan Insurance Company, on the issue of first party medical claims.

(c) The target market conduct examination of three Respondents revealed the following findings, with regard to a portion of the files reviewed:

- i. Respondents' files do not adequately document that written notice cancellation on property policies are provided insureds nor do they include evidence in file notes supporting that insureds requested cancellation.
- ii. The minimum number of days notice was not provided on cancellation notices for property policies.
- iii. Property policies were non-renewed for prohibited reasons.

- iv. Respondents failed to specify the amount of premium due on cancellation notices.
- v. Respondents failed to provide renewal notices to insureds at least 30 days in advance of the expiration date of policies.
- vi. Respondents improperly coded certain costs and fees as loss payments, instead of expenses, relating to first party medical claims.
- vii. For certain third party bodily injury claims, Respondents' attorney fees payments were improperly miscoded and processed as loss payments, contrary to Respondent's own guidelines.
- viii. Respondents failed to provide insureds with 30/45 day status letters on property claims.
- ix. Respondents failed to timely accept or deny property claims and failed to provide insureds with written notifications of claims denials.
- x. On various occasion during the examination, Respondents failed to provide accurate data in response to the Department's requests for certain data runs. In addition, certain files that were identified by Respondents as nonrenewals were actually 60-day and/or mid-term cancellations and certain files identified by Respondents as 60-day cancellations were actually mid-term cancellations.
- xi. In 2011 and 2012, the Respondents' annual MCAS filings with the Department contained material inaccuracies relating to claims and underwriting data. Similarly, in May of 2012, Respondent incorrectly reported lawsuit counts and submitted this data to the NAIC, which

subsequently resulted in Respondent having to file a revised MCAS filing for 2012.

- xii. Respondents historically utilized agent and customer information to manually assign Property Protection Classifications, which resulted in some inaccuracies. Respondents implemented its automated geocoding system in November 2009 and this resulted in Respondents more accurately rating Property Protection Classifications and identifying premium undercharges and overcharges. Since implementation of the new tool, Respondents have made premium adjustments including refunds of approximately \$3 million to its policyholders in Pennsylvania.
- xiii. Respondents misrated homeowner policies contrary to its filed and approved rating and rules manual; specifically, policies were rated as 1-4 family dwelling units when in fact the properties were in excess of four family dwelling units. Further, Respondents in some instances failed to rate policies in accordance with their filed and approved rating plan.

(d) The limited scope target market conduct exam of five Respondents revealed the following findings:

- i. Respondents improperly coded certain costs and fees as loss payments, instead of expenses, relating to first party medical claims.

- (e) The market conduct examinations of Respondents revealed the following violations:
- i. Section 903(a) of the Insurance Department Act 40 Purdons Statutes, Section 323.3(a), which requires every company subject to examination keep all records and documents relating to its business in such manner as may be required in order that the Department may verify whether the company has complied with the laws of this Commonwealth;
  - ii. Section 904(b) of the Insurance Department Act (40 P.S. § 323.4), which requires every company or person from whom information is sought must provide to the examiners timely, convenient and free access to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined;
  - iii. Section 4 of Act 205 (40 P.S. § 1171.4), which prohibits any person to engage in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act;
  - iv. Section 5(a)(9) of Act 205 (40 P.S. § 1171.5), which prohibits cancellation of any policy of insurance covering owner-occupied private residential

properties or personal property of individuals that has been in force for sixty days or more or refusing to renew any such policy unless misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the company; or there has been a substantial change or increase in hazard in the risk assumed by the company subsequent to the date the policy was issued;

v. Section 5(a)(9)(ii) of Act 205 (40 P.S. § 1171.5), which prohibits any cancellation or refusal to renew to become effective in a period of less than thirty days from the date of delivery or mailing;

vi. Section 5(a)(9)(iii) of Act 205 (40 P.S. § 1171.5) requires that a cancellation notice shall state the specific reason or reasons of the insurer for cancellation;

vii. Section 5(a)(10)(i) and (vi) of Act 205 (40 P.S. § 1171.5), which states any of the following acts, if committed or performed with such frequency as to indicate a business practice, shall constitute unfair claim settlement or compromise practices: misrepresenting pertinent facts or policy or contract provisions relating to coverages at issue, and not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in



which the company's liability under the policy has become reasonably clear;

- viii. Section 5(a)(13)(c)(1) of Act 205 (40 P.S. §1171.5), states that nothing in subsection (a)(9) of this section shall apply if the insured has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, including the mailing of a renewal premium notice to the insured not less than thirty days in advance of the expiration date of the policy;
- ix. Section 5(a)(5) of the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171.5) prohibiting the filing of any false material statement of fact to a public official.
- x. 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;
- xi. Title 31, Pennsylvania Code, Section 59.6(6), which states if the reason is a

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

xii. Title 31, Pennsylvania Code, Section 59.9(b), which 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;

xiii. Title 31, Pennsylvania Code, Section 146.6 states that if an investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation delay for the and state when a decision on the claim may be expected;

xiv. Title 31, Pennsylvania Code, Section 146.7(a)(1), which requires within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer; and

xv. Section 1798(a) of Act 1990-6, Title 75, Pa.C.S. §1798(a), which states an attorney's fee for representing a claimant in connection with a claim for first party benefits provided under Subchapter B or a claim for catastrophic loss benefits under Subchapter F shall be calculated, determined or paid on

a contingent fee basis, nor shall any attorney's fees be deducted from the benefits enumerated in this subsection which are otherwise due such claimant. An attorney may charge a claimant a reasonable fee based upon actual time expended.

#### CONCLUSIONS OF LAW

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

(a) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.

(b) Respondents' violations of Sections 4, 5(a)(5), 5(a)(9), 5(a)(9)(ii), 5(a)(9)(iii), 5(a)(10)(i) and (vi) and 5(a)(13)(c)(1) 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.

(c) In addition to any penalties imposed by the Commissioner for Respondents' 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).

(d) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.6 and 146.7(a)(1) are punishable under Sections 9, 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§1171.9, 1171.10 and 1171.11), as described above.

(e) Respondents' violations of Sections 4(a) and (h) of the Casualty and Surety Rate Regulatory Act, No. 246 (40 P.S. § 1184) are punishable under Section 16 of the Casualty and Surety Rate Regulatory Act:

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

extension thereof which the Commissioner may grant.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondents consent to the following:

- (a) Respondents shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) In settlement of the violations relating to the miscoded costs and fees relating to first party benefits (referenced in paragraph 4(c)(vi), *infra.*), each of the eight Respondents captioned above shall each pay Thirty Seven Thousand and Five Hundred Dollars (\$37,500). Additionally, three Respondents, Nationwide Property & Casualty Insurance Company, Nationwide Mutual Fire Insurance Company and Nationwide Insurance Company, shall pay Two Hundred Seventeen Thousand and Five Hundred Dollars (\$217,500) for settlement of all of the remaining violations identified during the examination and Fifty-Seven Thousand and Five Hundred Dollars (\$57,500) for reimbursement to the Department for costs and expenditure of resources associated with the exam.
- (c) Payment of this matter shall be made by check payable to the Pennsylvania Insurance Department. Payment should be directed to Cherie L. Leese,

Administrative Officer, 1321 Strawberry Square, Harrisburg, Pennsylvania  
17120. Payment must be made no later than thirty (30) days after the date of  
this Order.

- (d) Respondents shall file an affidavit stating under oath that they will provide each of its directors, at the next scheduled directors meeting, a copy of this adopted Order. Such affidavit shall be submitted within thirty (30) days of the date of this Order.
- (e) Respondents shall comply with all sections of statute and regulation referenced in this Order.
- (f) After a period of 12 months from the date of this Order, the Department shall, at its sole discretion, conduct a re-examination of Respondents to verify that all corrective actions have been implemented and to otherwise review any and all issues that the Department, within its sole discretion, deems appropriate. The cost of the re-examination shall be paid by Respondents and otherwise be conducted pursuant to Pennsylvania's Examination Law. Further, Respondents shall file any periodic report or reports that the Department, in its sole discretion deems necessary, and in a manner, time, form and content that the Department designates.

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

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

9. In any such enforcement proceeding, Respondents 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.

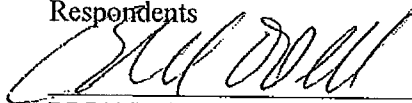
10. Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. 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.

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

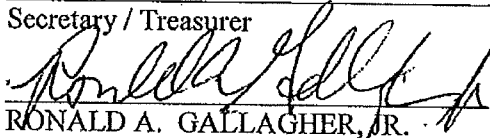
BY: NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE PROPERTY & CASUALTY INSURANCE COMPANY, NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, NATIONWIDE INSURANCE COMPANY OF AMERICA, NATIONWIDE AFFINITY COMPANY OF AMERICA, NATIONWIDE ASSURANCE COMPANY, NATIONWIDE GENERAL INSURANCE COMPANY and TITAN INSURANCE COMPANY

Respondents



BRIAN O'DELL  
Regional Vice President  
Northeast States Regional Operations

Secretary / Treasurer



RONALD A. GALLAGHER, JR.  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania