

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

ARGONAUT INSURANCE COMPANY
Menlo Park, California

**AS OF
October 8, 2003**

COMMONWEALTH OF PENNSYLVANIA



**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: December 4, 2003

ARGONAUT INSURANCE COMPANY

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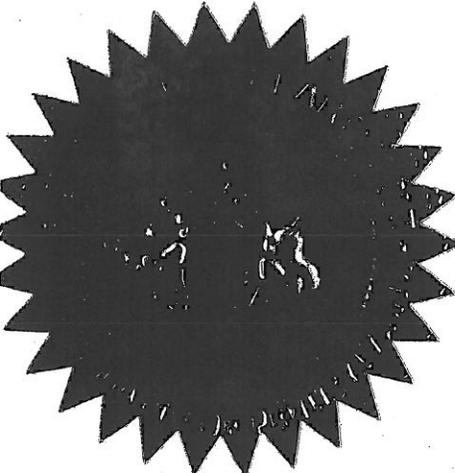
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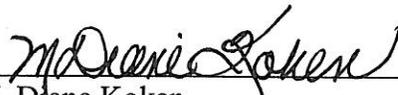
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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

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





M. Diane Koken
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
ARGONAUT INSURANCE	:	Act 1990-6, Sections 1705(a)(1) and
COMPANY	:	(4), 1731(b) and (c), 1738(d)(1) and
250 Middlefield Road	:	(2), 1791, 1791.1(a), 1791.1(b),
Menlo Park, CA 94025	:	1792(b)(1), 1793(b)(1)(2),
	:	1797(b)(1) and 1799.3(a) and (d)
	:	
	:	Sections 2002(c)(3), 2003, 2003(a)(1),
	:	2004, 2006(1), 2006(2) and 2008(b) of
	:	Act 68 of 1998 (40 P.S. §§ 991.2002,
	:	2003, 2004, 2006 and 2008)
	:	
	:	Title 31, Pennsylvania Code, Sections
	:	61.13, 62.3(f)(8), 67.33(b)(1),
	:	69.52(b), 146.5(d) and 146.6
	:	
	:	Title 75, Pennsylvania Consolidated
	:	Statutes, Sections 1716 and 1822
	:	
	:	
	:	
Respondent.	:	Docket No. MC03-10-025

CONSENT ORDER

AND NOW, this *4th* day of *December*, 2003, 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 Argonaut Insurance Company, and maintains an address at One International Plaza, Suite 500, Philadelphia, Pennsylvania 19113.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2001 through June 30, 2002.
- (c) On October 8, 2003, the Insurance Department issued a Market Conduct Examination Report to Respondent.

(d) A response to the Examination Report was provided by Respondent on November 5, 2003.

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

- (i) Section 1705(a)(1) and (4) of Act 1990-6, Title 75, Pa.C.S. § 1705(a)(1) and (4), 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;
- (ii) Section 1731(b) and (c) of Act 1990-6, Title 75, Pa.C.S. § 1731(b) and (c), 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;
- (iii) Section 1738(d)(1) and (2) of Act 1990-6, Title 75, Pa.C.S. § 1738, which requires the named insured to be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms;

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

- (v) 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 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;

- (vi) Section 1791.1(b) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance;

- (vii) Section 1792(b)(1) of Act 1990-6, Title 75, Pa.C.S. § 1792, which requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it;

- (viii) Section 1793 (b)(1)(2) 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 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;

- (ix) Section 1797(b)(1) of Act 1990-6, Title 75, Pa.C.S. § 1797, which requires that a peer review plan for challenges to reasonableness and necessity of treatment by the insurer shall contract jointly and separately with any peer review organization for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person;

- (x) Section 1799.3(a) of Act 1990-6, Title 75, Pa.C.S. § 1799, which prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$950 in excess of any self-insured retention or deductible applicable to the named insured;

- (xi) Section 1799.3(d) of Act 1990-6, Title 75, Pa.C.S. § 1799, which requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the named insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect;

- (xii) Section 2002(c)(3) of Act 68 of 1998 (40 P.S. § 991.2003), which requires that an insurer supply the insured with a written statement of the reason for cancellation;

- (xiii) Section 2003 of Act 68 of 1998 (40 P.S. § 991.2003), which prohibits the rescission of a personal automobile policy after the policy has been in force

for more than 60 days, unless the rescission meets the two-prong test established by the Supreme Court of Pennsylvania;

(xiv) 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. Under Pennsylvania law, requiring a minimum period of driving experience in order to be eligible to obtain automobile insurance constitutes a *per se* unlawful criterion based upon age. *See, e.g., Aetna v. Commonwealth, Insurance Department*, 606 A.2d 553 (Pa. Cmwlth. 1992), *rev'd on other grounds*, 536 Pa. 105, 638 A.2d 194 (1994); *Travelers v. Commonwealth, Insurance Department*, 440 A.2d 645 (Pa. Cmwlth. 1981);

(xv) Section 2004 of Act 68 of 1998 (40 P.S. § 991.2003), 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 of a determination that the insured has concealed a material factor 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;

- (xvi) Section 2006(1) of Act 68 of 1998 (40 P.S. § 991.2003), which requires that a cancellation or refusal to write or renew by an insurer of a policy of insurance must be in a form acceptable to the Insurance Commissioner;
- (xvii) Section 2006(2) of Act 68 of 1998 (40 P.S. § 991.2006), which prohibits a cancellation or refusal to renew from being effective unless the insurer delivers or mails a written notice of the cancellation or refusal to renew, which will include the date, not less than 60 days after the date of mailing or delivery, on which the cancellation or refusal to renew shall become effective. When the policy is being cancelled or not renewed for reasons set forth in Sections 2004(1) and (2), however, the effective date may be 15 days from the date of mailing or delivery;
- (xviii) Section 2008(b) of Act 68 of 1998 (40 P.S. § 991.2008), which requires any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Commissioner that he review the action of the insurer in refusing to write a policy for the applicant;
- (xix) Title 31, Pennsylvania Code, Section 61.13, which requires an insurer to maintain records of the number of cancellations and the reasons therefore

and shall file with the Insurance Department, a report summarizing the record of all such actions, within 60 days following June 30 and December 31, each year;

- (xx) Title 31, Pennsylvania Code, Section 62.3(f)(8), which requires a company to provide a copy of the total loss evaluation sheet to the consumer within five working days after the appraisal is completed;
- (xxi) 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;
- (xxii) Title 31, Pennsylvania Code, Section 69.52(b), which requires an insurer to make a referral to a PRO within 90 days of the insurer's receipt of sufficient documentation supporting the bill. An insurer shall pay bills for care that are not referred to a PRO within 30 days after the insurer receives sufficient documentation supporting the bill. If an insurer makes its referral after the 30th day and on or before the 90th day, the provider's bill for care shall be paid;
- (xxiii) Title 31, Pennsylvania Code, Section 146.5(d), which requires an insurer, upon receiving notification of a claim, shall provide within ten working days

necessary claim forms, instructions and reasonable assistance so that first-party claimants can comply with policy conditions and reasonable requirements of the insurer;

(xxiv) Title 31, Pennsylvania Code, Section 146.6, which requires complete investigation of a claim within thirty days after notification of a claim. If such investigation cannot reasonably be completed within such time, provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected, within thirty days and every forty-five days thereafter;

(xxv) Title 75, Pennsylvania Consolidated Statutes, Section 1716, states 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; and

(xxvi) Title 75, Pennsylvania Consolidated Statutes, Section 1822 (75 Pa. C.S. § 1822, which requires a fraud warning notice be included on all applications for insurance, renewals and claim forms.

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 2002, 2003, 2004, 2006 and 2008 of Act 68 of 1998 are punishable by the following, under Section 2013 of the Act (40 P.S. § 991.2013): Any individual or insurer who violates any of the provisions of this article may be sentenced to pay a fine not to exceed five thousand dollars (\$5,000.00).
- (c) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.5 and 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 below:

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

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 Seventy-Five Thousand Dollars (\$75,000.00) 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, 1311 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: ARGONAUT INSURANCE COMPANY,
Respondent


Title: SR. VICE PRES & SEC


Title: Assistant Secretary


RANDOLPH L. KOHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

I. INTRODUCTION

The market conduct examination was conducted at Argonaut Insurance Company's offices located in Philadelphia, Pennsylvania from March 19, 2003, through April 3, 2003. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

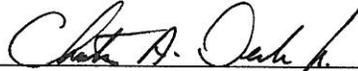
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

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

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

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

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



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



James R Myers
Market Conduct Examiner



Constance Arnold
Market Conduct Examiner



Metro Orange
Market Conduct Examiner

II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Argonaut Insurance Company, hereinafter referred to as "Company," at their office located in Philadelphia, 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, 2001, through June 30, 2002, 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, mid-term cancellations, 60-day cancellations and declinations.
 - Rating - Proper use of all classification and rating plans and procedures.
2. Claims
3. Forms
4. Advertising
5. Complaints
6. Licensing

III. COMPANY HISTORY AND LICENSING

Argonaut Insurance Company was incorporated as a California stock property and casualty insurance company on May 21, 1957, and commenced business the same day. Argonaut Insurance Company is owned by Argonaut Insurance Group. The private passenger automobile program was handled by a Third Party Administrator, Esurance, also from California.

LICENSING

Argonaut Insurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2003. The Company is licensed in all states, District of Columbia and Puerto Rico. The Company's 2002 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$318,002. Premium volume related to the areas of this review were: Private Passenger Automobile Direct Written Premium was reported as Private Passenger Auto No-Fault (personal injury protection) \$80,272; Private Passenger Auto Liability \$384,772 and Private Passenger Auto Physical Damage \$464,974. It should be noted that several lines of business indicated a negative balance (Workers' Compensation, -\$591,941; Commercial Automobile, -\$20,705).

IV. UNDERWRITING PRACTICES AND PROCEDURES

As part of the examination, the Company was requested to supply 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 and commercial automobile. The purpose of this review was to identify any inconsistencies which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. The following 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 Company is writing general liability and commercial automobile insurance only in conjunction with profitable workers compensation insurance.

1 Violation 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 is using age as criteria for refusal to write a policy of automobile insurance in the following instance: single-driver policies with less than 3 years licensed to drive in the U.S. are rejected.

Concern: Applicants are being rejected for not having 12 months continuous prior insurance. This practice is a concern to the department as it

could result in age discrimination, as this implies the applicant must have 12 months driving experience.

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.

The universe of 21 personal automobile files identified as being cancelled in the first 60 days of new business was selected for review. All 21 files selected were received and reviewed. The 16 violations were based on 16 files resulting in an error ratio of 76%.

The following finding was made:

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

Requires that an insurer supply the insured with a written statement of the reason for cancellation. The 16 files noted were for policies cancelled within the first 60 days of new business inception date and did not contain evidence that a written statement of the reason for cancellation was given to the insured.

2. Mid-term Cancellations

A mid-term 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 221 private passenger automobile files identified as mid-term cancellations by the Company, 75 files were selected for review. All 75 files selected were received and reviewed. The 44 violations were based on 42 files, resulting in an error ratio of 56%

The following findings were made:

2 Violations 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 2 files noted were cancelled for other than permitted reasons.

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

Requires an insurer to deliver or mail to the named insured a notice of cancellation 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 42 files noted contained 40 instances of cancellation notices that did not provide the required 15 days notice from the date of mailing and 2 instances of cancellation notices that did not provide the required 60 days notice from the time of mailing.

3. Declinations

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

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

The universe of 106 automobile declinations was selected for review. All 106 files were received and reviewed. The 107 violations were based on 106 files, resulting in an error ratio of 100%.

The following findings were made:

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

Requires that any applicant for a policy who is refused such policy by an insurer shall be given a written notice of the refusal to write by the insurer. The notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. There were 106 violations for failure to provide a specific reason for refusal to write.

1 Violation Title 31, PA Code, Chapter 61.13

Requires each insurer to maintain records of the number of cancellations and refusals to write or renew policies and the reasons therefore, and shall file with the Insurance Department, a report summarizing the record of all such actions. The company failed to maintain accurate records for refusals to write.

4. Rescissions

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

The universe of 6 personal automobile files were identified as being rescissions by the Company during the experience period was selected for review. All 6 files selected were received and reviewed. The 12 violations were based on 6 files, resulting in an error ratio of 100%

The following findings were made:

6 Violations Act 68, Section 2003 [40 P.S. §991.2002]

Prohibits the rescission of a personal automobile policy after the policy has been in force for more than (60) days, unless the rescission meets the two-prong test established by the Supreme Court of Pennsylvania in *Erie Insurance Exchange v. Lake*. The 6 files noted were rescinded in a manner not consistent with *Erie v. Lake*. A separate action filed by the Field Investigation Division, in the form of a consent order, also addressed this issue.

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

Requires that a cancellation or refusal to write or renew by an insurer of a policy of insurance must be in a form acceptable to the Insurance Commissioner. The 6 files notes did not have a Notice of Rescission in a form acceptable by the Insurance Commissioner. A separate action filed by the Field Investigation Division, in the form of a consent order, also addressed this issue.

B. Private Passenger Automobile – Assigned Risk

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

VI. RATING

A. Private Passenger Automobile

1. New Business

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

Private Passenger Automobile – New Business Without Surcharges

From the universe of 1,032 personal automobile policies identified as new business without surcharges by the Company, 100 files were selected for review. All 100 files were received and reviewed. The 4,214 violations were based on 1,032 files, resulting in an error ratio of 100%.

The following findings were made:

66 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 66 violations noted were the result of policies issued with limited tort and no evidence of a signed limited tort selection form.

4 Violations Act 1990-6, Section 9, Title 75, Pa. C.S. §1731(b) (c)

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. The 4 violations noted were the result of policies

written without uninsured and underinsured motorist coverage and absent signed rejection forms for uninsured and underinsured motorist coverage.

7 Violations Act 1990-6, Section 12, Title 75, Pa. C.S. §1738(d)(1)(2)
Requires that the named insured shall be informed that he may exercise the waiver for stacked uninsured and underinsured motorist coverage by signing written rejection forms. The 7 violations noted were the result of policies written as nonstacked and absent signed forms requesting rejection of stacked limits for uninsured and underinsured motorist coverage.

9 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 9 violations noted were the result of not having the required signed statement from the insured.

1,032 Violations Act 1990-6, Section 16, Title 75, Pa C.S. §1791
It shall be presumed that the insured has been advised of the benefits available under this chapter provided the notice is given to the insured at the time of application. The 1,032

violations were for failure to provide the required notice at the time of application.

1,032 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 1,032 violations noted were absent any evidence this requirement was complied with.

1,032 Violations Act 1990-6, Section 17, Title 75, Pa C.S. §1791.1(b)

Requires that in addition to the invoice required, an insurer must, at the time of application and every renewal thereafter, provide to an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The 1,032 violations notes were the result of the Company

not providing the required notice of tort options at the time of application.

1,032 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 1,032 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan.

Private Passenger Automobile – New Business With Surcharges

From the universe of 192 personal automobile policies identified as new business with surcharges by the Company, 100 files were selected for review. All 100 files requested were received and reviewed. The 1,068 violations noted were based on 192 files, resulting in an error ratio of 100%.

The following findings were made:

52 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 52 violations noted were the result of policies issued with limited tort and no evidence of a signed limited tort selection form.

7 Violations Act 1990-6, Section 9, Title 75, Pa. C.S. §1731(b) (c)

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. The 7 violations noted were the result of policies written without uninsured and underinsured motorist coverage and absent signed rejection forms for uninsured and underinsured motorist coverage.

42 Violations Act 1990-6, Section 12, Title 75, Pa. C.S. §1738(d)(1)(2)

The named insured shall be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms. The 42 violations noted were the result of policies written as nonstacked and absent signed forms requesting rejection of stacked limits for uninsured and underinsured motorist coverage.

192 Violations Act 1990-6, Section 16, Title 75, Pa C.S. §1791

It shall be presumed that the insured has been advised of the benefits available under this chapter provided the notice is given to the insured at the time of application. The 192 violations were for failure to provide the required notice at the time of application.

192 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 192 violations noted were absent any evidence this requirement was complied with.

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

Requires that in addition to the invoice required, an insurer must, at the time of application and every renewal thereafter, provide to an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The 192 violations noted were the result of the Company not providing the required notice of tort options at the time of application.

7 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 7 violations noted were the result of not having the required signed statement from the insured.

192 Violations Act 1990-6, Section 19, Title 75, Pa. C.S. §1799.3(d)

Requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the named insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect. The 192 files noted failed to identify and provide a description of the accident or violation, which resulted in the surcharge and advise the insured.

192 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 192 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan.

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 401 private passenger automobile policies renewed during the experience period, 50 files without surcharges were selected for review. All 50 files selected were received and reviewed. The 1,203 violations were based on the universe of 401, resulting in an error ratio of 100%.

The following findings were made:

401 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 401

violations noted were absent any evidence this requirement was complied with.

401 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 401 violations were the result of the Company not providing the notice of tort options to the insured at the time of renewal.

401 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 401 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan.

Private Passenger Automobile – Renewals With Surcharges

The universe of 53 private passenger automobile policies renewed during the experience period with surcharges was selected for review. All 53 files requested were received and reviewed. The 215 violations were based on the entire universe of 53 files, resulting in an error ratio of 100%.

The following findings were made:

53 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 53 violations noted were absent any evidence this requirement was complied with.

53 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 renewal.

53 Violations Act 1990-6, Section 19, Title 75, Pa. C.S. §1799.3(d)

Requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the named insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect. The 53 files noted failed to identify and provide a description of the accident or violation, which resulted in the surcharge and advise the insured of the surcharge information.

3 Violations 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 \$950 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 3 files noted contained improper surcharges applied to the policy, which resulted in an overcharge of \$671.10.

53 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 53 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan.

Private Passenger Automobile – Renewals In a Higher Plan

The Company did not report any automobile policies renewed in a higher rating plan during the experience period.

B. Private Passenger Automobile – Assigned Risk

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

VII. CLAIMS

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

The Claims review consisted of the following areas of review:

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

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

A. Automobile Property Damage Claims

From the universe of 63 private passenger automobile property damage claims reported during the experience period, 25 claim files were selected for review. All 25 files requested were received and reviewed. No violations were noted.

B. Automobile Comprehensive Claims

From the universe of 74 private passenger automobile comprehensive claims reported during the experience period, 25 claim files were selected for review. All 25 files requested were received and reviewed. No violations were noted.

C. Automobile Collision Claims

From the universe of 183 private passenger automobile collision claims reported during the experience period, 50 claim files were selected for review. All 50 files requested were received and reviewed. The 7 violations were based on 7 files, resulting in an error ratio of 14%.

The following finding was made:

7 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 the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The 7 violations noted were absent any evidence this requirement was complied with.

D. Automobile Total Loss Claims

The universe of 24 private passenger automobile total loss claims reported during the experience period, was selected for review. All 24 files requested were received and reviewed. The 22 violations were based on 22 files, resulting in an error ratio of 92%.

The following finding was made:

22 Violations Title 31, Pa. Code, Section 62.3(f)(8)

Requires a company to provide a copy of the total loss evaluation sheet to the consumer within five working days after the appraisal is completed. The 22 violations noted were absent any evidence this requirement was complied with.

E. Automobile First Party Medical Claims

The universe of 52 private passenger automobile first party medical claims reported during the experience period, was selected for review. The 52 files requested were received and reviewed. The 21 violations noted were based on 10 files, resulting in an error ratio of 19%.

The following findings were made:

10 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 10 violations noted resulted because the bill was not paid within 30 days.

10 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 10 violations are the result of the Company not paying the first party medical bill within 30 days.

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

Requires an insurer, upon receiving notification of a claim, shall provide within ten working days necessary claim forms, instructions and reasonable assistance so that first-party claimants can comply with policy conditions and reasonable requirements of the insurer. The violation noted was the result of not providing claimant with the necessary claim forms within ten working days.

F. Automobile First Party Medical Claims Referred to a PRO

The Company did not report any First Party Medical claims referred to a peer review organization during the experience period. The Company was requested to supply all signed contracts in place with a peer review organization. The Company indicated they did not have a signed contract in place.

The following finding was made:

1 Violation Title 31, Pa. Code, Section 69.53(a)

Requires that a PRO shall contract, in writing, jointly and separately with an insurer for the provision of peer review services.

AND

Act 1990-6, §1797(b)(1)

Insurers shall contract jointly or separately with any peer review organization established for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person. The violation noted was for the failure of the Company to have a contract in place with a Peer Review Organization.

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 findings were made:

Automobile Rating – Renewals Without Surcharges

401 Violations Act 1990-6, Title 75, Pa. C.S. §1822

Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: “Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.” The 401 violations were the result of renewal

policies being issued during the experience period absent the fraud statement.

Automobile Rating – Renewals With Surcharges

53 Violations Act 1990-6, Title 75, Pa. C.S. §1822

Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: “Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.” The 53 violations were the result of renewal policies being issued during the experience period absent the fraud statement.

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 12 pieces of advertising, which included brochures and magazine ads. 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 a universe of 5 consumer complaints received during the experience period and provided all consumer complaint logs requested. All 5 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:

2 Violations Act 68, Section 2003 [40 P.S. §991.2002]

Prohibits the rescission of a personal automobile policy after the policy has been in force for more than (60) days, unless the rescission meets the two-prong test established by the Supreme Court of Pennsylvania in *Erie Insurance Exchange v. Lake*. The 2 files noted were rescinded in a manner not consistent with *Erie v. Lake*. A separate action filed by the Field Investigation Division, in the form of a consent order, also addressed this issue.

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

Requires that a cancellation or refusal to write or renew by an insurer of a policy of insurance must be in a form acceptable to the Insurance Commissioner. The 2 files notes did not have a Notice of Rescission in a form acceptable by the Insurance Commissioner. A separate action filed by the Field Investigation Division, in the form of a consent order, also addressed this issue.

The following synopsis reflects the nature of the 5 complaints that were reviewed.

• 3	Premium Related	60%
• 2	Rescissions	40%
<hr/>		<hr/>
5		100%

XI. LICENSING

In order to determine compliance by the Company and its agency force with the licensing requirements applicable to Section 605 (40 P.S. §235) and Section 623 (40 P.S. §253) of the Insurance Department Act, 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, applications, agency contracts and commission statements were also checked to verify proper licensing and appointment.

No violations were noted.

XII. RECOMMENDATIONS

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

1. The Company 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 noted in the Report do not occur in the future.
2. 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.
3. The Company must review Title 75, Pa. C.S. §1716 regarding 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 insureds and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.
4. The Company must review Title 31, PA Code, Section 69.53(b) and Act 1990-6, §1979(b)(1) with its claim staff to ensure that a contract is in place with a Peer Review Organization.
5. When a surcharge is imposed on a private passenger automobile policy the Company must identify the dates of accidents and citations and give

notice to the insured. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Act 1990-6, Section 19, Title 75, Pa. C.S. §1799.3(d) 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 revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to exercise the waiver for uninsured and underinsured motorist coverage forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Act 1990-6, Section 9, Title 75 Pa. C.S. §1731(b)(c) do not occur in the future.
8. The Company must revise underwriting procedures to ensure that the insured is aware that there is an additional cost for purchasing a lower deductible for collision coverage. This is to ensure that violations noted under Act 1990-6, Section 18, Title 75, Pa. C.S. §1792(b)(1) do not occur in the future.
9. The Company must revise underwriting procedures to ensure that the insured is aware that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written

rejection forms. This is to ensure that violations noted under Act 1990-6, Section 12, Title 75, Pa. C.S. §1738(c)(d)(1) and (2) do not occur in the future.

10. The Company must ensure that all applications for insurance, claim forms and renewals 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.

11. The Company must review and revise internal control procedures to ensure compliance with cancellation notice requirements of Act 68, Sections 2003, 2004, 2006 & 2008 [40 P.S. §991.2003, 2004, 2006 and 2008] so that the violations noted in the Report do not occur in the future.

12. 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 as noted in the Report do not occur in the future.

13. 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 and every renewal thereafter as noted in the Report do not occur in the future.

14. The Company must review Act 1990-6, Section 19, Title 75 Pa. C.S., §1799.3(d) to ensure that violations of the types noted in the Report do not occur in the future.
15. The Company must review and revise private passenger automobile underwriting guidelines used in Pennsylvania to ensure the guidelines do not exclude applicants from being eligible to obtain insurance by reasons prohibited under Act 68, Section 2003 (40 P.S. 991.2003) and Act 205, Section 5 (a)(4) (40 P.S. §1171.5(a)(4)).
16. 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.

XIII. COMPANY RESPONSE



Argonaut Insurance Company

November 4, 2003

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

**RE: Market Conduct Exam: 02-M22-297
Private Passenger Automobile Program
Argonaut Insurance Company
NAIC # 0457-19801**

Dear Mr. Derk,

We have received the Department's Report of Examination for Argonaut Insurance Company and have enclosed responses to the Report recommendations. When reviewing the responses to the Department's recommendations please be aware of the current status of Argonaut Insurance Company's private passenger automobile program in Pennsylvania.

1. After notifying the department Argonaut Insurance Company stopped accepting private passenger auto insurance in Pennsylvania effective April 10, 2003.
2. The Department approved Argonaut Insurance Company's plan to withdraw from writing private passenger automobile on June 30, 2003. Non-renewal of policies began on August 13, 2003, according to the terms of the withdrawal agreement.
3. Argonaut Insurance Company continues to provide underwriting, billing and claims service to the remaining 699 policyholders in the State.

Your recommendations for questions 6, 7, 12, 13 & 15 pertain to actions for new business applicants and renewal policies for private passenger automobile. As a result of the current status of Argonaut Insurance Company we have respectfully not responded to those recommendations since there is no potential impact for a new policy applicant or renewal policy.

Sincerely,

Marilyn Brands
Vice President, Underwriting

Enclosures

XII. Recommendations

1. 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 noted in the Report do not occur in the future.

On October 22, 2003 the claims staff was provided with copies of Title 31, PA Code, Chapter 146 Unfair Claims Settlement Practices. The claims staff has reviewed Title 31, PA Code 146 and revised procedures to ensure compliance with the claims handling requirements.

2. 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.

On October 22, 2003 the claims staff was provided with copies of Title 31, PA Code, Section 69.52(b). The claims staff has reviewed Title 31, PA Code, Section 69.52(b) to ensure that first party medical bills are paid within 30 days.

3. The Company must review Title 75, Pa. C.S. 1716 regarding 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 insureds and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.

The following claims were reimbursed for interest at the rate of 12% annum for first party medical claims that were paid after 30 days of receipt. Supporting documentation is enclosed.

<u>Claim No.</u>	<u>Bill Rec'd</u>	<u>Bill Amt./Date Paid</u>	<u>Amt. Paid</u>	<u>Interest Amt/Date Paid</u>
DMA0000836	7/12/02	\$437.00 9/17/02	\$437.00	\$5.32 4/24/03
PAPA0000002250	8/27/01	\$122.00 10/11/01	\$122.00	\$0.60 4/22/03
PAPA0000003140	11/19/01	\$165.00 1/26/02	\$139.11	\$1.78 4/24/03
DMA0003127	7/29/02	\$529.99 5/11/02	\$211.56	\$0.56 4/22/03
PAPA000002211	7/17/02	\$1045.00 9/19/02	\$497.97	\$5.57 4/24/03
DMA0002348	6/18/02	\$161.86 7/25/02	\$87.48	\$0.20 4/22/03
PAPA0000003724	2/8/02	\$100.00 5/9/02	\$74.68	\$1.47 4/22/03
PAPA0000003765	1/10/02	\$42.00 3/6/02	\$28.33	\$0.23 4/22/03
DMA0002391	5/30/02	\$200.65 3/25/03	\$200.65	\$3.00 5/2/03
DMA0003504	7/22/02	\$1,675.00 8/28/02	\$1,328.03	\$3.06 4/24/03

4. The Company must review Title 31, PA Code, Section 69.53(b) and Act 1990-6, 1979(b)(1) with its claims staff to ensure that a contract is in place with a Peer Review Organization.

On October 22, 2003 the claims staff was provided with copies of Title 31, PA Code, Section 69.53(b) and Act 1990-6, 1979(b)(1). The claims staff has reviewed Title 31, PA Code Section 69.53(b) and Act 1990-6, 1979(b)(1). The Company is in negotiations with Concentra to have a Peer Review Organization contract in place by November 30, 2003.

5. When a surcharge is imposed on a private passenger automobile policy the Company must identify the dates of accidents and citations and give notice to the insured. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Act 1990-6, Section 19, Title 75, Pa. C.S.1799.3(d) do not occur in the future.

Argonaut Insurance Company will have programming changes implemented by November 6, 2003 to provide notice of the determination to impose a surcharge to comply with Act 1990-6, Section 19, Title 75 Pa. C.S., 1799.3(d).

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.

Revisions to underwriting procedures providing applicants for private passenger automobile insurance the opportunity to elect a tort option is no longer applicable because Argonaut Insurance Company has stopped accepting private passenger automobile insurance in Pennsylvania.

7. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to exercise the waiver for uninsured and underinsured motorist coverage forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Act 1990-6, Section 9, Title 75 Pa. C.S. 1731 (b)(c) do not occur in the future. Argonaut Insurance Company has stopped accepting private passenger automobile insurance in Pennsylvania.

Revisions to underwriting procedures providing applicants for private passenger automobile insurance the opportunity to exercise the waiver for uninsured and underinsured motorist coverage are no longer applicable because Argonaut Insurance Company has stopped accepting new business for private passenger automobile insurance in Pennsylvania.

8. The Company must revise underwriting procedures to ensure that the insured is aware that there is an additional cost for purchasing a lower deductible for collision coverage. This is to ensure that violations noted under Act 1990-6, Section 18, Title 75, Pa. C.S. 1792(b)(1) do not occur in the future.

Argonaut Insurance Company will have programming changes implemented by November 6, 2003 to ensure that an insured is aware of an additional cost for purchasing a lower deductible for collision to ensure that violations noted under Act 1990-6, Section 18, Title 75, Pa. C.S. 1792(b)(1) do not occur in the future.

9. The company must revise underwriting procedures to ensure that the insured is aware that he may exercise the waiver of stacked limits for uninsured motorist coverage by signing written rejection forms. This is to ensure that violations noted under Act 1990-6, Section 12, Title 75, Pa. C.S. 1738(c)(d)(1) and (2) do not occur in the future.

Argonaut Insurance Company has implemented a process to provide the waiver and secure the signature of the Named Insured if a request for coverage changes of stacked limits for uninsured motorist coverage is made on an existing policy. This is to ensure violations noted under Act 1990-6, Section 12, Title 75, Pa. C.S. 1738(c)(d)(1) and (2) do not occur in the future.

10. The company must ensure that all application for insurance, claim forms and renewals 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.

Argonaut Insurance Company updated their claims forms on October 29, 2003 to include the statement, "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."

11. The Company must review and revise internal control procedures to ensure compliance with cancellation notice requirements of Act 68, Section 2003, 2004, 2006 & 2008 [40 P.S. 991.2003, 2004, 2006 and 2008] so that violations noted in the report do not occur in the future.

Argonaut Insurance Company has reviewed and revised internal control procedures to ensure compliance with cancellation notice requirements of Act 68, Section 2003, 2004 and 2006 effective April 24, 2003. Act 68, Section 2008 is no longer applicable; Argonaut Insurance Company is no longer accepting new business for private passenger automobile in Pennsylvania.

12. 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 as noted in the Report do not occur in the future.

A surcharge disclosure plan is no longer applicable because Argonaut Insurance Company has stopped accepting private passenger automobile insurance in Pennsylvania and began non-renewal of existing policies.

13. 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 itemized invoice listing minimum coverages and tort options at the time of application and every renewal thereafter as noted in the Report do not occur in the future.

Providing an itemized listing of minimum coverage and tort options at application and every renewal is no longer applicable because Argonaut Insurance Company has stopped accepting private passenger automobile insurance in Pennsylvania and began non-renewal of existing policies.

14. The Company must review Act 1990-6, Section 19, Title 75 Pa. C.S., 1799.3(d) to ensure that violations of the types noted in the report do not occur in the future.

Argonaut Insurance Company will have programming changes implemented by November 6, 2003 to provide notice of the determination to impose a surcharge to the to comply with Act 1990-6, Section 19, Title 75 Pa. C.S., 1799.3(d).

15. The Company must review and revise private passenger automobile underwriting guidelines used in Pennsylvania to ensure the guidelines do not exclude applicants from being eligible to obtain insurance by reasons prohibited under Act 68, section 2003 (40 P.S. 991.2003) and Act 205, Section 5(a)(4)(40 P.S. 1171.5(a)(4).

Revisions to new business underwriting guidelines are no longer applicable because Argonaut Insurance Company has stopped accepting private passenger automobile insurance in Pennsylvania.

16. 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.

Premium overcharges noted in the rating section have been refunded to insureds. Supporting documentation is enclosed.

<u>Policy</u>	<u>Refund Amount</u>	<u>Issue Date</u>
73799	\$340.00	10/30/03
61824	\$198.90	10/30/03
19997	\$198.50	10/30/03
81991	\$204.00	10/30/03
51106	\$63.00	10/30/03

17. We strongly disagree that Argonaut Insurance Company is in violation of *Act 205, Section 5*. We are not boycotting, coercing, or intimidating our customers resulting in unreasonable restraint of trade or monopoly in the business of insurance. It is important to note that our market share in these lines is as follows:

- 1) Workers Compensation .0015%
- 2) Commercial Auto .00002%
- 3) General Liability .0001%

We also use independent insurance agents who have access to other markets. Given our small market share it is impossible that we could effectuate restraint of trade or a monopoly in the business of insurance. Further, we do not unfairly discriminate between individuals of the same class and hazard in the amount of premium, policy, fees or rate charges, or in benefits payable. We do not offer special terms or conditions to a particular class of insureds but merely attempt to profitably underwrite our book of business.