

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**BRISTOL WEST INSURANCE COMPANY**  
Independence, Ohio

**AS OF  
February 3, 2010**

**COMMONWEALTH OF PENNSYLVANIA**

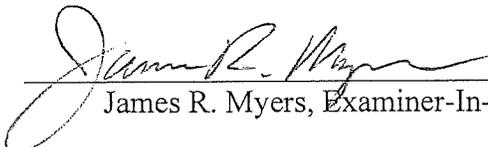


**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

**Issued: March 31, 2010**

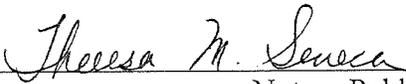
VERIFICATION

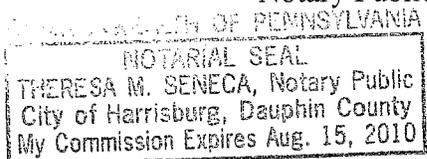
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).

  
James R. Myers, Examiner-In-Charge

Sworn to and Subscribed Before me

This 20 Day of January, 2010

  
Notary Public



BRISTOL WEST INSURANCE COMPANY

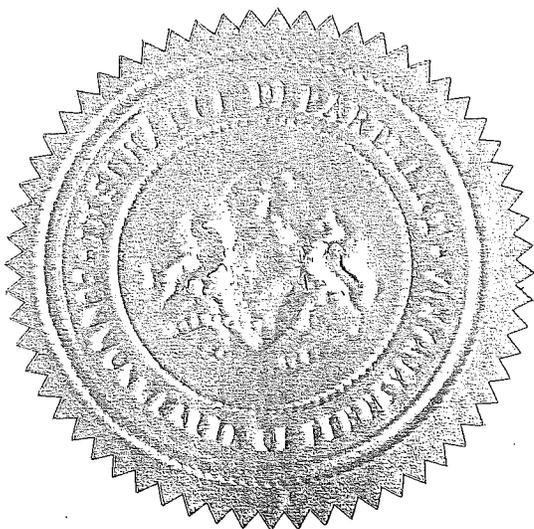
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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 22<sup>ND</sup> day of July, 2008, 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 Ronald A. Gallagher, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.



  
\_\_\_\_\_  
Joel S. Ario  
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
BRISTOL WEST INSURANCE : Sections 641.1A and 671-A of Act 147  
COMPANY : of 2002 (40 P.S. §§ 310.41 and 310.71)  
5990 West Creek Road :  
Independence, OH 44131 : Act 1990-6, Sections 1705(a)(1)(4),  
: 1716, 1731(b) and (c), 1731(c)(1), 1734,  
: 1738(c)(d)(1) and (2), 1793(b) and  
: 1799.3(d) (Title 75, Pa.C.S. §§ 1705,  
: 1716, 1731, 1734, 1738, 1793 and 1799)  
: :  
: Sections 2002(c)(3), 2004, 2005(c), 2006,  
: 2006(2), and 2006(7) (40 P.S. §§991.2002,  
: 991.2004, 991.2005, and 991.2006)  
: :  
: Title 31, Pennsylvania Code, Sections  
: 62.3(e)(4) and (7), 69.42, 69.43,  
: 69.52(b), 146.5(a), 146.6 and 146.7(a)(1)  
: :  
: Title 18, Pennsylvania Consolidated  
: Statutes, Section 4117(k)(1)  
: :  
: Title 75, Pennsylvania Consolidated  
: Statutes, Sections 1161(a) and (b)  
: and 1822  
: :  
Respondent. : Docket No. MC10-02-014

CONSENT ORDER

AND NOW, this 31<sup>st</sup> day of MARCH, 2010, this Order is hereby  
issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to  
the statutes cited above and in disposition of the matter captioned above.

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

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

#### FINDINGS OF FACT

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

- (a) Respondent is Bristol West Insurance Company, and maintains its address at 5990 West Creek Road, Independence, OH 44131.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from January 1, 2008 through December 31, 2008.
- (c) On February 3, 2010, the Insurance Department issued a Market Conduct Examination Report to Respondent.

- (d) A response to the Examination Report was provided by Respondent on March 5, 2010.
  
- (e) The Examination Report notes violations of the following:
  - (i) Section 641.1A of Act 147 of 2002 prohibits any entity or the appointed agent of any entity from transacting the business of insurance through anyone acting without an insurance producer license (40 P.S. § 310.41a);
  
  - (ii) Section 671-A of Act 147 of 2002 prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act (40 P.S. § 310.71).
  
  - (iii) Sections 1705(a)(1) & (4) of Act 1990-6, Title 75, Pa.C.S. § 1705, which requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option;
  
  - (iv) Section 1716 of Act 1990-6, Title 75, Pa. C.S. § 1716, which requires that benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the amount of benefits. If reasonable proof is not supplied as to all benefits, the portion supported by reasonable proof is overdue if not paid

within 30 days after the proof is received by the insurer. Overdue benefits shall bear interest at the rate of 12% per annum from the date the benefits become due. In the event the insurer is found to have acted in an unreasonable manner in refusing to pay the benefits when due, the insurer shall pay, in addition to the benefits owed and the interest thereon, a reasonable attorney fee based upon actual time expended;

- (v) Section 1731(b) and (c) of Act 1990-6, Title 75, Pa.C.S. § 1731, which requires the named insured to be informed that he may reject uninsured and underinsured motorist coverage by signing a written rejection form;
- (vi) Section 1731(c)(1) of Act 1990-6, Title 75, Pa.C.S. § 1731(c)(1), which states on policies in which either uninsured or underinsured motorist coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists;
- (vii) Section 1734 of Act 1990-6, Title 75, Pa.C.S. § 1734, which allows a named insured to request in writing the issuance of coverages under Section 1731 in amount equal to or less than the limits of liability for bodily injury;

- (viii) Section 1738(c)(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;
- (ix) Section 1793(b) of Act 1990-6, Title 75, Pa. C.S. § 1793, which requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall deliver the plan to each insured at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage;
- (x) 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;

- (xi) Section 2002(c)(3) of Act 68 of 1998 (40 P.S. §991.2002), which requires that an insurer supply the insured with a written statement of the reason for cancellation;
  
- (xii) Section 2004 of Act 68 of 1998 (40 P.S. § 991.2004), which requires that no insurer shall cancel a policy of automobile insurance except for nonpayment of premium, suspension or revocation of the named insured's driver license or motor vehicle registration or a determination that the insured has concealed a material fact or has made a material allegation contrary to fact or has made a misrepresentation of material fact and that such concealment, allegation or misrepresentation was material to the acceptance of the risk by the insurer;
  
- (xiii) Section 2005(c) of Act 68 (40 P.S. § 991.2005), which states all insurers shall provide to insureds a detailed statement of the components of a premium and shall specifically show the amount of a 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;
  
- (xiv) Section 2006 of Act 68 of 1998 (40 P.S. § 991.2006), which requires that nonrenewal by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the insured a written notice of the cancellation;

- (xv) Section 2006(2) of Act 68 of 1998 (40 P.S. § 991.2006), which requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the date, not less than 60 days after the date of the mailing or delivery, on which cancellation shall become effective. When the policy is being cancelled for nonpayment of premium, the effective date may be 15 days from the date of mailing or delivery;
  
- (xvi) Section 2006(7) of Act 68 of 1998 (40 P.S. § 991.2006), which requires that a cancellation notice clearly state that when coverage is to be terminated due to nonresponse to a citation imposed under 75 Pa.C.S. § 1533, or nonpayment of a fine or penalty imposed under that section, coverage shall not terminate if the insured provides the insurer with proof that the insured has responded to all citations and paid all fines and penalties and that he has done so on or before the termination date of the policy;
  
- (xvii) Title 31, Pennsylvania Code, Section 62.3(e)(4), which requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value;
  
- (xviii) Title 31, Pennsylvania Code, Section 62.3(e)(7), which states the appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within 5 working days to the consumer by the appraiser after the appraisal is

completed. If a settlement offer is extended before the consumer receives the total loss evaluation report, the consumer shall be advised of the total loss evaluation report's contents and of the consumer's right to be sent a copy within 5 days after its completion;

- (xix) Title 31, Pennsylvania Code, Section 69.42, which states an insurer shall make payments to providers in accordance with the Medicare Program as applied in this Commonwealth by the carrier and intermediaries. Care covered under the Medicare Program shall be reimbursed at 110% of the Medicare payment or a different allowance as may be determined under § 69.12(b). Medicare co-insurance and deductibles may not be excluded in payments made by the insurer;
  
- (xx) Title 31, Pennsylvania Code, Section 69.43, which states an insurer shall pay the provider's usual and customary charge for services rendered when the charge is less than 110% of the Medicare payment or a different allowance as may be determined under § 69.12(b). An insurer shall pay 80% of the provider's usual and customary charge rendered if no Medicare payment exists. In calculating the usual and customary charge, an insurer may utilize the requested payment amount on the provider's bill for services or the data collected by the carrier or intermediaries to the extent that the data is made available. An insurer shall provide a complete explanation of the calculations made in computing its determination of the amount payable, including whether the calculation is based

on 110% of the Medicare payment, 80% of the usual and customary charge or at a different allowance determined by the Commissioner under § 69.12(b). A bill submitted by the provider delineating the services rendered and the information from which a determination could be made by the insurer as to the appropriate payment amount will not be construed as a demand for payment in excess of the permissible payment amount;

- (xxi) Title 31, Pennsylvania Code, Section 69.52(b), which requires an insurer to pay medical bills for care that are not referred to a Peer Review Organization within 30 days after the insurer receives sufficient documentation supporting the bill;
- (xxii) Title 31, Pennsylvania Code, Section 146.5(a), which states every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice, unless payment is made within such period. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated;
- (xxiii) Title 31, Pennsylvania Code, Section 146.6, requires that every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant

with a reasonable written explanation for the delay and state when a decision on the claim may be expected;

(xxiv) Title 31, Pennsylvania Code, Section 146.7(a)(1), which requires within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition or exclusion unless reference to such provision, condition or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial;

(xxv) Title 18, Pennsylvania Consolidated Statutes, Section 4117(k)(1), which requires all applications for insurance and all claim forms shall contain or have attached thereto the following notice: "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties".

(xxvi) Section 1161(a) and (b) of Title 75, Pa. C.S., which states an insurer who owns, possesses or transfers a vehicle located or registered in the

Commonwealth which qualifies as a salvage vehicle shall make application to the Department for a certificate of salvage for that vehicle; and

- (xxvii) Title 75, Pa. C.S. § 1822, which requires, not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states, in substance, the following: Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.00.

#### CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Respondent's violations of Sections 641.1A and 671-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):

- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
  - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
  - (iii) an order to cease and desist; and
  - (iv) any other conditions as the Commissioner deems appropriate.
- (c) Respondent's violations of Sections 2002, 2004, 2005 and 2006 of Act 68 of 1998 are punishable by the following, under Section 2013 of the Act (40 P.S. § 991.2013): Any individual or insurer who violates any of the provisions of this article may be sentenced to pay a fine not to exceed five thousand dollars (\$5,000.00).
- (d) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.5(a)(1), 146.6 and 146.7(a)(1) are punishable by the following, under Section 9 of the Unfair Insurance Practices Act (40 P.S. §1171.9):
- (i) cease and desist from engaging in the prohibited activity;
  - (ii) suspension or revocation of the license(s) of Respondent.
- (e) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§1171.1 - 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance

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

- (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);
- (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

ORDER

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

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall file an affidavit stating under oath that it will provide each of its directors, at the next scheduled directors meeting, a copy of the adopted Report and related Orders. Such affidavit shall be submitted within thirty (30) days of the date of this Order.

- (c) Respondent shall comply with all recommendations contained in the attached Report.
- (d) Respondent shall pay Twenty-Five Thousand Dollars (\$25,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.
- (e) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Bureau of Market Actions, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

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

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

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

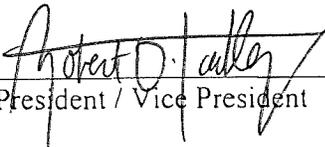
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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

11. This Order shall be final upon execution by the Insurance Department. Only the 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: BRISTOL WEST INSURANCE COMPANY,  
Respondent

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

 - Treasurer  
\_\_\_\_\_  
Secretary / Treasurer

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

## I. INTRODUCTION

The market conduct examination was conducted at Bristol West Insurance Company's offices located in Independence, Ohio, from June 22, 2009, through September 3, 2009. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

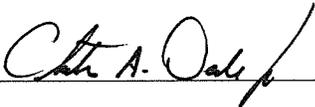
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

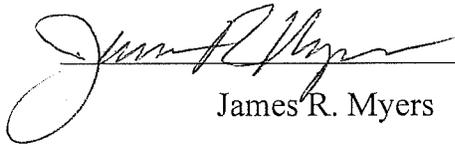
The courtesy and cooperation extended by the officers and employees of the Company during the course of the examination is hereby acknowledged.

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



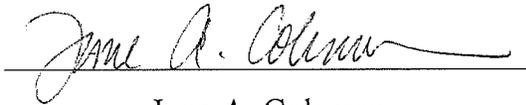
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Chester A. Derk, Jr., AIE, HIA  
Market Conduct Division Chief



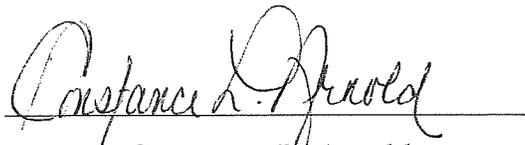
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James R. Myers  
Market Conduct Examiner



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June A. Coleman  
Market Conduct Examiner



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Constance L. Arnold  
Market Conduct Examiner

## II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Bristol West Insurance Company, hereinafter referred to as “Company,” at their office located in Independence, Ohio. 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 January 1, 2008, through December 31, 2008, unless otherwise noted. The purpose of the examination was to determine the Company’s compliance with Pennsylvania insurance laws and regulations.

The examination focused on Company operations in the following areas:

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

### III. COMPANY HISTORY AND LICENSING

Bristol West Insurance company was incorporated in Pennsylvania, on February 9, 1968, as Vista Insurance Company and commenced business on June 10, 1968. Effective as of March 31, 2001, the Company was acquired by Coast National Insurance Company. Effective November 21, 2001, the current title was adopted.

#### LICENSING

Bristol West Insurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2009. The Company is licensed in all states except: Alabama, Alaska, Arizona, California, Connecticut, Iowa, Kansas, Massachusetts, Minnesota, Mississippi, Nevada, New Jersey, New York, North Carolina, Oregon, Texas, Washington and Wyoming. The Company's 2008 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$17,913,060. Premium volume related to the areas of this review were: Private Passenger Automobile Direct Written Premium was reported as Private Passenger Auto No-Fault (personal injury protection) \$2,717,203; Other Private Passenger Auto Liability \$10,439,503 and Private Passenger Auto Physical Damage \$4,756,354.

#### *IV. UNDERWRITING PRACTICES AND PROCEDURES*

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

No violations were noted.

## V. UNDERWRITING

### A. Private Passenger Automobile

#### 1. 60-Day Cancellations

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

The primary purpose of the review was to determine compliance with Act 68, Section 2003 (40 P.S. §991.2003), which establishes conditions under which action by the insurer is prohibited. These files were also reviewed for compliance with Act 68, Section 2002(b)(3) [40 P.S. §991.2002(b)(3)], which requires an insurer who cancels a policy of automobile insurance in the first 60 days, to supply the insured with a written statement of the reason for cancellation.

From the universe of 1,841 private passenger automobile files identified as being cancelled in the first 60 days of new business, 54 files were selected for review. All 54 files were received and reviewed. The violation resulted in an error ratio of 2%.

The following finding was made:

*1 Violation 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 file noted was a policy cancelled within the first 60 days of new business inception date and did not contain evidence that a notice of cancellation was sent to the insured.

## 2. Midterm Cancellations

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

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

From the universe of 4,870 private passenger automobile files identified as midterm cancellations, 150 files were selected for review. All 150 files were received and reviewed. The 3 violations noted were based on 3 files, resulting in an error ratio of 2%.

The following findings were made:

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

Requires an insurer to deliver or mail to the named insured a cancellation notice and state the date, not less than sixty (60) days after the date of the mailing or delivery, on which cancellation shall become effective. When the policy is being cancelled for the nonpayment of premium, the effective date may be fifteen (15) days from the date of mailing or delivery. The Company failed to provide 15 days notice of cancellation for the 3 files noted.

### 3. Nonrenewals

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

The 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 108 private passenger automobile files identified as nonrenewals, 75 files were selected for review. All 75 files were received and reviewed. Of the 75 files reviewed, 19 files were identified as midterm cancellations. The 33 violations noted were based on 29 files, resulting in an error ratio of 39%.

The following findings were made:

#### *18 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 18 files noted were cancelled for other than permitted reasons.

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

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

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

Requires an insurer to deliver or mail to the named insured a cancellation notice and state the date, not less than sixty (60) days after the date of the mailing or delivery, on which cancellation shall become effective. When the policy is being cancelled for the nonpayment of premium, the effective date may be fifteen (15) days from the date of mailing or delivery. The Company failed to provide 60 days notice of cancellation or refusal to renew for the 13 files noted.

4. Rescissions

A rescission is any policy, which was void *ab initio*.

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 review also determined compliance with the rescission requirements established by the Supreme Court of Pennsylvania in *Erie Insurance Exchange v. Lake*.

From the universe of 86 private passenger automobile policies that were identified as rescissions during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were

noted.

The following concern was made:

While reviewing rescissions, it was noted the rescissions for reasons other than non-sufficient funds, were the result of information received while processing a claim. It is the Company's procedure that underwriting issues other than non-sufficient funds are to be completed within the first 60 days of new business issuance. There appears to be a pattern that post-60 days underwriting taking place only to have the coverage rescinded and as a result, no coverage provided. On several occasions it had been noted that an unlisted driver, garaging or residence issue arose during the underwriting period, but no additional action was taken until a claim was submitted. While the reasons for rescissions were mostly misrepresentation in an attempt to avoid higher rates in other territories, a more concerted effort should be taken to have the risk underwritten within the first 60 days of new business and the proper underwriting decisions made within that time frame.

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

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

## VI. RATING

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

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

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

The primary purpose of the review was to measure compliance with Act 246, Sections 4(a) and (h) [40 P.S. §1184], which requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at that time. Files were also reviewed to determine compliance with all provisions of Act 6 of 1990 and Act 68, Section 2005(c) [40 P.S. §991.2005(c)], which requires insurers to provide to insureds a detailed statement of the components of a premium and shall specifically show the amount of surcharge or other additional amount that is charged as a result of a claim having been made under a policy of insurance or as a result of any other factors.

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

Private Passenger Automobile – New Business Without Surcharges

From the universe of 4,223 private passenger automobile policies identified as new business without surcharges, 25 files were selected for review. All 25 files were received and reviewed. The 4,237 violations noted were based on the universe of 4,223 files, resulting in an error ratio of 100%.

The following findings were made:

*4 Violations Title 75, Pa. C.S. §1705(a)(1)&(4)*

Requires every insurer, prior to the first issuance of a private passenger motor vehicle liability insurance policy to provide each applicant with the notice required by paragraph (1). A policy may not be issued until the applicant has been provided an opportunity to elect a tort option. The notice shall be a standardized form as adopted by the Commissioner. The Company did not provide a signed limited tort form for the 4 files noted.

*5 Violations Title 75, Pa. C.S. §1731(b) & (c)*

The named insured shall be informed that he may reject uninsured and underinsured motorist coverage by signing a written rejection form. The Company failed to provide a signed written rejection form for uninsured and underinsured motorst coverage for the 5 files noted.

*1 Violation Title 75, Pa. C.S. §1734*

A named insured may request in writing the issuance of coverages under Section 1731 (relating to availability, scope and amount of coverage) in an amount equal to or less than

the limits of liability for bodily injury. The Company failed to provide written request for lower uninsured and underinsured limits.

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

The named insured shall be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms. The Company did not provide the signed rejection form of stacked limits for uninsured and underinsured motorists coverage for the 4 files noted.

*4,223 Violations Title 75, Pa. C.S. §1793(b)*

Requires the insurer to provide to the insured a copy of their surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and the plan 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 Company failed to provide a surcharge disclosure plan to the insured at the time of application is made for motor vehicle insurance coverage.

Private Passenger Automobile - New Business With Surcharges

From the universe of 7,334 private passenger automobile policies identified as new business with surcharges by the Company, 50 files were selected for review. All 50 files were received and reviewed. The 7,354 violations

noted were based on the universe of 7,334 files, resulting in an error ratio of 100%.

The following findings were made:

*5 Violations Title 75, Pa. C.S. §1705(a)(1)&(4)*

Requires every insurer, prior to the first issuance of a private passenger motor vehicle liability insurance policy to provide each applicant with the notice required by paragraph (1). A policy may not be issued until the applicant has been provided an opportunity to elect a tort option. The notice shall be a standardized form as adopted by the Commissioner. The Company did not provide a signed limited tort form for the 5 files noted.

*5 Violations Title 75, Pa. C.S. §1731(b) & (c)*

The named insured shall be informed that he may reject uninsured and underinsured motorist coverage by signing a written rejection form. The Company failed to provide a signed written rejection form for uninsured and underinsured motorist coverage for the 5 files noted.

*8 Violations Title 75, Pa. C.S. §1731(c)(1)*

On policies in which either uninsured or underinsured motorist coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. The Company failed to have the rejection forms dated to be valid for the 8 files noted.

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

The named insured shall be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms. The Company did not provide the signed rejection form of stacked limits for uninsured and underinsured motorists coverage for the 2 files noted.

*7,334 Violations Title 75, Pa. C.S. §1793(b)*

Requires the insurer to provide to the insured a copy of their surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and the plan 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 Company failed to provide a surcharge disclosure plan to the insured at the time of application is made for motor vehicle insurance coverage.

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 474 private passenger automobile policies renewed without surcharges during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The 486 violations noted were based on the universe of 474, resulting in an error ratio of 100%.

The following findings were made:

#### *12 Violations Title 75, Pa. C.S. §1731(c)(1)*

On policies in which either uninsured or underinsured motorist coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not

provide protection against damages caused by uninsured or underinsured motorists. The Company failed to provide the required notice that the policy does not provide protection against damages caused by uninsured or underinsured motorists on the renewal.

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

Requires the insurer to provide to the insured a copy of their surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and the plan 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 Company failed to provide a surcharge disclosure plan to the insured at renewal.

Private Passenger Automobile – Renewals With Surcharges

From the universe of 2,336 private passenger automobile policies renewed with surcharges during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 2,371 violations noted were based on the universe of 2,336 files, resulting in an error ratio of 100%.

The following findings were made:

*7 Violations Act 68, Section 2005(c) [40 P.S. §991.2005(c)]*

All insurers shall provide to insureds a detailed statement of the components of a premium and shall specifically show the

amount of a 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.

*AND*

*Title 75, Pa. C.S. §1799.3(d)*

Requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect. The Company failed to clearly identify the amount of the surcharge or rate penalty on the renewal premium notice for the 7 files noted. The policies affected were rated using the Select 1.0 H rate manual.

*28 Violations Title 75, Pa. C.S. §1731(c)(1)*

On policies in which either uninsured or underinsured motorist coverage has been rejected, the policy renewals must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. The Company failed to provide the required notice that the policy does not provide protection against damages caused by uninsured or underinsured motorists on the renewal for the 28 files noted.

*2,336 Violations Title 75, Pa. C.S. §1793(b)*

Requires the insurer to provide to the insured a copy of their surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and the plan 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 Company failed to provide a surcharge disclosure plan to the insured at renewal.

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

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

## VII. CLAIMS

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

The Claims review consisted of the following areas of review:

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

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

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

From the universe of 1,669 private passenger automobile property damage claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The 7 violations noted were based on 6 files, resulting in an error ratio of 24%.

The following findings were made:

*2 Violations Title 31, Pa. Code, Section 146.5(a)*

Every insurer, upon receiving notification of a claim, shall, within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer, dating from the time the insurer receives notice. The Company did not acknowledge the claim within 10 working days for the 2 files noted.

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

Every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The Company did not provide a timely status letter for the 5 claims noted.

**B. Automobile Comprehensive Claims**

From the universe of 309 private passenger automobile comprehensive claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The violation resulted in an error ratio of 4%.

The following finding was made:

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

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

**C. Automobile Collision Claims**

From the universe of 895 private passenger automobile collision claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The violation resulted in an error ratio of 4%.

The following finding was made:

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

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

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

From the universe of 304 private passenger automobile total loss claims reported during the experience period, 65 files were selected for review. All 65 files were received and reviewed. The 29 violations noted were based on 21 files, resulting in an error ratio of 32%.

The following findings were made:

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

Requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value. The 2 files noted did not have the proper sales tax included in the replacement value of the vehicle.

*17 Violations Title 31, Pa. Code, Section 62.3(e)(7)*

The appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within 5 working days to the consumer by the appraiser after the appraisal is completed. If a settlement offer is extended before the consumer receives the total loss evaluation report, the consumer shall be advised of the total loss evaluation report's contents and of the consumer's right to be sent a copy within 5 days after its completion. The Company did not provide a copy of the total loss evaluation to the insured for the 17 files noted.

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

Every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such

investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The Company did not provide timely status letters for the 6 claims noted.

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

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

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

salvage before paying the vehicle replacement value for 2 files noted. The remaining 2 files did not reflect a Pennsylvania salvage title was obtained.

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

From the universe of 318 private passenger automobile first party medical claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 15 violations noted were based on 13 files, resulting in an error ratio of 26%.

The following findings were made:

##### *3 Violations Title 31, Pa. Code, Section 69.42*

An insurer shall make payments to providers in accordance with the Medicare Program as applied in this Commonwealth by the carrier and intermediaries. Care covered under the Medicare Program shall be reimbursed at 110% of the Medicare payment or a different allowance as may be determined under §69.12(b). Medicare co-insurance and deductibles may not be excluded in payments made by the insurer.

*AND*

##### *Title 31, Pa. Code, Section 69.43*

An insurer shall pay the provider's usual and customary charge for services rendered when the charge is less than 110% of the Medicare payment or a different allowance as may be determined under §69.12(b). An insurer shall pay 80% of the provider's usual and customary charge rendered if no Medicare payment exists. In calculating the usual and

customary charge, an insurer may utilize the requested payment amount on the provider's bill for services or the data collected by the carrier or intermediaries to the extent that the data is made available. An insurer shall provide a complete explanation of the calculations made in computing its determination of the amount payable including whether the calculation is based on 110% of the Medicare payment, 80% of the usual and customary charge or at a different allowance determined by the Commissioner under §69.12(b). A bill submitted by the provider delineating the services rendered and the information from which a determination could be made by the insurer as to the appropriate payment amount will not be construed as a demand for payment in excess of the permissible payment amount. The Company failed to have medical bills repriced or adjusted for cost containment for the 3 files noted.

*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 Company failed to pay medical bills within 30 days for the 10 files noted.

*1 Violation Title 75, Pa. C.S. §1716*

Payment of Benefits. Benefits are overdue if not paid within 30 days after the insurer receives reasonable proof of the amount of benefits. If reasonable proof is not supplied as to all benefits, the portion supported by reasonable proof is

overdue if not paid within 30 days after the proof is received by the insurer. Overdue benefits shall bear interest at the rate of 12% per annum from the date the benefits become due. In the event the insurer is found to have acted in an unreasonable manner in refusing to pay the benefits when due, the insurer shall pay, in addition to the benefits owed and the interest thereon, a reasonable attorney fee based upon actual time expended. The Company did not pay interest on a claim that was not paid within 30 days.

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

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. The Company failed to deny payment within 15 working days after receipt of the proof of loss.

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

The universe of 3 automobile first party medical claims referred to a peer review organization was selected for review. All 3 files were received and reviewed. The 3 files reviewed were found to be losses that occurred in the state of New York and the claimants were receiving New York PIP benefits. The Company was also asked to provide a copy of the all peer review contracts in place during the experience period. One contract was received and reviewed. No violations were noted.

## VIII. FORMS

Throughout the course of the examination, all underwriting files were reviewed to identify the policy forms used in order to verify compliance with Insurance Company Law, Section 354 (40 P.S. §477b), Approval of Policies, Contracts, etc., Prohibiting the Use Thereof Unless Approved. During the experience period of the examination, Section 354 provided that it shall be unlawful for any insurance company to issue, sell, or dispose of any policy contract or certificate covering fire, marine, title and all forms of casualty insurance or use applications, riders, or endorsements in connection therewith, until the forms have been submitted to and formally approved by the Insurance Commissioner. All underwriting and claim files were also reviewed to verify compliance with Act 165 of 1994 [18 Pa. CS §4117(k)(1)] and Title 75, Pa. C.S. §1822, which requires all insurers to provide an insurance fraud notice on all applications for insurance, all claims forms and all renewals of coverage.

The following findings were made:

*1 Violation Act 68, Section 2006(7) [40 P.S. §991.2006(7)]*

Requires that a cancellation notice clearly state that when coverage is to be terminated due to nonresponse to a citation imposed under 75 Pa. C.S. §1533 (relating to suspension of operating privilege for failure to respond to a citation) or nonpayment of a fine or penalty imposed under that section, coverage shall not terminate if the insured provides the insurer with proof that the insured has responded to all citations and paid all fines and penalties and that he has done so on or before the termination date of the policy. Form PA 00007 (03/04), a cancellation notice for nonpayment of premium, did not contain the required notice.

*1 Violation 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."

*AND*

*Act 165 of 1994 [18 Pa. C.S. §4117(k)(1)]*

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. The Company failed to include a fraud statement on an automobile accident report.

## *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 advised that there were no advertising materials used during the experience period. Internet advertising was 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 27 consumer complaints received during the experience period and provided all consumer complaint logs requested. All 27 complaint files reported were requested, received and reviewed.

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

The following findings were made:

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

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

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

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

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

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

The following synopsis reflects the nature of the 27 complaints that were reviewed.

• 15	Cancellation/Nonrenewal	55%
• 11	Claim Handling	41%
• 1	Miscellaneous	4%
<hr/>		<hr/>
27		100%

## XI. LICENSING

In order to determine compliance by the Company and its agency force with the licensing requirements applicable to Section 641.1(a) [40 P.S. §310.41(a) and Section 671-A [40 P.S. §310.71] of the Insurance Department Act No. 147, the Company was requested to furnish a list of all active producers during the experience period and a listing of all producers terminated during the experience period. Underwriting files were checked to verify proper licensing and appointment.

The following findings were made:

*1 Violation Insurance Department Act, No. 147, Section 641.1A  
[40 P.S. §310.41a]*

(a) Any insurance entity or licensee accepting applications or orders for insurance from any person or securing any insurance business that was sold, solicited or negotiated by any person acting without an insurance producer license shall be subject to civil penalty of no more than \$5,000.00 per violation in accordance with this act. This section shall not prohibit an insurer from accepting an insurance application directly from a consumer or prohibit the payment or receipt of referral fees in accordance with this act.

The following producers were found to be writing and /or soliciting policies but were not found in Insurance Department records as holding a Pennsylvania producer license.

A Affordable Insurance

*28 Violations Insurance Department Act, No. 147, Section 671-A*

*(40 P.S. §310.71)*

(a) Representative of the insurer – An insurance producer shall not act on behalf of or as a representative of the insurer unless the insurance producer is appointed by the insurer. An insurance producer not acting as a representative of an insurer is not required to be appointed.

(b) Representative of the consumer – An insurance producer acting on behalf of or representing an insurance consumer shall execute a written agreement with the insurance consumer prior to representing or acting on their behalf that:

(1) Delineates the services to be provided; and

(2) Provides full and complete disclosure of the fee to be paid to the insurance producer by the insurance consumer.

(c) Notification to Department – An insurer that appoints an insurance producer shall file with the Department a notice of appointment. The notice shall state for which companies within the insurer's holding company system or group the appointment is made.

(d) Termination of appointment – Once appointed, an insurance producer shall remain appointed by an insurer until such time as the insurer terminates the appointment in writing to the insurance producer or until the insurance producer's license is suspended, revoked or otherwise terminated.

(e) Appointment fee – An appointment fee of \$12.50 will be billed annually to the insurer for each producer appointed by the insurer during the preceding calendar year regardless of the length of time the producer held the appointment with the insurer. The appointment fee may be modified by regulation.

(f) Reporting – An insurer shall, upon request, certify to the Department the names of all licensees appointed by the insurer.

The following producers were found to be writing policies but were not found in Insurance Department records as having an appointment. The Company failed to file a notice of appointment and submit appointment fees to the Department.

K & A Insurance Agency  
Avant-Garde Financial Corp  
LSF Financial Services  
Guerrini Insurance  
Imperial Auto Tags & Ins Inc  
Fidishun Ins & Financial Inc  
Statewide Agency  
Donald Gross T/A Statewide Agency  
A Carolina Insurance Agency LLC  
ATIQ Chaudhry DBA Pak Auto Tags Ins  
Rexach Ins Agy DBA La Cinco  
A Mobile Insurance  
Lillegard Group  
Portis Insurance Group  
William Huck Agency Inc  
Chrismar & Associates LLC  
Filter & Associates, LLC  
Clyde Smith Ins Agency Inc  
Defurio-Mongell & Assoc Inc  
Millison Insurance Agency  
Jack Selsky  
Frank Hacko Insurance  
Andrea M. Fuller  
Michelle R McCartney  
Jack Maggs Agency, Inc

Amrit & Associates LLC  
Seneca Insurance Services, Inc  
Open Insurance Corp

## XII. RECOMMENDATIONS

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

1. The Company must review and revise internal control procedures to ensure compliance with cancellation and nonrenewal notice requirements of Act 68, Sections 2002, 2004 and 2006 [40 P.S. §991.2002, 2004 and 2006], so that the violations noted in the Report do not occur in the future.
2. 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 Title 75, Pa. C.S. §1705(a)(1)(4) do not occur in the future.
3. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to exercise the waiver for uninsured and underinsured motorist coverage forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Title 75, Pa. C.S. §1731(b) & (c) do not occur in the future.

4. The Company must review Title 75, Pa. C.S. 1793(b) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure plan at the time of application, as noted in the Report, do not occur in the future.
5. On policies in which either uninsured or underinsured coverage has been rejected, the policy renewal must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Title 75, Pa. C.S. §1731(c)(1) do not occur in the future.
6. 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 Title 75, Pa. C.S. §1738(c)(d)(1) and (2) do not occur in the future.
7. The Company must review Title 75, Pa. C.S. §1734 to ensure that the insured signs a request for lower limits of liability for uninsured and underinsured motorist coverage and a copy kept in the file as noted in the Report.
8. When a surcharge is imposed on a private passenger automobile policy the Company must specify the manner in which the surcharge was made and clearly identify the amount of the surcharge 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 68,

Section 2005(c) [40 P.S. §991.2005(c)] and Title 75, Pa. C.S. §1799.3(d) do not occur in the future.

9. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices so that the violations relating to status letters, claim acknowledgement and the acceptance and denial of claims, as noted in the Report, do not occur in the future.
10. The Company must review Title 75, Pa. C.S. §1161(a)&(b) with its claim staff to ensure that salvage certificates are obtained and are retained with the claim file.
11. The Company must review Title 31, Pa. Code, Section 62.3(e)(4) with its claim staff to ensure that sales tax is included in the replacement value of a motor vehicle. The Company must review all claims where sales tax was not included in the replacement value of a motor vehicle. The sales tax must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.
12. The Company must review Title 31, Pa. Code, Section 62.3(e)(7) with its claim staff to ensure that the consumer receives the total loss evaluation report within 5 working days after the appraisal is completed.
13. 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.

14. The Company must review the first party medical claims, which have not been paid within 30 days. Those claims that have not been paid within 30 days shall bear interest at the rate of 12% annum from the date the benefits become due as required by Title 75, Pa. C.S. §1716. The interest amount must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.
  
15. The Company must review Title 31, Pa. Code, Sections 69.42 and 69.43 with its claim staff to ensure that provider bills are repriced for cost containment as required.
  
16. The Company must ensure all producers are properly licensed and appointed, as required by Section 641.1(a) and Section 671-A [40 P.S. §310.41(a) and 40 P.S. §310.71] of the Insurance Department Act No. 147, prior to accepting any business from any producer.
  
17. The Company must ensure that all claim forms contain the required fraud warning notice.

*XIII. COMPANY RESPONSE*



RECEIVED  
INSURANCE DEPT.

MAR 05 2010

Field Investigations Div.

Apex Adjustment Bureau, Inc.  
Bayview Adjustment Bureau, Inc.  
Bristol West Casualty Insurance Company  
Bristol West Insurance Company

Bristol West Insurance Services of California, Inc.  
Bristol West Insurance Services, Inc. of Florida  
Bristol West Insurance Services of Nevada, Inc.  
Bristol West Insurance Services of Texas, Inc.  
Coast National Holding Company

Coast National Insurance Company  
Insurance Data Systems, G.P.  
Coast National General Agency, Inc.  
Security National Insurance Company

March 4, 2010

Via Overnight Delivery

Chester A. Derk Jr., AIE, HIA  
Market Conduct Division Chief  
Pennsylvania Insurance Department  
Bureau of Market Conduct  
Property and Casualty Division  
1227 Strawberry Square  
Harrisburg, Pennsylvania 17120

**RE: Company Response to the Report of Examination Warrant Number 09-M22-013 of  
Bristol West Insurance Company, NAIC 19658**

Dear Mr. Derk:

On behalf of Bristol West Insurance Company (the "Company"), please allow this letter to serve as our response to the Report of Examination Warrant Number 09-M22-013 (the "Report"), which was received with your cover letter dated February 3, 2010.

We respectfully submit our responses in the order appearing in the Report under Section XII – Recommendations.

**1. The Company must review and revise internal control procedures to ensure compliance with cancellation and nonrenewal notice requirements of Act 68, Sections 2002, 2004 and 2006 [40 P.S. §991.2002, 2004 and 2006], so that the violations noted in the Report do not occur in the future.**

Company Response: The Company accepts this recommendation and has changed its system programs and internal controls to ensure compliance with respect to cancellation and nonrenewal notice requirements of Act 68, Sections 2002, 2004 and 2006.

**2. 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 Title 75, Pa. C.S. §1705(a)(1)(4) do not occur in the future.**

Company Response: A Notice of Tort Options and a Notice to Named Insureds - Tort Option Selection form automatically print with every new business application. All Pennsylvania producers have been instructed as to their obligation to obtain and retain signed



tort option selection forms. The Company's marketing personnel, who manage the Company's relationship with the producers, have been instructed to reiterate the importance of compliance with the aforementioned statutory provisions and to conduct periodic audits of the producers' customer files.

**3. 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. [sic] This is to ensure that violations noted under Title 75, Pa. C.S. §1731(b) & (c) do not occur in the future.**

Company Response: A Rejection of Uninsured Motorist Protection form and a Rejection of Underinsured Motorist Protection form automatically print with new business applications when these coverages have been rejected. All Pennsylvania producers have been instructed as to their obligation to obtain and retain the signed forms. The Company's marketing personnel, who manage the Company's relationship with the producers, have been instructed to reiterate the importance of compliance with the aforementioned statutory provisions and to conduct periodic audits of the producers' customer files.

**4. The Company must review Title 75, Pa. C.S. 1793(b) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure plan at the time of application, as noted in the Report, do not occur in the future.**

Company Response: The Company accepts this recommendation and now automatically prints the surcharge disclosure plan with all new business applications. This is in addition to providing it in the policy contract which was done for all policies written during the examination period.

**5. On policies in which either uninsured or underinsured coverage has been rejected, the policy renewal must contain notice in prominent type that the policy does not provide protection against damages caused by uninsured or underinsured motorists. This procedure must be implemented within 30 days of the Report issue date. This is to ensure that violations noted under Title 75, Pa. C.S. §1731(c)(1) do not occur in the future.**

Company Response: As of October 27, 2009 this issue was remediated.

**6. 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 Title 75, Pa. C.S. §1738(c)(d)(1) and (2) do not occur in the future.**

Company Response: A Stacked Uninsured Coverage Limits waiver and a Stacked Underinsured Coverage Limits waiver automatically print with new business applications when stacked limits have been rejected. All Pennsylvania producers have been instructed as to their obligation to obtain and retain the signed forms. The Company's marketing personnel, who manage the Company's relationship with the producers, have been instructed to reiterate the importance of compliance with the aforementioned statutory provisions and to conduct periodic audits of the producers' customer files.



**7. The Company must review Title 75, Pa. C.S. §1734 to ensure that the insured signs a request for lower limits of liability for uninsured and underinsured motorist coverage and a copy kept in the file as noted in the Report.**

Company Response: An Uninsured Motorist increased Limits Rejection form and an Underinsured Motorist Increased Limits Rejection form automatically print with new business applications when the selected limits are lower than bodily injury. All Pennsylvania producers have been instructed as to their obligation to obtain and retain the signed forms. The Company's marketing personnel, who manage the Company's relationship with the producers, have been instructed to reiterate the importance of compliance with the aforementioned statutory provisions and to conduct periodic audits of the producers' customer files.

**8. When a surcharge is imposed on a private passenger automobile policy the Company must specify the manner in which the surcharge was made and clearly identify the amount of the surcharge 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 68, Section 2005(c) [40 P.S. §991.2005(c)] and Title 75, Pa. C.S. §1799.3(d) do not occur in the future.**

Company Response: The Company has conducted further research into this issue and found that the aforementioned disclosure is printing on renewal declarations pages in the run-off program cited in the Report. The policies examined either had surcharges attributable to a foreign driver's license, or had an at-fault accident under the threshold which is not subject to a surcharge. The Department will receive, under separate cover, a renewal declarations page from the cited run-off program that contains the requisite disclosure.

**9. 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 violations relating to status letters, claim acknowledgement and the acceptance and denial of claims, as noted in the Report, do not occur in the future.**

Company Response: The Company continues to reinforce claims best practices with all claims representatives. Follow up training in this area with appropriate claims staff was completed in September, 2009. Claims management conducts regular reviews of claims files and provides on-going training and counsel with claims representatives on an individual and group basis to assure compliance with Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices requirements.

**10. The Company must review Title 75, Pa. C.S. §1161(a)&(b) with its claims staff to ensure that salvage certificates are obtained and are retained with the claim file.**

Company Response: Follow up training in this area with appropriate claims staff was completed in September, 2009. Claims management conducts regular reviews of claims files



and provides on-going training and counsel with claims representatives on an individual and group basis to assure compliance with Title 75, Pa. C.S. §1161(a)&(b).

**11. The Company must review Title 31, Pa. Code, Section 62.3(e)(4) with its claims staff to ensure that sales tax is included in the replacement value of a motor vehicle. The Company must review all claims where sales tax was not included in the replacement value of a motor vehicle. The sales tax must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report Issue date.**

Company Response: Follow up training in this area with appropriate claims staff was completed in September, 2009. Claims management conducts regular reviews of claims files and provides on-going training and counsel with claims representatives on an individual and group basis to assure compliance with Title 31, Pa. Code, Section 62.3(e)(4).

**12. The Company must review Title 31, Pa. Code, Section 62.3(e)(7) with its claims staff to ensure that the consumer receives the total loss evaluation report within 5 working days after the appraisal is completed.**

Company Response: Follow up training in this area with appropriate claims staff was completed in September, 2009. Claims management conducts regular reviews of claims files and provides on-going training and counsel with claims representatives on an individual and group basis to assure compliance with Title 31, Pa. Code, Section 62.3(e)(7).

**13. The Company must review Title 31, Pa. Code, Section 69.52(b) with its claims staff to ensure that first party medical bills are paid within 30 days.**

Company Response: Follow up training in this area with appropriate claims staff was completed in September, 2009. Claims management conducts regular reviews of claims files and provides on-going training and counsel with claims representatives on an individual and group basis to assure compliance with Title 31, Pa. Code, Section 69.52(b).

**14. The Company must review the first party medical claims, which have not been paid within 30 days. Those claims that have not been paid within 30 days shall bear interest at the rate of 12% annum from the date the benefits become due as required by Title 75, Pa. C.S. §1716. The interest amount must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.**

Company Response: Follow up training in this area with appropriate claims staff was completed in September, 2009. Claims management conducts regular reviews of claims files and provides on-going training and counsel with claims representatives on an individual and group basis to assure compliance with Title 75, Pa. C.S. §1716..

**15. The Company must review Title 31, Pa. Code, Sections 69.42 and 69.43 with its claims staff to ensure that provider bills are repriced for cost containment as required.**

Company Response: Follow up training in this area with appropriate claims staff was completed in September, 2009. Claims management conducts regular reviews of claims files



and provides on-going training and counsel with claims representatives on an individual and group basis to assure compliance with Title 31, Pa. Code, Sections 69.42 and 69.43.

**16. The Company must ensure all producers are properly licensed and appointed, as required by Section 641.1(a) and Section 671-A [40 P.S. §310.41(a) and 40 P.S. §310.71] of the Insurance Department Act No. 147, prior to accepting any business from any producer.**

Company Response: The Company accepts the recommendation and has implemented procedures to ensure all producers are properly appointed prior to accepting any business. Such procedures include training and the conducting of regular audits to ensure compliance.

**17. The company must ensure that all claims forms contain the required fraud warning notice.**

Company Response: The Company accepts this recommendation and has corrected the one claims form cited in the Report.

The Company respectively submits that it has taken the appropriate action and steps to address, correct and/or minimize the occurrence of the issues noted in the report, and asks for your favorable consideration of such action. We wish to offer our sincere gratitude to the Department and to the examiners for the courtesies granted Bristol West Insurance Company throughout the course of the examination.

Sincerely,

A handwritten signature in cursive script that reads 'Christina Austin'.

Christina Austin  
Compliance Director  
Bristol West Insurance Company