

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**ACCESS INSURANCE COMPANY  
Austin, Texas**

**AS OF  
October 12, 2007**

**COMMONWEALTH OF PENNSYLVANIA**

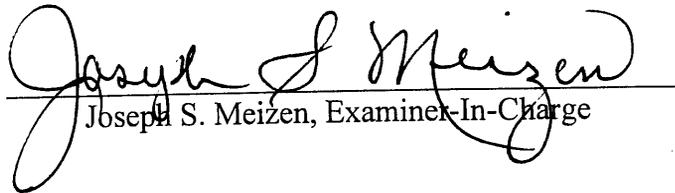


**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

**Issued: December 10, 2007**

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).

  
Joseph S. Meizen, Examiner-In-Charge

Sworn to and Subscribed Before me

This 10 Day of September, 2007

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
THERESA M. SENECA, Notary Public  
City of Harrisburg, Dauphin County  
My Commission Expires Aug. 15, 2010

# ACCESS INSURANCE COMPANY

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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 6<sup>th</sup> day of July, 2007, 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.



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

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:

ACCESS INSURANCE COMPANY  
2830 Dresden Drive  
Atlanta, GA 30341

VIOLATIONS:

Sections 641-A and 671-A of Act 147  
of 2002 (40 P.S. §§ 310.41 and 310.71)

Sections 4(a) and 4(h) of the Act of  
June 11, 1947, P.L. 538, No. 246  
(40 P.S. §§ 1184)

Act 1990-6, Sections 1705(a)(1) and  
(4), 1731(b)(c), I 731(c)(1), 1786(e)(3),  
1791, 1791.1(a) and (b), 1792(b)(1),  
1793(b), 1797(b)(1), and 1799.3(a) and  
(d) (Title 75, Pa.C.S. §§ 1705, 1731,  
1786, 1791, 1792, 1793, 1797 and 1799)

Sections 2005(c), 2006, 2006(2), (4),  
(5) and (6) of Act 68 of 1998 (40  
P.S. §§991.2005 and 991.2006)

Title 31, Pennsylvania Code,  
Sections 69.22(c), 69.42, 69.43,  
69.53(a) and 146.5(d)

Title 75, Pennsylvania Consolidated  
Statutes, Sections 1161(a) and (b),  
and 1822

Respondent.

Docket No. MC07-10-013

CONSENT ORDER

AND NOW, this 10<sup>th</sup> day of December, 2007, 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.

3. Respondent neither admits nor denies the Findings of Fact or Conclusions of Law contained herein; Respondent expressly denies that it violated Pennsylvania insurance laws and regulations.

#### FINDINGS OF FACT

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

- (a) Respondent is Access Insurance Company, and maintains its address at 2830 Dresden Drive, Atlanta, Georgia 30341.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2005 through June 30, 2006.
- (c) On October 12, 2007, the Insurance Department issued a Market Conduct Examination Report to Respondent.

- (d) A response to the Examination Report provided by Respondent on November 9, 2007 was adopted and included in the Report.
- (e) The Examination Report cites to violations of the following:
- (i) Section 641.1-A of Act 147 of 2002 (40 P.S. § 310.41a);
  - (ii) Section 671-A of Act 147 of 2002 (40 P.S. § 310.71);
  - (iii) Sections 4(a) and 4(h) of the Casualty and Surety Rate Regulatory Act, No. 246 (40 P.S. § 1196);
  - (iv) Sections 1705(a)(1) & (4) of Act 1990-6, Title 75, Pa.C.S. § 1705;
  - (v) Section 1731(b)(c) of Act 1990-6, Title 75, Pa.C.S. § 1731;
  - (vi) Section 1731(c)(1) of Act 1990-6, Title 75, Pa.C.S. § 1731;
  - (vii) Section 1786(e)(3) of Act 1990-6, Title 75, Pa.C.S. § 1786;
  - (viii) Section 1791 of Act 1990-6, Title 75, Pa.C.S. § 1791;
  - (ix) Section 1791.1(a) of Act 1990-6, Title 75, Pa.C.S. § 1791;
  - (x) Section 1791.1(b) of Act 1990-6, Title 75, Pa.C.S. § 1791;
  - (xi) Section 1792(b)(1) of Act 1990-6, Title 75, Pa.C.S. § 1792;
  - (xii) Section 1793(b) of Act 1990-6, Title 75, Pa. C.S. § 1793;
  - (xiii) Section 1797(b)(1) of Act 1990-6, Title 75, Pa.C.S. § 1797;
  - (xiv) Section 1799.3(a) of Act 1990-6, Title 75, Pa.C.S. § 1799;
  - (xv) Section 1799.3(d) of Act 1990-6, Title 75, Pa.C.S. § 1799;
  - (xvi) Section 2005(c) of Act 68 of 1998 (40 P.S. § 991.2005);
  - (xvii) Section 2006 of Act 68 of 1998 (40 P.S. § 991.2006);
  - (xviii) Section 2006(2) of Act 68 of 1998 (40 P.S. § 991.2006);
  - (xix) Section 2006(4) of Act 68 of 1998 (40 P.S. § 991.2006);

- (xx) Section 2006(5) of Act 68 of 1998 (40 P.S. § 991.2006);
- (xxi) Section 2006(6) of Act 68 of 1998 (40 P.S. § 991.2006);
- (xxii) Title 31, Pennsylvania Code, Section 69.22(c);
- (xxiii) Title 31, Pennsylvania Code, Section 69.42;
- (xxiv) Title 31, Pennsylvania Code, Section 69.43;
- (xxv) Title 31, Pennsylvania Code, Section 69.53(a);
- (xxvi) Title 31, Pennsylvania Code, Section 146.5(d);
- (xxvii) Section 1161(a) and (b) of Title 75, Pa. C.S.; and
- (xxviii) Title 75, Pennsylvania Consolidated Statutes, Section 1822.

#### CONCLUSIONS OF LAW

5. In accordance 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) Violations of Sections 641-A and 671-A of Act 147 of 2002 are punishable by the following available administrative sanctions, 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) Violations of Sections 4(a) and (h) of the Casualty and Surety Rate Regulatory Act, No. 246 (40 P.S. § 1196) are punishable under Section 16 of the Casualty and Surety Rate Regulatory Act:
  - (i) imposition of a civil penalty not to exceed \$50 for each violation or not more than \$500 for each such willful violation;
  - (ii) suspension of the license of any insurer which fails to comply with an Order of the Commissioner within the time limited by such Order, or any extension thereof which the Commissioner may grant.
- (d) Violations of Sections 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).
- (e) Violations of Title 31, Pennsylvania Code, Section 146.5(d) are punishable under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9):
  - (i) cease and desist from engaging in the prohibited activity;
  - (ii) suspension or revocation of the license(s) of respondent.
- (f) In addition to any penalties imposed by the Commissioner for 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

6. 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) Consistent with the provisions of 40 P.S. § 323.5(d)(1), 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 \$75,000 to the Commonwealth of Pennsylvania in settlement of 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, Office Manager, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

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

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

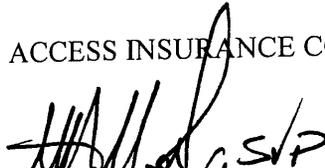
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

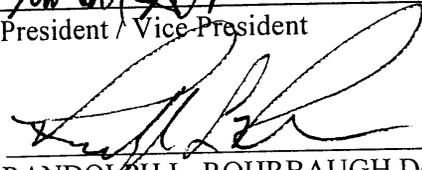
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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

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

BY: ACCESS INSURANCE COMPANY, Respondent

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

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

## I. INTRODUCTION

The market conduct examination was conducted at Access Insurance Company's office located in Atlanta, Georgia, from April 10, 2007, through April 27, 2007. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

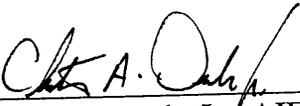
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

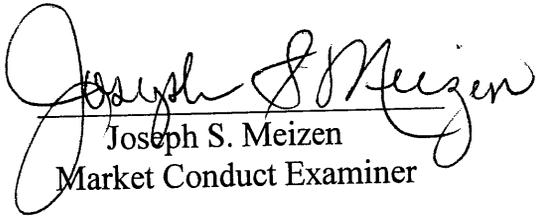
In certain areas of review listed in this Report, the examiners will refer to "error ratio." This error ratio is calculated by dividing the number of policies with violations by the total number of policies reviewed. For example, if 100 policies are reviewed and it is determined that there are 20 violations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

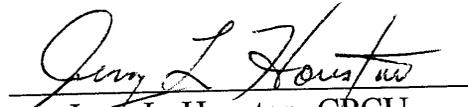
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel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

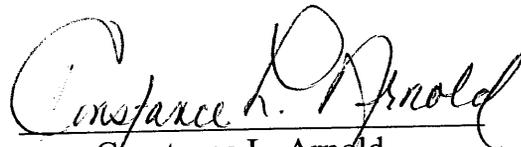
The undersigned participated in this examination and in preparation of this Report.

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

  
Joseph S. Meizen  
Market Conduct Examiner

  
Jerry L. Houston, CPCU  
Market Conduct Examiner

  
M. Katherine Sutton  
Market Conduct Examiner

  
Constance L. Arnold  
Market Conduct Examiner

## II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Access Insurance Company, hereinafter referred to as "Company," at their office located in Atlanta, Georgia. 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, 2005, through June 30, 2006, 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 midterm cancellations, 60-day cancellations and rescissions.
  - 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

Access Insurance Company was incorporated under the laws of Texas, on December 5, 1945, as Lawyers Surety Corporation and commenced business on January 1, 1946. The name was changed To Century American Casualty Company on November 4, 1994. The current title was adopted in October 2004.

#### LICENSING

Access Insurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2007. The Company is licensed in Alabama, Arkansas, California, Florida, Georgia, Kentucky, Mississippi, Missouri, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee and Texas. The Company's 2006 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$6,277,434. Premium volume related to the areas of this review were: Private Passenger Auto No-Fault (personal injury protection) \$6,150,555 and Private Passenger Auto Physical Damage \$126,879.

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

As part of the examination, the Company was requested to supply manuals, underwriting guides, bulletins, directives or other forms of underwriting procedure communications for each line of business being reviewed. Underwriting guides were furnished for private passenger automobile. 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 438 private passenger automobile files cancelled within the first 60 days of new business, 50 files were selected for review. All 50 files were received and reviewed. No violations were noted.

#### **2. Midterm Cancellations**

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

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

From the universe of 277 private passenger automobile files identified as midterm cancellations by the Company, 50 files were selected for review. All 50 files were received and reviewed. The 389 violations noted were based on the universe of 277 files, resulting in an error ratio of 100%.

The following findings were made:

*2 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.

*38 Violations Act 68, Section 2006(4) [40 P.S. §991.2006(4)]*

Requires that a cancellation notice advise the insured of his right to request in writing that the Insurance Commissioner review the action of the insurer. The Company did not advise the insured of his right to request in writing a review by the Insurance Commissioner on the cancellation notice for the 38 files noted.

*38 Violations Act 68, Section 2006(5) [40 P.S. §991.2006(5)]*

Requires that either in the cancellation notice or in an accompanying statement, the insured be advised of this possible eligibility for insurance through the automobile

assigned risk plan. The Company did not did not advise the insured of his or her eligibility for insurance through the assigned risk plan on the cancellation for the 38 files noted.

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

Requires that a cancellation notice advise the insured that he must obtain compulsory automobile insurance coverage if he operates or registers a motor vehicle in this Commonwealth and that the insurer is notifying the Department of Transportation that the insurance is being cancelled and the insured must notify the Department of Transportation that he has replaced said coverage. The Company did not advise the insured of the required information on the cancellation notice for the 38 files noted.

*273 Violations Title 75, Pa. C.S. §1786(e)(3)*

An insurer who has issued a contract of motor vehicle liability insurance and knows or has reason to believe that the contract is only for the purpose of providing proof of financial responsibility shall notify the department if the insurance has been cancelled or terminated by the insured or by the insurer. The insurer shall notify the department not later than ten days following the effective date of the cancellation or termination. The Company failed to notify the Department of Transportation of cancellations within 10 days.

### 3. 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*.

The universe of 3 private passenger automobile files identified as rescissions was selected for review. All 3 files were received and reviewed. The violation resulted in an error ratio of 33%.

The following finding was made:

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

Requires that cancellation by an insurer of a policy of automobile insurance shall not be effective unless the insurer delivers or mails to the insured a written notice of the cancellation. The Company sent a disclaimer of coverage letter to the named insured regarding declination of any claim(s) or other action(s) brought against or by the insured resulting from the captioned claim. The letter did not contain any wording advising the policy was void *ab initio*. There was no notice sent regarding the rescission of the policy itself.

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

The Company did not report any assigned risk business during the experience period because they have not been writing business in Pennsylvania long enough to receive assignments. The Company began writing business in Pennsylvania in October 2005. The Company recently signed a LAD agreement. 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.

## 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 5,433 private passenger automobile policies identified as new business without surcharges by the Company, 50 files were selected for review. All 50 files were received and reviewed. The 26,113 violations noted were based on the universe of 5,433 files, resulting in an error ratio of 100%.

The following findings were made:

*3,440 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 get signed written rejection forms for policies in the universe where uninsured and underinsured motorist coverages were rejected. These policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*3,440 Violations 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 Company failed to provide this notice at the time of application for the 3,440 files noted. These policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*3,440 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 the surcharge disclosure plan at the time of application for the 3,440 files noted. These policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*3,440 Violations Title 75, Pa. C.S. §1705(a)(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 standardized form as adopted by the Commissioner. The Company failed to provide the election of tort options at the time of application for the 3,440 files noted. These policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*3,440 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 standardized form as adopted by the Commissioner. The Company failed to provide the signed limited tort option selection form in the file for the 3,440 files noted. These policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*3,440 Violations Title 75, Pa. C.S. §1791*

Requires the Company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten-point type at the time of application for original coverage. The Company did not provide the required notice at the time of application. These policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*5,433 Violations Title 75, Pa. C.S. §1791.1(b)*

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the notice of tort options to the insured at the time of application for all new business policies issued during the experience period.

*2 Violations 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 Company failed to provide a signed statement from the insured requesting a deductible less than \$500 for the 2 files noted.

*38 Violations Act 246, The Casualty and Surety Rate Regulatory Act,  
Section 4 (40 P.S. §1184)*

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to rate the 38 files noted in accordance with their filed and approved rating plan which resulted in overcharges of \$9,087 and an undercharge of \$2.

Private Passenger Automobile – New Business With Surcharges

From the universe of 116 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 515 violations noted were based on the universe of 116 files, resulting in an error ratio of 100%.

The following findings were made:

*54 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 standardized form as adopted by the Commissioner. The Company failed to provide the signed limited tort option selection form in the file for the 54 files noted. Of the 54 files

noted, 52 policies were previously insured with another company. These files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*52 Violations 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 Company failed to provide this notice at the time of application for the 52 files noted. These policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*52 Violations Title 75, Pa. C.S. §1705(a)(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 standardized form as adopted by the Commissioner. The Company failed to provide the election of tort options at the time of application for the 52 files noted. These policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*55 Violations Title 75, Pa. C.S. §1791*

Requires the Company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten-point type at the time of application for original coverage. The Company did not provide the required notice at the time of application for the 55 files noted. Of the 55 files noted, 52 policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*55 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 the surcharge disclosure plan at the time of application for the 55 files noted. Of the 55 files noted, 52 policies were previously insured with another company. The files reflected completed applications from the prior company. The Company did not provide a new application with the appropriate disclosures.

*116 Violations Title 75, Pa. C.S §1791.1(b)*

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the notice of tort options to the insured at the time of application for all new business policies issued during the experience period.

*116 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 show the amount of surcharge and the reason for the driver record points for accidents and traffic violations for all new business policies issued during the experience period.

*11 Violations Title 75, Pa. C.S. §1799.3(a)*

Prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,150 in excess of any self insured retention or deductible applicable to the named insured.

*AND*

*Act 246, The Casualty and Surety Rate Regulatory Act,  
Section 4 (40 P.S. §1184)*

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The 11 files noted were not rated in accordance with their filed and approved rating plan which resulted in overcharges of \$2,176.

*2 Violations Act 246, The Casualty and Surety Rate Regulatory Act,  
Section 4 (40 P.S. §1184)*

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to rate the 2 files noted in accordance with their filed and approved rating plan which resulted in overcharges of \$357.

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

The Company did not report any renewals without surcharges during the experience period. The Company was asked to provide a sample of its current renewals without surcharges. Ten policies were provided for review.

The following findings were made:

#### *1,854 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 policy renewal did not reflect the prominent notice as required. The Company identified 1,854 policies that renewed without surcharges in which either uninsured or underinsured motorist protection was rejected.

Private Passenger Automobile – Renewals With Surcharges

The Company did not report any renewals with surcharges during the experience period. The Company was asked to provide a sample of its current renewals with surcharges. One policy was provided for review.

The following findings were made:

*10 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 policy renewal did not reflect the prominent notice as required. The Company identified 10 policies that renewed with surcharges in which uninsured or underinsured motorist protection was rejected.

*10 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 show the amount of surcharge and the reason for the driver record points for accidents and traffic violations.

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

The Company did not report any assigned risk business during the experience period because they have not been writing business in Pennsylvania long enough to receive assignments. The Company began writing business in Pennsylvania in October 2005. The Company recently signed a LAD agreement. 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.

## 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 201 private passenger automobile property damage claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

## **B. Automobile Comprehensive Claims**

The universe of 2 private passenger automobile comprehensive claims reported during the experience period was selected for review. Both files were received and reviewed. No violations were noted.

## **C. Automobile Collision Claims**

The universe of 8 private passenger automobile collision claims reported during the experience period was selected for review. All 8 files were received and reviewed. No violations were noted.

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

The universe of 26 private passenger automobile total loss claims reported during the experience period was selected for review. All 26 files were received and reviewed. The violation noted resulted in an error ratio of 4%.

The following finding was made:

*1 Violation 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 file noted did not reflect a Pennsylvania salvage title was obtained.

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

The universe of 26 private passenger automobile first party medical claims reported during the experience period was selected for review. All 26 files were received and reviewed. The 56 violations noted were based on the universe of 26 files, resulting in an error ratio of 100%.

The following findings were made:

##### *4 Violations Title 31, Pa. Code, Section 69.22(c)*

Requires the insurer when an insured's first-party limits have been exhausted, to provide notice to the provider and the insured within 30 days of the receipt of the provider's bill. The Company did not provide evidence that a notice of exhausted limits was sent to the insured.

##### *26 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 did not

reprice any medical or hospital bills received for injuries occurring in Pennsylvania.

*26 Violations 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 Company did not provide an application for first party benefits or provide instructions to first-party claimants within ten working days for the 26 files noted.

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

Although the Company did not report any automobile first party medical claims referred to a peer review organization, the Company was asked to provide copies of all written contracts it has in place with a peer review organization. The Company advised they did not have any written contracts with a peer review organization.

The following finding was made:

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

A Peer Review Organization shall contract, in writing, jointly or separately with an insurer for the provision of peer review services as authorized by Act 1990-6 and this chapter.

*AND*

*Title 75, Pa. C.S. §1797(b)(1)*

Peer review plan for challenges to reasonableness and necessity of treatment. Peer review plan. 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. Such evaluation shall be for the purpose of confirming that such treatment, products, services or accommodations conform to the professional standards of performance and are medically necessary. An insurer's challenge must be made to a PRO within 90 days of the insurer's receipt of the provider's bill for treatment or services or may be made at any time for continuing treatment or services. The Company failed to have a written contract in place with an approved 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 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:

### Automobile Rating – New Business Without Surcharges

#### *3,440 Violations 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 Company failed to provide the fraud warning on an application for insurance for the 3,440 files noted.

Automobile Rating – New Business With Surcharges

*54 Violations 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 Company failed to provide the fraud warning on an application for insurance for the 54 files noted.

## *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 does not do any advertising, but does maintain a website. 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 did not report any complaints during the experience period and did not provide any complaint logs. The universe of 3 complaints were identified by the exam team and requested for review. The 3 complaint files were 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.

No violations were noted.

The following synopsis reflects the nature of the 3 complaints that were reviewed.

• 3	Cancellation/Nonrenewal	100%
<hr/>		<hr/>
3		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:

*2 Violations Insurance Department Act, No. 147, Section 641.1-A  
[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 Plus Insurance Agency, LLC  
Bucks County Insurance

*129 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.

Ames, Edward  
Bobb, Larry  
Bommentre, Andrew  
Bozzi, Domenic  
Bozzi, Michael  
Bruce, Kevin  
Bruckner, Marc  
Brunerm, Barbara  
Bruni, David  
Chaudhry, Atiq  
Coleman, Susan  
Cox, Donna  
Critchlow, Paul  
Davis, Mia  
Dennis, Danny  
Dortch, Michael  
Erwin, Craig  
Ferullo, John  
Foglia, Dennis  
Gabilanes, Betty  
Garman, Melanie  
Gildein, Patricia  
Grace, Michelle  
Grant, Cassandra  
Grisafi, Joseph  
Hagan, Charles  
Heckworth, Patrick  
Hughes, Christopher  
Joswiak, Preston  
Katz, Shirley  
Khawam, John

King, Timothy  
Kline, Jeffrey  
Kratz, Jeffrey  
Kukish, Warren  
Lapikus, Diane  
Lazorko, Jonathan  
Lennon, Thomas  
Levin, Maxwell  
Lillegard, James  
Lunney, Mark  
McAfee, Doris  
McHenry, Deborah  
Muscado, Vincent  
Naples, Joseph  
Pabon, Milagros  
Padgeon, Michael  
Padilla, Aida  
Park, Rosemary  
Pearson, Thomas  
Preiss, Mark  
Rexarch, Carlos  
Rivera, Oswaldo  
Saint-Fleur, Lamy  
Shah, Kirankumar  
Silvestre, Jose  
Simpers, Paul  
Smith, David  
Son, Dung  
Sutor, Carol  
Thach, Bao  
Tirpak, Brian  
Triggiani, Susan  
Troast-Singley, Kim  
Varano, Joseph  
Wagner, Kathy  
Yoos, Fred  
Zavawski, Christopher  
Access General Insurance Agency of Pennsylvania, Inc.  
An Agency by the Mail  
A Agency Insurance, Inc.  
A North Star Agency, Inc.  
Ames Insurance Services, Inc.  
Beacon Insurance Agency

Bubby's Auto Tags and Insurance  
Business Insurance Specialists, LTD  
Century Agency II, Inc.  
Coleman Insurance, Inc.  
Collision I, Inc.  
Combined Insurance Group, LTD  
Comprehensive Insurance Services  
Critchlow, Paul S. Insurance Agency  
Durham Insurance Group  
East Coast Insurance Consultants  
Empire Insurance Service Agency, Inc.  
Fifth Street Agency  
Five Points Insurance  
Foglia Insurance, Inc.  
Fry and Bommentre, Inc.  
Grasafi Insurance  
Hagans Towne Insurance Associates, Inc.  
Hunter Group, Alexis  
Independent Associates of PA, Inc.  
Insurance Intermediaries, Inc. (Columbus, OH)  
Insurance Intermediaries, Inc. – Erwin Insurance  
Insurance Intermediaries, Inc. – Ferullo Insurance  
Insurance Intermediaries, Inc. – Lennon Financial Group  
Insurance Solutions Concept  
Juniata Insurance Agency, Inc.  
Katz, Shirley, Inc.  
Kennett Tag & Insurance Agency  
King Insurance Agency, Inc.  
KPB Insurance Services, Inc.  
Kratz & Company, Peggy  
Levin, Maxwell Insurance Agency  
Liberty Business Center  
Lillegard Group, The  
LSF Financial Services  
McAfee Insurance Agency  
McGinley Insurance Agency  
McHenry Insurance, Debbie  
Mia Financial Associates  
Millie's Insurance Agency  
Neshaminy Insurance, LLC  
PA Auto Insurance Outlet Corp.  
Pacific Insurance Agency  
PAK Auto Tags

Park, R. Insurance Agency  
Pearson Insurance Agency  
Quick Auto Tags & Insurance, Inc. (Policy APA 000004473)  
Rexach Insurance Agency  
Simpers Agency  
Smith, K.D. Insurance, Inc.  
Tirpak Insurance  
Troast-Singley Agency, The  
University Insurance  
Wagner Insurance  
West Chester Insurance Agency  
Yoos Agency, Inc.

## *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 nonrenewal notice and refusal to write requirements of Act 68, Section 2006 [40 P.S. §§991.2006], so that the violations noted in the Report do not occur in the future.
2. The Company must review Title 75, Pa. C.S. §1786(e)(3) to ensure proper notification to the Department of Transportation within 10 days when a policy has been cancelled or terminated by the insured or insurer.
3. The Company must review Title 75, Pa. C.S. §1791 to ensure that the notice of available benefits with the required language is given to the insured at the time of application as noted in the Report.
4. The Company must review Title 75, Pa. C.S. §1791.1(a) and (b) to ensure that an itemized invoice listing minimum coverages and tort options is provided at the time of application and every renewal thereafter as noted in the Report do not occur in the future.
5. 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.

6. 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.
  
7. 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.
  
8. 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 and is 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.
  
9. 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 Title 75, Pa. C.S. §1792(b)(1) do not occur in the future.

10. When a surcharge is imposed on a private passenger automobile policy the Company must include the amount of the surcharge and the specifics 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 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.
11. The Company must review Title 75, Pa. C.S. §1799.3(a) to ensure that a policy is not surcharged where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,150 in excess of any self-insured retention or deductible applicable to the named insured.
12. The premium overcharges noted in the rating section of this report must be refunded to the insured and proof of such refund must be provided to the Insurance Department within 30 days of the report issue date.
13. The Company must review Act 246, Section 4 [40 P.S. §1184], and take appropriate measures to ensure the automobile rating violations listed in the report do not occur in the future.
14. 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 providing necessary claim forms, as noted in the Report, do not occur in the future.

15. The Company must review Title 75, Pa. C.S. §1161(a)&(b) with its claim staff to ensure that Pennsylvania salvage certificates are obtained and are retained with the claim file.
16. The Company must review Title 31, Pa. Code, Section 69.22 with its claim staff to ensure that the insured is properly notified that first-party medical benefits have been exhausted.
17. 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.
18. The Company must review Title 31, Pa. Code, Section 69.53(a) and Title 75, Pa. C.S. §1797(b)(1) with its claim staff to ensure that a written contract is in place with an approved peer review organization established for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person. Such evaluation shall be for the purpose of confirming that such treatment, products, services or accommodations conform to the professional standards of performance and are medically necessary.
19. 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.
20. The Company must ensure that all applications contain the required fraud warning notice.

**XIII. COMPANY RESPONSE**



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INSURANCE COMPANY

November 8, 2007

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

RE: Examination Warrant Number: 06-M30-032  
Access Insurance Company  
Report of Market Conduct Examination

Dear Mr. Derk:

Kindly permit this letter to confirm Access Insurance Company's (the "Company") receipt of your correspondence, dated October 12, 2007, containing the Pennsylvania Insurance Department's Report of Examination for the Company covering the period July 1, 2005 through June 30, 2006 as of the close of business on October 12, 2007. The Company and I thank you for courtesies shown throughout this process by you and the examiners: Constance L. Arnold; Joseph S. Meizen; Jerry L. Houston, CPCU; and M. Katherine Sutton.

The following constitutes Section XIII of the Report of Examination, the Company Response, which, together with this letter, is to be included in its entirety and made part of any final Report of Examination that may be adopted by the Insurance Commissioner. This Company Response tracks the ordering and sequencing of the matters contained in the Report of Examination.

The comments contained in this Company Response, as well as any measures implemented in connection with the Report of Examination, should not be construed or interpreted by the Insurance Department, or any other party, as admissions on the part of the Company. The comments and corporate measures provided or referenced in the Company Response are being undertaken by the Company on a wholly voluntary basis and without any waiver, whatsoever, of any applicable defense or privilege that may relate to the information provided.

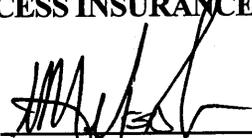
November 8, 2007  
Chester A. Derk, Jr., AIE, HIA  
Market Conduct Division Chief

The Company requests the Insurance Department to take specific note of the fact that the Examination Period (July 1, 2005 through June 30, 2006) occurred shortly after the Company's commencement of insurance activities in the Commonwealth of Pennsylvania. As with the development of any new business enterprise, there will be areas for improvement in the conduct of its business affairs. Therefore, Access Insurance Company particularly appreciates the guidance being offered by the Insurance Department with regard to its efforts in the Commonwealth of Pennsylvania.

We trust that you will agree that Access Insurance Company is proactive in adopting measures to ensure its continued good corporate citizenship within the Commonwealth; and on behalf of Access Insurance Company, I look forward to a long and mutually beneficial relationship with the Insurance Department and the insurance consumers of Pennsylvania.

Sincerely,

**ACCESS INSURANCE COMPANY**

By: 

\_\_\_\_\_  
Michael H. Meadows  
Senior Vice President  
and Chief Compliance Officer

enclosure



INSURANCE COMPANY

### **XIII. Company Response**

Access Insurance Company (the "Company") issues its response to the Report of Examination covering the period July 1, 2005 through June 30, 2006 as of the close of business on October 12, 2007 (the "Report"). The comments contained herein, as well as all statements regarding any measures undertaken or implemented by the Company, are not to be construed or interpreted as an admission of wrongdoing or violation of the laws of the Commonwealth of Pennsylvania. All statements, references, comments and representations contained in this Company Response are being submitted on a wholly voluntary basis and without waiver of or prejudice to the Company's ability to fully defend against any and all claims or allegations which the Pennsylvania Insurance Department may institute. No such item(s) may be used in any fashion as an admission or otherwise; and all such items are being provided in an effort to amicably resolve and settle this matter. The Company, by responding to the Report of Examination, is not waiving any defense, privilege, set-off, claim, etc., that it may have with regard to the Pennsylvania Insurance Department's Market Conduct Examination.

This response tracks the ordering and sequencing of the matters contained in the remainder of the Report of Examination.

#### **I. INTRODUCTION**

The Company offers no comments to this Section.

#### **II. SCOPE OF EXAMINATION**

The Company offers no comments to this Section.

#### **III. COMPANY HISTORY AND LICENSING**

The Company agrees with the Department's characterization of its corporate history and licensing.

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

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

#### **V. UNDERWRITING**

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

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

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

###### **2. Midterm Cancellations**

Act 68, Section 2006(2) [40 P.S. §991.2006(2)] – The two (2) subject policies involved cancellations due to insufficient funds payments. The Company has modified its review process for policy cancellations to ensure compliance with Act 68's notice requirements.

Act 68, Section 2006(4) [40 P.S. §991.2006(4)] – The Company disputes the Department's allegation that the Company "did not advise the insured of his right to request in writing a review by the Insurance Commissioner." In all of the thirty-eight (38) subject policies, the Company's notice did advise the insured of the insured's right to request in writing a review by the Insurance Commissioner. The notice on these policies, however, indicated a ten (10) day time frame when a thirty (30) day time frame should have been used. At the time of this occurrence, the Company's filed form contained the appropriate language. However, the Company utilized the services of a third-party vendor. The Company had instructed the third-party vendor to correct the form it used and the third-party vendor failed to do so. Subsequently, the third-party vendor advised the Company that it is not able to correct forms in accord with the Company's instructions in order to bring them into compliance. The Company took the forms back from the third-party vendor and is now processing its forms in-house to ensure compliance on a going forward basis.

Act 68, Sections 2006(5) & 2006(6) [40 P.S. §§991.2006(5) & 991.2006(6)] – During the examination period, July 1, 2005 through June 30, 2006 (the "Examination Period"), the Company's filed form contained the appropriate language. However, the Company utilized the services of a third-party vendor. The Company had instructed the third-party vendor to correct the form it used and the third-party vendor failed to do so. Subsequently, the third-party vendor advised the Company that it is not able to correct forms in accord with the Company's instructions in order to bring them into

compliance. The Company took the forms back from the third-party vendor and is now processing its forms in-house to ensure compliance on a going forward basis.

Title 75, Pa. C.S. §1786(e)(3) - The Report alleges instances of failing to provide notices of cancellation to the Pennsylvania Department of Transportation (PENNDOT) within 10 days of the cancellation. Notwithstanding that the Company stood ready to make paper submissions; PENNDOT requires all such notices to be submitted only on an electronic basis. Further, while the Company had all programming in place to submit notices on an electronic basis, PENNDOT did not authorize the Company to make such electronic submissions until after the Examination Period. Thus, while the Company agrees with the Report on a technical basis (*i.e.*, notices not submitted to PENNDOT within 10 days), any non-compliance with statute, if any, does not rest with the Company. Subsequent to the examination period, the Company has been, and continues to be, compliant with the statute.

3. Rescissions

Act 68, Section 2006 [40 P.S. §991.2006] - The single subject policy was the first rescission issued by the Company and did not contain a complete written notice to the insured. This notwithstanding, the insured received a full refund of premium. All subsequent rescissions since this first occurrence have issued in compliance with Act 68's notice requirements.

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

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

**VI. RATING**

**A. Private Passenger Automobile**

1. New Business

Private Passenger Automobile – New Business Without Surcharges

Title 75, Pa. C.S. §1731(b) & (c); Title 75, Pa. C.S. §1791.1(a); Title 75, Pa. C.S. §1793(b); Title 75, Pa. C.S. §1705(a)(4); Title 75, Pa. C.S. §1705(a)(1) & (4); Title 75, Pa. C.S. §1791; Title 75, Pa. C.S. §1791.1(b); Title 75, Pa. C.S. §1792(b)(1) – As admitted by the Department, the subject policies were non-renewed by another insurer. When this other insurer non-renewal occurred, the Company, through an insurance producer, offered to provide the policyholders with replacement coverage that was at least equal to the coverage the policyholders had been receiving from the prior insurer. Further, in most instances where this offer was made, the policyholders' premium for their new coverage with the Company ended up being lower than the premium they paid to their prior insurer.

Although the Company did indeed request each policyholder to complete new application forms, such forms were not always returned by the policyholder. Moreover, where the policyholder only indicated their acceptance of coverage through the payment of premiums, the Company elected to bind coverage and policies were issued to ensure that Pennsylvania insureds did not needlessly suffer lapses to their coverage or unintentional violations by the policyholders of applicable motor vehicle financial responsibility laws. Moreover, as admitted by the Department, at all times the Company endeavored to ensure the presence of an original application with appropriate signatures from the agency placing the business (although these applications named the non-renewing insurer as the underwriting company). Thus, it is the Company's position that its practice was in compliance with Pennsylvania's Motor Vehicle Financial Responsibility Law.

The Company understands and accepts that appropriate industry practice is to require the execution of new application and election forms at the time coverage is placed with an insurance carrier. The above-referenced activity only occurred during the Examination period and only with respect to policyholders who had been previously insured with another insurer and non-renewed by that insurer. At all times, the Company's intent was to maintain compliant policy files while protecting the best interests of its Pennsylvania insureds. A reasonable and conscientious attempt was made by the Company to update application and election forms. In the interest of assisting insureds with maintaining continuous insurance coverage and individual compliance with financial responsibility laws, the Company honored the insureds' request to maintain continuous insurance coverage when they paid the required premium.

The Company's practice since the examination period is to only bind new coverage where the Company's application and election forms have been properly completed.

Under the circumstances set forth above, the Company's position is that it acted in accordance with the spirit and intent of the Motor Vehicle Financial Responsibility Law.

With specific reference to surcharge disclosures (*Title 75, Pa. C.S. §1793(b)*), the Company had relied upon the producers to provide the surcharge disclosure to insureds at the time of application. However, the Company did not maintain documentation of the delivery of such notice by the producers. The Company is working to ensure proper notice delivery and file maintenance on a going forward basis.

With specific reference to statements from insureds requesting deductibles less than \$500 (*Title 75, Pa. C.S. §1792(b)(1)*), in two (2) isolated instances, although the insureds were provided with a statement to sign and did not return this statement to the Company, the insureds did manifest their intent to purchase and acceptance of lower deductibles through their tender of premium payments that matched the premium for a deductible that was less than \$500. Moreover, proof of the insureds premium payment and the notice to the insured of premium versus deductible amounts was maintained in the policy files. Therefore, it is the Company's position that it is in compliance with the requirements of the statute.

Act 246, Section 4 (40 P.S. §1184) - As admitted by the Department, the subject policies were non-renewed by another insurer. When this other insurer non-renewal occurred, the Company, through an insurance producer, offered to provide the policyholders with replacement coverage that was at least equal to the coverage the policyholders had been receiving from the prior insurer. In the isolated instances referenced by the Department, certain transfer discounts were not credited, or surcharges for lack of prior coverage were mistakenly assessed. These files have been corrected and appropriate credits and/or refunds have been issued. The Company's practice and business model is only to issue contracts in accordance with filed rates.

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

Title 75, Pa. C.S. §1705(a)(1) & (4); Title 75, Pa. C.S. §1791(a); Title 75, Pa. C.S. §1705(a)(4); Title 75, Pa. C.S. §1791; Title 75, Pa. C.S. §1793(b); Title 75, Pa. C.S. §1791.1(b) - As admitted by the Department, the bulk of the subject policies were non-renewed by another insurer. When this other insurer non-renewal occurred, the Company, through an insurance producer, offered to provide the policyholders with replacement coverage that was at least equal to the coverage the policyholders had been receiving from the prior insurer. Further, in most instances where this offer was made, the policyholders' premium for their new coverage with the Company ended up being lower than the premium they paid to their prior insurer.

Although the Company did indeed request each policyholder to complete new application forms, such forms were not always returned by the policyholder. Moreover, where the policyholder only indicated their acceptance of coverage through the payment of premiums, the Company elected to bind coverage and policies were issued to ensure that Pennsylvania insureds did not needlessly suffer lapses to their coverage or unintentional violations by the policyholders of applicable motor vehicle financial responsibility laws. Moreover, as admitted by the Department, at all times the Company endeavored to ensure the presence of an original application with appropriate signatures from the agency placing the business (although these applications named the non-renewing insurer as the underwriting company). Thus, it

is the Company's position that its practice was in compliance with Pennsylvania's Motor Vehicle Financial Responsibility Law.

The Company understands and accepts that appropriate industry practice is to require the execution of new application and election forms at the time coverage is placed with an insurance carrier. The above-referenced activity only occurred during the Examination period and with respect to policyholders who had been previously insured with another insurer and non-renewed by that insurer. At all times, the Company's intent was to maintain compliant policy files while protecting the best interests of the insureds. A reasonable and conscientious attempt was made by the Company to update application and election forms. In the interest of assisting insureds with maintaining continuous insurance coverage and individual compliance with financial responsibility laws, the Company honored the insureds' request to maintain continuous insurance coverage when they paid the required premium.

The Company's practice since the examination period is to only bind new coverage where the Company's application and election forms have been properly completed.

Under the circumstances set forth above, the Company's position is that it acted in accordance with the spirit and intent of the Motor Vehicle Financial Responsibility Law.

With specific reference to surcharge disclosures (*Title 75, Pa. C.S. §1793(b)*), the Company had relied upon the producers to provide the surcharge disclosure to insureds at the time of application. However, the Company did not maintain documentation of the delivery of such notice by the producers. The Company is working to ensure proper notice delivery and file maintenance on a going forward basis.

*Act 68, Section 2005(c) [40 P.S. §991.2005(c)]; Title 75, Pa. C.S. §1799.3(d)* - The Company had relied upon the producers to provide the surcharge disclosure to insureds at the time of application. However, the Company did not maintain documentation of the delivery of such notice by the producers. The Company is working to ensure proper notice delivery and file maintenance on a going forward basis.

*Title 75, Pa. C.S. §1799.3(a); Act 246, Section 4 (40 P.S. §1184)* - The eleven (11) subject policies each involved insureds, who answered affirmatively with regards to being at fault in an accident within the chargeable period. However, in these eleven (11) isolated occurrences, while the insureds admitted to at fault accidents, the amount paid was not disclosed and charges were assessed without this disclosure. The

Company's practice and business model is only to issue contracts in accordance with filed rates; and the Company is working to ensure that these isolated occurrences are not repeated.

Act 246, Section 4 (40 P.S. §1184) – These two (2) isolated occurrences were the result of a rating error that was discovered shortly after the beginning of the examination period for a limited number of policies that met certain restricted criteria. This rating error was immediately corrected and no longer exists for policies currently being written by the Company. The Company's practice and business model is only to issue contracts in accordance with filed rates.

2. Renewals

Private Passenger Automobile – Renewals Without Surcharges

Title 75, Pa. C.S. §1731(c)(1) - The Company mistakenly relied upon the original policy applications wherein the insureds rejected the uninsured / underinsured motorist protection. While the insureds were aware of the rejection of these coverages at the time of application, the Company did not re-notify the insureds when the renewal policy was issued. The Company is working to ensure proper notice on a going forward basis.

Private Passenger Automobile – Renewals With Surcharges

Title 75, Pa. C.S. §1731(c)(1) - The Company mistakenly relied upon the original policy applications wherein the insureds rejected the uninsured / underinsured motorist protection. While the insureds were aware of the rejection of these coverages at the time of application, the Company did not re-notify the insureds when the renewal policy was issued. The Company is working to ensure proper notice on a going forward basis.

Act 68, Section 2005(c) [40 P.S. §991.2005(c)]; Title 75, Pa. C.S. §1799.3(d) - Relative to surcharge disclosures, the Company is working to ensure proper notice delivery and file maintenance on a going forward basis.

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

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

## VII. CLAIMS

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

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

### **B. Automobile Comprehensive Claims**

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

### **C. Automobile Collision Claims**

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

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

Title 75, Pa. C.S. §1161(a) & (b) - The Company strives to ensure the maintenance of complete files; and it is the Company's standard practice to obtain salvage certificates on all total loss claims. This one (1) isolated occurrence is not indicative of the Company's manner of doing business.

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

Title 31, Pa. Code, Section 69.22(c) – The Company has reported its disagreement with the Department's position relative to two (2) of the subject incidents. Under the circumstances of these incidents, within thirty (30) days of receipt of the provider's bill or before receipt of such bill, the Company was notified that the insureds had retained legal counsel and thereafter the Company was prohibited from having direct contact with the insureds regarding their benefit limitations. Thus, through no fault of the Company, compliance was not possible.

With respect to the remaining two (2) isolated subject incidents, the responsible individual adjusters failed to follow Company procedures which include the notification of benefits exhaustion to the insureds. The Company has taken measures to send proper notifications relative to these two (2) incidents. In addition, all adjusters handling the Company's claims have been re-trained regarding proper notification requirements to ensure proper notice delivery on a going forward basis.

Title 31, Pa. Code, Section 69.42; Title 31, Pa. Code, Section 69.43 - The Company's practice since the examination period is to reprice all First Party Benefit claims. All First Party Benefits claims from the examination period have been repriced and all adjustments and

notifications have been made. All additional coverage benefits to which the insureds are now entitled have also been made available as a result of the repricing. In addition, all adjusters handling the Company's claims have been re-trained regarding the repricing of First Party Benefit claims on a going forward basis.

Title 31, Pa. Code, Section 146.5(d) - While the Company gave instructions, processed and promptly paid claims to first-party claimants during the examination period, written applications for First Party Benefits were not provided. The Company is now using an appropriate application for First Party Benefits. All claimants reporting a claim for First Party Benefits are forwarded this form for completion upon the first notice of claim. In addition, all adjusters handling the Company's claims have been re-trained regarding the use of the application for First Party Benefits on a going forward basis.

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

Title 31, Pa. Code, Section 69.53(a); Title 75, Pa. C.S. §1797(b)(1) - The Company disputes the Department's position. The Company agrees that in the event it seeks to professionally assess the reasonableness and necessity of medical treatment in order to independently determine whether a claim should be paid or denied (*i.e.*, challenge whether treatment, health care services, products or accommodations conform to professional standards of performance or are medically necessary), section 1797(b) of the Motor Vehicle Financial Responsibility Law (75 Pa. C.S. § 1797(b)) requires that the Company contract with a Peer Review Organization for that purpose. However, if the Company does not challenge whether professional standards of performance are met or whether services are medically necessary (*i.e.*, the Company pays the claim outright upon establishing that medical expenses were incurred), then the Company is not required to submit to the claim to PRO review. This notwithstanding, as an accommodation to the Department's position, the Company is presently in active negotiations with a Peer Review Organization and expects a contract to be fully in place by November 30, 2007.

The Company did not have a contract in place with a Peer Review Organization, nor did the Company submit claims to a PRO for review, during the examination period. However, this activity, or lack thereof, is not a violation of 75 Pa. C.S. § 1797(b)(1). Indeed, the last sentence of subsection (1) ("insurer's challenge must be made to a PRO within 90 days...") clearly contemplates that the contract is only required in the event of a challenge by an insurer to the reasonableness and necessity of medical treatment. There is certainly no need for a contract with a PRO where an insurer simply agrees to pay properly submitted medical claims that are within the scope of coverage offered by the insurer's policies.

The Company can find no authority for the proposition that *all* first-party benefits claims must be submitted to a PRO for review; and has been provided no such authority by the Department. During the examination period, the Company handled only 26 first-party medical claims. All 26 of these claims were promptly handled by the Company, without challenge to the reasonableness and necessity of the medical treatment alleged to have been

provided. Thus, review by a peer review organization (PRO) was not necessary on any of these 26 claims.

The Company did not violate 31 Pa. Code § 69.53(a) or 75 Pa. C.S. § 1797(b)(1) and requests that this allegation be removed from any Final Report of Examination that may be adopted by the Insurance Commissioner. Alternatively, the Company requests the Insurance Commissioner to make a specific finding that the Company is compliant with 31 Pa. Code § 69.53(a) and 75 Pa. C.S. § 1797(b)(1).

## **VIII. FORMS**

### **Automobile Rating – New Business Without Surcharges**

Title 75, Pa. C.S. §1822 - As admitted by the Department, the subject policies were non-renewed by another insurer. When this other insurer non-renewal occurred, the Company, through an insurance producer, offered to provide the policyholders with replacement coverage that was at least equal to the coverage the policyholders had been receiving from the prior insurer. This offer included the necessary fraud warning. Further, in most instances where this offer was made, the policyholder's premium for their new coverage with the Company ended up being lower than the premium they paid to their prior insurer.

Although the Company did indeed request each policyholder to complete new application forms, such forms were not always returned by the policyholder. Moreover, where the policyholder only indicated their acceptance of coverage through the payment of premiums, the Company elected to bind coverage and policies were issued to ensure that Pennsylvania insureds did not needlessly suffer lapses to their coverage or unintentional violations by the policyholders of applicable motor vehicle financial responsibility laws. Moreover, as admitted by the Department, at all times the Company endeavored to ensure the presence of an original application with appropriate signatures from the agency placing the business (although these applications named the non-renewing insurer as the underwriting company). Thus, it is the Company's position that its practice was in compliance with Pennsylvania's Motor Vehicle Financial Responsibility Law.

The Company understands and accepts that appropriate industry practice is to require the execution of new application and election forms at the time coverage is placed with an insurance carrier. The above-referenced activity only occurred during the Examination period and only with respect to policyholders who had been previously insured with another insurer and non-renewed by that insurer. At all times, the Company's intent was to maintain compliant policy files while protecting the best interests of the Pennsylvania insureds. A reasonable and conscientious attempt was made by the Company to update application and election forms. In the interest of assisting insureds with maintaining continuous insurance coverage and individual compliance with financial responsibility laws, the Company honored the insureds' request to maintain continuous insurance coverage when they paid the required premium.

The Company's practice since the examination period is to only bind new coverage where the Company's application and election forms have been properly completed and required notices have been given.

Under the circumstances set forth, the Company's position is that it acted in accordance with the spirit and intent of the Motor Vehicle Financial Responsibility Law.

Automobile Rating – New Business With Surcharges

Title 75, Pa. C.S. §1822 - As admitted by the Department, the subject policies were non-renewed by another insurer. When this other insurer non-renewal occurred, the Company, through an insurance producer, offered to provide the policyholders with replacement coverage that was at least equal to the coverage the policyholders had been receiving from the prior insurer. This offer included the necessary fraud warning. Further, in most instances where this offer was made, the policyholder's premium for their new coverage with the Company ended up being lower than the premium they paid to their prior insurer.

Although the Company did indeed request each policyholder to complete new application forms, such forms were not always returned by the policyholder. Moreover, where the policyholder only indicated their acceptance of coverage through the payment of premiums, the Company elected to bind coverage and policies were issued to ensure that Pennsylvania insureds did not needlessly suffer lapses to their coverage or unintentional violations by the policyholders of applicable motor vehicle financial responsibility laws. Moreover, as admitted by the Department, at all times the Company endeavored to ensure the presence of an original application with appropriate signatures from the agency placing the business (although these applications named the non-renewing insurer as the underwriting company). Thus, it is the Company's position that its practice was in compliance with Pennsylvania's Motor Vehicle Financial Responsibility Law.

The Company understands and accepts that appropriate industry practice is to require the execution of new application and election forms at the time coverage is placed with an insurance carrier. The above-referenced activity only occurred during the Examination period and only with respect to policyholders who had been previously insured with another insurer and non-renewed by that insurer. At all times, the Company's intent was to maintain compliant policy files while protecting the best interests of the Pennsylvania insureds. A reasonable and conscientious attempt was made by the Company to update application and election forms. In the interest of assisting insureds with maintaining continuous insurance coverage and individual compliance with financial responsibility laws, the Company honored the insureds' request to maintain continuous insurance coverage when they paid the required premium.

The Company's practice since the examination period is to only bind new coverage where the Company's application and election forms have been properly completed and required notices have been given.

Under the circumstances set forth, the Company's position is that it acted in accordance with the spirit and intent of the Motor Vehicle Financial Responsibility Law.

### **IX. ADVERTISING**

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

### **X. CONSUMER COMPLAINTS**

The Company agrees with the Department's finding that the Company is compliant with Pennsylvania law.

### **XI. LICENSING**

*Insurance Department Act, No. 147, Section 641.1-A [40 P.S. §310.41a]* - The business (policies) in question was submitted by two (2) Pennsylvania licensed insurance producers. These two (2) individuals (not agencies) possessed a valid producer license in the Commonwealth of Pennsylvania during the examination period. Documentation of the validity of these licenses was provided to the Department. It is the Company's position that it is compliant with 40 P.S. §310.41a.

*Insurance Department Act, No. 147, Section 671-A [40 P.S. §310.71]* - The Company recently began doing business in the Commonwealth and presumed that appointments for these insurance producers were not necessary, since the Company believed that it was properly accepting business from the producers in their capacity as brokers for their insured clients. The Company is taking measures to ensure that all business accepted from insurance producers, acting as brokers for their insured clients, is appropriately documented.

### **XII. RECOMMENDATIONS**

1. The Company has modified its review process and revised internal control procedures for nonrenewals and refusals to write to ensure compliance with Act 68.
2. Subsequent to the examination period, the Company has been, and continues to be, compliant with Title 75, Pa. C.S. §1786(e)(3).
- 3-11. The Company's practice since the examination period is to only bind new coverage where the Company's application and election forms have been properly completed and required notices provided to the insured. Additionally, the Company's practice since the examination period is to provide required notices to insureds at the time of policy renewals.

12. Any premium overcharges noted in the rating section of the Department's Report were refunded to the insureds and proof thereof was furnished to and accepted by the Department's Market Conduct Examiners during the Exit process. Thus, the Company is in full compliance with the Recommendation.
13. Rating errors when discovered by the Company were immediately corrected and the Company is working to ensure continued compliance with rating requirements.
14. The Company is presently compliant with Chapter 146 of Title 31 of the Pennsylvania Code and the Company is working to ensure continued compliance.
- 15-17. The Company has reviewed the applicable statutes and regulations with its claim staff to ensure continued compliance.
18. The Company has reviewed the applicable statute and regulations with its claim staff to ensure compliance, if and when applicable. As set forth in Section VII (F) of this Company Response, as an accommodation to the Department's position, the Company is presently in active negotiations with a Peer Review Organization and expects a contract to be fully in place by November 30, 2007.
19. The Company is taking measures to ensure that all business accepted from insurance producers, acting as brokers for their insured clients, is appropriately documented. Additionally, when applicable, the Company is taking measures to ensure that all business accepted from insurance producers, acting as agents for the Company, is appropriately documented and that such producers are properly appointed with the Company.
20. The Company is working to ensure that all of its forms, inclusive of applications, are, and continue to be, compliant with applicable law.

The Company thanks the Pennsylvania Insurance Department for its attention and courtesy throughout the examination process.

Sincerely,

**ACCESS INSURANCE COMPANY**

By:   
\_\_\_\_\_  
Michael H. Meadows  
Senior Vice President  
and Chief Compliance Officer