

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

ESURANCE INSURANCE COMPANY
Tulsa, Oklahoma

**AS OF
July 25, 2005**

COMMONWEALTH OF PENNSYLVANIA

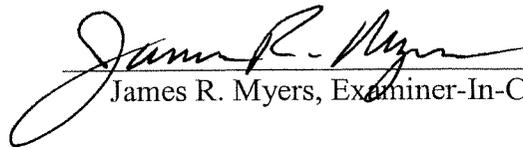


**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: September 13, 2005

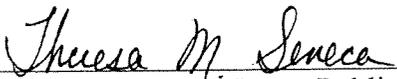
VERIFICATION

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


James R. Myers, Examiner-In-Charge

Sworn to and Subscribed Before me

This 28 Day of March, 2005



Notary Public
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
THERESA M. SENECA, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires Aug. 15, 2006

ESURANCE INSURANCE COMPANY

TABLE OF CONTENTS

Order		
I.	Introduction.....	1
II.	Scope of Examination.....	3
III.	Company History/Licensing.....	4
IV.	Underwriting Practices and Procedures.....	6
V.	Underwriting	
	A. Private Passenger Automobile.....	7
	B. Assigned Risk.....	12
VI.	Rating	
	A. Private Passenger Automobile.....	13
	B. Assigned Risk.....	26
VII.	Claims.....	27
VIII.	Forms.....	30
IX.	Advertising.....	32
X.	Consumer Complaints.....	33
XI.	Licensing.....	35
XII.	Recommendations.....	38
XIII.	Company Response.....	41

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

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



M. Diane Koken
M. Diane Koken
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
ESURANCE INSURANCE	:	Section 671-A of Act 147 of 2002
COMPANY	:	(40 P.S. § 310.71)
3785 Placer Corporate Drive	:	
Rocklin, CA 95765	:	Act 1990-6, Sections 1705(a)(1) & (4),
	:	1705(a)(1)(D), 1705(a)(3), 1734,
	:	1738(d)(1)(2), 1791.1(a) and (b),
	:	1792(b)(1), 1793(b), 1799.3(a) and
	:	1799.3(d) (Title 75, Pa.C.S. §§ 1705,
	:	1734, 1738, 1791, 1793 and 1799)
	:	
	:	Sections 2006(2), 2006(3) and
	:	2008(b) of Act 68 of 1998 (40 P.S.
	:	§§991.2003 and 991.2008)
	:	
	:	Sections 4(a) and 4(h) of the Act of
	:	June 11, 1947, P.L. 538, No. 246
	:	(40 P.S. § 1184)
	:	
	:	Title 31, Pennsylvania Code, Sections
	:	67.33(b)(1) and 146.6
	:	
	:	Title 75, Pennsylvania Consolidated
	:	Statutes, Section 1822
	:	
	:	
Respondent.	:	Docket No. MC05-07-020

CONSENT ORDER

AND NOW, this 13th day of *September*, 2005, this Order is hereby
issued by the Deputy Insurance Commissioner of the Commonwealth of

Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

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

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

FINDINGS OF FACT

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

- (a) Respondent is Esurance Insurance Company, and maintains its address at 3785 Placer Corporate Drive, Rocklin, California 95765.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2003 through June 30, 2004.

- (c) On July 25, 2005, the Insurance Department issued a Market Conduct Examination Report to Respondent.

- (d) A response to the Examination Report was provided by Respondent on August 24, 2005.

- (e) The Examination Report notes violations of the following:
 - (i) Section 671-A of Act 147 of 2002 prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act (40 P.S. § 310.71).

 - (ii) Section 1705(a)(1) and (4) of Act 1990-6, Title 75, Pa.C.S. § 1705(a)(1) and (4), which requires each insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy, shall provide each applicant with the notice required under paragraph (1);

 - (iii) Section 1705(a)(1)(D) of Act 1990-6, Title 75, Pa.C.S. § 1705, which requires an insurer, not less than 45 days prior to the first renewal of an automobile policy, notify in writing each named insured of the availability of two alternatives of full tort and limited tort insurance;

- (iv) Section 1705(a)(3) of Act 1990-6, Title 75, Pa.C.S. § 1705, which states if a named insured who receives a notice under paragraph (1) does not indicate a choice within 20 days, the insurer shall send a second notice. The second notice shall be in a form identical to the first notice, except that it shall be identified as a second and final notice. If a named insured has not responded to either notice ten days prior to the renewal date, the insured is presumed to have chosen full tort;
- (v) Section 1734 of Act 1990-6, Title 75, Pa.C.S. § 1734, which allows a named insured to request in writing the issuance of coverages under Section 1731 in amount equal to or less than the limits of liability for bodily injury;
- (vi) Section 1738(d)(1)(2) of Act 1990-6, Title 75, Pa.C.S. § 1738, which requires the insurer to advise that named insured shall be informed that he may exercise the waiver for stacked uninsured and underinsured motorist coverage by signing written rejection forms;
- (vii) Section 1791.1(a) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the commonwealth and the premium charge for the insured to purchase the

minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-point type: "The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage or coverages in excess of the limits required by law Are provided only at your request as enhancements to basic coverages." The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured's existing coverages;

- (viii) Section 1791.1(b) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires an insurer to provide an insured with a notice of the availability of two alternatives of full tort insurance and limited tort insurance;
- (ix) Section 1792(b)(1) requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500.00 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it;
- (x) Section 1793(b) of Act 1990-6, Title 75, Pa. C.S. § 1793, which requires the insurer to provide to the insured a surcharge disclosure plan.

The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall deliver the plan to each insured at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage;

- (xi) Section 1799.3(a) of Act 1990-6, Title 75, Pa.C.S. § 1799, which prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three year period, the aggregate cost of the insurer for any person injured or property damaged is determined to be less than \$1,050 in excess of any self-insured retention or deductible applicable;
- (xii) Section 1799.3(d) of Act 1990-6, Title 75, Pa.C.S. § 1799, which requires insurers who make a determination to impose a surcharge, rate penalty or driver record point assignment, to inform the named insured of the determination and specify the manner in which the surcharge, rate penalty or driver record point assignment was made and clearly identify the amount of the surcharge or rate penalty on the premium notice for as long as the surcharge or rate penalty is in effect;
- (xiii) Section 2006(2) of Act 68 of 1998 (40 P.S. § 991.2003), which requires an insurer to deliver or mail to the named insured a cancellation notice and

state the date, not less than 60 days after the date of mailing or delivery, on which cancellation shall become effective. When the policy is being cancelled for nonpayment of premium, the effective date may be 15 days from the date of mailing or delivery;

(xiv) Section 2006(3) of Act 68 of 1998 (40 P.S. § 991.2003), which requires an insurer to deliver or mail to the named insured a cancellation notice and state the specific reason for cancellation;

(xv) Section 2008(b) of Act 68 of 1998 (40 P.S. § 991.2006), which requires any applicant for a policy who is refused such policy by an insurer shall be given a written notice of the refusal to write by the insurer. The notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant;

(xvi) Sections 4(a) and 4(h) of the Casualty and Surety Rate Regulatory Act, No. 246 (40 P.S. § 1184), which requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan which it proposes to use in this Commonwealth and prohibits an insurer from making or issuing a contract or policy with rates other than those approved;

(xvii) Title 31, Pennsylvania Code, Section 67.33(b)(1), which states an insurer may not assess a premium surcharge for the payment of a claim arising from one or more accidents where the insured was not at-fault in causing or contributing to the accident;

(xviii) Title 31, Pennsylvania Code, Section 146.6, requires that every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected; and

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

CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

- (b) Respondent's violations of Section 671-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
 - (i) suspension, revocation or refusal to issue the certificate of qualification or license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
 - (iii) an order to cease and desist; and
 - (iv) any other conditions as the Commissioner deems appropriate.

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

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

(i) imposition of a civil penalty not to exceed \$50 for each violation or not more than \$500 for each such wilful violation;

(ii) suspension of the license of any insurer which fails to comply with an Order of the Commissioner within the time limited by such Order, or any extension thereof which the Commissioner may grant.

(e) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.6 are punishable under Sections 9, 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9, 1171.10 and 1171.11):

(i) cease and desist from engaging in the prohibited activity;

(ii) suspension or revocation of the license(s) of Respondent.

(f) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair

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

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

ORDER

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

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

(c) Respondent shall comply with all recommendations contained in the attached Report.

(d) Respondent shall pay Fifty Thousand Dollars (\$50,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.

(e) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

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

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

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

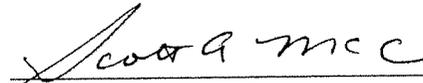
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

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

11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent

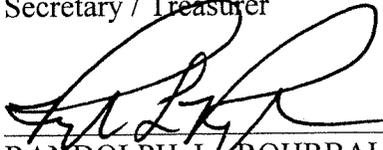
Order is not effective until executed by the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner.

BY: ESURANCE INSURANCE COMPANY,
Respondent

 VICE PRESIDENT

President / Vice President

Secretary / Treasurer



RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania

I. INTRODUCTION

The market conduct examination was conducted at Esurance Insurance Company's office located in Rocklin, California, from January 31, 2005, through February 17, 2005. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

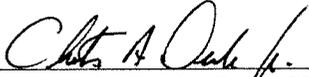
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

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

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

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

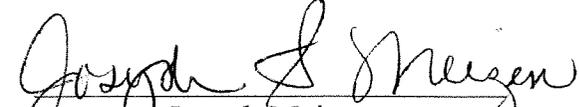
The undersigned participated in this examination and in preparation of this Report.



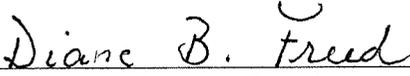
Chester A. Derk, Jr., AIE, HIA
Market Conduct Division Chief



James R. Myers
Market Conduct Examiner



Joseph Meizen
Market Conduct Examiner



Diane B. Freed
Market Conduct Examiner

II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Esurance Insurance Company, hereinafter referred to as "Company," at their office located in Rocklin, California. The examination was conducted pursuant to Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of July 1, 2003, through June 30, 2004, unless otherwise noted. The purpose of the examination was to determine the Company's compliance with Pennsylvania insurance laws and regulations.

The examination focused on Company operations in the following areas:

1. Personal Automobile
 - Underwriting - Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations, declinations 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

Esurance Insurance Company was incorporated on December 1, 1933, under the laws of Oklahoma as the Tri-State Casualty Insurance Company and began business on December 5, 1933. It's initial operation, accident, liability and workers' compensation coverages on behalf of zinc mine owners in Ottawa County, Oklahoma, was abandoned in August 1938.

The word "Casualty" was deleted from the Company's name on June 9, 1949. A former wholly owned affiliate, National Guaranty and Deposit Insurance Corporation was absorbed during the latter part of 1962. Another former subsidiary, National Guaranty and Deposit Insurance Corporation organized under the laws of Arizona and formed in mid-1962 by Esurance, was sold on August 19, 1964 to the Standard Life and Accident Insurance Company, Oklahoma City, Oklahoma. Financial control was held by Silvey Corporation, Columbia, Missouri, which was acquired by Royal Group Inc., a U.S. subsidiary of Royal Insurance plc, London, in 1984. CGU Insurance Company, formerly General Accident Insurance Company of America, acquired Silvey Corporation from Royal Group in 1990.

On June 1, 2001, White Mountains Insurance Group, Ltd. purchased OneBeacon Insurance Group formerly the United States property and casualty insurance operation of CGNU plc. As a result of the acquisition of OneBeacon, White Mountains became the ultimate controlling parent of Esurance. On August 27, 2002, the Company changed its name from Tri-State Insurance Company to Esurance Insurance Company. The Company divested its subsidiary Farmers and Merchants Insurance Company to OneBeacon Insurance Company on December 3, 2002. The Company acquired 100% ownership from OneBeacon Insurance Company of Esurance's affiliate, Esurance Property and Casualty

Insurance Company, on October 1, 2003. On December 17, 2004, OneBeacon sold Esurance to its affiliate White Mountains (Luxembourg) S.a.r.l., which then immediately contributed Esurance to Esurance Holdings, Inc., an affiliate holding company within White Mountains.

LICENSING

Esurance Insurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2005. The Company is licensed in Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia and Washington. The Company's 2003 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$9,325,441. Premium volume related to the areas of this review were: Private Passenger Automobile Direct Written Premium was reported as Private Passenger Auto No-Fault (personal injury protection) \$1,043,168; Private Passenger Auto Liability \$4,926,937 and Private Passenger Auto Physical Damage \$3,355,336.

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 859 personal automobile files identified as being cancelled in the first 60 days of new business, 150 files were selected for review. All 150 files selected were received and reviewed. Of the 150 files reviewed, 30 were identified as midterm cancellations and one as a nonrenewal. The 3 violations noted were based on 3 files, resulting in an error ratio of 2%.

The following findings were made:

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

Any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the

applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Insurance Commissioner that he review the action of the insurer in refusing to write a policy for the applicant. The Company did not provide a specific reason for cancellation on the 2 files noted.

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

Requires an insurer to deliver or mail to the named insured a nonrenewal 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 did not provide 60 days notice of nonrenewal.

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 784 private passenger automobile files identified as midterm cancellations by the Company, 150 files were selected for review. All 150 files selected were received and reviewed. Of the 150 files

reviewed, 12 were identified as 60-day cancellations. The 8 violations noted were based on 6 files, resulting in an error ratio of 4%.

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 did not provide 60 days notice of cancellation.

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

Any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Insurance Commissioner that he review the action of the insurer in refusing to write a policy for the applicant. The Company did not provide a specific reason for cancellation on the 4 files noted.

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

Requires an insurer to deliver or mail to the named insured a cancellation notice and state the specific reason or reasons of

the insurer for cancellation. The 2 violations noted resulted in cancellation notices being issued without a specific reason for cancellation.

3. Nonrenewals

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

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

The universe of 8 private passenger automobile files identified as nonrenewals by the Company was selected for review. The 8 files selected were received and reviewed. No violations were noted.

4. Declinations

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

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

From the universe of 941 automobile files identified as declinations by the Company, 150 files were selected for review. All 150 files selected were received and reviewed. Of the 150 files reviewed, 5 files were identified as

midterm cancellations, 29 files were identified as 60-day cancellations, 43 files were identified as rescissions and one file was identified as a nonrenewal. The 79 violations noted were based 79 files, resulting in an error ratio of 53%.

The following findings were made:

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

Any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Insurance Commissioner that he review the action of the insurer in refusing to write a policy for the applicant. Of the 79 violations noted, 10 were the result of the Company not providing a specific reason for cancellation. The remaining 69 violations were due to the Company not providing an offer to have the Insurance Commissioner review the action.

5. 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 determines compliance with the rescission requirements established by the Supreme Court of Pennsylvania in *Erie Insurance Exchange v. Lake*.

The Company did not report any rescissions during the experience period.

B. Private Passenger Automobile – Assigned Risk

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

VI. RATING

A. Private Passenger Automobile

1. New Business

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

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

Private Passenger Automobile – New Business Without Surcharges

From the universe of 3,055 personal automobile policies identified as new business without surcharges by the Company, 50 files were selected for review. All 50 files requested were received and reviewed. The 9,192 violations noted were based on the universe of 3,055 files, resulting in an error ratio of 100%.

The following findings were made:

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

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

3,055 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 did not provide the itemized invoice listing the minimum motor vehicle insurance coverage levels and premium charge

for the insured to purchase the minimum mandated coverages at the time of application.

3,055 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.

3,055 Violations Title 75, Pa. C.S. §1793(b)

Requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The 3,055 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan at the time of application.

26 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 apply the anti-theft discount on the 26 policies noted. Premium refunds were completed prior to the examiners arriving on site.

Private Passenger Automobile – New Business With Surcharges

From the universe of 1,264 personal automobile policies identified as new business with surcharges by the Company, 50 files were selected for review. All 50 files requested were received and reviewed. Of the 50 files reviewed, 8 files were identified as declinations and one file did not contain a surcharge. The 5,090 violations noted were based on the universe of 1,264 files, resulting in an error ratio of 100%.

The following findings were made:

1,264 Violations 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 provide a correct surcharge disclosure listing the dates of accidents and/or violations.

1,264 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 did not provide the itemized invoice listing the minimum motor vehicle insurance coverage levels and premium charge for the insured to purchase the minimum mandated coverages at the time of application.

1,264 Violations Title 75, Pa. C.S. §1793(b)

Requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The 1,264 violations were the result of the Company not providing the insured with a copy of a surcharge disclosure plan at the time of application.

1,264 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.

3 Violations Title 75, Pa. C.S. §1705(a)(1)(D)

Requires an insurer, not less than 45 days prior to the first renewal of an automobile policy on and after July 1, 1990, notify in writing each named insured of the availability of two alternatives of full tort insurance and limited tort insurance.

AND

Title 75, Pa. C.S. §1705(a)(3)

If an named insured who receives a notice under paragraph (1) does not indicate a choice within 20 days, the insurer shall send a second notice. The second notice shall be in a form identical to the first notice, except that it shall be identified as a second and final notice. If a named insured has not responded to either notice ten days prior to the renewal date, the named insured and those he is empowered by this section to bind by his choice are conclusively presumed to have chosen the full tort alternative. There was no evidence of a signed limited tort option selection form in the file prior to the renewal on the 3 files noted.

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

The named insured shall be informed that he may exercise the waiver of stacked limits for uninsured and underinsured

motorist coverage by signing written rejection forms. The Company did not provide signed rejection of stacking uninsured or underinsured motorist benefits in the 3 files noted.

1 Violation 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 violation noted was the result of not having the required signed statement from the insured.

1 Violation Title 75, Pa. C.S. §1734

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

18 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 apply the anti-theft discount on the 18 policies noted. Premium refunds were completed prior to the examiners arriving on site.

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

Any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Insurance Commissioner that he review the action of the insurer in refusing to write a policy for the applicant. The Company did not provide an offer to have the Insurance Commissioner review the action in the 8 files noted.

2. Renewals

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

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

Act 68, Section 2005(c) (40 P.S. §991.2005(c)), which requires insurers to provide to insureds a detailed statement of the components of a premium and shall specifically show the amount of surcharge or other additional amount that is charged as a result of a claim having been made under a policy of insurance, or as a result of any other factors.

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

Private Passenger Automobile – Renewals Without Surcharges

From the universe of 1,433 private passenger automobile policies renewed without surcharges during the experience period, 25 files were selected for review. All 25 files selected were received and reviewed. The 2,894 violations were based on the universe of 1,433, which resulted in an error ratio of 100%.

The following findings were made:

1,433 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 renewal.

*28 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 apply the anti-theft discount on the 28 policies noted. Premium refunds were completed prior to the examiners arriving on site.

1,433 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 the insured with an itemized invoice listing the minimum motor vehicle insurance coverage levels and the premium charge for the insured to purchase the minimum mandated coverages at the time of renewal. While the Company does provide a minimum premium invoice at the time of renewal, the amount quoted is understated by the amount of the expense fee included in the bodily injury premium.

Private Passenger Automobile – Renewals With Surcharges

From the universe of 433 private passenger automobile policies renewed with surcharges during the experience period, 25 files were selected for review. All 25 files selected were received and reviewed. The 1,313 violations were based on the universe of 433 files, resulting in an error ratio of 100%.

The following findings were made:

433 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 the insured with an itemized invoice listing the minimum motor vehicle insurance coverage levels and the premium charge for the insured to purchase the minimum mandated coverages at the time of renewal. While the Company does provide a minimum premium invoice at the time of renewal, the amount quoted is understated by the amount of the expense fee included in the bodily injury premium.

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 renewal.

433 Violations 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 provide a surcharge disclosure statement listing the dates of accidents and/or violations.

1 Violation Title 75, Pa. C.S. §1799.3(a)

Prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,050 in excess of any self insured retention or deductible applicable to the named insured.

AND

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

An insurer may not assess a premium surcharge for the payment of a claim arising from one or more accidents where the insured was not at-fault in causing or contributing to the accident. The file noted contained an improper accident surcharge applied to the policy, which resulted in an overcharge of \$1,408.

13 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 apply the anti-theft discount on the 13 policies noted. Premium refunds were completed prior to the examiners arriving on site.

B. Private Passenger Automobile – Assigned Risk

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

VII. CLAIMS

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

The Claims review consisted of the following areas of review:

- A. Automobile Property Damage Claims
- B. Automobile Comprehensive Claims
- C. Automobile Collision Claims
- D. Automobile Total Loss Claims
- E. Automobile First Party Medical Claims

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 387 private passenger automobile property damage claims reported during the experience period, 75 files were selected for review. All 75 files requested were received and reviewed. The 4 violations were based on 4 files, resulting in an error ratio of 5%.

The following findings were made:

4 Violations Title 31, Pa. Code, Section 146.6

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

B. Automobile Comprehensive Claims

From the universe of 232 private passenger automobile comprehensive claims reported during the experience period, 75 files were selected for review. All 75 files requested were received and reviewed. No violations were noted.

C. Automobile Collision Claims

From the universe of 577 private passenger automobile collision claims reported during the experience period, 75 files were selected for review. All 75 files requested were received and reviewed. The 2 violations noted were based on 2 files, resulting in an error ratio of 3%.

The following findings were made:

2 Violations Title 31, Pa. Code, Section 146.6

Every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the

claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The 2 violations noted were absent any evidence this requirement was complied with.

D. Automobile Total Loss Claims

The universe of 52 private passenger automobile total loss claims reported during the experience period was selected for review. All 52 files selected were received and reviewed. No violations were noted.

E. Automobile First Party Medical Claims

From the universe of 157 private passenger automobile first party medical claims reported during the experience period, 50 files were selected for review. All 50 files selected were received and reviewed. No violations were noted.

VIII. FORMS

Throughout the course of the examination, all underwriting files were reviewed to identify the policy forms used in order to verify compliance with Insurance Company Law, Section 354 (40 P.S. §477b), Approval of Policies, Contracts, etc., Prohibiting the Use Thereof Unless Approved. During the experience period of the examination, Section 354 provided that it shall be unlawful for any insurance company to issue, sell, or dispose of any policy contract or certificate covering fire, marine, title and all forms of casualty insurance or use applications, riders, or endorsements in connection therewith, until the forms have been submitted to and formally approved by the Insurance Commissioner. All underwriting and claim files were also reviewed to verify compliance with Act 165 of 1994 [18 Pa. CS §4117(k)(1)] and Act 6 of 1990 [75 Pa. CS §1822] which requires all insurers to provide an insurance fraud notice on all applications for insurance, all claims forms and all renewals of coverage.

The following findings were made:

Private Passenger Automobile – Rating – New Business Without Surcharges

3,055 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 did not provide the correct fraud warning with the application.

Private Passenger Automobile – Rating – New Business With Surcharges

1,264 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 did not provide the correct fraud warning with the application.

IX. ADVERTISING

The Company was requested to provide copies of all advertising, sales material and internet advertisements in use during the experience period.

The purpose of this review was to determine compliance with Act 205, Section 5 [40 P.S. §1171.5], which defines unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as well as Title 31, Pennsylvania Code, Section 51.2(c) and Section 51.61.

The Company provided 11 pieces of advertising material which included: direct mailers, printed advertising and e-mail templates for broadcast distribution. In addition, the Company's Internet site was also reviewed. No violations were noted.

X. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of their consumer complaint logs for the preceding four years. The Company identified 18 consumer complaints received during the experience period and provided all consumer complaint logs requested. The 18 complaints reported, were selected and reviewed.

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

The following finding was made:

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

Any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Insurance Commissioner that he review the action of the insurer in refusing to write a policy for the applicant. The Company did not provide a specific reason for cancellation.

The following synopsis reflects the nature of the 18 complaints that were reviewed.

•	8	Premium Related	45%
•	6	Claims Related	33%
•	4	Cancellations	22%
	<hr/>		<hr/>
	18		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:

20 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 for casualty insurance while writing automobile insurance.

Harvey Chodock
Tammy Dowdell
Ronald Goldberg
James Hoynes
Penny Griffin
Brian Hummer
ICT
Cheryl LeClair
Tracey Newman
David Peck
Darrin Reynolds

Teresa Ring
Jacqueline Rioux
Shannon Robinson
Evan Ross
Amy Taylor
James Taylor
Thomas Woodard
Ronnie Wooliver
Comparison Marketing, 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 cancellation notice requirements of Act 68, Sections 2006 and 2008 [40 P.S. §991.2006 and 2008], so that the violations noted in the Report do not occur in the future.
2. The Company must review Title 75, Pa. C.S. §1791.1(a) and (b) to ensure that violations of providing an itemized invoice listing minimum coverages and tort options at the time of application and every renewal thereafter as noted in the Report do not occur in the future.
3. The Company must review Title 75, Pa. C.S. §1799.3(d) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure statement listing the dates of accidents and/or violations as noted in the Report do not occur in the future.
4. The Company must review Title 75, Pa. C.S. 1793(b) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure plan at the time of application as noted in the Report do not occur in the future.
5. The Company must revise underwriting procedures to ensure that the insured is aware that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written

rejection forms. These forms should be retained with the underwriting file. This is to ensure that violations noted under Title 75, Pa. C.S. §1738(c)(d)(1) and (2) do not occur in the future.

6. The premium overcharge 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.
7. 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.
8. The Company must ensure that all applications contain a statement that clearly states in substance the following: “Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete information or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.” This is to ensure that violations noted under Act 1990-6, Title 75, Pa. C.S. §1822 do not occur in the future.
9. The Company must ensure all producers are properly appointed, as required by Section 671-A [40 P.S. §310.71] of the Insurance Department Act No. 147, prior to accepting any business from any producer.
10. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices so

that the violations relating to status letters, claim acceptance and denials as noted in the Report do not occur in the future.

XIII. COMPANY RESPONSE

ESURANCE INSURANCE COMPANY

August 23, 2005

Commonwealth of Pennsylvania
Insurance Department
Bureau of Enforcement
Market Conduct Division
Attn: Chester A. Derk Jr., Market Conduct Division
1227 Strawberry Square
Harrisburg, PA 17120

RE: Esurance Insurance Company
Examination Warrant Number: 04-M22-028

Dear Mr. Derk:

On behalf of Esurance Insurance Company (the "Company"), please allow this letter to serve as our response to the Report of Examination Warrant Number 04-M22-028 (the "Report"), which was received with your cover letter dated July 25, 2005. Esurance Insurance Company appreciates the opportunity to respond to the recommendations outlined in the Report.

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

- 1. The Company must review and revise internal control procedures to ensure compliance with cancellation notice requirements of Act 68, Sections 2006 and 2008, so that violations noted in the Report do not occur in the future.*

The Company's internal control procedures will be reviewed and revised to ensure compliance with the notice requirements of Act 68, Sections 2006 and 2008. Specifically, additional detail will be added to the cancellation notice which clearly states the reason for the policy cancellation. As of 2005, the Company cancellation notices began listing all accidents and violations in order to provide specific reasons for cancellation related to driver activity. In addition, internal controls will be implemented to ensure that appropriate days notice are provided with all cancellation notices.

As discussed during the audit, the Company reviewed all related laws, notices and bulletins and could not find any requirements regarding a company's obligation to provide a specific notice to the insured regarding their right to protest a declination with the Department of Insurance. At the request of the Department, the Company will add language to declination notices informing the applicant of their right to protest the action taken by the Company. The Company believes these changes will address the concerns identified in the Examination.

- 2. The Company must review Title 75, Pa C.S. 1791.1(a) and (b) to ensure that violations of providing an itemized invoice listing minimum coverages and tort options at the time of application and every renewal thereafter as noted in the Report do not occur in the future.*

The Company will establish internal procedures to ensure that an itemized invoice listing minimum coverages and tort options is provided at the time of application and at every renewal thereafter. Specifically, an additional form notifying the policyholder of their minimum coverage and tort options will be provided. This form will be provided at the time of application and with the renewal policy document set. Please see Exhibit A.

In addition, this same notification will be presented on the Website during the quote process to provide notification to all applicants of the available minimum coverages and tort options. Please see Exhibit B.

As requested by the Market Conduct staff, the State Minimum Coverage Quote form will be presented to each applicant prior to a policy being bound. The State Minimum Coverage Quote form is currently provided to each policyholder with their new business policy document set and with every renewal policy document set. The Company believes these changes will address the concerns identified in the Examination.

- 3. The Company must review Title 75, Pa. C.S. 1799.3(d) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure statement listing the dates of accidents and/or violations as noted in the Report do not occur in the future.*

The Company will establish internal procedures to ensure that a surcharge disclosure statement listing the dates of accidents and/or violations is provided to the policyholder. Specifically, the Declarations page will be modified to itemize accidents and/or violations that are surcharged on the policy. The itemized activity will include the date the accident/violation occurred. The Company believes these changes will address the concerns identified in the Examination.

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

As discussed with the Department during the audit, the surcharge disclosure plan is currently delivered to every policyholder with their Declarations Page. At the request of the Department, the process will be updated to include the surcharge disclosure plan at time of application. The Company believes these changes will address the concerns identified in the Examination.

- 5. The Company must revise underwriting procedures to ensure that the insured is aware that he may exercise the waiver of stacked limits for uninsured and underinsured motorist by signing written rejection forms. These forms should be retained with the underwriting file. This is to ensure that violations noted under Title 75, Pa. C.S. 1738(c)(d)(1) and (2) do not occur in the future.*

Prior to the start of the Examination, the Company instituted an internal audit process specifically designed to identify policies with outstanding forms that required a signature from the policyholder. The policies identified as lacking the required form occurred prior to the implementation of this audit process. Additional internal controls have since been established to ensure appropriate follow up for obtaining required forms from policyholders. The Company believes these efforts will address the concerns identified in the Examination.

6. *The premium overcharge 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.*

A copy of the refund was provided during the audit. An additional copy will be included with this response.

7. *The Company must review Act 246, Section 4 and take appropriate measures to ensure the automobile rating violations listed in the report do not occur in the future.*

During the initial Examination meeting, the Company provided the Department with a list of policies that had been identified as being affected by the rating error noted in the report. The Company had corrected the rating error and provided refunds to affected policyholder's approximately 12 months prior to the commencement of the Examination.

In an effort to prevent similar rating errors from happening in the future, an enhanced internal audit process has been established to identify and correct any rating errors prior to program implementation. In addition, a formalized post-implementation audit process has been established.

8. *The Company must ensure that all applications contain a statement that clearly states in substance the following: "Any person who knowingly and with intent to injure or defraud any insurer files and application or claim containing false, incomplete information or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000." This is to ensure that violations noted under Act 1990-6, Title 75 Pa. C.S. 1822 do not occur in the future.*

The Company believes that it fully complies with the referenced statute and, in fact, exceeds the requirements of Act 6, §1822 by providing an appropriate fraud warning in two different locations. The first, which requires policyholder acknowledgement prior to policy purchase, is presented in the "Terms and Conditions". It reads, "It is unlawful to knowingly provide false, incomplete, or misleading facts and information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages." The second is printed on the bottom of every Policy Declarations Page. It reads "Any person who knowingly and with intent to injure or defraud any insurer files and application or claim containing false, incomplete information or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000."

During the Examination, the Company was advised that the Department interprets the statement "in substance", from Act 6, §1822, to mean "exactly as presented in the statute". Given the Department's position, the Company will modify the wording in the "Terms and Conditions" to exactly match the applicable wording in Act 6, §1822.

9. *The Company must ensure all producers are properly appointed, as required by Section 671-A of the Insurance Department Act No. 147, prior to accepting any business from any producer.*

The Company will modify internal procedures to ensure that all producers are properly appointed, as required by Section 671-A of the Insurance Department Act No. 147. Prior to the Examination, the Company had audited all producer appointments to ensure that proper appointments were in place. The Company had either properly appointed or terminated all appointments cited in the Examination prior to the commencement of the Examination.

The Company also implemented a semi-annual audit process of its producer appointments, and began using licensing software to ensure compliance with Section 671-A of Act No. 147 prior to the commencement of the Examination. The Company believes all producers are now properly appointed.

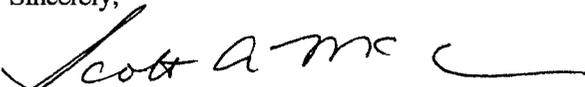
- 10. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices so that the violations relating to status letters, claim acceptance and denial as noted in the Report do not occur in the future.*

An action plan has been created and training has been provided to ensure compliance with Title 31, Chapter 146.6.

The Company respectfully submits that it has outlined specific actions that will be taken to address and/or correct the recommendations outlined in the Report. Additionally, the Company offers that it had taken action on several of the recommendations prior to the beginning of the Examination and asks your favorable consideration of such actions. The Company also asks for favorable consideration from the Department given that this was the first examination of Esurance Insurance Company.

The Company offers our sincere gratitude to the Department and to the examiners for the courtesies granted Esurance Insurance Company throughout the course of the examination.

Sincerely,



Scott A. McCrae

Vice President

Esurance Insurance Company