

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**MIDLAND NATIONAL LIFE INSURANCE  
COMPANY**

West Des Moines, Iowa

**AS OF  
April 12, 2006**

**COMMONWEALTH OF PENNSYLVANIA**



**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

Issued: June 8, 2006

# MIDLAND NATIONAL LIFE INSURANCE COMPANY

## TABLE OF CONTENTS

<b>Order</b>	
<b>I. Introduction</b>	<b>3</b>
<b>II. Scope of Examination</b>	<b>6</b>
<b>III. Company History and Licensing</b>	<b>7</b>
<b>IV. Advertising</b>	<b>8</b>
<b>V. Forms</b>	<b>9</b>
<b>VI. Producer Licensing</b>	<b>11</b>
<b>VII. Consumer Complaints</b>	<b>16</b>
<b>VIII. Underwriting</b>	<b>17</b>
<b>A. Underwriting Guidelines</b>	<b>18</b>
<b>B. Group Annuity Contracts Issued</b>	<b>18</b>
<b>C. Group Annuity Contracts Surrendered</b>	<b>20</b>
<b>D. Individual Universal Life Policies Issued</b>	<b>21</b>
<b>E. Individual Term Life Policies Issued</b>	<b>24</b>
<b>F. Individual Variable Universal Life Policies Issued</b>	<b>24</b>
<b>G. Individual Whole Life Policies Issued</b>	<b>25</b>
<b>H. Individual Life Policies Declined</b>	<b>26</b>
<b>I. Individual Life Policies Issued as Replacements</b>	<b>26</b>
<b>J. Individual Life Policies Terminated</b>	<b>30</b>
<b>K. Individual Life Policies Not-Taken</b>	<b>31</b>
<b>L. Individual Life Conversions</b>	<b>31</b>
<b>M. Individual Annuity Contracts Issued</b>	<b>33</b>
<b>N. Individual Annuity Contracts Surrendered</b>	<b>35</b>
<b>O. Individual Annuity Contracts Issued as Replacements</b>	<b>36</b>
<b>P. Individual Annuity Contracts Not-Taken</b>	<b>37</b>
<b>IX. Internal Audit and Compliance Procedures</b>	<b>39</b>
<b>X. Claims</b>	<b>40</b>
<b>A. Annuity Claims</b>	<b>41</b>
<b>B. Individual Life Claims</b>	<b>42</b>

<b>XI. Recommendations</b>	<b>43</b>
<b>XII. Company Response</b>	<b>45</b>

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
MIDLAND NATIONAL LIFE	:	Section 903(a) of the Insurance
INSURANCE COMPANY	:	Department Act, Act of May 17, 1921,
One Midland Plaza	:	P.L. 789, No. 285 (40 P.S. § 323.3)
Sioux Falls, SD 57193-0001	:	
	:	Sections 641.1-A and 671.1-A of Act
	:	147 of 2002 (40 P.S. §§ 310.41 and
	:	310.71)
	:	
	:	Sections 354, 404-A, 406-A, 408-
	:	A(e)(1)(i), 408-A(e)(1)(ii), 408-
	:	A(e)(2)(i), 408-A(e)(2)(iii) and 409-A
	:	of the Insurance Company Law, Act
	:	of May 17, 1921, P.L. 682, No. 284
	:	(40 P.S. §§ 477b, 625-4, 625-6, 625-8
	:	and 625-9)
	:	
	:	Title 31, Pennsylvania Code, Sections
	:	81.4(b)(1), 81.5(b), 81.6(a)(1),
	:	81.6(a)(2)(ii), 81.6(c), 83.3, 83.4a,
	:	83.4b, 83.55, 83.55a and 83.55b,
	:	146.6 and 146.7
	:	
	:	Title 18, Pennsylvania Consolidated
	:	Statutes, Section 4117(k)
	:	
Respondent.	:	Docket No. MC06-05-036

CONSENT ORDER

AND NOW, this *8th* day of *JUNE*, 2006, 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 Midland National Life Insurance Company, and maintains its address at One Midland Plaza, Sioux Falls, South Dakota 57193-0001.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from January 1, 2004 to December 31, 2004.

- (c) On April 12, 2006, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on May 12, 2006.
- (e) After consideration of the May 12, 2006 response, the Insurance Department has modified the Examination Report as attached.
- (f) The Examination Report notes violations of the following:
  - (i) Section 903(a) of the Insurance Department Act, No. 285 (40 P.S. § 323.3), which requires every company or person subject to examination must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the Department may require, in order that its representatives may ascertain whether the company has complied with the laws of the Commonwealth;
  - (ii) Section 641.1-A of Act 147 of 2002 prohibits any entity or the appointed agent of any entity from transacting the business of insurance through anyone acting without an insurance producer license (40 P.S. § 310.41a);

- (iii) Section 671.1-A of Act 147 of 2002 (40 P.S. § 310.71), which prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act;
- (iv) Section 354 of the Insurance Company Law (40 P.S. § 477b), which prohibits issuing, selling, or disposing of any policy, contract or certificate until the forms have been submitted to, and formally approved by, the Insurance Commissioner;
- (v) Section 404-A of the Insurance Company Law, No. 284 (40 P.S. §625-4), which requires when the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence;

- (vi) Section 406-A of the Insurance Company Law, No. 284 (40 P.S. §625-6), prohibits alteration of any written application for a life insurance policy or annuity shall be made by any person other than the applicant without the applicant's written consent;
  
- (vii) Section 408-A(e)(1)(i) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which requires if the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the application;
  
- (viii) Section 408-A(e)(1)(ii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states if the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled "Revised Illustration". The statement required by subsection (c)(4) shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered;

- (ix) Section 408-A(e)(2)(i) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states the following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen is displayed. The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form, the applicant shall acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery;
  
- (x) Section 408-A(e)(2)(iii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which applies if no illustration is used by a producer in the sale of a life insurance policy or if a screen illustration is displayed. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner at the time the policy is delivered and to the insurer;
  
- (xi) Section 409-A of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states when there is a solicitation for the replacement of an existing insurance policy or annuity with the same insurer or insurer group, the insurer shall, through its producers where appropriate, provide a "Notice Regarding Replacement of Life Insurance and Annuities" in the prescribed form;

- (xii) Title 31, Pennsylvania Code, Section 81.4(b)(1), which states if replacement is involved, the agent or broker shall present to the applicant, not later than at the time of taking the application, a notice regarding replacement of life insurance and annuities;
- (xiii) Title 31, Pennsylvania Code, Section 81.5(b), which requires the insurer, as part of a completed application for life insurance or annuity, require a statement signed by the applicant regarding whether the proposed insurance or annuity will replace existing life insurance or annuity;
- (xiv) Title 31, Pennsylvania Code, Section 81.6(a)(1), which requires an insurer that uses an agent or broker in a life insurance or annuity sale shall require with or as part of a completed application for life insurance or annuity, a statement signed by the agent or broker regarding whether the broker knows replacement is or may be involved in the transaction;
- (xv) Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii), which states an insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved, send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement or ledger statement containing comparable policy data on the proposed life insurance. This

written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner;

- (xvi) Title 31, Pennsylvania Code, Section 81.6(c), which requires the replacing insurer to maintain evidence of the notice regarding replacement of life insurance and annuities;
- (xvii) Title 31, Pennsylvania Code, Section 83.3, which requires written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such;
- (xviii) Title 31, Pennsylvania Code, Section 83.4a, which states the agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant;
- (xix) Title 31, Pennsylvania Code, Section 83.4b, which requires the insurer to maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute *prima*

*facie* evidence that no disclosure statement was provided to the prospective purchaser of life insurance;

- (xx) Title 31, Pennsylvania Code, Section 83.55, which states the surrender comparison index disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible. A disclosure that is minimally satisfactory to the Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter prior to use is adequate notification to the Department;
  
- (xxi) Title 31, Pennsylvania Code, Sections 83.55a and 83.55b, which (a) require the agent to submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant; and (b) the insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the files of the insurer shall constitute *prima facie* evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance;

- (xxii) Title 31, Pennsylvania Code, Section 146.6 states that if an investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected;
- (xxiii) Title 31, Pennsylvania Code, Section 146.7 requires that within 15 working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. The denial shall be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial;  
and
- (xxiv) Title 18, Pennsylvania Consolidated Statutes, Section 4117(k), which requires all applications for insurance and all claim forms shall contain or have attached thereto the following notice: “Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.”

## CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
  
- (b) Respondent's violations of Sections 641.1-A and 671.1-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 violation of Section 354 of The Insurance Company Law is punishable by the following, under Section 354 of The Insurance Company Law (40 P.S. § 477b):

- (i) suspension or revocation of the license(s) of Respondent;
  - (ii) refusal, for a period not to exceed one year thereafter, to issue a new license to Respondent;
  - (iii) imposition of a fine of not more than one thousand dollars (\$1,000.00) for each act in violation of the Act.
- (d) Respondent's violations of Sections 404-A, 406-A, 408-A and 409-A of the Insurance Company Law, No. 284 are punishable by the following, under 40 P.S. § 625-10: Upon determination by hearing that this act has been violated, the commissioner may issue a cease and desist order, suspend, revoke or refuse to renew the license, or impose a civil penalty of not more than \$5,000 per violation.
- (e) Respondent's violations of Title 31, Pennsylvania Code, Chapter 81, are punishable under Title 31, Pennsylvania Code, Section 81.8(b) and (c), which provide failure to comply, after a hearing, may subject a company to penalties provided in 40 P.S. § 475. Failure to comply shall be considered a separate violation and may not be considered in lieu of a proceeding against the company for a violation of 40 P.S. §§472, 473 or 474. In addition, failure to make the disclosure may be considered a violation of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 to 1171.15);

(f) Respondent's violations of Title 31, Pennsylvania Code, Chapter 83 are punishable under Title 31, Pennsylvania Code, Section 83.6:

(i) For failing to insure adequate disclosure of basic information, after a hearing, a company may be subject to the penalties provided under 40 P.S. § 475, for violations of 40 P.S. §§ 472 through 474. In addition, failure to make the disclosure outlined in this subchapter may be considered a violation of 40 P.S. §§ 1171.1 through 1171.15.

(g) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.6 and 146.7 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.

(h) 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 Fifteen Thousand Dollars (\$15 ,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.

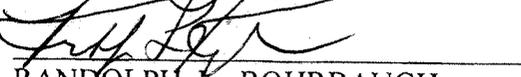
11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this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

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

BY: MIDLAND NATIONAL LIFE INSURANCE  
COMPANY, Respondent

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

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

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

## I. INTRODUCTION

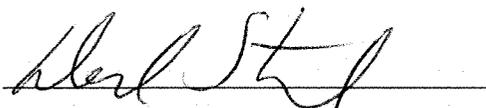
The Market Conduct Examination was conducted on Midland National Life Insurance Company, hereafter referred to as "Company," at the Company's offices located in Sioux Falls, South Dakota and Des Moines, Iowa, May 2, 2005, through July 1, 2005. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

Pennsylvania Market Conduct Examination Reports generally note only those items, to which the Department, after review, takes exception. 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. Generally, practices, procedures, or files that were reviewed by Department examiners during the course of an examination may not be referred to in the Report if no improprieties were noted. 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 these areas of concern in order to determine the potential impact upon Company operations or future compliance.

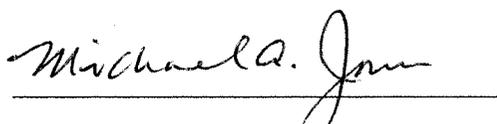
Throughout the course of the examination, Company officials were provided status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company officials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

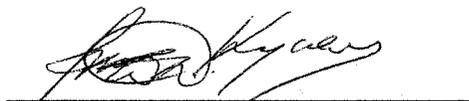
The undersigned participated in the Examination and in the preparation of this Report.



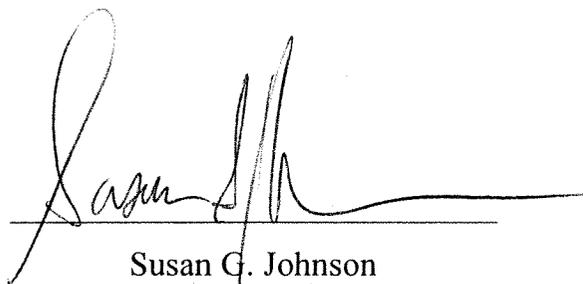
Daniel Stemcosky, AIE, FLMI  
Market Conduct Division Chief



Michael A. Jones  
Market Conduct Examiner



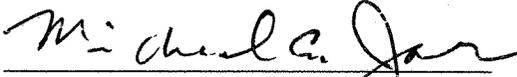
Frank W. Kyazze, FLMI, ALHC  
Market Conduct Examiner



Susan G. Johnson  
Market Conduct Examiner

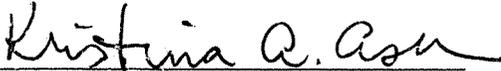
**Verification**

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).

  
Michael A. Jones, Examiner in Charge

Sworn to and Subscribed Before me

This 11<sup>TH</sup> Day of APRIL , 2006

  
Notary Public

KRISTINA A. ASH, Notary Public  
Allen County, State of Indiana  
My Commission Expires September 12, 2008

## II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted pursuant to the authority granted by Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of January 1, 2004, through December 31, 2004, unless otherwise noted. The purpose of the examination was to determine compliance by the Company with Pennsylvania insurance laws and regulations.

The examination focused on the Company's operation in areas such as: Advertising, Consumer Complaints, Forms, Producer Licensing, Underwriting Practices and Procedures, and Claim Handling Practices and Procedures.

The Company was requested to identify the universe of files for each segment of the review. Based on the universe sizes identified, random sampling was utilized to select the files reviewed for this examination.

During the course of the examination, for control purposes, some of the review segments identified in this Report may have been broken down into various sub-categories by line of insurance or Company administration. These specific sub-categories, if not reflected individually in the Report, would be included and grouped within the respective general categories of the Examination Report.

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

Midland National was founded in 1906 as Dakota Mutual Life Insurance Company. It reorganized to a stock company in 1909, changing its name to Midland National Life Insurance Company in 1925. In 1970, the Company recorded its first billion dollars of life insurance in force. In 1999, the Company expanded its operations to include two main locations - the Executive Office, based in Sioux Falls, South Dakota, and the Principal Office, based in Des Moines, Iowa.

Since its beginnings in 1906, Midland National has survived two World Wars, the Great Depression, and numerous turns in the economy. Today, it is one of the leading life insurance companies in the country.

Midland National is a member of the Sammons Financial Group, which is a group of financial companies that share resources and services for optimal efficiency and growth.

As of their December, 2005, annual statement for Pennsylvania, Midland National Life Insurance Company reported direct premium for ordinary life insurance, annuities and group annuities in the amount of \$232,049,649; and direct premium for accident and health in the amount of \$1,209.

#### **IV. ADVERTISING**

Title 31, Pennsylvania Code, Section 51.2(c) provides that “Any advertisements, whether or not actually filed or required to be filed with the Department under the provisions of this Regulation may be reviewed at any time at the discretion of the Department.” The Department, in exercising its discretionary authority for reviewing advertising, requested the Company to provide copies of all advertising materials used for solicitation and sales during the experience period.

The Company provided a list of 344 pieces of advertising utilized in the Commonwealth during the experience period. Of the 344 pieces provided, 208 pieces were reviewed. The remaining 136 pieces were determined to be duplicates. The advertising consisted of: Brochures, Cards, Illustrations, Product Guides, Product Manuals and the Company’s web page. The advertising materials and the Company’s web site were reviewed to ascertain compliance with Act 205, Section 5 (40 P.S. §1171.5), Unfair Methods of Competition and Unfair or Deceptive Acts or Practices and Title 31, Pennsylvania Code, Chapter 51 and Chapter 89. No violations were noted.

## V. FORMS

Throughout the course of the examination, all underwriting files were reviewed to identify the policy contracts, riders, endorsements and applications used in order to determine compliance with requirements of Insurance Company Law, Chapter 2, Section 354 (40 P.S. §477b), as well as provisions for various mandated benefits. Applications and claim forms were also reviewed to determine compliance with Title 18, Pa. C.S., Section 4117(k). The following violations were noted:

### **6 Violations - Insurance Company Law, Section 354 (40 P.S. §477b)**

It shall be unlawful for any insurance company, doing business in Commonwealth of Pennsylvania, to issue, sell, or dispose of any policy, contract, or certificate, covering life insurance, or use applications, riders, or endorsements in connection therewith, until the forms have been submitted to, and formally approved by, the Insurance Commissioner. The following forms were not filed and approved. The application form number, description and frequency of use are listed in the table below.

<b>Form Number</b>	<b>Description</b>	<b>Frequency of Use</b>
1032R	Application	2
10329S-PA	Application	1
8855Y	Application	3

### **3 Violations - Title 18, Pennsylvania Consolidated Statutes, Section 4117(k)**

All applications for insurance and all claim forms shall contain or have attached thereto the following notice: "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance

or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.” The following application forms did not contain or have attached the required fraud statement. The application form description and frequency of use is listed in the table below.

<b>Form Number</b>	<b>Description</b>	<b>Number of Files</b>
1032R	Application	2
8000 PAR	Application	1

## VI. PRODUCER LICENSING

The Company was requested to provide a list of all producers active and terminated during the experience period. Section 671-A (40 P.S. §310.71) of the Insurance Department Act prohibits producers from doing business on behalf of or as a representative of any entity without a written appointment from that entity. Section 641.1-A (40 P.S. §310.41a) of the Insurance Department Act prohibits a company from accepting insurance applications or securing any insurance business through anyone acting without a license. Section 671.1-A (40 P.S. §310.71a) of the Insurance Department Act requires the Company to report all producer terminations to the Department.

The Company provided a list of 277 active and terminated producers. A random sample of 100 producers was selected for review. The 100 producers were compared to departmental records of producers to verify appointments, terminations and licensing. In addition, a comparison was made on the 100 producers identified on applications reviewed in the policy issued sections of the exam. The following violations were noted:

### **17 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 Company failed to file a notice of appointment and submit appointment fees to the Insurance Department for the following 11 producers, or agencies. The Company listed these producers as active; however Department records did not indicate their appointment during the experience period.

<b>Producer Name</b>
Oslebo, Mark
Commonwealth Eq.
Scarpa, Gregory
Mayne, Randall
Elick, Ronald
US Allianz Insurance
US Allianz Insurance
Mercer Financial Net
Lewis, Linda
Goldsmith, Mark
Pan American Fin Ser

The following producer was listed on 3 applications reviewed in the Individual Life Policies Issued as Replacements Section of the exam. The Company failed to file a notice of appointment and submit appointment fees to the Insurance Department for the producer.

<b>Producer Name</b>	<b>Application Date</b>
A. Fraser	1/22/2004
A. Fraser	1/28/2004
A. Fraser	1/30/2004

The following producer was listed on 3 applications reviewed in the Individual Life Conversions Section of the exam. The Company failed to file a notice of appointment and submit appointment fees to the Insurance Department for the producer.

<b>Producer Name</b>	<b>Application Date</b>
Karmon Hoiten	216/2004
Karmon Hoiten	5/1/2004
Karmon Hoiten	5/2/2004

**16 Violations – Insurance Department Act, No. 147, Section 641.1A**

**(40 P.S. §310.41a)**

Any insured 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 10 producers noted were listed as a producer for the Company; however, Department records do not identify them as holding a Pennsylvania insurance license.

<b>Producer Name</b>
Oslebo, Mark
Commonwealth Eq.
Scarpa, Gregory
Mayne, Randall
Elick, Ronald
US Allianz Insurance
US Allianz Insurance
Mercer Financial Net
Lewis, Linda
Goldsmith, Mark

The following individual was listed on 3 applications reviewed in the Individual Life Policies Issued as Replacements Section of the exam. Department records do not identify the individual as holding a Pennsylvania Insurance License.

<b>Producer Name</b>	<b>Application Date</b>
A. Fraser	1/22/2004
A. Fraser	1/28/2004
A. Fraser	1/30/2004

The following individual was listed as a producer on 3 applications reviewed in the Individual Life Conversion Section of the exam. Department records do not identify the individual as holding a Pennsylvania Insurance License.

<b>Producer Name</b>	<b>Application Date</b>
Karmon Hoiten	2/16/2004
Karmon Hoiten	5/1/2004
Karmon Hoiten	5/2/2004

## **VII. 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 2001, 2002, 2003, and 2004. The Company identified 42 written consumer complaints and provided complaints logs for 2001, 2002, 2003 and 2004. Of the 42 consumer complaints identified, 16 were forwarded from the Department. All 42 consumer complaint files were requested, received and reviewed.

The Department's list of written consumer complaints that were forwarded to the Company during the experience period was compared to the Company's complaint log. The complaint files and the 4 years of complaint logs were reviewed for compliance with the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). Section 5 (a)(11) of the Act requires maintenance of a complete record of all complaints received during the preceding four (4) years. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaint and the time it took to process each complaint. Written complaint files involving claims were also reviewed for compliance with Title 31, Pennsylvania Code, Section 146.5(b) and 146.5(c), Unfair Claims Settlement Practices. No violations were noted.

## **VIII. UNDERWRITING**

The Underwriting review was sorted and conducted in 16 general segments.

- A. Underwriting Guidelines
- B. Group Annuity Contracts Issued
- C. Group Annuity Contracts Surrendered
- D. Individual Universal Life Policies Issued
- E. Individual Term Life Policies Issued
- F. Individual Variable Universal Life Policies Issued
- G. Individual Whole Life Policies Issued
- H. Individual Life Policies Declined
- I. Individual Life Policies Issued as Replacements
- J. Individual Life Policies Terminated
- K. Individual Life Policies Not-Taken
- L. Individual Life Conversions
- M. Individual Annuity Contracts Issued
- N. Individual Annuity Contracts Surrendered
- O. Individual Annuity Contracts Issued as Replacements
- P. Individual Annuity Contracts Not-Taken

Each segment was reviewed for compliance with underwriting practices and included forms identification and agent identification. Issues relating to forms or agent/broker licensing appear in those respective sections of the Report and are not duplicated in the Underwriting portion of the Report.

## **A. Underwriting Guidelines**

The Company was requested to provide copies of all established written underwriting guidelines in use during the experience period. Underwriting guidelines were reviewed to ensure guidelines were in place and being followed in a uniform and consistent manner and no underwriting practices or procedures were in place which could possibly be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

The following manuals and guides were provided and reviewed:

1. MNL Corporate Markets Underwriting Guidelines
2. Swiss Re Underwriting Guidelines
3. Lincoln Re Underwriting Guidelines
4. Introduction to Underwriting Guidelines
5. Financial Underwriting Guidelines

## **B. Group Annuity Contracts Issued**

The Company was requested to provide a list of all group annuity contracts issued during the experience. The Company identified a universe of 3,003 group annuity contracts issued. A random sample of 100 group annuity contracts issued was requested, received and reviewed. The files were reviewed to ensure compliance with contract provisions, issuance laws and regulations. The following violations were noted:

**2 Violations - Title 31, Pennsylvania Code, Section 81.5(b)**

The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity. The applicant's replacement question was not answered in the 2 applications noted or was answered incorrectly.

**1 Violation - Title 31, Pennsylvania Code, Section 81.6(a)(1)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall:

Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction. The agent question on replacement was answered incorrectly in the application noted.

**2 Violations - Title 31, Pennsylvania Code, Section 81.6(c)**

The replacing insurer shall maintain evidence of the notice regarding replacement of life insurance and annuities. The 2 files noted did not contain a copy of the required notice of replacement.

**9 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the

application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner. Of the 9 violations noted, the replacement letter to the replaced company was not documented in 4 files and the replacement letter was not sent within 5 working days to the company in the remaining 5 files.

## **2 Violations - Insurance Department Act, Section 903 (40 P.S. §323.3)**

(a) Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may readily ascertain whether the Company or person has complied with the laws of this Commonwealth. The 2 files noted were missing the signed policy amendment.

### **C. Group Annuity Contracts Surrendered**

The Company was requested to provide a list of all group policies surrendered during the experience period. The Company identified a universe of 93 annuity contracts surrendered. A random sample of 25 files was requested received and reviewed. The files were reviewed to ensure compliance with contract provisions, regulations, and proper return of any unearned premium. No violations were noted.

## **D. Individual Universal Life Policies Issued**

The Company identified a universe of 286 universal life policies issued during the experience period. A random sample of 75 policy files was requested, received and reviewed. The 75 files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **1 Violation - Title 31, Pennsylvania Code, Section 81.4 (b)(1)**

If replacement is involved, the agent or broker shall: present to the applicant, not later than at the time of taking the application, a notice regarding replacement of life insurance and annuities. The replacement form was dated after the application date in the file noted.

### **2 Violations - Title 31, Pennsylvania Code, Section 81.5 (b)**

The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity. The applicant's replacement question was not answered in the 2 files noted.

### **5 Violations - Title 31, Pennsylvania Code, Section 81.6 (a)(1)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall:  
Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction. The producer's statement on replacement was not completed in the 5 files noted.

**10 Violations - Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement**

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. The 10 files noted did not contain a disclosure form.

**1 Violation - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b**

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance. The file noted did not contain a copy of the required producer's certification of disclosure.

**24 Violations – Title 31, Pennsylvania Code, Sections 83.55a and 83.55b**

a) The agent shall submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant.

b) The insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie

evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance. The producer delivered the policies and the producer's certification of the surrender comparison index disclosure delivery was not evident in the 24 files noted.

**1 Violation – Insurance Company Law, Section 406-A (40 P.S. §625-6)**

No alteration of any written application for a life insurance policy or annuity shall be made by any person other than the applicant without the applicant's written consent. The file noted contained alterations without the applicant's consent.

**4 Violations – Insurance Company Law, Section 408-A (e)(2)(i)  
(40 P.S. §625-8)**

The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen is displayed. The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form the applicant shall acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. The 4 files noted did not contain the signed certification and acknowledgement that no illustration was used in the sale of the life insurance policies.

**1 Violation – Insurance Company Law, Section 409A (40 P.S. §625-9)**

Replacements with the Same Insurer or Insurer Group: When there is solicitation for the replacement of an existing insurance policy or annuity with the same insurer or insurer group, the insurer shall, through its producers where appropriate, provide a "Notice Regarding Replacement of Life Insurance and Annuities" in the form set forth under Title 31, Pennsylvania Code, Chapter 81 (relating to

replacement of life insurance and annuities). The file noted did not contain the required replacement notice.

#### **E. Individual Term Life Policies Issued**

The Company identified a universe of 581 term life policies issued during the experience period. A random sample of 50 policy files was requested, received and reviewed. The 50 files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

#### **F. Individual Variable Universal Life Policies Issued**

The Company identified a universe of 53 Variable Universal Life policies issued during the experience period. All 53 files were requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

##### **2 Violations - Insurance Department Act, Section 903 (40 P.S. § 323.3)**

(a) Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may readily ascertain whether the Company or person has complied with the laws of this Commonwealth. The 2 files noted were missing pertinent information.

## **G. Individual Whole Life Policies Issued**

The Company identified a universe of 88 whole life policies issued during the experience period. A random sample of 50 whole life policies files was requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **2 Violations – Insurance Company Law, Section 408-A(e)(1)(i) (40 P.S. §625-8)**

The following applies if a basic illustration is used by a producer in the sale of a life insurance policy. If the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant. The producer's certification and the applicant's acknowledgement of the illustration in the 2 files noted were signed after the date of application.

### **2 Violations – Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement**

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A. The 2 files noted did not contain evidence that a written disclosure was provided.

## **2 Violations – Title 31, Pennsylvania Code, Section 83.55**

(a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible.

(b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use. The 2 files noted did not include the cost surrender comparison index disclosure or failed to include the date the surrender comparison index disclosure was used or provided.

### **H. Individual Life Policies Declined**

The Company was requested to provide a list of all individual life policies declined during the experience period. The Company identified 69 individual policies. A random sample of 50 files was requested, received and reviewed. The files were reviewed to ensure declinations were not the result of any discriminatory underwriting practice. No violations were noted.

### **I. Individual Life Policies Issued As Replacements**

The Company identified a universe of 278 life policies issued as replacements during the experience period. A random sample of 50 replacement files was requested, received and reviewed. Of the 50 files provided, 22 were conversions.

The replacement files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

**1 Violation - Title 31, Pennsylvania Code, Section 81.5(b)**

The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity. The applicant's replacement question on the application was not answered in the file noted.

**1 Violation - Title 31, Pennsylvania Code, Section 81.6(a)(1)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if a replacement is involved: (1) require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction. The producer did not answer the replacement question on the application in the file noted.

**1 Violation - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the

date the proposed policy or contract is issued, whichever is sooner. The replacement letter to the replaced company was not made within 5 working days in the file noted.

**7 Violations – Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement**

(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A. The 7 files noted did not contain evidence that a written disclosure was provided.

**2 Violations - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b**

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years.

The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance. The dates on the disclosure forms, in the 2 files noted were different from the dates on the applications.

**1 Violation – Title 31, Pennsylvania Code, Section 83.55**

(a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance

applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible.

(b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use. The file noted did not include the cost surrender comparison index disclosure.

**1 Violation - Insurance Company Law, Section 404-A (40 P.S. §625-4)**

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence. Verification of the date of policy delivery could not be established in the file noted.

**2 Violations – Insurance Company Law, Section 408-A(e)(2)(iii)**

**(40 P.S. §625-8)**

The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a screen illustration is displayed. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy

and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner at the time the policy is delivered and to the insurer. The 2 files noted did not contain the signed certification and acknowledgement of the delivery of an illustration at the time of policy issuance and delivery.

### **J. Individual Life Policies Terminated**

The Company was requested to provide a list of all policies terminated during the experience period. The Company identified a universe of 2,474 life insurance policies terminated. A random sample of 50 files was requested. Of the 50 files requested, 49 were received and reviewed. The policies were reviewed to ensure compliance with contract provisions, termination laws and regulations, and proper return of any unearned premium. The following violations were noted:

#### **6 Violations - Insurance Department Act, Section 903 (40 P.S. §323.3)**

(a) Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may readily ascertain whether the Company or person has complied with the laws of this Commonwealth. Of the 6 violations noted, 5 were missing pertinent termination documentation and the remaining file was not provided.

### **K. Individual Life Policies Not-Taken**

The Company was requested to provide a list of all policies not-taken during the experience period. The Company identified 97 individual life policies not-taken. A random sample of 40 files was requested, received and reviewed. A not-taken policy by definition is a contract that is issued and the insured requests cancellation. The files were reviewed to ensure compliance with the free look provisions of the contract. No violations were noted.

### **L. Individual Life Conversions**

The Company identified a universe of 211 individual life conversion policies that were issued during the experience period. A random sample of 50 life conversion files was requested, received and reviewed. Of the 50 files received, 11 were determined to be replacement policies, 3 files were identified as a date change, 2 were signed outside of Pennsylvania and 1 was an offer to buy additional insurance. The remaining 33 files were reviewed to determine compliance to issuance and underwriting statutes and regulations. The following violations were noted:

#### **10 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)**

When the producer delivers the individual policy or annuity to the policyholder by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the

delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence. Verification of policy delivery could not be established or pertinent information was missing on the delivery receipt in the 10 files noted.

**4 Violations – Insurance Company Law, Section 408-A(e)(1)(i)**

**(40 P.S. §625-8)**

The following applies if a basic illustration is used by a producer in the sale of a life insurance policy. If the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant. The agent certification and applicant's acknowledgement of the illustration used was dated after the application date.

**1 Violation– Insurance Company Law, Section 408-A (e)(1)(ii)**

**(40 P.S. §625-8)**

If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled "Revised Illustration." The statement required by subsection (c)(4) shall be signed and dated by the policy owner and

producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered. The file noted contained a revised illustration but the illustration was not labeled as “Revised Illustration”.

### **M. Individual Annuity Contracts Issued**

The Company identified a universe of 112 individual annuities issued during the experience period. A random sample of 65 individual annuities issued was requested, received and reviewed. The annuity files issued were reviewed to determine compliance to issuance, and replacement statutes and regulations. The following violations were noted:

#### **3 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(1)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall:  
Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction. The application did not contain an agent replacement statement in the 3 files noted.

#### **7 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or

ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner. Of the 7 violations noted, the replacement letter to the replaced company was not documented in 6 files and the replacement letter to the replaced company was not sent within 5 working days in the remaining file.

#### **4 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)**

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence. Verification of the date of contract delivery could not be established in the 4 files noted.

## **N. Individual Annuity Contracts Surrendered**

The Company was requested to provide a list of all annuities surrendered during the experience period. The Company identified a universe of 3 individual annuities surrendered. All 3 files were requested, received and reviewed. The files were reviewed to ensure that the surrenders were processed in accordance with current laws and that the correct reimbursement amounts were distributed. In addition, files surrendered due to death were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. No violations were noted.

## **O. Individual Annuity Contracts Issued As Replacements**

The Company identified a universe of 40 annuity contracts issued as replacements during the experience period. All 40 files were requested, received and reviewed. The annuity replacements were reviewed to determine compliance to issuance, replacement statutes and regulations. The following violations were noted:

### **1 Violation - Title 31, Pennsylvania Code, Section 81.6(a)(1)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall:  
Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction. The agents question on replacement was not completed on the application in the file noted.

### **2 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (1) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner. Of the 2 violations noted, the replacement letter to the replaced company was not documented in 1 file and the replacement letter was not sent within 5 working days in the other file.

**1 Violation - Insurance Company Law, Section 404-A (40 P.S. §625-4)**

When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence. Verification of the date of contract delivery could not be established in the file noted.

**P. Individual Annuity Contracts Not-Taken**

The Company was requested to provide a list of annuity policies not-taken during the experience period. The Company identified a universe of 3 policies not-taken. All 3 files were requested, received and reviewed. The files were reviewed to ensure compliance with the free look provisions of the contract. The following violations were noted:

**2 Violations – Insurance Department Act, Section 903 (40 P.S. §323.3)**

Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or

other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may ascertain whether the Company or person has complied with the laws of this Commonwealth. The Company failed to provide accurate refund information for the 2 files noted.

## **IX. INTERNAL AUDIT AND COMPLIANCE PROCEDURES**

The Company was requested to provide copies of their internal audit and compliance procedures. The audits and procedures were reviewed to ensure compliance with Insurance Company Law, Section 405-A (40 P.S. §625-5). Section 405-A provides for the establishment and maintenance of internal audit and compliance procedures, which provides for the evaluation of compliance with all statutes and regulations dealing with sales methods, advertising, and filing and approval requirements for life insurance and annuities. The procedures shall also provide for the following:

- (1) Periodic reviews of consumer complaints in order to determine patterns of improper practices.
- (2) Regular reporting to senior officers and the board of directors or an appropriate committee thereof with respect to any significant findings.
- (3) The establishment of lines of communication, control and responsibility over the dissemination of advertising and promotional materials, including illustrations and illustration explanations, with the requirement that such materials shall not be used without the approval by company employees whose compensation, other than generally applicable company bonus or incentive plans, is not directly linked to marketing or sales.

No violations were noted.

## X. CLAIMS

The claims review consisted of a review of the Company's claim manuals and a review of the claim files. The Company was requested to provide copies of all procedural guidelines including all manuals, memorandums, directives and any correspondence or instructions used for processing claims during the experience period. The Company provided the following claim manuals:

1. Claims and Benefit Department Procedures '2005'
2. Claims and Benefit Death Procedures
3. Claims and Benefit General Procedures
4. Claims and Benefit Maturity Annuitization Procedures
5. New Business Procedure Manual
6. Desk Manual Claims Representative
7. Patriot Act Procedures

The claim manuals and procedures were reviewed for any inconsistencies, which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. No violations were noted.

The Claim file review consisted of 2 areas:

- A. Annuity Claims
- B. Individual Life Claims

All claim files sampled were reviewed for compliance with requirements of the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). The insured submitted claims were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices and the provider submitted claims were

reviewed for compliance with Act 68, Section 2166 (40 P.S. §991.2166), Prompt Payment of Provider Claims. The life claims were additionally reviewed for compliance with Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b).

### **A. Annuity Claims**

The Company was requested to provide a list of Annuity claims paid during the experience period. The Company identified a universe of 126 Annuity claims. A random sample of 100 claim files was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violations were noted:

#### **17 Violations - Title 31, Pennsylvania Code, Section 146.6**

Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The Company failed to provide timely status letters in the 17 claims noted.

## **B. Individual Life Claims**

The Company was requested to provide a list of life claims paid during the experience period. The Company identified a universe of 272 life claims. A random sample of 100 claim files was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). The following violations were noted:

### **20 Violations - Title 31, Pennsylvania Code, Section 146.6**

Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected. The Company failed to provide timely status letters in the 20 claim files noted.

### **1 Violation - Title 31, Pennsylvania Code, Section 146.7**

Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. The Company failed to provide notice of acceptance or denial within 15 working days in the claim noted.

## **XI. 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 violations, noted in the Report.

1. The Company must implement procedures to ensure compliance with the fraud statement notice requirements of Title 18, Pennsylvania Consolidated Statutes Section 4117(k).
2. The Company must review and revise internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.
3. The Company must review and revise Licensing procedures to ensure compliance with Sections 641.1-A and Section 671-A of the Insurance Department Act of 1921 (40 P.S. §§310.41a and 310.71).
4. The Company must review and revise procedures to ensure all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the Company are maintained in such manner and for such period of time to ensure compliance with Section 903(a) of the Insurance Department Act of 1921 (40 P.S. §323.3).
5. The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Chapter 81.
6. The Company must review internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.
7. The Company must review internal control procedures to ensure compliance with forms filing and approval requirements of Section 354 of the Insurance Company Law of 1921 (40 P.S. §477b).

8. The Company must implement procedures to ensure compliance with the policy delivery receipt requirements of Section 404-A of the Insurance Company Law of 1921 (40 P.S. §625-4).
9. The Company must review internal control procedures to ensure compliance with application alteration requirements of Section 406-A of the Insurance Company Law of 1921 (40 P.S. §625-6).
10. The Company must review internal control procedures to ensure compliance with illustration certification and delivery requirements of Section 408-A of the Insurance Company Law of 1921 (40 P.S. §625-8).
11. The Company must implement internal control procedures to ensure compliance with replacement requirements of Section 409-A of the Insurance Company Law of 1921 (40 P.S. §625-9).

## **XII. COMPANY RESPONSE**

May 12, 2006

Mr. Daniel A. Stemcosky, AIE, FLMI  
Market Conduct Division Chief  
Commonwealth of Pennsylvania  
Insurance Department  
Bureau of Enforcement  
1321 Strawberry Square  
Harrisburg, Pennsylvania 17120

Re: Examination Warrant Number 04-M21-014  
Midland National Life Insurance Company

Dear Mr. Stemcosky:

In accordance with Section 905 (40 P.S. 323.5) of the Insurance Department Act, enclosed are written responses on behalf of Midland National Life Insurance Company to the Report of Examination as well as responses to suggested corrective action.

On behalf of the staff at each of our locations, I would like to thank you and the Examiners for the flexibility and cooperation demonstrated during the examination process.

Please feel free to contact me if anything further is needed.

Sincerely,



Meg J. Taylor

enclosure

**Midland National Life Insurance Company**  
**Response to the XI. Recommendations**  
**Examination Warrant Number 04-M21-014**  
**May 12, 2006**

1. The Company is providing enhanced training to associates in the life division to assure that only forms as approved by the Pennsylvania Insurance Department are utilized in Pennsylvania.
2. The Claims procedures for life and annuities will be revised according to the specifications outlined by the Pennsylvania Department.
3. The Company has agreed to licensing in accordance with Sections 641.1-A and Section 671-A of the Insurance Department Act of 1921.
4. The Company will reinforce and provide training regarding record retention requirements.
5. The Company will train and reinforce replacement regulation requirements to assure compliance.
6. The Company is currently revising their procedure to include the disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.
7. Education and training will be implemented to reinforce policies and procedures to deny acceptance of any filed form that has not been approved by the Pennsylvania Insurance Department.
8. Procedures have been implemented to ensure policy delivery requirements of Section 404-A.
9. The Company agrees to train and reinforce procedures in affected business units regarding application alteration requirements.
10. The Company will reinforce and train associates regarding compliance with the illustration certification and delivery requirements.
11. The Company agrees to implement training to reinforce internal control procedures to ensure compliance with replacement regulations.