

**REPORT OF
MARKET CONDUCT EXAMINATION
OF**

**NATIONWIDE INSURANCE COMPANY
OF AMERICA**

Madison, Wisconsin

**AS OF
May 22, 2007**

COMMONWEALTH OF PENNSYLVANIA

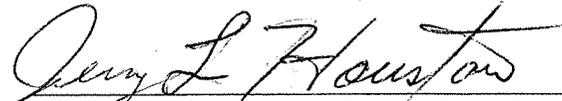


**INSURANCE DEPARTMENT
MARKET CONDUCT DIVISION**

Issued: July 13, 2007

VERIFICATION

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


Jerry L. Houston, AIE, CPCU, Examiner-In-Charge

Sworn to and Subscribed Before me

This 30 Day of April, 2007



Notary Public

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

NATIONWIDE INSURANCE COMPANY OF AMERICA

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BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 6th day of July, 2007, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Randolph L. Rohrbaugh, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.





Joel S. Ario
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
NATIONWIDE INSURANCE : Sections 641.1-A and 671-A of Act 147
COMPANY OF AMERICA : of 2002 (40 P.S. §§ 310.41 and 310.71)
One Nationwide Plaza :
Columbus, OH 43215 : Sections 4(a) and 4(h) of the Act of
: June 11, 1947, P.L. 538, No. 246
: (40 P.S. §§ 1184)
: :
: Act 1990-6, Sections 1705(a)(4),
: 1738(c)(D)(1)(2), 1791.1(b), and
: 1792(b)(1) (Title 75, Pa.C.S. §§ 1705,
: 1738, 1791 and 1792)
: :
: Sections 2004, 2006(2) and 2008(b) of
: Act 68 of 1998 (40 P.S. §§ 991.2004,
: 991.2006 and 991.2008)
: :
: Title 75, Pennsylvania Consolidated
: Statutes, Sections 1161(a) and (b), and
: 1822
: :
: Docket No. MC07-05-036

CONSENT ORDER

AND NOW, this 13th day of July, 2007, this Order is hereby
issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant
to the statutes cited above and in disposition of the matter captioned above.

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

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

FINDINGS OF FACT

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

- (a) Respondent is Nationwide Insurance Company of America, and maintains its address at One Nationwide Plaza, Columbus, Ohio 43215.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2005 through June 30, 2006.
- (c) On May 22, 2007, the Insurance Department issued a Market Conduct Examination Report to Respondent.

(d) A response to the Examination Report was provided by Respondent on June 20, 2007.

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

(i) 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);

(ii) Section 671-A of Act 147 of 2002 prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act (40 P.S. § 310.71).

(iii) Sections 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;

(iv) Sections 1705(a)(4) of Act 1990-6, Title 75, Pa.C.S. § 1705, which requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to

elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option;

- (v) Section 1738(c)(d)(1) and (2) of Act 1990-6, Title 75, Pa.C.S. § 1738, which requires the named insured to be informed that he may exercise the waiver of stacked limits for uninsured and underinsured motorist coverage by signing written rejection forms;
- (vi) 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;
- (vii) Section 1792(b)(1) of Act 1990-6, Title 75, Pa.C.S. § 1792, which requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it;
- (viii) Section 2004 of Act 68 of 1998 (40 P.S. § 991.2004), which requires that no insurer shall cancel a policy of automobile insurance except for nonpayment of premium, suspension or revocation of the named insured's

driver license or motor vehicle registration or a determination that the insured has concealed a material fact or has made a material allegation contrary to fact or has made a misrepresentation of material fact and that such concealment, allegation or misrepresentation was material to the acceptance of the risk by the insurer;

(ix) Section 2006(2) of Act 68 of 1998 (40 P.S. § 991.2006), which requires an insurer to deliver or mail to the named insured a nonrenewal notice and state the date, not less than 60 days after the date of the mailing or delivery, on which cancellation shall become effective. When the policy is being cancelled for nonpayment of premium, the effective date may be 15 days from the date of mailing or delivery;

(x) Section 2008(b) of Act 68 of 1998 (40 P.S. § 991.2008), which requires any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within 30 days of the receipt of such reasons, the applicant may request in writing to the Commissioner that he review the action of the insurer in refusing to write a policy for the applicant;

- (xi) Section 1161(a) and (b) of Title 75, Pa. C.S., which states an insurer who owns, possesses or transfers a vehicle located or registered in the Commonwealth which qualifies as a salvage vehicle shall make application to the Department for a certificate of salvage for that vehicle; and

- (xii) 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 Insurance Department makes the following Conclusions of Law:

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

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

- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
- (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.

(c) Respondent's violations of Sections 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.

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

ORDER

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

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

(d) Respondent shall pay Ten Thousand Dollars (\$10,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.

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

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

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

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

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

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law

contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

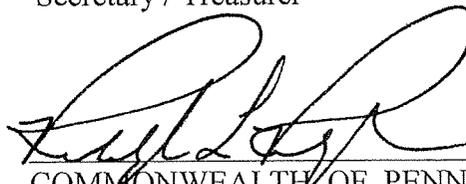
BY: NATIONWIDE INSURANCE COMPANY
OF AMERICA, Respondent



President / Vice President



Secretary / Treasurer



COMMONWEALTH OF PENNSYLVANIA
Randolph L. Rohrbaugh
Deputy Insurance Commissioner

I. INTRODUCTION

The market conduct examination was conducted at Nationwide Insurance Company of America's office located in Harrisburg, Pennsylvania, from February 1, 2007, through February 27, 2007. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

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

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

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

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

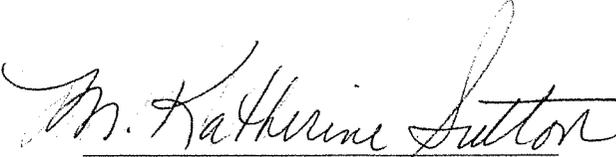
The undersigned participated in this examination and in preparation of this Report.



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



Jerry Houston, AIE, CPCU
Market Conduct Examiner



M. Katherine Sutton, AIC
Market Conduct Examiner



Joseph S. Meizen
Market Conduct Examiner

II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Nationwide Insurance Company of America, hereinafter referred to as “Company,” at their office located in Harrisburg, Pennsylvania. The examination was conducted pursuant to Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of July 1, 2005, through June 30, 2006, unless otherwise noted. The purpose of the examination was to determine the Company’s compliance with Pennsylvania insurance laws and regulations.

The examination focused on Company operations in the following areas:

1. Private Passenger Automobile
 - Underwriting – Appropriate and timely notices of 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

Nationwide Insurance Company of America was founded in 1926, as Wolverine Insurance Company. It was incorporated on June 30, 1960, under the laws of California as the Spartan Insurance Company and began business on August 31, 1960. In 1962, the Company was purchased by Transamerica Insurance Company. The corporate title was changed to Countrywide Insurance Company on April 12, 1968, to Transamerica Countrywide Insurance Company on July 1, 1981, and back to Countrywide Insurance Company on January 3, 1985. On August 17, 1990, the title was changed again to its former name, Transamerica Countrywide Insurance Company. In 1993, the Company was purchased and taken public by TIG Holdings, Inc. through public offerings in April and December. The title, TIG Countrywide Insurance Company, was adopted on December 31, 1993, after the second offering, which reduced Transamerica's ownership interest to zero. Nationwide Mutual Insurance Company acquired TIG Countrywide as a shell from TIG Holdings on December 31, 1997, concurrent with its acquisition of TIG Holdings' independent agency personal lines business, which TIG Countrywide assumed. The current title was adopted on January 2, 1999.

LICENSING

Nationwide Insurance Company of America's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2006. The Company is licensed in all states except Hawaii, Louisiana, New Hampshire, North Carolina and Vermont. The Company's 2005 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$88,611,099. 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) \$11,070,116; Other Private Passenger
Auto Liability \$43,512,189 and Private Passenger Auto Physical Damage
\$34,028,035.

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 1,367 private passenger automobile files cancelled within the first 60 days of new business, 50 files were selected for review. All 50 files were received and reviewed. The 9 violations noted were based on 9 files, resulting in an error ratio of 18%.

The following findings were made:

9 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 failed to provide a specific reason for cancellation for the 9 files noted.

2. Midterm Cancellations

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

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

The universe of 73 private passenger automobile files identified as midterm cancellations by the Company was selected for review. All 73 files were received and reviewed. The 4 violations noted were based on 4 files, resulting in an error ratio of 5%.

The following findings were made:

4 Violations Act 68, Section 2004 [40 P.S. §991.2004]

Requires that no insurer shall cancel a policy of automobile insurance except for nonpayment of premium, suspension or revocation of the named insured's driver license or motor vehicle registration or a determination that the insured has concealed a material fact or has made a material allegation contrary to fact or has made a misrepresentation of material

fact and that such concealment, allegation or misrepresentation was material to the acceptance of the risk by the insurer. The Company cancelled the 4 files noted for an improper reason.

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 35 private passenger automobile files identified as nonrenewals by the Company was selected for review. All 35 files were received and reviewed. No violations were noted.

4. Rescissions

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

The primary purpose of the review was to determine compliance with Act 68, Section 2003 [40 P.S. §991.2003], which establishes conditions under which action by the insurer is prohibited. The review also determined compliance with the rescission requirements established by the Supreme Court of Pennsylvania in *Erie Insurance Exchange v. Lake*.

The universe of one private passenger automobile file identified as a rescission was selected for review. The file was received and reviewed. No violations were noted.

B. Private Passenger Automobile – Assigned Risk

Nationwide Insurance reports its premium writings for private passenger automobile to the Pennsylvania Assigned Risk Plan for its companies under Nationwide Mutual Fire Insurance Company. As a result, Nationwide Insurance Company of America does not receive any assignments from the Pennsylvania Assigned Risk Plan.

VI. RATING

A. Private Passenger Automobile

1. New Business

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

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

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

Private Passenger Automobile – New Business Without Surcharges

From the universe of 6,511 private passenger automobile policies identified as new business without surcharges by the Company, 25 files were selected for review. All 25 files were received and reviewed. The 28 violations noted were based on 25 files, resulting in an error ratio of 100%.

The following findings were made:

25 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 correct statutory notice of tort options to the insured at the time of application.

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

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

2 Violations Title 75, Pa. C.S. §1705(a)(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 Company failed to

issue the 2 policies noted with the tort option elected by the insured.

Private Passenger Automobile – New Business With Surcharges

From the universe of 2,584 private passenger automobile policies identified as new business with surcharges by the Company, 50 files were selected for review. All 50 files were received and reviewed. The 54 violations noted were based on 50 files, resulting in an error ratio of 100%.

The following findings were made:

50 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 correct statutory notice of tort options to the insured at the time of application.

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

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

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 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 rated the policy using an incorrect territory which is not in accordance with the Company's filed and approved rating plan and resulted in an overcharge of \$144.40.

The following concern was noted:

Concern: The Company shows the amount of surcharge, the dates of accidents/violations but failed to be specific as to whether the surcharge is

for an accident or a violation, or both. A detailed statement should specify what the surcharge is for, not simply referencing “accidents/violations”.

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 38,340 private passenger automobile policies renewed without surcharges during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The 25 violations noted were based on 25 files, resulting in an error ratio of 100%.

The following findings were made:

25 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 correct statutory notice of tort options to the insured at the time of renewal.

Private Passenger Automobile – Renewals With Surcharges

From the universe of 441 private passenger automobile policies renewed with surcharges during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 50 violations noted were based on 50 files, resulting in an error ratio of 100%.

The following findings were made:

50 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 correct statutory notice of tort options to the insured at the time of renewal.

The following concern was noted:

Concern: The Company shows the amount of surcharge, the dates of accidents/violations but failed to be specific as to whether the surcharge is for an accident or a violation, or both. A detailed statement should specify what the surcharge is for, not simply referencing “accidents/violations”.

B. Private Passenger Automobile – Assigned Risk

Nationwide Insurance reports its premium writings for private passenger automobile to the Pennsylvania Assigned Risk Plan for its companies under Nationwide Mutual Fire Insurance Company. As a result, Nationwide Insurance Company of America does not receive any assignments from the Pennsylvania Assigned Risk Plan.

VII. CLAIMS

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

The Claims review consisted of the following areas of review:

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

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

A. Automobile Property Damage Claims

From the universe of 10,154 private passenger automobile property damage claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

B. Automobile Comprehensive Claims

From the universe of 4,900 private passenger automobile comprehensive claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

C. Automobile Collision Claims

From the universe of 9,323 private passenger automobile collision claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

D. Automobile Total Loss Claims

From the universe of 1,945 private passenger automobile total loss claims reported during the experience period, 115 files were selected for review. All 115 claim files were received and reviewed. The 6 violations noted were based on 6 files, resulting in an error ratio of 5%.

The following findings were made:

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

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

(b) Application for certificate of salvage. – An owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. Except as provided in Section 1163, the transferee shall immediately present the assigned certificate of title to the Department or an authorized agent of the Department with an application for a certificate of salvage upon a form furnished and prescribed by the Department. An insurer as defined in Section 1702 to which title to a vehicle is assigned upon payment to the insured or claimant of the replacement value of a vehicle shall be regarded as a transferee under this subsection. The 6 files noted did not reflect a Pennsylvania salvage title was obtained.

E. Automobile First Party Medical Claims

From the universe of 895 private passenger automobile first party medical claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

F. Automobile First Party Medical Claims Referred to a PRO

From the universe of 192 automobile first party medical claims that were referred to a peer review organization by the Company, 50 files were selected for review. All 50 files were received and 41 files were reviewed. The remaining 9 files were either out of state claims or referred for an IME. In addition to the files requested, the Company was asked to provide copies of all contracts it has in place with a peer review organization. The contracts were received and reviewed.

The following concern was made:

Concern: Several PRO medical files were referred for review as an IME, which cannot be utilized to determine if treatment has been reasonable and necessary. An IME is used to determine if further treatment is necessary and related to the accident in question. Because the files were not PRO medical claims, they were not reviewed as to PRO compliance. If they are, in fact, referrals for future treatment, these claims should not be reported or coded as PRO referrals.

VIII. FORMS

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

The following finding was made:

1 Violation Title 75, Pa. C.S. §1822

Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: "Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000." The Company failed to provide the fraud warning notice on an Affidavit of Vehicle Theft claim form.

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 74 pieces of advertising which were in the form of brochures. The Company's web 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 312 consumer complaints received during the experience period and provided all consumer complaint logs requested. Of the 312 complaint files reported, 50 were selected, received and reviewed.

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

The following finding was made:

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

The following synopsis reflects the nature of the 50 complaints that were reviewed.

• 18	Billing	36%
• 9	Cancellations/Nonrenewals	18%
• 8	Claims	16%
• 8	Service/Agency	16%
• 7	Rating	14%
<hr/>		<hr/>
50		100%

XI. LICENSING

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

The following findings were made:

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

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

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

Ruiz, Raul
Wenhold Insurance Agency, LLC

1 Violation 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 producer was found to be writing policies but was 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.

Paul P. Kowalewski, Jr.

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 2003, 2004, 2006 and 2008 [40 P.S. §§991.2003, 991.2004, 991.2006 and 991.2008], so that the violations noted in the Report do not occur in the future.
2. 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.
3. 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.
4. The Company must review Title 75, Pa. C.S. §1791.1(b) to ensure that the correct notice of tort options is provided at the time of application and every renewal thereafter, as noted in the Report.
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. This is to ensure that violations noted under Title 75, Pa. C.S. §1738(d)(1) and (2) do not occur in the future.

6. The Company must revise underwriting procedures to ensure that the insured is aware that there is an additional cost for purchasing a lower deductible for collision coverage. This is to ensure that the violation noted under Title 75, Pa. C.S. §1792(b)(1) does not occur in the future.
7. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to elect a tort option prior to policy issuance and that signed tort option is provided. This is to ensure that violations noted under Title 75, Pa. C.S. §1705(a)(1)(4) do not occur in the future.
8. The Company must review Title 75, Pa. C.S. §1161(a)&(b) with its claim staff to ensure that Pennsylvania salvage certificates are obtained and are retained with the claim file.
9. The Company must ensure all producers are properly licensed and appointed, as required by Section 641.1(a) and Section 671-A [40 P.S. §310.41(a) and 40 P.S. §310.71] of the Insurance Department Act No. 147, prior to accepting any business from any producer.
10. The Company must ensure that all claim forms contain the required fraud warning notice.

XIII. COMPANY RESPONSE



On Your Side™

Office of General Counsel

June 20, 2007

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

RE: *Response to the Report of Market Conduct Examination Warrant:
06-M19-031*

Dear Mr. Derk:

On behalf of Nationwide Insurance Company of America (collectively, the "Company" or "Nationwide"), please allow this letter to serve as our response to the Report of the Market Conduct Examination Warrant Number 06-M19-031 (the "Report"), which was received with your cover letter dated May 22, 2007. We have reviewed the Report and respectfully submit this response.

This response will address the recommendations beginning on page 29 of the Report. The recommendations made in the Report identify measures that the Department believes are necessary as a result of the number or the nature of the alleged violations noted in the Report. As our response indicates below, Nationwide has taken corrective action where appropriate, in accordance with the recommendations.

We have organized our response in relation to the recommendations set forth in the Report as follows:

Recommendation #1:

The Company must review and revise internal control procedures to ensure compliance with cancellation notice requirements or Act 68, Sections 2003, 2004, 2006, and 2008 [40 P.S. §§991.2003, 991.2004, 991.2006 and 991.2008], so that the violations noted in the Report do not occur in the future.

Response:

We have reviewed our processes and procedures regarding cancellation notice requirements in the above noted statute and found them to be in compliance with law. The exceptions noted in the Report were determined to be anomalous, however in an effort to ensure compliance in the future all underwriting associates handling cancellation notices have been apprised of the Department's findings with points of emphasis as follows:

- We may nonrenew a policy for the license suspension of any named insured but we may not mid-term cancel unless the suspension is for the named insured.
- We must provide not less than 60 days notice after the date of mailing or delivery, on which cancellation or refusal to renew shall become effective.
- Although we currently provide a reason for refusal to write in our notices, our reasons must be more specific.

Of the more than 200 files reviewed for compliance with this statute, just 14 exceptions were noted in the Report, which is indicative of the Company's overall compliance with the statutory non-renewal and cancellation requirements.

Recommendation #2:

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.

Response:

A single premium overcharge was identified in the Report. As recommended, a premium refund was promptly issued on February 20, 2007. A copy of the canceled refund check will be provided to the Insurance Department within the required time period. Nationwide notes that the existence of one rating error in the Report illustrates that the Nationwide is adhering to the filed rating plan.

Recommendation #3:

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.

Response:

The single rating error cited in the Report is the premium overcharge noted in recommendation #2. We are reminding our agents and underwriting associates of the importance in using the correct territory when rating a policy.

Recommendation #4:

The Company must review Title 75, Pa. C.S. §1791.1(b) to ensure that the correct notice of tort options is provided at the time of application and every renewal thereafter, as noted in the Report.

Response:

The Company accepts the Department's recommendation regarding the notice of Availability of Coverages, ("Notice") required by 75 Pa.CS §1791.1(b). The Company notes that the Notice was provided to consumers in each of the files reviewed during the course of the Examination. The exceptions noted in the Report are based upon a minor revision to the Notice made by the Company in an effort to help the consumer make an informed decision regarding their tort selection. In light of the Department's concerns, the Company is taking steps to revise the Notice to duplicate the language exactly as provided in the statute.

Recommendation #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. This is to ensure that violations noted under title 75, Pa. C.S. §1738(d)(1) and (2) do not occur in the future.

Response:

We revised our underwriting procedures to print the appropriate form based upon the Pennsylvania Supreme Court decision of *Craley v State Farm*, 586 Pa 482, 895 A2d 530 (2006), which was decided on April 21, 2006. Prior to the *Craley* decision our underwriting procedures were consistent with then existing case law. Following the *Craley* decision, steps were taken to change our processes to conform to the change in the law. The three exceptions noted in the Report occurred after April 21, 2006 and prior to the change in our system which was completed on January 6, 2007. The timing of the examination fell after the issuance of the *Craley* decision and before the change could be made to our automated system. Our underwriting procedures and our automated system are now operating in compliance with the law.

Recommendation #6:

The Company must revise underwriting procedures to ensure that the insured is aware that there is an additional cost for purchasing a lower deductible for collision coverage. This is to ensure that the violation noted in Title 75, Pa. C.S. §1792(b)(1) does not occur in the future.

Response:

Nationwide's current underwriting procedures print the referenced form whenever a customer selects a collision deductible lower than \$500. The one case noted as a violation was a clerical error. We have addressed this issue with the agency where the error occurred. Nationwide notes that its underwriting procedures are compliant and the fact that there was only one exception noted is indicative of the Company's overall compliance with the statute.

Recommendation #7:

The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to elect a tort option prior to policy issuance and that signed tort option is provided. This is to ensure that violations noted under Title 75, Pa. C.S. §1705(a)(1)(4) do not occur in the future.

Response:

Nationwide's current underwriting procedures include a step to verify that the tort option selected on the tort option form matches the tort option on the policy. The two exceptions noted were clerical errors. We have reminded our underwriting associates of the importance of this step in the process.

Recommendation #8:

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

Response: The six motor vehicle titles that were noted as exceptions in the Report were titles processed outside of Pennsylvania. These six claims had occurred outside of Pennsylvania and were handled according to the laws of the state in which the loss occurred. Nationwide notes that automobile total loss claims, for claims occurring in Pennsylvania, have been processed in compliance with Pennsylvania law.

Nationwide accepts the Department's recommendation and has directed its claims staff accordingly. For vehicles registered in Pennsylvania, Nationwide will obtain salvage certificates from the Pennsylvania Department of Transportation for total loss claims occurring inside and outside of Pennsylvania

Recommendation #9:

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

Response:

Nationwide accepts this recommendation and has reviewed its processes and procedures to ensure that all producers are properly licensed and appointed prior to accepting business from that party. The Report notes three exceptions which were clerical errors. Given that we have more than 2,000 Nationwide-appointed producers, we believe the fact that the Report noted only three exceptions is a testament to the overall effectiveness of our current producer appointment process.

Recommendation #10:

The Company must ensure that all claims forms contain the required fraud warning notice.

Response:

The Fraud Warning Notice was not included on an Affidavit of Theft in one of the claims files reviewed during the course of the Examination. Of the 265 claims files reviewed, this was the only form found to not have the Fraud Warning Notice. This anomaly was the result of individual performance and has been addressed. The notice is programmed systematically to appear as appropriate on all claims forms.

Thank you for your consideration in this matter and for providing us with an opportunity to respond to the Report. We wish to offer our sincere gratitude to the Department and each individual examiner for the courtesies granted Nationwide throughout the course of this examination.

Very truly yours,

Nationwide Insurance Companies



David L. Bricker
Assistant General Counsel
Office of General Counsel