# REPORT OF MARKET CONDUCT EXAMINATION OF

# PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

Harrisburg, Pennsylvania

AS OF May 20, 2009

# **COMMONWEALTH OF PENNSYLVANIA**



# INSURANCE DEPARTMENT MARKET CONDUCT DIVISION

Issued: July 16, 2009

#### **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

Subscribed and sworn to (or affirmed) before me on this <u>IS+</u> day of <u>April</u>, 20<u>09</u>, by <u>Nerry L Houston</u>, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Notary Public

DIANA ELISA SALINAS
Commission # 1608382
Notary Public - California
Los Angeles County
My Comm. Expires Sep 22, 2009

### PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

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# BEFORE THE INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA

#### ORDER

AND NOW, this 200 day of 200, 2008, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Ronald A. Gallagher, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.

Joel S. Ario

Insurance Commissioner

#### ORDER

A market conduct examination of Pennsylvania National Mutual Casualty Insurance Company (referred to herein as "Respondent") was conducted in accordance with Article IX of the Insurance Department Act, 40 P.S. § 323.1, et seq., for the period July 1, 2007 through June 30, 2008. The Market Conduct Examination Report disclosed exceptions to acceptable company operations and practices. Based on the documentation and information submitted by Respondent, the Department is satisfied that Respondent has taken corrective measures pursuant to the recommendations of the Examination Report.

It is hereby ordered as follows:

- 1. The attached Examination Report will be adopted and filed as an official record of this Department. All findings and conclusions resulting from the review of the Examination Report and related documents are contained in the attached Examination Report.
  - 2. Respondent shall comply with Pennsylvania statutes and regulations.

3. Respondent shall comply with the recommendation contained in the attached

Report.

Respondent shall submit a written Corrective Action Plan in a manner and time

frame acceptable to the Department. The Corrective Action Plan is to provide details

including, but not limited to, specific procedures and actions taken to ensure specific

reasons are provided on all cancellation notices and all underwriting requirements and

actions, based upon supporting coverage, are eliminated.

5. 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.

The Department, pursuant to Section 905(e)(1) of the Insurance Department Act

(40 P.S. § 323.5), will continue to hold the content of the Examination Report as

private and confidential information for a period of thirty (30) days from the date of this

Order.

BY: Insurance Department of the Commonwealth

of Pennsylvania

Ronald A. Gallagher

Deputy Insurance Commissioner

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(July 16, 2009)

#### I. INTRODUCTION

The market conduct examination was conducted at Pennsylvania National Mutual Casualty Insurance Company's office located in Harrisburg, Pennsylvania, from December 15, 2008, through January 9, 2009. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

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

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

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

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 L. Houston, AIE, CPCU

Market Conduct Examiner

Joseph S. Meizen

Market Conduct Examiner

Diane B. Freed

Market Conduct Examiner

Constance L. Arnold

Market Conduct Examiner

#### II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Pennsylvania National Mutual Casualty Insurance Company, 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, 2007, through June 30, 2008, unless otherwise noted. The purpose of the examination was to determine the Company's compliance with Pennsylvania insurance laws and regulations.

The examination focused on Company operations in the following areas:

- 1. Private Passenger Automobile
- Underwriting Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations.
- Rating Proper use of all classification and rating plans and procedures.
- 2. Property
- Underwriting Appropriate and timely notices of nonrenewal, midterm cancellations and 60-day cancellations.
- Rating Proper use of all classification and rating plans and procedures.
- 3. Commercial Property
- Underwriting Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations, renewals and declinations.

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• Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations, declinations and renewals.

#### 5. Workers' Compensation

• Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations and renewals.

### 6. Medical Malpractice

• Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations and renewals.

#### 7. Claims

- 8. Forms
- 9. Advertising
- 10. Complaints
- 11. Licensing

#### III. COMPANY HISTORY AND LICENSING

Pennsylvania National Mutual Casualty Insurance Company was incorporated on January 6, 1919, under the laws of Pennsylvania as the Pennsylvania Threshermens' and Farmers' Mutual Casualty Insurance Company. It began business April 1, 1920. The title was changed to Pennsylvania Threshermen & Farmers' Mutual Casualty Insurance Company on February 11, 1943, and to its present form on April 1, 1963.

The Company reinsured the outstanding business, absorbed the assets, and assumed the liabilities, by merger, of Mutual Insurance Company of Pennsylvania, effective January 1, 1964; of Home Mutual Fire Insurance Company, as of December 31, 1972; and a former companion fire carrier, Pennsylvania National Mutual Insurance Company, as of December 31, 1967.

#### **LICENSING**

Pennsylvania National Mutual Casualty Insurance Company's Certificate of Authority to write business in the Commonwealth was issued on April 1, 1920. The Company is licensed in all states except California, Connecticut, Hawaii, Nevada, New Hampshire, North Dakota and Wyoming. The Company's 2007 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$205,681,879. Premium volume related to the areas of this review were: Fire \$11,378,570; Homeowners Multiple Peril \$22,740,317; Commercial Multiple Peril (Non-liability portion) \$6,828,022; Commercial Multiple Peril (Liability portion) \$2,276,007; Inland Marine \$5,426,174; Workers' Compensation \$42,717,649; Private Passenger Automobile

Direct Written Premium was reported as Private Passenger Auto No-Fault (personal injury protection) \$6,026,116; Other Private Passenger Auto Liability \$26,985,201 and Private Passenger Auto Physical Damage \$21,010,713; Commercial Automobile Direct Written Premium was reported as Commercial Auto No-Fault (personal injury protection) \$741,355; Other Commercial Auto Liability \$18,937,997 and Commercial Auto Physical Damage \$7,896,292.

#### IV. UNDERWRITING PRACTICES AND PROCEDURES

As part of the examination, the Company was requested to supply manuals, underwriting guides, bulletins, directives or other forms of underwriting procedure communications for each line of business being reviewed. Agency bulletins and underwriting guides were furnished for private passenger automobile, homeowners, dwelling fire and commercial lines. 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.

The following findings were made:

3 Violations Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance. The Company's workers' compensation, commercial automobile and general liability underwriting guides indicate no new business should be authorized for mono-line policies.

#### 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 2,106 private passenger automobile files identified as being cancelled in the first 60 days of new business, 9 files was selected for review. All 9 files were received and reviewed. No violations were noted.

#### 2. Midterm Cancellations

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

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

From the universe of 4,351 private passenger automobile files identified as

midterm cancellations, 18 files were selected for review. All 18 files were received and reviewed. No violations were noted.

#### 3. Nonrenewals

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

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

From the universe of 246 private passenger automobile files identified as nonrenewals, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

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

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

#### C. Property

#### 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 205, Unfair Insurance Practices Act, Section 5(a)(7)(iii) [40 P.S. §1171.5(a)(7)(iii)], which prohibits an insurer from canceling a policy for discriminatory reasons and Title 31, Pennsylvania Code, Section 59.9(b), which requires an insurer who cancels a policy in the first 60 days to provide at least 30 days notice of the termination.

From the universe of 71 property policies which were cancelled within the first 60 days of new business, 6 files were selected for review. The policies consisted of homeowner, tenant homeowner and boat. All 6 files were received and reviewed. No violations were noted.

#### 2. Midterm Cancellations

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

The primary purpose of the review was to determine personal lines compliance with Act 205, Unfair Insurance Practices Act, Section 5(a)(9) [40 P.S. §1171.5(a)(9)], which establishes the conditions under which cancellation of a policy is permissible along with the form requirements of the cancellation notice.

From the universe of 1,192 property policies which were cancelled midterm during the experience period, 99 files were selected for review. The property policies consisted of homeowners, tenant homeowners and owner occupied dwelling fire. All 99 files were received and reviewed. No violations were noted.

#### 3. Nonrenewals

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

The primary purpose of the review was to determine personal lines compliance with Act 205, Unfair Insurance Practices Act, Section 5(a)(9) [40 P.S. §1171.5(a)(9)], which establishes the conditions under which cancellation of a policy is permissible along with the form requirements of the nonrenewal notice.

From the universe of 60 property policies which were nonrenewed during the experience period, 25 files were selected for review. The property policies consisted of homeowners, tenant homeowners and inland marine. All 25 files were received and reviewed. The violation resulted in an error ratio of 4%.

The following finding was made:

1 Violation Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)]

Prohibits canceling any policy of insurance covering owneroccupied private residential properties or personal property of individuals that has been in force for sixty days or more or refusing to renew any such policy unless the policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the company; or there has been a substantial change or increase in hazard in the risk assumed by the company subsequent to the date the policy was issued; or there is a substantial increase in hazards insured against by reason of willful or negligent acts or omissions by the insured; or the insured has failed to pay any premium when due or for any other reasons approved by the Commissioner. The Company nonrenewed the policy because the agent no longer represented the Company.

#### D. Commercial Property

#### 1. <u>60-Day Cancellations</u>

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 86, Section 7 (40 P.S. §3407), which requires an insurer, who cancels a policy that is in effect less than 60 days, to provide 30 days notice of termination no later than the 60<sup>th</sup> day unless the policy provides for a longer period of notification.

From the universe of 54 commercial property policies cancelled within the first 60 days, 25 files were selected for review. The commercial policies consisted of commercial package, commercial inland marine and tenant occupied dwelling fire. All 25 files were received and reviewed. No violations were noted.

#### 2. Midterm Cancellations

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

The purpose of the review was to determine compliance with Act 86, Section 2 (40 P.S. §3402), which prohibits cancellation except for specified reasons and Section 3 (40 P.S. §3403), which establishes the requirements, which must be met regarding the form and condition of the cancellation notice.

From the universe of 1,437 commercial property policies cancelled midterm during the experience period, 12 files were selected for review. The commercial property files consisted of commercial package and tenant occupied dwelling fire. All 12 files were received and reviewed. The 5 violations noted were based on 3 files, resulting in an error ratio of 25%.

The following findings were made:

2 Violations Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Requires that a cancellation notice shall state the specific reasons for the cancellation. The reasons shall identify the condition, factor or loss experience, which caused the cancellation. The notice shall provide sufficient information or data for the insured to correct the deficiency.

AND

Title 31, Pa. Code, Section 113.88

The reason given for cancellation shall be clear and complete. It shall be stated so that a person of average intelligence and education can understand it. Phrases such as "losses" or "underwriting reasons" are not sufficiently specific reasons for cancellation. The Company failed to provide a specific reason for cancellation for the 2 files noted.

Requires that a midterm cancellation notice shall be forwarded directly to the named insured or insureds at least 60 days in advance of the effective date of termination unless one or more of the following exist: The insured has failed to pay a premium when due, whether the premium is payable directly to the company or its agents or indirectly under a premium finance plan or extension of credit, in which case, the prescribed written notice of cancellation shall be forwarded directly to the named insured at least 15 days in advance of the effective date of termination. The Company failed to provide 60 days notice of cancellation for the 3 files

#### 3. Nonrenewals

noted.

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 review was conducted to determine compliance with Act 86, Section 3 (40 P.S. §3403), which establishes the requirements that must be met regarding the form and condition of the nonrenewal notice.

From the universe of 202 commercial property policies nonrenewed during the experience period, 41 files were selected for review. The commercial property policies consisted of tenant occupied dwelling fire, commercial fire, commercial inland marine and commercial package. All 41 files were received and reviewed. The 9 violations noted were based on 9 files, resulting in an error ratio of 22%.

The following findings were made:

7 Violations Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Requires that a nonrenewal notice shall state the specific reasons for the nonrenewal. The reasons shall identify the condition, factor or loss experience, which caused the nonrenewal. The notice shall provide sufficient information or data for the insured to correct the deficiency.

AND

Title 31, Pa. Code, Section 113.88

The reason given for nonrenewal shall be clear and complete. It shall be stated so that a person of average intelligence and education can understand it. Phrases such as "losses" or "underwriting reasons" are not sufficiently specific reasons for nonrenewal. The reason for nonrenewal was not specific for the 7 files noted.

1 Violation Act 86, Section 3(a)(6) [40 P.S. §3403(a)(6)]

Requires that a nonrenewal notice shall state that at the insured's request, the insurer shall provide loss information to the insured for at least three years or the period of time during which the insurer has provided coverage to the insured, whichever is less. The Company did not provide an offer of loss information on the notice as required for the file noted.

1 Violation

Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance. The file contained a nonrenewal notice which required supporting business.

#### 4. Declinations

A declination is any application that is received and the Company declines to write the coverage.

The primary purpose of the review was to determine compliance with Act 205, Section 5 [40 P.S. §1171.5], which defined unfair methods of competition and unfair or deceptive acts or practices

From the universe of 2,434 commercial property files identified as declinations by the Company during the experience period, 60 files were selected for review. All 60 files were received and reviewed. The files consisted of commercial fire, commercial package and commercial inland marine submissions. No violations were noted.

#### 5. 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 86, Section 1 (40 P.S. §3401), which requires 30 days advance notice of an increase in renewal premium.

From the universe of 14,716 commercial property policies renewed during the experience period, 80 files were selected for review. The commercial property policies consisted of tenant occupied dwelling fire, commercial fire, commercial inland marine and commercial package. All 80 files were received and reviewed. No violations were noted.

#### E. Commercial 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 86, Section 7 (40 P.S. §3407), which requires an insurer, who cancels a policy that is in effect less than 60 days, to provide 30 days notice of termination no later than the 60<sup>th</sup> day unless the policy provides for a longer period of notification.

From the universe of 19 commercial automobile policies cancelled within the first 60 days of new business, 1 file was selected for review. The file was received and reviewed. No violations were noted.

#### 2. Midterm Cancellations

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

The purpose of the review was to determine compliance with Act 86, Section 2 (40 P.S. §3402), which prohibits cancellation except for specified reasons and Section 3 (40 P.S. §3403), which establishes the requirements, which must be met regarding the form and condition of the cancellation notice.

From the universe of 789 commercial automobile policies cancelled midterm during the experience period, 7 files were selected for review. All 7 files were received and reviewed. The violation noted resulted in an error ratio of 14%.

The following finding was made:

1 Violation Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Requires that a cancellation notice shall state the specific reasons for cancellation. The reasons shall identify the condition, factor or loss experience, which caused the cancellation. The notice shall provide sufficient information or data for the insured to correct the deficiency. The Company did not provide a specific reason for cancellation for the file noted.

#### 3. Nonrenewals

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

The review was conducted to determine compliance with Act 86, Section 3 (40 P.S. §3403), which establishes the requirements that must be met regarding the form and condition of the nonrenewal notice.

From the universe of 138 commercial automobile policies nonrenewed during the experience period, 32 files were selected for review. All 32 files were received and reviewed. The 8 violations noted were based on 7 files, resulting in an error ratio of 22%.

The following findings were made:

7 Violations Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Requires that a nonrenewal notice shall state the specific reasons for the nonrenewal. The reasons shall identify the condition, factor or loss experience, which caused the nonrenewal. The notice shall provide sufficient information or data for the insured to correct the deficiency.

AND

Title 31, Pa. Code, Section 113.88

The reason given for nonrenewal shall be clear and complete. It shall be stated so that a person of average intelligence and education can understand it. Phrases such as "losses" or "underwriting reasons" are not sufficiently specific reasons for nonrenewal. The Company did not provide a specific reason for nonrenewal for the 9 files noted.

1 Violation Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of

insurance. The file noted contained a nonrenewal notice which required supporting business.

#### 4. Declinations

A declination is any application that is received and the Company declines to write the coverage.

The primary purpose of the review was to determine compliance with Act 205, Section 5 [40 P.S. §1171.5], which defined unfair methods of competition and unfair or deceptive acts or practices

From the universe of 1,821 commercial automobile files identified as declinations by the Company during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### 5. 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 86, Section 1 (40 P.S. §3401), which requires 30 days advance notice of an increase in renewal premium.

From the universe of 6,606 commercial automobile policies renewed during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### F. Workers' Compensation

#### 1. Midterm Cancellations

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

The purpose of the review was to determine compliance with Insurance Company Law, Section 653 (40 P.S. §813), which prohibits midterm cancellation with exceptions for nonpayment of premium or by request of the insured.

From the universe of 707 workers' compensation policies identified as midterm cancellations, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### 2. Nonrenewals

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

The review was conducted to determine compliance with Act 86, Section 3 (40 P.S. §3403), which establishes notice requirements for nonrenewals.

From the universe of 136 workers' compensation policies nonrenewed during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The 6 violations noted were based on 6 files, resulting in an error ratio of 24%.

The following findings were made:

5 Violations Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Requires that a nonrenewal notice shall state the specific reasons for the nonrenewal. The reasons shall identify the condition, factor or loss experience, which caused the nonrenewal. The notice shall provide sufficient information or data for the insured to correct the deficiency.

AND

Title 31, Pa. Code, Section 113.88

The reason given for nonrenewal shall be clear and complete. It shall be stated so that a person of average intelligence and education can understand it. Phrases such as "losses" or "underwriting reasons" are not sufficiently specific reasons for nonrenewal. The Company failed to provide a specific reason for nonrenewal for the 5 files noted.

1 Violation Ac

Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance. The file noted contained a nonrenewal notice which required supporting business.

#### 3. 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 86, Section 1 (40 P.S. §3401), which requires 30 days advance notice of an increase in renewal premium.

From the universe of 5,141 workers' compensation policies which were renewed during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### 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.

<u>Private Passenger Automobile – New Business Without Surcharges</u>
From the universe of 6,602 private passenger automobile policies identified as new business without surcharges, 25 files were selected for review. All

Private Passenger Automobile - New Business With Surcharges

25 files were received and reviewed. No violations were noted.

From the universe of 415 private passenger automobile policies identified as new business with surcharges by the Company, 25 files were selected for review. All 25 files were received and reviewed. The violation noted resulted in an error ratio of 4%.

The following finding was made:

1 Violation Title 75, Pa. C.S. §1792(b)(1)

Requires every private passenger automobile insurance policy providing collision coverage to provide a deductible in the amount of \$500.00 for collision coverage, unless the named insured signs a statement indicating the insured is aware that the purchase of a lower deductible is permissible and that there is an additional cost of purchasing a lower deductible and the insured agrees to accept it. The Company failed to provide a signed statement from the insured requesting a deductible of less than \$500.

#### 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.

### <u>Private Passenger Automobile – Renewals Without Surcharges</u>

From the universe of 42,343 private passenger automobile policies renewed without surcharges during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### <u>Private Passenger Automobile – Renewals With Surcharges</u>

From the universe of 1,098 private passenger automobile policies renewed with surcharges during the experience period, 50 files were selected for review. All 50 files were received and reviewed. No violations were noted.

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

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

#### C. Homeowners

#### 1. New Business

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

The purpose of the review was to measure compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require 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.

#### <u>Homeowner Rating – New Business Without Surcharges</u>

From the universe of 3,525 homeowner policies written as new business during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### <u>Homeowner Rating – New Business With Surcharges</u>

The universe of one homeowner policy written as new business with surcharges during the experience period was selected for review. The file was received and reviewed. No violations were noted.

#### 2. Renewals

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

The purpose of the review was to determine compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require 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.

#### Homeowner Rating – Renewals Without Surcharges

From the universe of 39,851 homeowner policies renewed during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### Homeowner Rating – Renewals With Surcharges

From the universe of 484 homeowner policies renewed with surcharges during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The 2 violations noted were based on 2 files, resulting in an error ratio of 8%.

The following findings were made:

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

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company surcharged the 2 files noted for losses over 3 years old, resulting in overcharges of \$1,572.

#### D. Tenant Homeowners

#### 1. New Business

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

The purpose of the review was to measure compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require 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.

From the universe of 878 tenant homeowner policies written as new business without surcharges during the experience period, 15 files were selected for review. All 15 files were received and reviewed. No violations were noted.

#### 2. Renewals

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

The purpose of the review was to determine compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require 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.

#### <u>Tenant Homeowner Rating – Renewals Without Surcharges</u>

From the universe of 3,679 tenant homeowner policies renewed without surcharges during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### <u>Tenant Homeowner Rating – Renewals With Surcharges</u>

The universe of 6 tenant homeowner policies renewed with surcharges during the experience period was selected for review. All 6 files were received and reviewed. No violations were noted.

### E. Dwelling Fire

# 1. New Business

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

The purpose of the review was to measure compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require 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.

From the universe of 21 dwelling fire policies written as new business during the experience period, 10 files were selected for review. All 10 files were received and reviewed. No violations were noted.

### 2. Renewals

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

The purpose of the review was to determine compliance with Act 246, Sections 4(a) and (h) (40 P.S. §1184), which require 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.

From the universe of 308 dwelling fire policies renewed during the experience period, 20 files were selected for review. All 20 files were received and reviewed. No violations were noted.

# 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
- G. Homeowner Claims
- H. Tenant Homeowner Claims
- I. Dwelling Fire Claims

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

### A. Automobile Property Damage Claims

From the universe of 1,989 private passenger automobile property damage claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. The violation noted

resulted in an error ratio of 4%.

The following finding was made:

1 Violation Title 31, Pa. Code, Section 146.6

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

# B. Automobile Comprehensive Claims

From the universe of 4,048 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 2,186 private passenger automobile collision claims reported during the experience period, 25 files were selected for review.

All 25 files were received and reviewed. The violation noted resulted in an error ratio of 4%.

The following finding was made:

1 Violation Title 31, Pa. Code, Section 146.6

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

#### D. Automobile Total Loss Claims

From the universe of 897 private passenger automobile total loss claims reported during the experience period, 30 files were selected for review. All 30 files were received and reviewed. No violations were noted.

# E. Automobile First Party Medical Claims

From the universe of 854 private passenger automobile first party medical claims reported during the experience period, 40 files were selected for review. All 40 files were received and reviewed. No violations were noted.

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

The Company did not report any first party medical claims files referred to a PRO within the experience period. The Company was asked to provide a copy of all peer review contracts in place during the experience period. The Company advised they did not have any contracts in place.

The following finding was made:

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

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

AND

Title 75, Pa. C.S. §1797(b)(1)

Peer review plan for challenges to reasonableness and necessity of treatment. Peer review plan. Insurers shall contract jointly or separately with any peer review organization established for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person. Such evaluation shall be for the purpose of confirming that such treatment, products, services or accommodations conform to the professional standards of performance and are medically necessary. An insurer's challenge must be made to a PRO within 90 days of the insurer's receipt of the provider's bill for treatment or services or may be made at any time for continuing treatment or services. The Company did not have a contract in place with an approved peer review organization.

### G. Homeowner Claims

From the universe of 1,886 homeowner claims reported during the experience period, 25 files were selected for review. All 25 files were received and reviewed. No violations were noted.

#### H. Tenant Homeowner Claims

From the universe of 138 tenant homeowner claims reported during the experience period, 10 files were selected for review. All 10 files were received and reviewed. No violations were noted.

# I. Dwelling Fire Claims

From the universe of 48 dwelling fire claims reported during the experience period, 10 files were selected for review. All 10 files were received and reviewed. The 2 violations noted were based on 2 files, resulting in an error ratio of 20%.

The following findings were made:

2 Violations Title 31, Pa. Code, Section 146.6

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

### VIII. FORMS

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

The following findings were made:

1 Violation 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 a fraud warning notice on the claim questionnaire 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 50 pieces of advertising in use during the experience period. The advertising materials provided included: brochures, agent's kits, mail solicitation and a newsletter. Internet advertising was also reviewed on the Company's website at <a href="https://www.pennnationalinsurance.com">www.pennnationalinsurance.com</a>. 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 64 consumer complaints received during the experience period and provided all consumer complaint logs requested. Of the 64 complaint files reported, 25 files were requested, received and reviewed.

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

No violations were noted.

The following synopsis reflects the nature of the 25 complaints that were reviewed.

• 9	Cancellation/Nonrenewal	36%
• 15	Claims	60%
• 1	Miscellaneous	4%
25		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 finding was made:

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.

Pennoyer Group, Inc. (The)

### 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.

- The Company must review Act 205, Section 5(a)(9) [40 P.S.
   §1171.5(a)(9)] to ensure that the violation regarding the requirement for nonrenewal notices, as noted in the Report, does not occur in the future.
- 2. The Company must review and revise internal control procedures to ensure compliance relative to commercial cancellation and nonrenewal requirements of Act 86, Section 3 [40 P.S. §3403], so that the violations noted in the Report do not occur in the future.
- 3. The Company must review Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)] to ensure that the violations relative to supporting coverage noted in the Report do not occur in the future.
- 4. The Company must revise underwriting procedures to ensure that the insured is aware that there is an additional cost for purchasing a lower deductible for collision coverage. This is to ensure that violations noted under Title 75, Pa. C.S. §1792(b)(1) do not occur in the future.
- 5. The Company must review Act 246, Section 4(a) and (h) [40 P.S. §1184] and take appropriate measures to ensure the homeowner rating violations listed in the report do not occur in the future.

- 6. The premium overcharges noted in the rating section of this report must be refunded to the insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the report issue date.
- 7. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices so that the violations relating to claim acknowledgement and status letters, as noted in the Report, do not occur in the future.
- 8. The Company must review Title 31, Pa. Code, Section 69.53(a) and Title 75, Pa. C.S. §1797(b)(1) with its claim staff to ensure that a written contract is in place with an approved peer review organization established for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person. Such evaluation shall be for the purpose of confirming that such treatment, products, services or accommodations conform to the professional standards of performance and are medically necessary.
- 9. The Company must ensure all producers are properly appointed, as required by Section 671-A [40 P.S. §310.71] of the Insurance Department Act No. 147, prior to accepting any business from any producer.
- 10. The Company must revise and reissue their underwriting guidelines for use in Pennsylvania to ensure that guidelines do not require supporting coverage to write workers' compensation, commercial automobile and general liability.

11. The Company must ensure that all necessary claim forms contain the required fraud warning notice.

# XIII. COMPANY RESPONSE

Penn National Insurance Two North Second Street P.O. Box 2361 Harrisburg, PA 17105-2361 800-388-4764 phone 717-234-4941 phone



June 19, 2009

Mr. Chester A. Derk, Jr., AIE, HIA Market Conduct Division Chief Office of Market Regulation Bureau of Market Conduct Property & Casualty Division 1227 Strawberry Square Harrisburg, PA 17120

VIA: Email/US Mail 6/19

RE: Response of Pennsylvania National Mutual Casualty Insurance Company to the Market Conduct Examination Report prepared by the Pennsylvania Insurance Department for the period July 1, 2007 to June 30, 2008.

<u>Examination Warrant Number: 08-M19-020</u>

Dear Mr. Derk,

Please accept this letter as Pennsylvania National Mutual Casualty Insurance Company's (the "Company") response to the Report on the Market Conduct Examination conducted by the Pennsylvania Insurance Department for the period of July 1, 2007 to June 30, 2008, and acceptance of the same. We thank you and the examination team for your assistance and cooperation in the conduct of the Examination and found it to be a mutually gainful experience. With respect to the report, the Company will endeavor to make our final submissions or rebuttals on those areas of the report where we have conducted further review and provide further explanation/evidence or corrective measures, where applicable.

The Company considers this examination an invaluable tool in revealing both strong points and weaknesses, thereby, identifying those areas in which the Company must strive to improve its performance and better meet the needs of our policyholders. I think you will find that our responses to the examiner's requests were timely and that the Company, in the vast majority of the areas reviewed, was found to competently and professionally perform its obligations.

It is also important to stress that in no event were any of the errors based upon intentional or willful disregard for existing laws or regulations, but rather based upon human or unintentional error. Moreover, where areas of improvement are needed, the Company intends to implement corrective actions to address these areas and communicate the same to its employees.

With the above in mind, I will endeavor below to recite the Company's responses and/or comments as they occur in the body of the Examination Report. Accordingly, the following responses and/or comments are as follows:

### IV. UNDERWRITING PRACTICES AND PROCEDURES

Three violations noted-Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]

Company Response: The Company acknowledges the mandates of Act 205 relative to acts resulting in unreasonable restraint of, or monopoly of, the business of insurance; however, we do not believe that the current language in our underwriting guidelines is in violation of Act 205. Accordingly, we respectfully object to the Department's interpretation of 40 P.S. §1171.5(a)(4) with regard to our guidelines. We did not enter into any agreement to commit, or by any concerted action committed, any act of boycott, coercion or intimidation. Furthermore, the existence of a tie between two products is not alone a violation of the law, nor does it rise to the level of an illegal coercive arrangement. Additionally, we do not possess the market power or market share to exert a substantial amount of control over the product in the marketplace, nor are the customers denied the opportunity to receive the product from the Company. Lastly, there is no restraint of trade or conspiracy to monopolize trade as is contemplated by Act 205 or its antitrust counterpart at the federal level. We have offered to provide examples where stand-alone coverage has been underwritten and no supporting business has been required. Nevertheless, we accept the Department's Recommendation, and we will work to clarify the language in our Commercial Lines General Liability, Commercial Automobile and Worker's Compensation Underwriting Guidelines.

#### V. UNDERWRITING

#### A. PRIVATE PASSENGER AUTOMOBILE:

- 1. 60-day Cancellations-No violations noted.
- 2. Midterm Cancellations-No violations noted.
- 3. Nonrenewals-No violations noted.

#### B. PRIVATE PASSENGER AUTOMOBILE-ASSIGNED RISK:

Company wrote no assigned risk business during this experience period.

#### C. PROPERTY

- 1. 60-day Cancellations-No violations noted.
- 2. Midterm Cancellations-No violations noted.
- 3. Nonrenewals.

One violation-Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)]

Company Response: The Company acknowledges the mandates of 40 P.S. §1171.5(a)(9) and confirms that one file contained improper reasons for nonrenewal. The Company acknowledges this violation relative to the nonrenewal of owner-occupied private residence properties or personal property unless for a permissible reason and such reason is so stated on the notice. As such, the Company maintains that all cancellations be made for proper reasons, that all nonrenewal/cancellation notices clearly provide the proper reason for nonrenewal/cancellation, and that such reason be well-documented in the policy file.

#### D. COMMERCIAL PROPERTY

1. 60-day Cancellations-No violations noted.

#### 2. Midterm Cancellations.

Two violations-Act 86, Sec. 3(a)(5) [40 P.S. §3403(a)(5)] & Title 31, Pa. Code, Sec. 113.88.

Company Response: The Company acknowledges that, as a matter of course, all notices of nonrenewal must clearly provide specific reasons for cancellation as required by 40 P.S. §3403(a)(5), and that such reasons are to be retained in the file documentation so as to provide evidence that the Company was in compliance with this section. This is equally required by the Company's record retention policy. Our practices require supporting documentation be included and retained in the file as sent to the insured. With that in mind, the Company acknowledges the reasons for nonrenewal/cancellation provided with respect to the above files are non-specific and are not acceptable business practices. The Company will remind its underwriting staff and use quality reviews to monitor its compliance.

Three violations-Act 86, Section 3(a)(3)(ii) [40 P.S. §3403(a)(3)(ii)]

Company Response: The Company acknowledges the mandates of Act 86 relative to the provision of 60-day advance notice to the policyholder of the effective date of cancellation. The Company acknowledges the requirements of providing written notice of cancellation and maintains, as a matter of course, that all policies/insureds subject to cancellation receive the required 60-day advance notice as required by Act 86 and will restate such to its underwriting personnel and monitor its compliance.

#### 3. Nonrenewals.

Seven violations-Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)] AND Title 31, Pa. Code, Section 113.88

Company Response: The Company acknowledges that, as a matter of course, all notices of nonrenewal must clearly provide specific reasons for cancellation as required by 40 P.S. §3403(a)(5), and that such reasons are to be retained in the file documentation so as to provide evidence that the Company was in compliance with this section. This is equally required by the Company's record retention policy. Our practices require supporting documentation be included and retained in the file as sent to the insured. With that in mind, the Company acknowledges the reasons for nonrenewal/cancellation provided with respect to the above files are non-specific and are not acceptable business practices. The Company has always maintained that such reasons are unacceptable and will restate such to its underwriting personnel and monitor its compliance.

One violation-Act 86, Section 3(a)(6) [40 P.S. §3403(a)(6)]

The Company acknowledges the mandates of Act 86 relative to improper reasons for nonrenewal and respectfully requests that the Department consider that these findings should not be considered a "method" or "practice", nor considered acceptable in the ordinary course of business. The Company has always maintained that such reasons are unacceptable and will restate such to its underwriting personnel and monitor its compliance.

One violation-Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]

The Company acknowledges the mandates of Act 205 relative to improper reasons for nonrenewal and respectfully requests that the Department consider that these findings should not be considered a "method" or "practice", nor considered acceptable in the ordinary course of business. With that in mind, the Company acknowledges the reasons for nonrenewal provided is unacceptable and will restate such to its underwriting personnel and monitor its compliance.

- 4. Declinations-No violations noted.
- 5. Renewals-No violations noted.

#### E. COMMERCIAL AUTOMOBILE

- 1. 60-day Cancellations-No violations noted.
- 2. Midterm Cancellations.

One violation-Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)]

Company Response: The Company acknowledges the mandates of Act 86, Section 3(a)(5) and has explained its concerns relative to disclosing any personally identifiable information or MVR on the notice, as well as our desire to avoid being categorized as a consumer reporting agency. Notwithstanding, the Company acknowledges the violation and will endeavor to provide sufficient information that will allow the insured to correct the deficiencies which led to cancellation of the policy.

3. Nonrenewals. Seven violations-Act 86, Section3(a)(5) [40 P.S. §3403(a)(5)] AND Title 31, Pa. Code, Section 113.88

Company Response: The Company acknowledges that, as a matter of course, all notices of nonrenewal must clearly provide specific reasons for cancellation as required by 40 P.S. §3403(a)(5), and that such reason are to be retained in the file documentation so as to provide evidence that the Company was in compliance with this section. This is equally required by the Company's record retention policy. Our practices require supporting documentation be included and retained in the file as sent to the insured. With that in mind, the Company acknowledges the reasons for nonrenewal/cancellation provided with respect to the above files are non-specific and are not acceptable business practices. The Company has always maintained that such reasons are unacceptable, and will restate such to its underwriting personnel and monitor its compliance.

The Company acknowledges the mandates of Act 86 relative to improper reasons for nonrenewal and respectfully requests that the Department consider that these findings should not be considered a "method" or "practice", nor considered acceptable in the ordinary course of business. The Company has always maintained that such reasons are unacceptable and will restate such to its underwriting personnel and monitor its compliance.

One violation-Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]

Company Response: The Company acknowledges the mandates of Act 205 relative to improper reasons for nonrenewal and respectfully requests that the Department consider that these findings should not be considered a "method" or "practice", nor considered acceptable in the ordinary course of business. With that in mind, the Company acknowledges the reasons for nonrenewal provided is unacceptable, is not an acceptable business practice and will restate such to its underwriting personnel and monitor its compliance.

- 4. Declinations-No violations noted.
- 5. Renewals-No violations noted.

#### F. WORKERS' COMPENSATION

1. Midterm Cancellations-No violations noted.

#### 2. Nonrenewals.

Five violations-Act 86, Section 3(a)(5) [40 P.S. §3403(a)(5)] AND Title 31, Pa. Code, Section 113.88

Company Response: The Company acknowledges that, as a matter of course, all notices of nonrenewal must clearly provide specific reasons for cancellation as required by 40 P.S. §3403(a)(5), and that such reasons are to be retained in the file documentation so as to provide evidence that the Company was in compliance with this section. This is equally required by the Company's record retention policy. Our practices require supporting documentation be included and retained in the file as sent to the insured. With that in mind, the Company acknowledges the reasons for nonrenewal/cancellation provided with respect to the above files are non-specific and are not acceptable business practices. The Company will restate such to its underwriting personnel and monitor its compliance.

The Company acknowledges the mandates of Act 86 relative to improper reasons for nonrenewal and respectfully requests that the Department consider that these findings should not be considered a "method" or "practice", nor considered acceptable in the ordinary course of business. The Company has always maintained that such reasons are unacceptable and will restate such to its underwriting personnel and monitor its compliance.

One violation-Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)]

**Company Response:** The Company acknowledges the mandates of Act 205 relative to improper reasons for nonrenewal and respectfully requests that the Department consider that these findings should not be considered a "method" or "practice", nor considered acceptable in the ordinary course of business. With that in mind, the Company acknowledges the reason for nonrenewal provided is unacceptable, is not an acceptable business practice and will restate such to its underwriting personnel and monitor its compliance.

3. Renewals-No violations noted.

#### VI. RATING

#### A. PRIVATE PASSENGER AUTOMOBILE

- 1. New Business
  - a. Without Surcharges-No violations noted.
  - b. With Surcharges.

One violation-Title 75, Pa. C.S. §1792(b)(1)

Company Response: The Company acknowledges this violation as it appeared to be an oversight in that the insured failed to sign to the collision portion of the tort forms. The Company will endeavor to make certain and/or advise its agents to make certain all areas where insured acknowledgement is necessary are completed.

#### 2. Renewals

- a. Without Surcharges-No violations noted.
- b. With Surcharges-No violations noted.

#### B. PRIVATE PASSENGER AUTOMOBILE-ASSIGNED RISK:

Company wrote no assigned risk business during this experience period.

#### C. HOMEOWNERS

- 1. New Business
  - a. Without Surcharges-No violations noted.
  - b. With Surcharges-No violations noted.
- 2. Renewals
  - a. Without Surcharges-No violations noted.
  - b. With Surcharges.

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

Company Response: The Company acknowledges the mandates of Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40 P.S. §1184) relative to surcharges on premiums for losses when the losses are more than 3 years old. The Company respectfully requests that the Department consider the fact that we have refunded the money due to our policyholders and have reviewed all files and made adjustments where appropriate. The Company also requests that the Department consider we are in the process of automating our renewal processing where claims data will be included, therefore reducing or eliminating future erroneous surcharges.

#### D. TENANT HOMEOWNERS

- 1. New Business-No violations noted.
- 2. Renewals
  - a. Without Surcharges-No violations noted.
  - b. With Surcharges-No violations noted.

#### E. DWELLING FIRE

- 1. New Business-No violations noted.
- 2. Renewals-No violations noted.

#### VII. CLAIMS

#### A. AUTOMOBILE PROPERTY DAMAGE CLAIMS.

One violation-Title 31, Pa. Code, Section 146.6

Company Response: The Company acknowledges the mandates of Section 146.6 of 31 Pa. Code relative to the requirement that insurers provide a letter to insureds within 30-days following the notification of a claim. The required notice was not provided to the insured within such time frame. The Company has a comprehensive internal Quality Assurance program in place. We will continue to monitor and ensure full compliance with Title 31, Pennsylvania Code, Chapter 146.

#### **B. AUTOMOBILE COMPREHENSIVE CLAIMS**

No violations noted.

#### C. <u>AUTOMOBILE COLLISION CLAIMS</u>.

One violation-Title 31, Pa. Code, Section 146.6

Company Response: The Company acknowledges the mandates of Section 146.6 of 31 Pa. Code relative to the requirement that insurers provide a letter to insureds within 30-days following the notification of a claim. The required notice was not provided to the insured within such time frame. The Company has a comprehensive internal Quality Assurance program in place. We will continue to monitor and ensure full compliance with Title 31, Pennsylvania Code, Chapter 146.

#### D. AUTOMOBILE TOTAL LOSS CLAIMS

No violations noted.

#### E. AUTOMOBILE FIRST PARTY MEDICAL CLAIMS

No violations noted.

#### F. AUTOMOBILE FIRST PARTY MEDICAL CLAIMS REFERRED TO A PRO.

One violation-Title 31, Pa. Code, Section 69.53(a) AND Title 75, Pa. C.S. §1797(b)(1)

Company Response: The Company has reviewed Title 31, Pa. Code, Section 69.53(a) and Title 75, Pa. C.S. §1797(b)(1) and acknowledges the examiner's findings. Although the Company maintains a written contract with Hoover Rehabilitative Service, Inc., an approved PRO by the Pa. Insurance Dept., it will amend its contract to specifically acknowledge the PRO services of Hoover in the contract's scope of services, as suggested by the Department.

#### G. HOMEOWNER CLAIMS

No violations noted.

### H. TENANT HOMEOWNER CLAIMS

No violations noted.

#### I. DWELLING FIRE CLAIMS.

Two violations-Title 31. Pa. Code, Section 146.6

Company Response: The Company acknowledges the mandates of Section 146.6 of 31 Pa. Code relative to the requirement that insurers provide a letter to insureds within 30-days following the notification of a claim. The required notice was not provided to the insured within such time frame. The Company has a comprehensive internal Quality Assurance program in place. We will continue to monitor and ensure full compliance with Title 31, Pennsylvania Code, Chapter 146.

#### VIII. FORMS

One violation-Title 75, Pa. C.S. §1822. The Company must ensure that all necessary claim forms contain the required fraud warning notice.

**Company Response:** The Company acknowledges the mandates of Title 75 and Act 165 relative to the specific insurance fraud warning on all claim forms. No fraud warning appeared on this non-company claim questionnaire form in the claim file. The Company acknowledges the requirements of providing a fraud warning and maintains, as a matter of course, that all forms include the warning as required by Title 75 and Act 165.

#### IX. ADVERTISING

No violations noted.

#### X. CONSUMER COMPLAINTS

No violations noted.

#### XI. LICENSING

One violation: Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71)

Pennoyer Group Inc (The)

Company Response: The Company acknowledges the mandates of Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71) and that all insurance producers representatives shall have a valid appointment by the insurer. With respect to the above agency, this agency is a Maryland-domiciled agent and our research indicated that this business entity held a license but did not hold an appointment with the Company in PA.

Immediately upon being notified of this Violation, we secured a copy of the Agent's license and processed the appointment of this Agency with our Company effective 01/21/09.

#### XII. RECOMMENDATIONS AND RESPONSES

- 1. The Company must review Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)] to ensure that the violation regarding the requirement for nonrenewal notices, as noted in the Report, does not occur in the future.
- **Company Response:** The Company acknowledges the mandates of 40 P.S. §1171.5(a)(9) that require all nonrenewals be based on a permissible reason, such reason must be specifically stated on the notice, and that such reason be well-documented in the policy file. Underwriting staff will be reminded and quality reviews will be used to monitor compliance.
- 2. The Company must review and revise internal control procedures to ensure compliance relative to commercial cancellation and nonrenewal requirements of Act 86, Section 3 [40 P.S. §3403], so that the violations in the Report do not occur in the future.
- Company Response: The Company acknowledges the mandates of Act 86 relative to improper reasons for commercial cancellation and nonrenewal and acknowledges that all nonrenewal notices must be for a permissible reason, such reason must be specifically stated on the notice and that such reason be well-documented in the policy file. Underwriting staff will be reminded and quality reviews will be used to monitor compliance.

- 3. The Company must review Act 205, Section 5(a)(4) [40 P.S. §1171.5(a)(4)] to ensure that the violations relative to supporting coverage noted in the Report do not occur in the future.
- **Company Response:** The Company acknowledges the mandates of Act 205 relative to improper reasons for nonrenewal and acknowledges that all nonrenewal notices must be for a permissible reason, such reason must be specifically stated on the notice, and that such reason be well-documented in the policy file. Underwriting staff will be reminded and quality reviews will be used to monitor compliance.
- 4. The Company must revise underwriting procedures to ensure that the insured is aware that there is an additional cost for purchasing a lower deductible for collision coverage. This is to ensure that violations noted under Title 75, Pa. C.S. §1792(b)(1) do not occur in the future.
- Company Response: The Company acknowledges this violation as it appeared to be an oversight in that the insured failed to sign to the collision portion of the tort forms. The Company will endeavor to make certain and/or advise its agents to make certain all areas where insured acknowledgement is necessary are completed. Underwriting personnel will be reminded and quality reviews used to monitor compliance.
- 5. The Company must review Act 246, Section 4(a) and (h) [40 P.S. §1184] and take appropriate measures to ensure the homeowner rating violations listed in the report do not occur in the future.
- Company Response: The Company acknowledges the mandates of Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40 P.S. §1184) relative to surcharges on premiums for losses when the losses are more than 3 years old. The Company respectfully requests that the Department consider the fact that we have refunded the money due to our policyholders and have reviewed all files and made adjustments where appropriate. The Company also requests that the Department consider we are in the process of automating our renewal processing where claims data will be included, therefore reducing or eliminating future erroneous surcharges.
- 6. The premium overcharges noted in the rating section of this report must be refunded to the insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the report issue date.
- **Company Response:** Premiums were refunded accordingly, per the Department's request, and proof of the same has been provided to the Department.
- 7. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania code, Chapter 146, Unfair Claims Settlement Practices so that the violations relating to claim acknowledgement and status letters, as noted in the Report, do not occur in the future.
- **Company Response:** The Company acknowledges the mandates of Section 146.6 of 31 Pa. Code relative to the requirement that insurers provide a letter to insureds within 30-days following the notification of a claim. The Company has a comprehensive internal Quality Assurance program in place that we will use to monitor and ensure full compliance with Title 31, Pennsylvania Code, and Chapter 146.

- 8. The Company must review Title 31, Pa. Code, Section 69.53(a) and Title 75, Pa. C.S. §1797(b)(1) with its claims staff to ensure that a written contract is in place with an approved peer review organization established for the purpose of evaluating treatment, health care services, products or accommodations provided to any injured person. Such evaluation shall be for the purpose of confirming that such treatment, products, services or accommodations conform to the professional standards of performance and are medically necessary.
- Company Response: The Company has reviewed Title 31, Pa. Code, Section 69.53(a) and Title 75, Pa. C.S. §1797(b)(1) and acknowledges the examiner's findings. Although the Company maintains a written contract with Hoover Rehabilitative Service, Inc., an approved PRO by the Pa. Insurance Dept., it will amend its contract to specifically acknowledge the PRO services of Hoover in the contract's scope of services, as suggested by the Department.
- 9. The company must ensure all producers are properly appointed, as required by Section 671-A [40 P.S. §310.71] of the Insurance Department Act, No. 147, prior to accepting any business from any producer.
- Company Response: The Company acknowledges the mandates of Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71) that require all insurance producers representatives shall have a valid appointment by the insurer. Immediately upon being notified of this Violation, we secured a copy of the Agent's license and processed the appointment of this Agency with our Company effective 01/21/09. Licensing and underwriting staff will be reminded and quality reviews will be used to monitor compliance.
- 10. The Company must revise and reissue their underwriting guidelines for use in Pennsylvania to ensure that guidelines do not require supporting coverage to write workers' compensation, commercial automobile and general liability.
- **Company Response:** The Company acknowledges the mandate of Act 205 and will work to clarify the language in our Commercial Lines General Liability, Commercial Automobile and Worker's Compensation Underwriting Guidelines and reissue the same.
- 11. The Company must ensure that all necessary claim forms contain the required fraud warning notice.
- **Company Response:** The Company acknowledges the mandates of Title 75 and Act 165 relative to the specific insurance fraud warning on all claim forms and maintains, as a matter of course, that all forms include the warning as required by Title 75 and Act 165. Claims staff will be reminded and quality reviews will be used to ensure compliance.

In conclusion, the Company hopes that it is apparent from our acceptance that we view this Market Conduct Examination as a very meaningful and useful exercise in helping the Company monitor the strengths and weaknesses in our business operations, so that we may better manage our performance in meeting the needs and requirements of our policyholders. Please be assured that the Company is committed to providing its policyholders both the best possible product, and the best possible service of that product, available in the insurance marketplace.

Should you have any questions with regard to this matter or wish to discuss anything in further detail, please do not hesitate to contact me.

Regards,

Lisa C. Katterman

Sr. Corporate Counsel, & Director, Government & Industry Relations