

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**PROGRESSIVE ADVANCED INSURANCE  
COMPANY**

Mayfield Village, Ohio

**AS OF  
January 28, 2011**

**COMMONWEALTH OF PENNSYLVANIA**

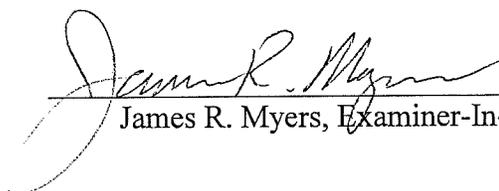


**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

**Issued: March 16, 2011**

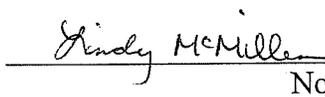
VERIFICATION

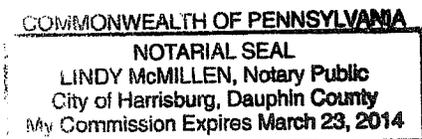
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).

  
James R. Myers, Examiner-In-Charge

Sworn to and Subscribed Before me

This 20 Day of January, 2011

  
Notary Public



# PROGRESSIVE ADVANCED INSURANCE COMPANY

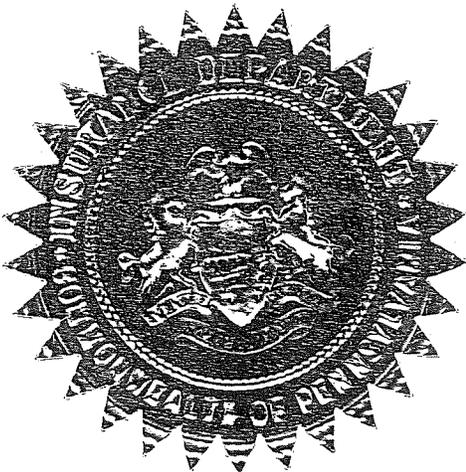
## TABLE OF CONTENTS

|       |  |    |
|-------|--|----|
| Order |  |    |
| I.    | Introduction.....                          | 1  |
| II.   | Scope of Examination.....                  | 3  |
| III.  | Company History/Licensing.....             | 5  |
| IV.   | Underwriting Practices and Procedures..... | 7  |
| V.    | Underwriting                               |    |
|       | A. Private Passenger Automobile.....       | 8  |
|       | B. Assigned Risk.....                      | 10 |
|       | C. Motorcycle.....                         | 10 |
|       | D. Property.....                           | 12 |
| VI.   | Rating                                     |    |
|       | A. Private Passenger Automobile.....       | 16 |
|       | B. Assigned Risk.....                      | 31 |
| VII.  | Claims.....                                | 32 |
| VIII. | Forms.....                                 | 43 |
| IX.   | Advertising.....                           | 46 |
| X.    | Consumer Complaints.....                   | 47 |
| XI.   | Licensing.....                             | 48 |
| XII.  | Recommendations.....                       | 50 |
| XIII. | Company Response.....                      | 54 |

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 24 day of January, 2011, 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.



  
Michael F. Consedine  
Acting Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
PROGRESSIVE ADVANCED : Section 671-A of Act 147 of 2002 (40  
INSURANCE COMPANY : P.S. § 310.71)  
6300 Wilson Mills Road : :  
Mayfield Village, OH 44143 : Act 1990-6, Sections 1705(a)(1) and (4),  
: 1731(b), 1738(c)(d)(1) and (2), 1791,  
: 1791.1(a) and (b), 1793(b), and  
: 1799.3(a) (Title 75, Pa.C.S. §§ 1705,  
: 1731, 1738, 1791, 1793 and 1799)  
: :  
: Sections 4(a) and (h) of the Act of  
: June 11, 1947, P.L. 538, No. 246 (40  
: P.S. §§1184)  
: :  
: Sections 4 and 5(a)(9)(v) of the Unfair  
: Insurance Practices Act, Act of July  
: 22, 1974, P.L. 589, No. 205 (40 P.S.  
: §§ 1171.4 and 1171.5)  
: :  
: Title 18, Pennsylvania Consolidated  
: Statutes, Section 4117(k)  
: :  
: Title 31, Pennsylvania Code, Sections  
: 59.9(b), 62.3(e)(4) and (7), and 146.6  
: :  
: Title 75, Pennsylvania Consolidated  
: Statutes, Sections 1161(a) and (b), and  
: 1822  
: :  
Respondent. : Docket No. MC11-02-017

CONSENT ORDER

AND NOW, this 16<sup>th</sup> day of March, 2011, 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 Progressive Advanced Insurance Company, and maintains its address at 6300 Wilson Mills Road, Mayfield Village, OH 44143.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2008 through June 30, 2009.
- (c) On February 7, 2011, the Insurance Department issued a Market Conduct Examination Report to Respondent.

- (d) A response to the Examination Report was provided by Respondent on February 28, 2011.
  
- (e) The Examination Report notes violations of the following:
  - (i) Section 671-A of Act 147 of 2002 prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act (40 P.S. § 310.71);
  
  - (ii) Sections 1705(a)(1) & (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;
  
  - (iii) Section 1731(b) of Act 1990-6, Title 75, Pa.C.S. § 1731, which requires the named insured to be informed that he may reject uninsured and underinsured motorist coverage by signing a written rejection form;
  
  - (iv) 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;

- (v) Section 1791 of Act 1990-6, Title 75, Pa.C.S. § 1791, which states it shall be presumed that the insured has been advised of the benefits available under this chapter provided the notice is given to the insured at time of application;
  
- (vi) Section 1791.1(a) of Act 1990-6, Title 75, Pa.C.S. § 1791, which requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-point type: “The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage or coverages in excess of the limits required by law are provided only at your request as enhancements to basic coverages.” The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured’s existing coverages;

- (vii) 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;
  
- (viii) Section 1793(b) of Act 1990-6, Title 75, Pa. C.S. § 1793, which requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall deliver the plan to each insured at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage;
  
- (ix) Section 1799.3(a) of Act 1990-6, Title 75, Pa.C.S. § 1799, which prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,350 in excess of any self-insured retention or deductible applicable to the named insured;
  
- (x) 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;

- (xi) Section 4 of Act 205 (40 P.S. § 1171.4), which states no person shall engage in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act;
- (xii) Section 5(a)(9)(v) of the Unfair Insurance Practices Act, No. 205 (40 P.S. § 1171.5(a)(9)(v)) requires that a cancellation notice shall advise the insured of his possible eligibility for insurance under The PA Fair Plan Act;
- (xiii) Title 18, Pennsylvania Consolidated Statutes, Section 4117(k), which requires all applications for insurance and all claim forms shall contain or have attached thereto the following notice: “Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties”.

- (xiv) Title 31, Pennsylvania Code, Section 59.9(b), which requires an insurer give at least 30 days notice of termination and provided it gives notice no later than the 60<sup>th</sup> day;
  
- (xv) Title 31, Pennsylvania Code, Section 62.3(e)(4), which requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value;
  
- (xvi) Title 31, Pennsylvania Code, Section 62.3(e)(7), which states the appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within 5 working days to the consumer by the appraiser after the appraisal is completed. If a settlement offer is extended before the consumer receives the total loss evaluation report, the consumer shall be advised of the total loss evaluation report's contents and of the consumer's right to be sent a copy within 5 days after its completion;
  
- (xvii) Title 31, Pennsylvania Code, Section 146.6, requires that every insurer shall complete investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected;

- (xviii) 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
- (xix) Title 75, Pa. C.S. § 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 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 willful violation;
  - (ii) suspension of the license of any insurer which fails to comply with an Order of the Commissioner within the time limited by such Order, or any extension thereof which the Commissioner may grant.
- (d) Respondent's violations of Sections 4 and 5(a)(9) of the Unfair Insurance Practices Act, No. 205 (40 P.S. §§ 1171.5) are punishable by the following, under Section 9 of the Unfair Insurance Practices Act (40 P.S. § 1171.9):

- (i) cease and desist from engaging in the prohibited activity;
  - (ii) suspension or revocation of the license(s) of Respondent.
  
- (e) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:
  - (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);
  - (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).
  
- (f) Respondent's violations of Title 31, Pennsylvania Code, Section 146.6 are punishable under 40 P.S. §§ 1171.9, 1171.10 and 1171.11, as stated above.

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 agrees to make premium adjustments and refunds to all affected policyholders identified during the course of the examination. Proof of such adjustments and refunds shall be provided to the Department by Respondent within thirty (30) days from the date of execution of this Order.

- (e) After a period of 18 months from the date of this Order, Respondent or its successor shall be re-examined to verify corrective actions have been implemented.
  
- (f) Respondent shall pay Ninety Thousand Dollars (\$90,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.
  
- (g) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Bureau of Market Actions, 1227 Strawberry Square, Harrisburg, PA 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 the Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

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

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 delegate 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: PROGRESSIVE ADVANCED INSURANCE  
COMPANY, Respondent

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



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



\_\_\_\_\_  
RONALD A. GALLAGHER, JR.  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania

## I. INTRODUCTION

The market conduct examination was conducted at Progressive Advanced Insurance Company's office located in Mayfield Village, Ohio, from December 14, 2009, through March 12, 2010. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

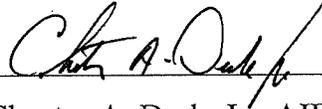
Pennsylvania Market Conduct Examination Reports generally note only those items to which the Department, after review, takes exception. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was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

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

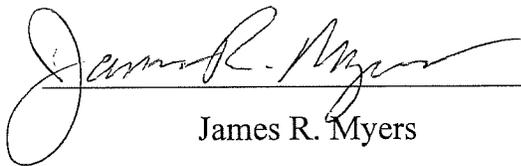
Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company personnel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

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

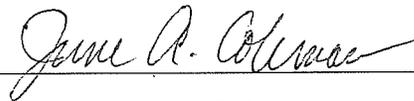
The undersigned participated in this examination and in preparation of this Report.



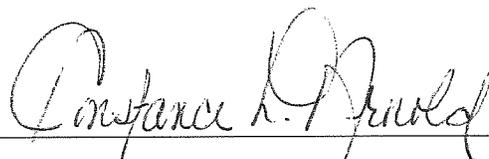
Chester A. Derk, Jr., AIE, HIA  
Market Conduct Division Chief



James R. Myers  
Market Conduct Examiner



June A. Coleman  
Market Conduct Examiner



Constance L. Arnold  
Market Conduct Examiner

## II. SCOPE OF EXAMINATION

The Market Conduct Examination was conducted on Progressive Advanced Insurance Company, hereinafter referred to as “Company,” at their office located in Mayfield Village, Ohio. 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, 2008, through June 30, 2009, 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 and rescissions.
  - Rating – Proper use of all classification and rating plans and procedures.
  
2. Motorcycle
  - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations, 60 day cancellations and rescissions.
  
3. Property
  - Underwriting – Appropriate and timely notices of nonrenewal, midterm cancellations, 60-day cancellations and rescissions.
  - Rating – Proper use of all classification and rating plans and procedures.
  
4. Claims
  
5. Forms

6. Advertising

7. Complaints

8. Licensing

### III. COMPANY HISTORY AND LICENSING

Progressive Advanced Insurance Company was incorporated on June 5, 1930, under the laws of Tennessee, and commenced business on August 26, 1930. Activities were conducted under the name Memphis Fire Insurance Company, from inception until February 9, 1989, when the Company became known as Midland Risk Insurance Company. On March 7, 1997, all outstanding shares of the Midland Group were acquired by The Progressive Corporation, a publicly traded holding company incorporated in Ohio. On September 20, 1999, the Company changed its name to Progressive Home Insurance Company. The Company was redomesticated from Tennessee, to Ohio, in 2001. Effective January 1, 2004, ownership of the Midland Group was transferred from The Progressive Corporation to Progressive Direct Holdings, Inc., a holding company incorporated in Delaware. The present title was adopted on May 19, 2006.

#### LICENSING

Progressive Advanced Insurance Company's Certificate of Authority to write business in the Commonwealth was last issued on April 1, 2010. The Company is licensed in Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas and West Virginia. The Company's 2009 annual statement reflects Direct Written Premium for all lines of business in the Commonwealth of Pennsylvania as \$101,858,601. Premium volume related to the areas of this review were: Inland Marine \$319,645; Private Passenger Automobile Direct Written Premium was

reported as Private Passenger Auto No-Fault (personal injury protection)  
\$7,793,483; Other Private Passenger Auto Liability \$57,884,038 and Private  
Passenger Auto Physical Damage \$35,657,894.

#### *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, boat, motorcycle and travel trailer 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.

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 canceled 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 3,435 private passenger automobile files identified as being canceled in the first 60 days of new business, 32 files were selected for review. All 32 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 10,619 private passenger automobile files identified as midterm cancellations, 77 files were selected for review. All 77 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 88 private passenger automobile files identified as nonrenewals, 25 files were selected for review. All 25 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*.

From the universe of 1,026 private passenger automobile files identified as rescissions, 25 files were selected for review. The 25 files were received

and reviewed. No violations were noted.

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

Progressive reports its premium writings for private passenger automobile to the Pennsylvania Assigned Risk Plan for its companies under Progressive Casualty Insurance Company. As a result, Progressive Advanced Insurance Company does not receive any assignments from the Pennsylvania Assigned Risk Plan.

## **C. Motorcycle**

### 1. 60-Day Cancellations

A 60-day cancellation is considered to be any policy, which was canceled 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 430 motorcycle policies cancelled in the first 60 days of new business, 15 files were selected for review. All 15 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 2,659 motorcycle policies cancelled midterm during the experience period, 25 files were selected for review. All 25 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.

The universe of 12 motorcycle policies nonrenewed during the experience period was selected for review. All 12 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*.

From the universe of 84 motorcycle policies identified as rescissions during the experience period, 10 files were selected for review. All 10 files were received and reviewed. No violations were noted.

#### **D. Property**

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

A 60-day cancellation is considered to be any policy, which was canceled 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.

The universe of 32 property policies which were canceled within the first 60 days of new business was selected for review. The policies consisted of boat, motor home and travel trailer. Of the 32 files reviewed, 30 cancellations were initiated by the insured and 2 cancellations were initiated by the Company. The 4 violations noted were based on 2 files, resulting in an error ratio of 6%.

The following findings were made:

*2 Violations Title 31, Pa. Code, Section 59.9(b)*

Requires an insurer give at least 30 days notice of termination and provided it gives notice no later than the 60<sup>th</sup> day. The Company did not provide the required 30 days notice of cancellation for the 2 files noted.

*2 Violations Act 205, Section 5(a)(9)(v) [40 P.S. §1171.5(a)(9)(v)]*

Requires that a cancellation notice shall advise the insured of his possible eligibility for insurance under the act of July 31, 1968 (P.L. 738, No. 233), known as “The PA Fair Plan Act”. The Company did not advise the insured of his possible eligibility under the Fair Plan for the 2 files 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 186 personal property policies which were cancelled midterm during the experience period, 45 files were selected for review. The property policies consisted of boat, motor home and travel trailer. All 45 files were received and reviewed. Of the 45 files reviewed, 40 were identified as midterm cancellations and 5 files were identified as 60-day cancellations. The 5 violations noted were based on 5 files, resulting in an

error ratio of 11%.

The following findings were made:

*5 Violations Act 205, Section 5(a)(9)(v) [40 P.S. §1171.5(a)(9)(v)]*

Requires that a cancellation notice shall advise the insured of his possible eligibility for insurance under the act of July 31, 1968 (P.L. 738, No. 233), known as “The PA Fair Plan Act”.

*AND*

Adjudications: Donegal v. Hunt P87-4-15 (1987)

PA National v. Herron PI 87-3-5 (1987) affirmed 551 A. 2<sup>nd</sup> 368 (Pa. Cmwlth. 1988)

The Company did not advise the insured of his possible eligibility under the Fair Plan for the 5 files 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.

The universe of 3 property policies which were nonrenewed during the experience period was selected for review. The property policies consisted of boat and travel trailer. All 3 files were received and reviewed. The 3 violations noted were based on 3 files, resulting in an error ratio of 100%.

The following findings were made:

*3 Violations Act 205, Section 5(a)(9)(v) [40 P.S. §1171.5(a)(9)(v)]*

Requires that a cancellation notice shall advise the insured of his possible eligibility for insurance under the act of July 31, 1968 (P.L. 738, No. 233), known as “The PA Fair Plan Act”. The Company did not advise the insured of his possible eligibility under the Fair Plan for the 3 files 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 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)], which establishes conditions under which cancellation of a policy is permissible along with the form requirements of the rescission notice.

The universe of 19 property policies identified as rescissions were selected for review. The policies consisted of boat, motor home and travel trailer. All 19 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.

Private Passenger Automobile – New Business Without Surcharges

From the universe of 43,605 private passenger automobile policies identified as new business without surcharges, 50 files were selected for review. All 50 files were received and reviewed. The 219,905 violations noted were based on the universe of 43,605 files, resulting in an error ratio of 100%.

The following findings were made:

*26,732 Violations Act 246, The Casualty and Surety Rate Regulatory Act,  
Section 4 (40 P.S. §1184)*

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to apply the proper rate factors for territory, smoothing, expense load tort option, recover device discount, airbag driver discount and airbag full discount, which resulted in overcharges of \$44,594.

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

Requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option. The Company failed to provide the signed limited tort selection form for the file

noted.

*1 Violation Title 75, Pa. C.S. §1731(b)*

The named insured shall be informed that he may reject uninsured motorist coverage by signing a written rejection form. The Company provided a signed uninsured motorist rejection form but the policy lists uninsured motorist coverage.

*1 Violation Title 75, Pa. C.S. §1738(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 provided the signed rejection forms of stacked limits for uninsured and underinsured motorists coverage, but the policy listed the coverages as stacked.

*43,605 Violations Title 75, Pa. C.S. §1791*

Requires the Company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten-point type at the time of application for original coverage. The Company failed to provide the notice of available benefits and limits at the time of application.

*43,605 Violations Title 75, Pa. C.S. §1791.1(a)*

Requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the

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

*43,605 Violations Title 75, Pa. C.S §1791.1(b)*

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the notice of tort options to the insured at the time of application.

*43,605 Violations Title 75, Pa. C.S. §1793(b)*

Requires the insurer to provide to the insured a copy of their surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and the plan shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance

coverage. The Company failed to provide the surcharge disclosure plan at the time of application.

*18,750 Violations Title 75, Pa. C.S. §1738(c)(d)(1)*

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 premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.

*AND*

*Act 205, Section 4 (40 P.S. §1171.4)*

Unfair method of competition and unfair or deceptive acts or practices prohibited. No person shall engage in this State in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy, resulting in overcharges of \$60,658.

The following concerns were made:

**Concern:** The Company is currently in the process of emailing required disclosure forms to applicants that have requested automobile insurance via telephone or internet. It is a concern that when sending the information during a telephone sale, the producer does not describe what types of disclosures are being sent. The Company should revise their procedures to advise and describe to the prospective insured(s) what disclosures are being sent.

**Concern:** During the on-line application process, the consumer is asked several questions regarding household residents, vehicle usage and garaging. When the application process is completed, the prospective insured is then permitted to print out a completed application. This application contains three pre-filled answers to questions regarding household residents, vehicle usage and garaging. It is a concern that the questions being asked of the consumer do not necessarily coincide with the pre-filled answers. The Company should allow the applicant to manually answer these questions rather than have the answers pre-filled to avoid potential confusion in the type of coverage or whether the applicant is even eligible for private passenger automobile insurance.

Private Passenger Automobile - New Business With Surcharges

From the universe of 10,090 private passenger automobile policies identified as new business with surcharges by the Company, 100 files were selected for review. All 100 files were received and reviewed. The 51,646 violations noted were based on the universe of 10,090 files, resulting in an error ratio of 100%.

The following findings were made:

*7,275 Violations Act 246, The Casualty and Surety Rate Regulatory Act,  
Section 4 (40 P.S. §1184)*

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the

time of issue. The Company failed to apply the proper rate factors for territory, smoothing, expense load tort option, recover device discount, airbag driver discount and airbag full discount, which resulted in overcharges of \$15,616.

*12 Violations Title 75, Pa. C.S. §1705(a)(1)&(4)*

Requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option. The Company failed to provide the signed limited tort selection forms for the 12 files noted.

*10,090 Violations Title 75, Pa. C.S. §1791*

Requires the Company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten-point type at the time of application for original coverage. The Company failed to provide the notice of available benefits and limits at the time of application.

*10,090 Violations Title 75, Pa. C.S. §1791.1(a)*

Requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the Commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten-

point type: “The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverages. Any additional coverage or coverages in excess of the limits required by law are provided only at your request as enhancements to basic coverages.” The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured’s existing coverages. The Company failed to provide the itemized invoice listing the minimum coverage levels at the time of application.

*10,090 Violations Title 75, Pa. C.S §1791.1(b)*

Requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the notice of tort options to the insured at the time of application.

*10,090 Violations Title 75, Pa. C.S. §1793(b)*

Requires the insurer to provide to the insured a copy of their surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and the plan shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The Company failed to provide the surcharge disclosure plan at the time of application.

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

Prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,350 in excess of any self insured retention or deductible applicable to the named insured. The Company did not provide any documentation to support the surcharge, which resulted in an overcharge of \$222.

*3,998 Violations Title 75, Pa. C.S. §1738(c)(d)(1)*

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 premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.

*AND*

*Act 205, Section 4 (40 P.S. §1171.4)*

Unfair method of competition and unfair or deceptive acts or practices prohibited. No person shall engage in this State in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy, resulting in overcharges of \$10,531.

The following concern was made:

**Concern:** The Company is currently in the process of emailing required disclosure forms to applicants that have requested automobile insurance via telephone or internet. It is a concern that when sending the information during a telephone sale, the producer does not describe what types of disclosures are being sent. The Company should revise their procedures to advise and describe to the prospective insured(s) what disclosures are being sent.

## 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 14,854 private passenger automobile policies renewed without surcharges during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 49,798 violations noted were based on information provided by the Company.

The following findings were made:

#### *29,804 Violations Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40 P.S. §1184)*

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to apply the proper rate factors for territory, smoothing, expense load tort option, recover device discount, airbag driver discount and airbag full discount, which resulted in overcharges of \$47,943.

*19,994 Violations Title 75, Pa. C.S. §1738(c)(d)(1)*

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 premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.

*AND*

*Act 205, Section 4 (40 P.S. §1171.4)*

Unfair method of competition and unfair or deceptive acts or practices prohibited. No person shall engage in this State in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy, resulting in overcharges of \$68,075.

The following concern was made:

The Company provided to the insured a notice listing the minimum coverage levels mandated by the Commonwealth and the total annual premium for the mandated coverage levels. The total annual premiums for the mandated minimum coverages for limited tort and full tort options provided by the Company were not reflective of the correct premiums. The Company failed to provide the required invoice that itemizes the premium for each minimum coverage level. The Company should provide the insured at the time of renewal an itemized invoice that provides the correct premium for the coverage levels.

Private Passenger Automobile – Renewals With Surcharges

From the universe of 3,826 private passenger automobile policies renewed with surcharges during the experience period, 75 files were selected for review. All 75 files were received and reviewed. The 11,110 violations noted were based on information provided by the Company.

The following findings were made:

*7,064 Violations Act 246, The Casualty and Surety Rate Regulatory Act,*

*Section 4 (40 P.S. §1184)*

Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to apply the proper rate factors for territory, smoothing, expense load tort option, recover device discount, airbag driver discount and airbag full discount, which resulted in undercharges of \$15,057.

*4,046 Violations Title 75, Pa. C.S. §1738(c)(d)(1)*

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 premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.

*AND*

*Act 205, Section 4 (40 P.S. §1171.4)*

Unfair method of competition and unfair or deceptive acts or practices prohibited. No person shall engage in this State in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy, resulting in overcharges of \$11,684.

The following concern was made:

The Company provided to the insured a notice listing the minimum coverage levels mandated by the Commonwealth and the total annual premium for the mandated coverage levels. The total annual premiums for the mandated minimum coverages for limited tort and full tort options provided by the Company were not reflective of the correct premiums. The Company failed to provide the required invoice that itemizes the premium for each minimum coverage level. The Company should provide the insured at the time of renewal an itemized invoice that provides the correct premium for the coverage levels.

Miscellaneous Automobile Rating

In addition to the rating sections noted above, the Company was also asked to provide additional information regarding the total number of policies that specifically contained: one or more excluded drivers, single car non-stacked uninsured motorist coverage surcharges for an unverified driver record and risks that initially had one vehicle but added another vehicle during the policy period. The additional information resulted in the following:

From the universe of 1,625 private passenger automobile policies with a surcharge for an unverified driving record, 50 files were selected for review. No violations were noted.

From the universe of 4,725 private passenger automobile policies with a vehicle-add endorsement, 25 files were selected for review. All 25 files were received and reviewed. The 4,725 violations noted were based on the universe of 4,725 files, resulting in an error ratio of 100%.

The following findings were made:

*4,725 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.

*AND*

*Adjudication: Sackett/Nationwide Mutual Insurance Company, J-117-2006 (2006)*

When an existing insured purchases uninsured or underinsured motorist coverage for more than one vehicle under a policy, the named insured must be provided with the opportunity to waive stacking of that coverage. The Company failed to inform the insured of the opportunity to stack or waive stacked limits of uninsured or underinsured motorist coverage when endorsing an additional vehicle to a policy.

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

Progressive reports its premium writings for private passenger automobile to the Pennsylvania Assigned Risk Plan for its companies under Progressive Casualty Insurance Company. As a result, Progressive Advanced Insurance Company 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
- G. Boat Collision Claims
- H. Boat Comprehensive Claims
- I. Boat Property Damage Claims
- J. Boat Total Loss Claims
- K. Motorcycle Collision Claims
- L. Motorcycle Comprehensive Claims
- M. Motorcycle Property Damage
- N. Motorcycle Total Loss Claims
- O. Motorcycle Medical Claims
- P. Travel Trailer Collision Claims
- Q. Travel Trailer Comprehensive Claims
- R. Travel Trailer Total Loss 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 5,017 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 2,285 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 4,904 private passenger automobile collision claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The violation resulted in an error ratio of 2%.

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 1,508 private passenger automobile total loss claims reported during the experience period, 75 files were selected for review. All 75 files were received and reviewed. The 11 violations noted were based on 10 files, resulting in an error ratio of 13%.

The following findings were made:

##### *7 Violations Title 31, Pa. Code, Section 62.3(e)(4)*

Requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value. Of the 7 claims noted, 6 claims did not have sales tax included in the replacement value of the vehicle and one claim did not have the correct sales tax applied to the replacement cost.

##### *2 Violations Title 31, Pa. Code, Section 62.3(e)(7)*

The appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within 5 working days to the consumer by the appraiser after the appraisal is completed. If a settlement offer is extended before the consumer receives the total loss evaluation report, the

consumer shall be advised of the total loss evaluation report's contents and of the consumer's right to be sent a copy within 5 days after its completion. The Company did not provide a copy of the total loss evaluation to the consumer within 5 working days for the 2 claims noted.

*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.

*1 Violation Title 75, Pa. C.S. §1161(a)&(b) – Certificate of Salvage Required.*

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

(b) Application for certificate of salvage. – An owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. Except as provided in

Section 1163, the transferee shall immediately present the assigned certificate of title to the Department or an authorized agent of the Department with an application for a certificate of salvage upon a form furnished and prescribed by the Department. An insurer as defined in Section 1702 to which title to a vehicle is assigned upon payment to the insured or claimant of the replacement value of a vehicle shall be regarded as a transferee under this subsection. The Company failed to have the claimant produce evidence of an issued certificate of salvage on an owner retained vehicle prior to payment of the claim.

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

From the universe of 2,656 private passenger automobile first party medical claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. No violations were noted.

The following concern was made:

**Concern:** When calculating the total first party benefit limits paid, the Company is including any interest that was payable to the provider as a result of late payment penalty. The Company shall exclude the interest and any other expense items as the total amount payable and available for the total first party benefit limit.

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

From the universe of 45 private passenger automobile first party medical claims that were referred to a peer review organization by the Company, 20 files were selected for review. All 20 files were received and reviewed. Of the 20 files reviewed, 3 involved losses and benefits for the State of New Jersey and 13 involved losses and benefits for the State of New York. The Company was also asked to provide a copy of all peer review contracts in place during the experience period. The contracts were received and reviewed. No violations were noted.

#### **G. Boat Collision Claims**

From the universe of 24 boat collision 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.

#### **H. Boat Comprehensive Claims**

The universe of 11 boat comprehensive claims reported during the experience period was selected for review. All 11 files were received and reviewed. No violations were noted.

#### **I. Boat Property Damage Claims**

The universe of 3 boat property damage claims reported during the experience period was selected for review. The 3 files were received and reviewed. No violations were noted.

#### **J. Boat Total Loss Claims**

The universe of 2 boat total loss claims reported during the experience period was selected for review. The 2 files were received and reviewed. No violations were noted.

#### **K. Motorcycle Collision Claims**

From the universe of 213 motorcycle collision claims reported during the experience period, 15 files were selected for review. All 15 files were received and reviewed. No violations were noted.

#### **L. Motorcycle Comprehensive Claims**

From the universe of 253 motorcycle comprehensive claims reported during the experience period, 15 files were selected for review. All 15 files were received and reviewed. No violations were noted.

#### **M. Motorcycle Property Damage Claims**

From the universe of 143 motorcycle property damage claims reported during the experience period, 15 files were selected for review. All 15 files were received and reviewed. No violations were noted.

## N. Motorcycle Total Loss Claims

From the universe of 280 motorcycle total loss claims reported during the experience period, 38 files were selected for review. All 38 files were received and reviewed. The violation resulted in an error ratio of 3%.

The following finding was made:

*1 Violation Title 75, Pa. C.S. §1161(a)&(b) – Certificate of Salvage Required.*

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

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

### **O. Motorcycle Medical Claims**

From the universe of 119 motorcycle medical claims reported during the experience period, 15 files were selected for review. All 15 files were received and reviewed. No violations were noted.

### **P. Travel Trailer Collision Claims**

The universe of six travel trailer collision claims reported during the experience period was selected for review. All 6 files were received and reviewed. The violation resulted in an error ratio of 17%.

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.

### **Q. Travel Trailer Comprehensive Claims**

The universe of 10 travel trailer comprehensive claims reported during the experience period was selected for review. All 10 files were received and reviewed. No violations were noted.

## **R. Travel Trailer Total Loss Claims**

The universe of 3 travel trailer total loss claims reported during the experience period was selected for review. The 3 files were received and reviewed. The violation noted resulted in an error ratio of 33%.

The following finding was made:

*1 Violation Title 75, Pa. C.S. §1161(a)&(b) – Certificate of Salvage Required.*

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

(b) Application for certificate of salvage. – An owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. Except as provided in Section 1163, the transferee shall immediately present the assigned certificate of title to the Department or an authorized agent of the Department with an application for a certificate of salvage upon a form furnished and prescribed by the Department. An insurer as defined in Section 1702 to which title to a vehicle is assigned upon payment to the insured or claimant of the replacement value of a vehicle shall be regarded as a transferee under this subsection. The Company failed to have the claimant produce evidence of an issued

certificate of salvage on an owner retained vehicle prior to payment of the claim.

### 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:

#### *3 Violations Title 75, Pa. C.S. §1822*

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

*AND*

*Act 165 of 1994 [18 Pa. C.S. §4117(k)(1)]*

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. The Company failed to provide the required Pennsylvania fraud notice on a total loss settlement report, an Autosource valuation and a damage appraisal.

Automobile Rating – Renewals Without Surcharges

*14,854 Violations Title 75, Pa. C.S. §1822*

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

*AND*

*Act 165 of 1994 [18 Pa. C.S. §4117(k)(1)]*

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. The Company failed to provide the required Pennsylvania fraud notice at

the time of renewal.

Automobile Rating – Renewals With Surcharges

*3,826 Violations Title 75, Pa. C.S. §1822*

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

*AND*

*Act 165 of 1994 [18 Pa. C.S. §4117(k)(1)]*

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. The Company failed to provide the required Pennsylvania fraud notice at the time of renewal.

## *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 48 pieces of advertising in use during the experience period. The advertising materials provided included: print, broadcast, direct mail and online banners. Internet advertising 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 66 consumer complaints received during the experience period and provided all consumer complaint logs requested. Of the 66 complaint files reported, 25 files 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.

No violations were noted.

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

|       |                         |       |
|-------|-------------------------|-------|
| • 12  | Cancellation/Nonrenewal | 48%   |
| • 7   | Claims Related          | 28%   |
| • 5   | Premium/Billing Related | 20%   |
| • 1   | Miscellaneous           | 4%    |
| <hr/> |                         | <hr/> |
| 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.

Lori J. Combs

## *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 Act 205, Section 5(a)(9) [40 P.S. §1171.5(a)(9)] to ensure that the violations regarding the requirement for cancellation and nonrenewal notices, as noted in the Report, do not occur in the future.
2. The Company must review Title 31, Pa. Code, Section 59.9(b) to ensure that violations regarding the requirements for cancellation notices, as noted in the Report, do not occur in the future.
3. The Company must review Title 75, Pa. C.S. §1791 violations to ensure that the notice of available benefits is given to the insured at the time of application as noted in the Report.
4. The Company must review Title 75, Pa. C.S. 1793(b) to ensure that violations regarding the requirement to provide the insured with a surcharge disclosure plan at the time of application, as noted in the Report, do not occur in the future.
5. The Company must review Title 75, Pa. C.S. §1799.3(a) to ensure that a policy is not surcharged where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,350 in excess of any self-insured retention or deductible applicable to the named insured.

6. The Company must review Title 75, Pa. C.S. §1791.1(a) violations to ensure that an itemized invoice listing minimum coverages and premiums are provided at the time of application, as noted in the Report, and do not occur in the future.
7. The Company must review Title 75, Pa. C.S. §1791.1(b) violations to ensure that tort options are provided at the time of application, as noted in the Report, and do not occur in the future.
8. The Company must revise its underwriting procedures to ensure that each applicant for private passenger automobile liability insurance is provided an opportunity to elect a tort option and that signed tort option selection forms are obtained and retained with the underwriting file. This is to ensure that violations noted under Title 75, Pa. C.S. §1705(a)(1)(4) do not occur in the future.
9. 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.
10. The Company must review Title 75, Pa. C.S. §1738(c)(d)(1) and Act 205, Section 4 [40 P.S. 1171.4], and revise procedures to ensure that premiums are reduced for rejection of stacked uninsured motorist coverage under a single vehicle policy.

11. The Company must review Act 246, Section 4(a) and (h) [40 P.S. §1184] and take appropriate measures to ensure the rating violations listed in the report do not occur in the future.
12. The premium overcharges noted in the rating section of this report must be refunded to insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the report issue date.
13. The Company must ensure that all claim forms and automobile renewal policies contain the required fraud warning notice.
14. The Company must review Title 75, Pa. C.S. §1161(a)&(b) with its claim staff to ensure that salvage certificates are obtained and are retained with the claim file.
15. The Company should review and revise internal control procedures to ensure compliance with the claims handling requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices so that the violations relating to status letters, claim acceptance and denials, as noted in the Report, do not occur in the future.
16. The Company must review Title 31, Pa. Code, Section 62.3(e)(4) with its claim staff to ensure that sales tax is included in the replacement value of a motor vehicle. The Company must review all claims where sales tax was not included in the replacement value of a motor vehicle. The sales tax must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.

17. The Company must review Title 31, Pa. Code, Section 62.3(e)(7) with its claim staff to ensure that the consumer receives the total loss evaluation report within 5 working days after the appraisal is completed.
  
18. 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.

**XIII. COMPANY RESPONSE**

**PROGRESSIVE\***

Market Conduct and Regulatory  
Compliance Group

February 28, 2011

Mr. Chester A. Dirk Jr.  
Market Conduct Division Chief  
Office of Market Regulation  
Bureau of Market Conduct  
Property and Casualty Division  
1227 Strawberry Square  
Harrisburg, Pennsylvania 17120

RE: Examination Warrant Number: 09-M22-024

Mr. Dirk:

We have reviewed the market conduct report concerning the examination of Progressive Advanced Insurance Company ("Progressive"). We thank the Division for its observations. Our response will address each of the issues cited by the examiners. Where we agree, we will address any corrective action taken or to be taken. Our response does not address areas examined for which no violations were found.

Progressive values a strong, cordial working relationship with the Department. We are committed to providing the best possible experience for our Pennsylvania customers and look forward to working with the Department to improve that experience whenever possible.

Should you have any additional questions, please do not hesitate to contact me at 440 395 3717.

Sincerely,



Patricia Kraven  
Market Conduct Auditor

Enclosures

Progressive Advanced Insurance Company  
Examination Warrant Number: 09-M22-024  
Response

V. Underwriting

D. Property

1. 60 Day Cancellations

A 60-day cancellation is considered to be any policy, which was canceled 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.

The universe of 32 property policies which were canceled within the first 60 days of new business was selected for review. The policies consisted of boat, motor home and travel trailer. Of the 32 files reviewed, 30 cancellations were initiated by the insured and 2 cancellations were initiated by the Company. The 4 violations noted were based on 2 files, resulting in an error ratio of 6%.

The following findings were made:

*2 Violations Title 31, Pa. Code, Section 59.9(b) Requires an insurer give at least 30 days notice of termination and provided it gives notice no later than the 60th day. The Company did not provide the required 30 days notice of cancellation for the 2 files noted.*

**Progressive's response:**

In our continued efforts to maintain compliance with Pennsylvania law, effective 01/03/2009, Progressive increased the notice period to 30 days. This change meets the requirements of Title 31, Pa. Code, Section 59.9(b).

*2 Violations Act 205, Section 5(a) (9) (v) [40 P.s. §1171.5(a) (9) (v)] Requires that a cancellation notice shall advise the insured of his possible eligibility for insurance under the act of July 31, 1968 (P.L. 738, No. 233), known as "The PA Fair Plan Act". The Company did not advise the insured of his possible eligibility under the Fair Plan for the 2 files noted.*

**Progressive's response:**

Progressive still maintains its belief that Boat is not subject to the Fair Plan or Assigned Risk as 40-4-103 defines basic property insurance covered by the Fair Plan as insurance against direct loss to real or tangible personal property at a fixed location. The express purpose of the Fair Plan, as stated in 40-49-102 is to cover risks in urban areas. In addition, 75-1741 advises the Insurance Department shall ... adopt a reasonable Assigned Risk Plan for the equitable apportionment among those insurers of applicants for motor vehicle liability insurance who are entitled to, but are unable to, procure insurance through ordinary methods. The statutory provisions regarding these plans appear consistent that boat is excluded from the requirement.

While maintaining our position, Progressive will enhance its forms to meet the requirements of Act 205, Section 5(a) (9) (v) [40 P.s. §1171.5(a) (9) (v)].

**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 186 personal property policies which were cancelled midterm during the experience period, 45 files were selected for review. The property policies consisted of boat, motor home and travel trailer. All 45 files were received and reviewed. Of the 45 files reviewed, 40 were identified as midterm cancellations and 5 files were identified as 60-day cancellations. The 5 violations noted were based on 5 files, resulting in an error ratio of 11 %.

The following findings were made:

*5 Violations Act 205, Section 5(a) (9) (v) [40 P.s. §1171.5(a) (9) (v)] Requires that a cancellation notice shall advise the insured of his possible eligibility for insurance under the act of July 31, 1968 (P.L. 738, No. 233), known as "The PA Fair Plan Act".*

AND

*Adjudications: Donegal v. Hunt P87-4-15 (1987) PA National v. Herron PI 87-3-5 (1987) affirmed 551 A. 2<sup>nd</sup> 368 (Pa. Cmwltth. 1988)  
The Company did not advise the insured of his possible eligibility under the Fair Plan for the 5 files noted.*

**Progressive's response:**

Progressive will enhance its property cancellation forms to meet the requirements of Act 205, Section 5(a) (9) (v) [40 P.s. §1171.5(a) (9) (v)].

**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.

The universe of 3 property policies which were nonrenewed during the experience period was selected for review. The property policies consisted of boat and travel trailer. All 3 files were received and reviewed. The 3 violations noted were based on 3 files, resulting in an error ratio of 100%.

The following findings were made:

*3 Violations Act 205, Section 5 (a) (9) (v) [40 P.S. §1171.5(a) (9) (v)] Requires that a cancellation notice shall advise the insured of his possible eligibility for insurance under the act of July 31, 1968 (P.L. 738, No. 233), known as "The PA Fair Plan Act".*

*The Company did not advise the insured of his possible eligibility under the Fair Plan for the 3 files noted.*

**Progressive's response:**

Progressive will enhance its property nonrenewal form to meet the requirements of Act 205, Section 5(a) (9) (v) [40 P.s. §1171.5(a) (9) (v)].

**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 insured's 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 43,605 private passenger automobile policies identified as new business without surcharges, 50 files were selected for review. All 50 files were received and reviewed. The 225,060 violations noted were based on the universe of 43,605 files, resulting in an error ratio of 100%.

The following findings were made:

*26,732 Violations Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40P.S. §1184) Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to apply the proper rate factors for territory, smoothing, expense load tort option, recover device discount, airbag driver discount and airbag full discount, which resulted in overcharges of \$44,594.*

#### **Progressive's response:**

Due to an administrative error, these factors were filed with 2 decimal places instead of 3 decimal places as programmed. Progressive submitted an updated filing which was approved effective March 31, 2010 reflecting the use of 3 decimal places. We have identified the policies in which the rates were impacted by this administrative error. We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

*1 Violation Title 75, Pa. C.S. §1705(a)(1)&(4) Requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to*

*provide each applicant an opportunity to elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option. The Company failed to provide the signed limited tort selection form for the file noted.*

**Progressive's response:**

We believe this to be an isolated incident and not reflective of our overall level of compliance.

*1 Violation Title 75, Pa. C.S. §1731(b) the named insured shall be informed that he may reject uninsured motorist coverage by signing a written rejection form. The Company provided a signed uninsured motorist rejection form but the policy lists uninsured motorist coverage.*

**Progressive's response:**

We believe this to be an isolated incident and not reflective of our overall level of compliance.

*1 Violation Title 75, Pa. C.S. §1738(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 provided the signed rejection forms of stacked limits for uninsured and underinsured motorists' coverage, but the policy listed the coverages as stacked.*

**Progressive's response:**

Progressive agrees we failed to honor the insured's request to provide unstacked UM/UIM limits in this single instance. We attempted to contact the customer in March 2010 to verify what coverage they desired. We were unable to make contact with the customer. We then made the decision to honor the stacked um/uim from 01/11/2009 till 07/11/2010 and issue a refund for the premium difference between the stacked and nonstacked premium to the customer. This was completed April, 2010. Since we have not been able to reach the customer and determine the coverage desired, we are leaving the policy with the stacked coverage going forward. Proof of corrective action can be provided if requested by the Department. We believe this to be an isolated incident and not reflective of our overall level of compliance.

*43,605 Violations Title 75, Pa. C.S. §1791 Requires the Company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten-point type at the time of application for original coverage. The Company failed to provide the notice of available benefits and limits at the time of application.*

**Progressive's response:**

Progressive Casualty Insurance Company, Progressive Specialty Insurance Company and Progressive Direct Insurance Company were previously criticized for this error. While maintaining our arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive agreed to modify our process to ensure the notice is provided to customers before policy purchase.

Progressive implemented a project effective June 15, 2009 to provide the required form via fax or email prior to policy purchase. Progressive proactively included Progressive Advanced Insurance Company in this project.

While the experience period reflects concerns with our compliance of Title 75, Pa. C.S. §1791, Progressive was in the process of implementing systematic changes for all companies writing business in Pennsylvania.

Progressive is currently providing the required notice which meets the requirement of the statute.

*43,605 Violations Title 75, Pa. C.S. §179J.1(a) Requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the Commonwealth and the premium charge for the insured to purchase the minimum mandated coverage. The invoice must contain the following notice in print of no less than ten point type: "The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical benefit coverage. Any additional coverage or coverages in excess of the limits required by law are provided only at your request as enhancements to basic coverages." The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the*

*insured's existing coverages. The Company failed to provide the itemized invoice listing the minimum coverage levels at the time of application.*

**Progressive's response:**

Progressive Casualty Insurance Company, Progressive Specialty Insurance Company and Progressive Direct Insurance Company were previously criticized for this error. While maintaining our arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive agreed to modify our process to ensure the notice is provided to customers before policy purchase.

Progressive implemented a project effective June 15, 2009 to provide the required form via fax or email prior to policy purchase. Progressive proactively included Progressive Advanced Insurance Company in this project.

While the experience period reflects concerns with our compliance of Title 75, Pa. C.S. §1791, Progressive was in the process of implementing systematic changes for all companies writing business in Pennsylvania.

Progressive is currently providing the required notice which meets the requirement of the statute.

*43,605 Violations Title 75, Pa. C.S §1791.1(b) requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the notice of tort options to the insured at the time of application.*

**Progressive's response:**

Progressive Casualty Insurance Company, Progressive Specialty Insurance Company and Progressive Direct Insurance Company were previously criticized for this error. While maintaining our arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive agreed to modify our process to ensure the notice is provided to customers before policy purchase.

Progressive implemented a project effective June 15, 2009 to provide the required form via fax or email prior to policy purchase. Progressive proactively included Progressive Advanced Insurance Company in this project.

While the experience period reflects concerns with our compliance of Title 75, Pa. C.S. §1791, Progressive was in the process of implementing systematic changes for all companies writing business in Pennsylvania.

Progressive is currently providing the required notice which meets the requirement of the statute.

*43,605 Violations Title 75, Pa. C.S. §1793(b) requires the insurer to provide to the insured a copy of their surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and the plan shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The Company failed to provide the surcharge disclosure plan at the time of application.*

**Progressive's response:**

Progressive Casualty Insurance Company, Progressive Specialty Insurance Company and Progressive Direct Insurance Company were previously criticized for this error. While maintaining our arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive agreed to modify our process to ensure the notice is provided to customers before policy purchase.

Progressive implemented a project effective June 15, 2009 to provide the required form via fax or email prior to policy purchase. Progressive proactively included Progressive Advanced Insurance Company in this project.

While the experience period reflects concerns with our compliance of Title 75, Pa. C.S. §1791, Progressive was in the process of implementing systematic changes for all companies writing business in Pennsylvania.

Progressive is currently providing the required notice which meets the requirement of the statute.

*18,750 Violations Title 75, Pa. C.S. §1738(c)(d)(I) 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 premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.*

AND

*Act 205, Section 4 (40P.S. §1171.4) Unfair method of competition and unfair or deceptive acts or practices prohibited. No person shall engage in this State in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy, resulting in overcharges of \$60,658.*

**Progressive's response:**

Progressive respectfully disagrees that it failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy.

We filed updates to our Progressive Advanced Insurance Company product effective June 27, 2008. Please reference state tracking number B13013001. The overall rate change for Uninsured Motorist (UM) coverage was 0%. The rate change was 0% for stacked single car policies and 0% for unstacked single car policies. In off-setting the new discounts within the UM rate order calculation, the single car stacked base rate did not increase as much as the single car unstacked rate. Although this specific change was an unintentional design, the change was approved within a prior approval filing. We have subsequently addressed this UM rate issue effective February 19, 2010. Please see state tracking number B26931001.

While maintaining our arguments set forth and without admitting liability or noncompliance, we have identified the policies in which the rates were affected. We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

The following concerns were made:

**Concern:** The Company is currently in the process of emailing required disclosure forms to applicants that have requested automobile insurance via telephone or internet. It is a concern that when sending the information during a telephone sale, the producer does not describe what types of disclosures are being sent. The Company should revise their procedures to advise and describe to the prospective insured(s) what disclosures are being sent.

**Progressive's response:**

Progressive appreciates the Division's concern and will take this under advisement, but it is our position we provide the required disclosures which meet the requirements of the statute. We will, however, revisit our communication guidelines in an effort to clarify the description of the disclosures.

**Concern:** During the on-line application process, the consumer is asked several questions regarding household residents, vehicle usage and garaging. When the application process is completed, the prospective insured is then permitted to print out a completed application. This application contains three pre-filled answers to questions regarding household residents, vehicle usage and garaging. It is a concern that the questions being asked of the consumer do not necessarily coincide with the pre-filled answers. The Company should allow the applicant to manually answer these questions rather than have the answers pre-filled to avoid potential confusion in the type of coverage or whether the applicant is even eligible for private passenger automobile insurance.

**Progressive's response:**

Progressive appreciates the Department's concern and will take this under advisement. We will continue to try to simplify and clarify the quoting and buying process for customers. We will attempt to remove pre-filled responses to questions asked during the quoting process. Progressive will continue to decline private passenger auto coverage to customers using their vehicle(s) to deliver goods or people for payment.

Private Passenger Automobile - New Business With Surcharges

From the universe of 10,090 private passenger automobile policies identified as new business with surcharges by the Company, 100 files were selected for review. All 100 files were received and reviewed. The 52,813 violations noted were based on the universe of 10,090 files, resulting in an error ratio of 100%.

The following findings were made:

*7,275 Violations Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40 P.s. §1184) Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to apply the proper rate factors for territory, smoothing, expense load tort option, recover device discount, airbag driver discount and airbag full discount, which resulted in overcharges of \$15,616.*

**Progressive's response:**

Due to an administrative error, these factors were filed with 2 decimal places instead of 3 decimal places as programmed. Progressive submitted an updated filing which was approved effective March 31, 2010 reflecting the use of 3 decimal places. We have identified the policies in which the rates were impacted by this administrative error. We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

*12 Violations Title 75, Pa. C.S. §1705(a)(1)&(4) Requires every insurer, prior to the issuance of a private passenger motor vehicle liability insurance policy to provide each applicant an opportunity to elect a tort option. A policy may not be issued unless the applicant has been provided an opportunity to elect a tort option. The Company failed to provide the signed limited tort selection forms for the 12 files noted.*

**Progressive's response:**

We believe these to be isolated incidents and not reflective of our overall level of compliance. We will review our processes and producers to look for opportunities to strengthen our overall compliance with this requirement.

*10,090 Violations Title 75, Pa. C.S. §1791 Requires the Company to advise the insured of the benefits and limits available under this Chapter in bold print of at least ten-point type at the time of application for original coverage. The Company failed to provide the notice of available benefits and limits at the time of application.*

**Progressive's response:**

Progressive Casualty Insurance Company, Progressive Specialty Insurance Company and Progressive Direct Insurance Company were previously criticized for this error. While maintaining our arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive agreed to modify our process to ensure the notice is provided to customers before policy purchase.

Progressive implemented a project effective June 15, 2009 to provide the required form via fax or email prior to policy purchase. Progressive proactively included Progressive Advanced Insurance Company in this project.

While the experience period reflects concerns with our compliance of Title 75, Pa. C.S. §1791, Progressive was in the process of implementing systematic changes for all companies writing business in Pennsylvania.

Progressive is currently providing the required notice which meets the requirement of the statute.

*10,090 Violations Title 75, Pa. C.S. §1791.1(a) Requires that at the time of application for original coverage and every renewal thereafter, an insurer must provide to an insured an itemized invoice listing the minimum motor vehicle insurance coverage levels mandated by the Commonwealth and the premium charge for the insured to purchase the minimum mandated coverages. The invoice must contain the following notice in print of no less than ten point type: "The laws of the Commonwealth of Pennsylvania, as enacted by the General Assembly, only require you to purchase liability and first-party medical*

*benefit coverages. Any additional coverage or coverages in excess of the limits required by law are provided only at your request as enhancements to basic coverages." The insurer shall provide the itemized invoice to the insured in conjunction with the declaration of coverage limits and premiums for the insured's existing coverages. The Company failed to provide the itemized invoice listing the minimum coverage levels at the time of application.*

**Progressive's response:**

Progressive Casualty Insurance Company, Progressive Specialty Insurance Company and Progressive Direct Insurance Company were previously criticized for this error. While maintaining our arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive agreed to modify our process to ensure the notice is provided to customers before policy purchase.

Progressive implemented a project effective June 15, 2009 to provide the required form via fax or email prior to policy purchase. Progressive proactively included Progressive Advanced Insurance Company in this project.

While the experience period reflects concerns with our compliance of Title 75, Pa. C.S. §1791, Progressive was in the process of implementing systematic changes for all companies writing business in Pennsylvania.

Progressive is currently providing the required notice which meets the requirement of the statute.

*10,090 Violations Title 75, Pa. C. S § 1791.1 (b) requires an insurer to provide an insured a notice of the availability of two alternatives of full tort insurance and limited tort insurance. The Company did not provide the notice of tort options to the insured at the time of application.*

**Progressive's response:**

Progressive Casualty Insurance Company, Progressive Specialty Insurance Company and Progressive Direct Insurance Company were previously criticized for this error. While maintaining our arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive agreed to modify our process to ensure the notice is provided to customers before policy purchase.

Progressive implemented a project effective June 15, 2009 to provide the required form via fax or email prior to policy purchase. Progressive proactively included Progressive Advanced Insurance Company in this project.

While the experience period reflects concerns with our compliance of Title 75, Pa. C.S. §1791, Progressive was in the process of implementing systematic changes for all companies writing business in Pennsylvania.

Progressive is currently providing the required notice which meets the requirement of the statute.

*10,090 Violations Title 75, Pa. C.S. §1793(b) requires the insurer to provide to the insured a copy of their surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and the plan shall be delivered to each insured by the insurer at least once annually. Additionally, the surcharge information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage. The Company failed to provide the surcharge disclosure plan at the time of application.*

**Progressive's response:**

Progressive Casualty Insurance Company, Progressive Specialty Insurance Company and Progressive Direct Insurance Company were previously criticized for this error. While maintaining our arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive agreed to modify our process to ensure the notice is provided to customers before policy purchase.

Progressive implemented a project effective June 15, 2009 to provide the required form via fax or email prior to policy purchase. Progressive proactively included Progressive Advanced Insurance Company in this project.

While the experience period reflects concerns with our compliance of Title 75, Pa. C.S. §1791, Progressive was in the process of implementing systematic changes for all companies writing business in Pennsylvania.

Progressive is currently providing the required notice which meets the requirement of the statute.

*1 Violation Title 75, Pa. C.S. §1799.3(a) Prohibits insurers from applying a surcharge, rate penalty or driver record point assignment where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,350 in excess of any self insured retention or deductible applicable to the named insured. The Company did not provide any documentation to support the surcharge, which resulted in an overcharge of \$222.*

**Progressive's response:**

Progressive agrees we improperly surcharged this single policy. We have taken the appropriate steps to correct the impacted policy, which includes the issuance of a refund for the amount of the overcharge. We believe this is an isolated incident and not reflective of our overall level of compliance.

*3,998 Violations Title 75, Pa. C.S. §1738(c)(d)(I) 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 premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.*

AND

*Act 205, Section 4 (40P.S. §1171.4) Unfair method of competition and unfair or deceptive acts or practices prohibited. No person shall engage in this State in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy, resulting in overcharges of \$10,531.*

**Progressive's response:**

Progressive respectfully disagrees that it failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy.

We filed updates to our Progressive Advanced Insurance Company product effective June 27, 2008. Please reference state tracking number B13013001. The overall rate change for Uninsured Motorist (UM) coverage was 0%. The rate change was 0% for stacked single car policies and 0% for unstacked single car policies. In off-setting the new discounts within the UM rate order calculation, the single car stacked base rate did not increase as much as the single car unstacked rate. Although this specific change was an unintentional design, the change was approved within a prior approval filing. We have subsequently addressed this UM rate issue effective February 19, 2010. Please see state tracking number B26931001.

While maintaining our arguments set forth and without admitting liability or noncompliance, we have identified the policies in which the rates were affected. We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

The following concern was made:

**Concern:** The Company is currently in the process of emailing required disclosure forms to applicants that have requested automobile insurance via telephone or internet. It is a concern that when sending the information during a telephone sale, the producer does not describe what types of disclosures are being sent. The Company should revise their procedures to advise and describe to the prospective insured(s) what disclosures are being sent.

**Progressive's Response:**

Progressive appreciates the Department's concern and will take this under advisement, but it is our position we provide the required disclosures which meet the requirements of the statute. We will, however, revisit our communication guidelines in an effort to clarify the description of the disclosures. Because no statutory or regulatory violations were found, however, we request this concern be removed.

## 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 14,854 private passenger automobile policies renewed without surcharges during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The 53,508 violations noted were based on information provided by the Company.

The following findings were made:

*29,804 Violations Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40 P.S. §1184) Requires every insurer to file with the Insurance*

*Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to apply the proper rate factors for territory, smoothing, expense load tort option, recover device discount, airbag driver discount and airbag full discount, which resulted in overcharges of \$47,943.*

**Progressive's response:**

Due to an administrative error, these factors were filed with 2 decimal places instead of 3 decimal places as programmed. Progressive submitted an updated filing which was approved effective March 31, 2010 reflecting the use of 3 decimal places. We have identified the policies in which the rates were impacted by this administrative error. We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

*19,994 Violations Title 75, Pa C.S. §1738(c)(d)(l) 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 premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage.*

AND

*Act 205, Section 4 (40 P.S. §1171.4) Unfair method of competition and unfair or deceptive acts or practices prohibited. No person shall engage in this State in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy, resulting in overcharges of \$68,075.*

**Progressive's response:**

Progressive respectfully disagrees that it failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy.

We filed updates to our Progressive Advanced Insurance Company product effective June 27, 2008. Please reference state tracking number B13013001. The overall rate change for Uninsured Motorist (UM) coverage was 0%. The rate change was 0% for stacked single car policies and 0% for unstacked single car policies. In off-setting the new discounts within the UM rate order calculation, the single car stacked base rate did not increase as much as the single car unstacked rate. Although this specific change was an unintentional design, the change was approved within a prior approval filing. We have subsequently addressed this UM rate issue effective February 19, 2010. Please see state tracking number B26931001.

While maintaining our arguments set forth and without admitting liability or noncompliance, we have identified the policies in which the rates were affected. We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

The following concern was made:

**Concern:** The Company provided to the insured a notice listing the minimum coverage levels mandated by the Commonwealth and the total annual premium for the mandated coverage levels. The total annual premiums for the mandated minimum coverages for limited tort and full tort options provided by the Company were not reflective of the correct premiums. The Company failed to provide the required invoice that itemizes the premium for each minimum coverage level. The Company should provide the insured at the time of renewal an itemized invoice that provides the correct premium for the coverage levels.

**Progressive's Response:**

Progressive appreciates the Department's concern and will take this under advisement, but it is our position we are providing notices which meet the requirements of the statute. We will, however, review our form and consider making any necessary changes on a going forward basis to ensure our continued compliance with Pennsylvania laws.

Private Passenger Automobile - Renewals With Surcharges

From the universe of 3,826 private passenger automobile policies renewed with surcharges during the experience period, 75 files were selected for review. All 75 files were received and reviewed. The 12,059 violations noted were based on information provided by the Company.

The following findings were made:

*7,064 Violations Act 246, The Casualty and Surety Rate Regulatory Act, Section 4 (40 P.s. §1184) Requires every insurer to file with the Insurance Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any rating plan, which it proposes to use in the Commonwealth. Also, no insurer shall make or issue a contract or policy except in accordance with filings or rates, which are in effect at the time of issue. The Company failed to apply the proper rate factors for territory, smoothing, expense load tort option, recover device discount, airbag driver discount and airbag full discount, which resulted in undercharges of \$15,057.*

**Progressive's response:**

Due to an administrative error, these factors were filed with 2 decimal places instead of 3 decimal places as programmed. Progressive submitted an updated filing which was approved effective March 31, 2010 reflecting the use of 3 decimal places. We have identified the policies in which the rates were impacted by this administrative error. We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

*4,046 Violations Title 75, Pa. C.S. §1738(c)(d)(1) 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 premiums for an insured who exercises such waiver shall be reduced to reflect the different cost of such coverage*

AND

*Act 205, Section 4 (40 P.S. §1171.4) Unfair method of competition and unfair or deceptive acts or practices prohibited, No person shall engage in this State in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act. The Company failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy, resulting in overcharges of \$11,684.*

**Progressive's response:**

Progressive respectfully disagrees that it failed to reduce premiums for rejection of stacked uninsured motorist coverage under a single vehicle policy.

We filed updates to our Progressive Advanced Insurance Company product effective June 27, 2008. Please reference state tracking number B13013001. The overall rate change for Uninsured Motorist (UM) coverage was 0%. The rate change was 0% for stacked single car policies and 0% for unstacked single car policies. In off-setting the new discounts within the UM rate order calculation, the single car stacked base rate did not increase as much as the single car unstacked rate. Although this specific change was an unintentional design, the change was approved within a prior approval filing. We have subsequently addressed this UM rate issue effective February 19, 2010. Please see state tracking number B26931001.

While maintaining our arguments set forth and without admitting liability or noncompliance, we have identified the policies in which the rates were affected. We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

The following concern was made:

**Concern:** The Company provided to the insured a notice listing the minimum coverage levels mandated by the Commonwealth and the total annual premium for the mandated coverage levels. The total annual premiums for the mandated minimum coverages for limited tort and full tort options provided by the Company were not reflective of the correct premiums. The Company failed to provide the required invoice that itemizes the premium for each

minimum coverage level. The Company should provide the insured at the time of renewal an itemized invoice that provides the correct premium for the coverage levels.

**Progressive's Response:**

Progressive appreciates the Department's concern and will take this under advisement, but it is our position we are providing notices which meet the requirements of the statute. We will, however, review our form and consider making any necessary changes on a going forward basis to ensure our continued compliance with Pennsylvania laws.

Miscellaneous Automobile Rating

From the universe of 4,725 private passenger automobile policies with a vehicle-add endorsement, 25 files were selected for review. All 25 files were received and reviewed. The 4,725 violations noted were based on the universe of 4,725 files, resulting in an error ratio of 100%.

The following findings were made:

*4,725 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.*

AND

*Adjudication: Sackett/Nationwide Mutual Insurance Company, J-117-2006 (2006) When an existing insured purchases uninsured or underinsured motorist coverage for more than one vehicle under a policy, the named insured must be provided with the opportunity to waive stacking of that coverage. The Company failed to inform the insured of the opportunity to stack or waive stacked limits of uninsured or underinsured motorist coverage when endorsing an additional vehicle to a policy.*

**Progressive's Response:**

Progressive respectfully disagrees that it failed to inform the insured of the opportunity to stack or waive stacked limits of uninsured and underinsured coverage when endorsing an additional vehicle to a policy. Progressive has monitored these cases and implement timely changes to ensure compliance with Pennsylvania laws.

We believe our current process for issuing UM and UIM stacking waiver forms when an additional vehicle is endorsed to a policy is consistent with the line of Sackett v. Nationwide cases and Pennsylvania law. The Sackett cases clarified that stacking waiver forms do not need to be re-signed when a vehicle is added to a multi-vehicle policy. Based specifically on the Sackett cases, we instituted a process that mails the UM and UIM stacking waiver forms (the (8057 (06/00) and 8058 (06/00) respectively) to the policyholder anytime a single-vehicle policy, stacked or non-stacked, endorses an additional vehicle making it a multi-vehicle policy. In addition to mailing the forms, we issue an accompanying letter (ACC) to policyholders explaining the reason for sending the forms and the ramifications of not returning signed forms. The current process began in March of 2009.

## VII. Claims

### C. Automobile Collision Claims

From the universe of 4,904 private passenger automobile collision claims reported during the experience period, 50 files were selected for review. All 50 files were received and reviewed. The violation resulted in an error ratio of 2%.

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.*

**Progressive's response:**

Progressive respectfully disagrees with the criticism noted. A status letter was not required as the claim was settled within 30 days.

**D. Automobile Total Loss Claims**

From the universe of 1,508 private passenger automobile total loss claims reported during the experience period, 75 files were selected for review. All 75 files were received and reviewed. The 11 violations noted were based on 10 files, resulting in an error ratio of 13%.

The following findings were made:

*7 Violations Title 31, Pa. Code, Section 62. 3 (e) (4) Requires that applicable sales tax on the replacement cost of a motor vehicle shall be included as part of the replacement value. Of the 7 claims noted, 6 claims did not have sales tax included in the replacement value of the vehicle and one claim did not have the correct sales tax applied to the replacement cost.*

**Progressive's response:**

Progressive issued a refund and provide proof to the Department on the one claim in which the sales tax was not included in the evaluation.

Progressive believes the claim in which it did not have the correct sales tax applied to the replacement cost was an isolated incident and not reflective of our general business practice.

On the remaining five claims, we believe our current practices are in compliance with Title 31, Pa. Code, Section 62. 3(e) (4). The vehicles on these claims were leased. It is our belief, that §47.17 of the Pennsylvania Code, defines that leased vehicles are not subject to sales tax. As such, they would not be subject to the requirements of Title 31, Pa. Code, Section 62. 3 (e) (4).

*2 Violations Title 31, Pa. Code, Section 62.3(e)(7) The appraiser is responsible for ensuring that a copy of the total loss evaluation report be sent within 5 working days to the consumer by the appraiser after the appraisal is completed. If a settlement offer is extended before the consumer receives the total loss evaluation report, the consumer shall be advised of the total loss*

*evaluation report's contents and of the consumer's right to be sent a copy within 5 days after its completion. The Company did not provide a copy of the total loss evaluation to the consumer within 5 working days for the 2 claims noted.*

**Progressive's response:**

We believe these to be isolated incidents and not reflective of our overall level of compliance.

*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.*

**Progressive's response:**

We believe these to be isolated incidents and not reflective of our overall level of compliance.

*1 Violation Title 75, Pa. C.S. §1161 (a) & (b) - Certificate of Salvage Required. (a) General rule - Except as provided in Sections 1162 and 1163, a person, including an insurer or self-insurer as defined in Section 1702 (relating to definitions), who owns, possesses or transfers a vehicle located or registered in the Commonwealth which qualifies as a salvage vehicle shall make application to the Department for a certificate of salvage for that vehicle.*

*(b) Application for certificate of salvage. - An owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. Except as provided in Section 1163, the transferee shall immediately present the assigned certificate of title to the Department or an authorized agent of the Department with an application for a certificate of salvage upon a form furnished and prescribed by the Department. An insurer as defined in Section 1702 to which title to a vehicle is assigned upon payment to the insured or claimant of the replacement value of a vehicle shall be regarded as a transferee under this subsection. The Company failed to have the claimant produce evidence of an*

*issued certificate of salvage on an owner retained vehicle prior to payment of the claim.*

**Progressive's response:**

We believe these to be isolated incidents and not reflective of our overall level of compliance.

**E. Automobile First Party Medical Claims**

The following concern was made:

**Concern:** When calculating the total first party benefit limits paid, the Company is including any interest that was payable to the provider as a result of late payment penalty. The Company shall exclude the interest and any other expense items as the total amount payable and available for the total first party benefit limit.

**Progressive's Response:**

Progressive recognizes the concern of the Insurance Department. Progressive does not calculate any interest or expense items towards the total of available first party benefits. We will never deduct an insured's available limits because of our obligation to pay interest or because of a loss adjustment expense.

**G. Boat Collision Claims**

From the universe of 24 boat collision 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.*

**Progressive's Response:**

Progressive respectfully disagrees with one of the criticism noted. A status letter was not required as the claim was settled within 30 days.

On the other claim, Progressive agrees we did not provide a timely status letter. However, this is an isolated incident and not reflective of our general business practice.

**N. Motorcycle Total Loss Claims**

From the universe of 280 motorcycle total loss claims reported during the experience period, 38 files were selected for review. All 38 files were received and reviewed. The violation resulted in an error ratio of 3%.

The following finding was made:

*1 Violation Title 75, Pa. C.S. §1161 (a) & (b) - Certificate of Salvage Required. (a) General rule - Except as provided in Sections 1162 and 1163, a person, including an insurer or self-insurer as defined in Section 1702 (relating to definitions), who owns, possesses or transfers a vehicle located or registered in the Commonwealth which qualifies as a salvage vehicle shall make application to the Department for a certificate of salvage for that vehicle. (b) Application for certificate of salvage. - An owner who transfers a vehicle to be destroyed or dismantled, salvaged or recycled shall assign the certificate of title to the person to whom the vehicle is transferred. Except as provided in Section 1163, the transferee shall immediately present the assigned certificate of title to the Department or an authorized agent of the Department with an application for a certificate of salvage upon a form furnished and prescribed by the Department. An insurer as defined in Section 1702 to which title to a vehicle is assigned upon payment to the insured or claimant of the replacement value of a vehicle shall be regarded as a transferee under this subsection. The file noted did not reflect a Pennsylvania salvage title was obtained.*

**Progressive's response:**

We believe this to be isolated incident and not reflective of our overall level of compliance.

#### **P. Travel Trailer Collision Claims**

The universe of six travel trailer collision claims reported during the experience period was selected for review. All 6 files were received and reviewed. The violation resulted in an error ratio of 17%.

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.*

#### **Progressive's response:**

We believe this to be isolated incident and not reflective of our overall level of compliance.

#### **R. Travel Trailer Total Loss Claims**

The universe of 3 travel trailer total loss claims reported during the experience period was selected for review. The 3 files were received and reviewed. The violation noted resulted in an error ratio of 33%.

The following finding was made:

*1 Violation Title 75, Pa. C.S. §JJ6J (a) & (b) - Certificate a/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 Company failed to have the claimant produce evidence of an issued certificate of salvage on an owner retained vehicle prior to payment of the claim.*

**Progressive's response:**

We believe this to be isolated incident and not reflective of our overall level of compliance.

## VII. 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:

*3 Violations Title 75, Pa. C.S. §1822 Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: "Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false,*

*incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000.*

AND

*Act 165 of 1994 [18 Pa. C.S. §4117(k) (1)] Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. The Company failed to provide the required Pennsylvania fraud notice on a total loss settlement report, an Autosource valuation and a damage appraisal.*

Progressive's Response:

While maintaining the arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive previously agreed to modify our process to ensure the notice was provided on the estimate. In addition, we added the fraud notice to the Total Loss Settlement Report effective March 3, 2010. We dispute that we are required to display a fraud notice on the Autosource Valuation. Progressive responds as follows with respect to each of the captioned forms:

1) The Total Loss Settlement Report has been programmed to print with the fraud language outlined in Title 18, Pa. C.S. § 4117(k) (1). A defect caused the fraud language not to print automatically if the vehicle owner is a Pennsylvania business and Pennsylvania is neither the loss state nor the policy state. The fraud language is printing in all other cases on the Total Loss Settlement Report today. The defect affecting businesses will be corrected by March 31, 2010.

2) The Autosource Valuation is not a Progressive form. It is generated by Audatex, an approved third party valuation vendor (See Adopted Regulation Bulletin No.06-557). Progressive does not control Audatex products. Further, the Autosource Valuation is produced with the Total Loss Settlement Report per our standard operating procedures. The insured or claimant therefore

views the Autosource Valuation together with the Total Loss Settlement Report, which contains a fraud notice.

3) Progressive completed programming to include a fraud notice on the estimate in December 2009. All estimates are currently printing with a fraud notice.

Automobile Rating - Renewals Without Surcharges

*14,854 Violations Title 75, Pa. C.S. §1822 Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly states in substance the following: "Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000."*

AND

*Act 165 of 1994 [18 Pa. C.S. §4117(k) (1)] Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. The Company failed to provide the required Pennsylvania fraud notice at the time of renewal.*

Progressive's response:

While maintaining the arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive previously agreed to modify our process to ensure the notice is provided on all claims forms and automobile renewal policies.

Automobile Rating - Renewals With Surcharges

*3,826 Violations Title 75, Pa. C.S. §1822 Warning notice on application for insurance and claim forms. Not later than May 1, 1990, all applications for insurance, renewals and claim forms shall contain a statement that clearly*

*states in substance the following: "Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and payment of a fine of up to \$15,000."*

AND

*Act 165 of 1994 [18 Pa. Cs. §4117(k) (1)]*

*Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties. The Company failed to provide the required Pennsylvania fraud notice at the time of renewal.*

**Progressive's response:**

While maintaining the arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive previously agreed to modify our process to ensure the notice is provided on all claims forms and automobile renewal policies.

**XI. Producer 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.*

*Lori J. Combs*

Progressive's Response:

Progressive respectfully disagrees with the alleged violation. The incorrect producer name was provided with the initial data file. The quote and subsequent sale of the policy was completed by a properly licensed and appointed agent in Pennsylvania during this interaction.

### 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 Act 205, Section 5(a)(9) [40 P.S. § 1171.5(a)(9)] to ensure that the violations regarding the requirement for cancellation and nonrenewal notices, as noted in the Report, do not occur in the future.

Progressive's response:

While maintaining our position, Progressive will enhance its forms to meet the requirements of Act 205, Section 5(a) (9) (v) [40 P.s. §1171.5(a) (9) (v)].

2. The Company must review Title 31, Pa. Code, Section 59.9(b) to ensure that violations regarding the requirements for cancellation notices, as noted in the Report, do not occur in the future.

Progressive's response:

In our continued efforts to maintain compliance with Pennsylvania law, effective 01/03/2009, Progressive increased the notice period to 30 days. This change meets the requirements of Title 31, Pa. Code, Section 59.9(b).

3. The Company must review Title 75, Pa. C.S. § 1791 violations to ensure that the notice of available benefits is given to the insured at the time of application as noted in the Report.

Progressive's response:

Progressive proactively identified the exposure with Progressive Advance Insurance Company and implemented the necessary changes. Progressive is currently providing the required notice which meets the requirement of the

statute. We will continue to monitor to ensure compliance with Pennsylvania requirements with each filing.

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

Progressive's response:

Progressive proactively identified the exposure with Progressive Advance Insurance Company and implemented the necessary changes. Progressive is currently providing the required notice which meets the requirement of the statute. We will continue to monitor to ensure compliance with Pennsylvania requirements with each filing.

5. The Company must review Title 75, Pa. C.S. § 1799.3(a) to ensure that a policy is not surcharged where, during the preceding three-year period, the aggregate cost to the insurer for any person injured or property damaged is determined to be less than \$1,350 in excess of any self-insured retention or deductible applicable to the named insured.

Progressive's response:

We believe these to be an isolated incidents and not reflective of our overall level of compliance. We have taken the appropriate steps to correct the impacted policy, which includes the issuance of a refund for the amount of the overcharge. We believe our procedures clearly support compliance of Title 75, Pa. C.S. § 1799.3(a)

6. The Company must review Title 75, Pa. C.S. §1791.1(a) violations to ensure that an itemized invoice listing minimum coverages and premiums are provided at the time of application, as noted in the Report, and do not occur in the future.

Progressive's response:

Progressive proactively identified the exposure with Progressive Advance Insurance Company and implemented the necessary changes. Progressive is currently providing the required notice which meets the requirement of the

statute. We will continue to monitor to ensure compliance with Pennsylvania requirements with each filing.

7. The Company must review Title 75, Pa. C.S. §1791.1(b) violations to ensure that tort options are provided at the time of application, as noted in the Report, and do not occur in the future.

Progressive's response:

Progressive proactively identified the exposure with Progressive Advance Insurance Company and implemented the necessary changes. Progressive is currently providing the required notice which meets the requirement of the statute. We will continue to monitor to ensure compliance with Pennsylvania requirements with each filing.

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

Progressive's response:

We believe these to be isolated incidents and not reflective of our overall level of compliance. We believe our procedures clearly support compliance of Title 75, Pa. C.S. §1705(a) (1) (4).

9. 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.

Progressive's response:

Progressive believes this to be an isolated incident and not reflective of our overall level of compliance. We took the appropriate steps to correct this mistake with our customer. We believe our procedures clearly support compliance of Title 75, Pa. C.S. § 1738(d) (1) and (2)

10. The Company must review Title 75, Pa. C.S. §1738(c) (d) (1) and Act 205, Section 4 [40 P.S. 1171.4], and revise procedures to ensure that premiums are reduced for rejection of stacked uninsured motorist coverage under a single vehicle policy.

Progressive's response:

Progressive have updated subsequent filings to ensure compliance with Title 75, Pa. C.S. §1738(c) (d) (1) and Act 205, Section 4 [40 P.S. 1171.4].

11. The Company must review Act 246, Section 4(a) and (h) [40 P.S. § 1184] and take appropriate measures to ensure the rating violations listed in the report do not occur in the future.

Progressive's response:

Progressive will review Act 246, Section 4(a) and (h) [40 P.S. § 1184] and take the appropriate measures to ensure the rating violations listed in the report do not occur in the future. Progressive has updated subsequent filings to correct the discrepancies and ensure future compliance.

12. The premium overcharges noted in the rating section of this report must be refunded to insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the report issue date.

Progressive's response:

We are in the process of issuing the applicable refund or credits. As requested by the Department, upon completion of this task, Progressive will provide a summary of the total number of policies affected, total amount of refunds, and proof of credits or refunds applied.

13. The Company must ensure that all claim forms and automobile renewal policies contain the required fraud warning notice.

Progressive's response:

While maintaining the arguments set forth and without admitting liability or noncompliance, upon learning of the Department's interpretation of the statutory language, Progressive previously agrees to modify our process to

ensure the notice is provided on all claims forms and automobile renewal policies.

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

Progressive's response:

We believe these to be isolated incidents and not reflective of our overall level of compliance. We believe our procedures clearly support compliance of Title 75, Pa. C.S. §1161(a) & (b)

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

Progressive's response:

While maintaining our arguments set forth and without admitting liability or noncompliance, Progressive will review our procedures to ensure compliance with Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.

16. The Company must review Title 31, Pa. Code, Section 62.3(e) (4) with its claim staff to ensure that sales tax is included in the replacement value of a motor vehicle. The Company must review all claims where sales tax was not included in the replacement value of a motor vehicle. The sales tax must be paid to the claimant and proof of such payment must be provided to the Insurance Department within 30 days of the Report issue date.

Progressive's response:

Progressive believe our current practices are in compliance with Title 31, Pa. Code, Section 62. 3(e) (4). The vehicles on these claims were leased. It is our belief, that §47.17 of the Pennsylvania Code, defines that leased vehicles are not subject to sales tax. As such, they would not be subject to the requirements of Title 31, Pa. Code, Section 62. 3 (e) (4).

17. The Company must review Title 31, Pa. Code, Section 62.3(e)(7) with its claim staff to ensure that the consumer receives the total loss evaluation report within 5 working days after the appraisal is completed.

Progressive's response:

We believe these to be isolated incidents and not reflective of our overall level of compliance. We believe our procedures clearly support compliance of Title 31, Pa. Code, Section 62.3(e) (7)

18. 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.

Progressive's response:

Progressive does not accept any business from any producer without ensuring they are properly appointed. There was a data integrity issue with one policy. The policy was sold and uploaded by a licensed and appointed Pennsylvania agent.