

**AMERICAN NATIONAL PROPERTY & CASUALTY
COMPANY**

**1949 East Sunshine
Springfield, MO 65899**

NAIC COMPANY CODE 28401

MARKET CONDUCT EXAMINATION REPORT

as of December 31, 2000

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**PCMC 01-09-AU
(10/23/2001)**

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June 14, 2001

The Honorable William Kirven III
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Kirven:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating and claims practices of the American National Property and Casualty Company's private passenger automobile business, has been conducted. The Company's records were examined at their home office located at 1949 East Sunshine, Springfield, Missouri, 65899. The examination covered a one-year period from January 1, 2000, to December 31, 2000.

A report of the examination of the American National Property and Casualty Company is, herewith, respectfully submitted.

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**MARKET CONDUCT
EXAMINATION REPORT
OF THE
AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY**

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COMPANY PROFILE

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY

The company was incorporated on October 1, 1973, under the laws of Missouri, and began business on January 2, 1974. The company is a stock company. All outstanding capital stock is owned by the sponsor, American National Insurance Company, Galveston, Texas.

The company is licensed in Washington, D.C., and all states except AK, HI, MA, MI, NC, NJ, NY, and RI. The company was licensed in Colorado on September 11, 1975. Lines of business written include private passenger auto, homeowners, personal umbrella, rental owners, boat owners, motorcycles, and a business owners policy for offices.

The company markets its products through approximately 1,400 licensed exclusive agents. As of 12/31/00, there were 84 agents appointed by the company in Colorado.

In 1999 the Company's operations in Colorado represented a 0.54%** share of the auto insurance market, with direct premiums totaling \$11,833,000.** During the examination period, the Company wrote 6,999* auto new business applications. The Company's private passenger auto retention ratio was 86%* for the examination period.

*Data as reported by the Company

**Data as reported by NAIC 1999 Detail and Market Share Ratio report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The market conduct examination covered by this report was performed on a routine basis to assist the Colorado Commissioner of Insurance to meet statutory requirements by determining Company compliance with the Colorado Insurance Code and generally accepted operating principles. Additionally, findings of a market conduct examination serve as an aid to the Division of Insurance's early warning system. The intent of the information contained in this report is to serve only those purposes.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered one calendar year of the Company's operations, from January 1, 2000, to December 31, 2000.

File sampling was based on a review of underwriting and claim files that were systematically selected from file runs provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus \$10.00 was allowed in most cases involving monetary values. However, in cases where monetary values were generated by computer or other system, a \$0 tolerance level was applied in order to identify possible system errors.

Additionally, a \$0 tolerance level was applied in exceptions where there appeared to be a consistent pattern of deviation from the Company's rates, on file with the Colorado Division of Insurance.

The report addresses only Private Passenger Automobile issues and contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following five (5) Company operations:

1. Company Operations and Management
2. Complaint Handling
3. Underwriting
4. Rating
5. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINATION REPORT SUMMARY

The examination resulted in twelve (12) issues arising from the Company's apparent failure to comply with Colorado statutes and regulations that govern all property and casualty insurers operating in Colorado. These issues involved 3 of the 5 categories of Company operations examined as follows:

Company Operations and Management:

In the area of company operations and management no compliance issues are addressed in this report.

Complaint Handling:

In the area of complaint handling, no compliance issues are addressed in this report.

Underwriting:

In the area of underwriting, seven (7) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements that must be complied with whenever policies are issued, canceled, non-renewed or premiums increased or decreased. The incidence of noncompliance in the underwriting area exhibited a frequency up to 10%. With regard to these underwriting practices, it is recommended that the Company review its underwriting practices and procedures and make the changes necessary to assure future compliance with applicable statutes and regulations as to each issue.

Rating:

In the area of rating, two (2) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements that must be complied with whenever policies are issued, canceled, non-renewed or premiums increased or decreased. The incidence of noncompliance in the rating area exhibited a frequency up to 16%. Regarding the compliance issues in this area, it is recommended that the Company review its rating manuals, practices and procedures and make the changes necessary to assure future compliance with applicable statutes and regulations as to each issue. A self-audit has been recommended for selected issues.

Claim Practices:

In the area of claim practices, three (3) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claim benefits, maintenance of records, and the timeliness and accuracy of claim payments. The incidence of noncompliance in the claims area exhibits a frequency of 6% to 91%. Regarding the compliance issues in this area, it is recommended the Company review its claim handling practices and procedures and make the changes necessary to assure future compliance with applicable statutes and regulations. A self-audit has been recommended for selected issues.

**AMERICAN NATIONAL PROPERTY AND CASUALTY
COMPANY**

PERTINENT FACTUAL FINDINGS

**AMERICAN NATIONAL PROPERTY AND CASUALTY
COMPANY**

PERTINENT FACTUAL FINDINGS

PRIVATE PASSENGER AUTO

PERTINENT FACTUAL FINDINGS

UNDERWRITING

Issue A: Failure to offer collision coverage as required by Colorado insurance law

Section 10-4-710, CRS provides, in part:

...(3) All insurers shall offer collision coverage for damage to insured motor vehicles subject to deductibles of one hundred dollars and two hundred fifty dollars. Insurers may offer such other reasonable deductibles as they deem appropriate. Collision coverage shall provide insurance without regard to fault against accidental property damage to the insured motor vehicle with another motor vehicle or motor vehicle caused by physical contact of the insured with another object or by upset of the insured motor vehicle, if the accident occurs within the United States, its territories or possessions, Canada, or Mexico.

The company’s underwriting manual, AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, New Business Automobile Eligibility Criteria, provides on page E-2, ANPAC Colorado, 7-99:

COVERAGE REQUIREMENTS

Collision.....Both BI/PD & Comprehensive must be carried

This conditional requirement to obtain collision coverage is not provided for in the statute.

Recommendation # 1:

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of Section 10-4-710(3) C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its practices and procedures and implemented a plan to assure the statutorily mandated offer of collision coverage.

Issue B: Adopting a rule that allows the use of comprehensive claims to increase premiums

Section 10-4-719.7 C.R.S., Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited, provides, in part:

(1) No insurer shall cancel; fail to renew; refuse to write; reclassify an insured under; reduce coverage under, unless the reduction is part of a general reduction in coverage filed with the commissioner; or increase the premium for, unless the increase is part of a general increase in premiums filed with the commissioner, any complying policy because the applicant, insured, or any resident of the household of the applicant or insured has:

(a) Had an accident or accidents which are not the fault of such named applicant, insured, household member, or permissive user;

Colorado Insurance Regulation 5-2-3 as promulgated under the authority of Section 10-1-109 C.R.S. states, in part:

...E. RULES LIMITING INSURERS' ACTION TO REFUSE TO WRITE, CANCEL, NONRENEW, INCREASE PREMIUM, SURCHARGE OR REDUCE COVERAGES

...e. Claims paid under comprehensive coverage are defined as accidents where the insured is not at fault. Therefore, no insurer shall refuse to write, cancel, fail to renew, reclassify an insured under, reduce coverage under (except as part of a general reduction in coverage filed with the Commissioner), or increase the premium for any complying policy as defined in §10-4-703(2), C.R.S., based on claims paid under comprehensive coverage pursuant to §10-4-719.7, C.R.S.

The company's rule manual, **FAMILY AUTOMOBILE AND RECREATIONAL VEHICLE POLICY PROGRAMS GENERAL RULES, GENERAL PROVISIONS**, ANPAC Colorado, 1-00, states, on page MR-9:

Rule 283 Comp Claim Free Discount

New Business

If all insureds on the policy have not had any Comprehensive paid claims in the new business experience period, a discount will be applied to the Comprehensive coverage for each vehicle on the policy. The new business experience period is the 36 months prior to being insured with the Company. The discount is based upon the number of years the account is comprehensive claim free as shown in the table below.

Renewal Business

Single Car

If all insured on the policy have not had any Comprehensive paid claims during the renewal experience period*, a discount will be applied to the Comprehensive coverage for the insured vehicle. The discount is based upon the number of years the account is comprehensive claim free as shown in the table below.

Multi Car

If there have been no Comprehensive paid claims during the renewal experience period* for all insureds on the policy, or there has been no more than one Comprehensive paid claim for at least three years on the policy and that claim occurred since being insured with the Company, a discount will be applied to the Comprehensive coverage for each insured vehicle on the policy. The discount is based upon the number of years the account is comprehensive claim free as shown in the table below.

YEARS COMP CLAIM FREE	DISCOUNT
3-5	15%
6 or more	30%

The renewal experience period shall be the 36-month period ending 30 days prior to the effective date of the next renewal.

Note: For new and renewal business, multiple Comprehensive claims insured on the same date will be considered one claim.

The company's rule awarding a discount for not making a comprehensive claim is, in effect, an increase in premium and is proscribed by Colorado Statutes and Regulations.

Recommendation # 2:

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of Section 10-4-719.7(1)(a) C.R.S. and Colorado Insurance Regulation 5-2-3(E)(e). If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has eliminated the Comp Free Claim Discount rule and implemented a plan to assure discontinuance of comprehensive claims to increase premiums. Additionally, the company should adjust their comprehensive base rates to reflect the actual rate for this coverage.

Furthermore, at policy renewal the Company should include a notice to all affected policyholders clearly stating the reason for the loss of the discount, such notice to be reviewed by the Colorado Division of Insurance before implementation.

Issue C: Adopting a rule that discourages insureds from filing PIP claims and/or seeking medical attention resulting from an automobile accident.

Section 10-1-111, C.R.S. provides that the commissioner may revoke or suspend the certificate of authority of an insurance company for:

(h) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render its operation hazardous, or its condition unsound, to the public or to its policy holders

Company rule #285, **CA\$HBACK FROM ANPAC** states:

Insureds who remain claim free on all automobile or motorcycle and homeowner policies for the three-year period after their CA\$HBACK FROM ANPAC enrollment date will receive a 25% refund of their combined automobile or motorcycle and homeowners premiums from the third prior year subject to the eligibility requirements as outlined below.

The Company's CA\$HBACK program appears to violate Colorado law, is void as against public policy, and is hazardous to the public by discouraging insureds from seeking medical attention and/or filing PIP claims resulting from the insured's involvement in an automobile accident.

Recommendation #3:

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of Section 10-1-111, C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has eliminated or modified rule #285, CA\$HBACK FROM ANPAC, to ensure that an insured is not discouraged from seeking medical attention or filing a PIP claim, and that the filing of a PIP claim does not adversely impact the insured's participation in the CA\$HBACK program. Such documentation should include evidence of filing this rating rule with the Colorado Division of Insurance Rates & Forms Section.

In addition, the Company shall revise its advertising, policies, procedures and relevant forms to ensure that insureds are fully informed about the nature of the CA\$HBACK program, including the fact that not-at-fault accidents may be counted against them, and that personal injury protection claims will not be counted against them. Applicable certifications shall be made immediately.

Issue D: Certification and use of non-complying forms and/or unfair or deceptive acts or practices

Section 10-4-725 C.R.S. Certification of policy and notice forms, provides:

(1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted by July 15, 1993, and not later than July 1 of each subsequent year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

(2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one days before using such policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner.

Section 10-3-1104 C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...(u) Certifying pursuant to section 10-4-725 or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

Furthermore, Colorado Insurance Regulation 1-1-6, concerning the elements of certification for automobile private passenger forms, provides, in part:

...B. Filing requirements

At least 31 days prior to using any new form, subject to the provisions of this regulation, each entity must file in a format prescribed by the Commissioner, a Listing of New Policy Forms including a fully executed certificate of compliance. Any such listing and the applicable certificate of compliance must be prepared individually for each program.

Not later than July 1 of each year, each private passenger automobile insurer and claims-made liability insurer must file an Annual Report of policy forms including a fully executed certificate of compliance. Not later than December 31 of each year, each entity providing health care coverages must file an annual report of policy forms including a fully executed certificate of compliance.

The company certified and used non-complying form SA-241 (5-79) Mexico Coverage Endorsement—Limited that stated, in part:

...This endorsement does not apply to trips into Mexico that exceed 10 miles from the boundary of the United States of America.

Section 10-4-710 C.R.S., Required Coverages are minimum, provides, in part:

... (3) All insurers shall offer collision coverage for damage to insured motor vehicles subject to deductibles of one hundred dollars and two hundred fifty dollars. Insurers may offer such other reasonable deductibles as they deem appropriate. Collision coverage shall provide insurance without regard to fault against accidental property damage to the insured motor vehicle with another motor vehicle or motor vehicle caused by physical contact of the insured with another object or by upset of the insured motor vehicle, if the accident occurs within the United States, its territories or possessions, Canada, or Mexico.

The company certified and used non-complying form IA-12 (9-96) Colorado Policyholder Disclosure Notice that stated, in part:

VII. DRIVING RECORD RATING

...A. ACCIDENT RECORD RATING

A chargeable accident is an accident which resulted in bodily injury and/or damage to any property resulting in payment of more than \$500. ...

Colorado Insurance Regulation 5-2-3, Auto Accident Reparations Act (No-Fault) Rules And Regulations, promulgated under the authority of section 10-1-109, C.R.S states, in part:

6. Unacceptable reasons for an increase in premium (other than a general increase filed with the Commissioner of Insurance) due to a reclassification of the insured under a complying policy include, but are not necessarily limited to the following: ...

- b. The use of a single accident resulting in payment of less than \$1,000, unless the insurer has elected to file with the Division of Insurance a rating plan such as a Safe Driver Plan, an Accident Surcharge Plan, etc., which includes statistical data justifying the use of a lesser threshold.

Although the company's rule was in violation of Colorado Insurance Regulation 5-2-3 by setting a \$500 threshold, the company's stated practice was to use a \$1000 threshold. This practice was verified by the examiners through their selected file review.

The Company certified and used non-complying form Colorado Amendatory Endorsement SA-358 (12-98), which states in part:

4. PART IV – UNISURED MOTORIST

This part is deleted and replaced by:

PART IV – UNINSURED AND UNDERINSURED MOTORIST

COVERAGE J – UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGE

...When a vehicle is provided coverage under this Part, but does not carry Coverage E – Collision, Uninsured Motorist Property Damage is provided for the insured vehicle if a premium is shown in the Declarations for UMPD and if there is actual physical contact between **your insured car** and the **uninsured motor vehicle**.

The statute requires contact only between *any* vehicle and the covered motor vehicle, not contact between the covered vehicle and the *uninsured* vehicle as stated in the company's form.

Recommendation #4:

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of sections 10-4-725 C.R.S., 10-4-610 C.R.S., 10-3-1104(1) (s) C.R.S. and Colorado Regulations 1-1-6 (B) and 5-2-3. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its practices and procedures and implemented a plan to assure that all forms certified to the Division of Insurance and all forms used in Colorado are in compliance with Colorado statutes and regulations. Furthermore, the company should correct the errant forms and, within 30 days, certify them to the Division of Insurance.

Issue E: Failure to provide collision coverage in Mexico as required by statute

Section 10-4-710 C.R.S., Required Coverages are minimum, provides, in part:

... (3) All insurers shall offer collision coverage for damage to insured motor vehicles subject to deductibles of one hundred dollars and two hundred fifty dollars. Insurers may offer such other reasonable deductibles as they deem appropriate. Collision coverage shall provide insurance without regard to fault against accidental property damage to the insured motor vehicle with another motor vehicle or motor vehicle caused by physical contact of the insured with another object or by upset of the insured motor vehicle, if the accident occurs within the United States, its territories or possessions, Canada, or Mexico.

The company's form SA-241 (5-79) Mexico Coverage Endorsement—Limited stated, in part:

...This endorsement does not apply to trips into Mexico that exceed 10 miles from the boundary of the United States of America.

The company's endorsement limiting collision coverage to within 10 miles of the United States boundary is in violation of section 10-4-710 C.R.S.

Recommendation # 5.

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of section 10-4-710 (3) C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its practices and procedures and implemented a plan to assure that all policies with collision coverage in Mexico comply with Colorado statutes.

Issue F: Failure to provide UM/UIM coverage as required by statute

Section 10-4-610 C.R.S. Property damage protection against uninsured motorists, provides, in part:

1) Every policy providing insurance for bodily injury caused by uninsured motorists that is delivered or issued for delivery in this state, which policy does not also provide insurance for collision damage, shall provide, at the request of the insured, coverage for the protection of persons insured thereunder who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of property damage to the motor vehicle described in the policy arising out of the operation, maintenance, or use of the uninsured motor vehicle. The coverage provided under this section shall cover the actual cash value of the vehicle or the cost of repair or replacement, whichever is less. Any coverage offered pursuant to this section on a vehicle may be subject to a deductible, at the option of the insurer, as with other property damage coverage. The coverage provided under this section shall not provide protection for:

- (a) Damage if there is not actual physical contact between the covered motor vehicle and another motor vehicle;

The company uses Colorado Amendatory Endorsement SA-358 that states, in part:

4. PART IV – UNISURED MOTORIST

This part is deleted and replaced by:

PART IV – UNINSURED AND UNDERINSURED MOTORIST**COVERAGE J – UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGE**

...When a vehicle is provided coverage under this Part, but does not carry Coverage E – Collision, Uninsured Motorist Property Damage is provided for the insured vehicle if a premium is shown in the Declarations for UMPD and if there is actual physical contact between **your insured car** and the **uninsured motor vehicle**.

The statute requires contact only between *any* vehicle and the covered motor vehicle, not contact between the covered vehicle and the *uninsured* vehicle as stated in the company's form.

Recommendation # 6.

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of section 10-4-610 C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its practices and procedures and implemented a plan to assure that the company's uninsured motorist coverage endorsement complies with Colorado statutes.

Issue G: Failure to provide notice of premium increase when surcharging policies

Section 10-4-720 C.R.S., Cancellation - renewal - reclassification provides, in part:

- (1) Except in accordance with the provisions of this part 7, no insurer shall cancel or fail to renew a policy of insurance which complies with this part 7, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 7.
- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form which has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner:
 - (a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;
 - (b) The proposed effective date of the action;

Surcharged Policies

Population	Sample Size	Number of Exceptions	Percentage to Sample
3156	50	5	10%

An examination of 50 systematically selected files, representing 1.58% of all policies surcharged by the Company in Colorado during the examination period, showed five (5) exceptions (10% of the sample) wherein the Company failed to provide notice of an increase in premium.

Recommendation # 7:

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of Section 10-4-720(2), C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its rules and procedures and implemented a plan to effect policy surcharge notifications as required under the Colorado Insurance Code.

PERTINENT FACTUAL FINDINGS

RATING

Issue H: Failure to utilize rates and/or rating rules filed with the Colorado Division of Insurance

Section 10-4-401(3)(b) C.R.S. provides:

Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f)(II) C.R.S. defines unfair discrimination as:

Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Colorado Insurance Regulation 5-1-10 section III (B), promulgated under the authority of section 10-1-109, C.R.S states, in part:

Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the forgoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

Private Passenger Auto New Business Policies Issued

Population	Sample Size	Number of Exceptions	Percentage to Sample
4665	50	8	16%

An examination of 50 systematically selected files, representing 1.07% of all private passenger auto new business policies issued by the Company during the examination period, showed eight (8) exceptions (16% of the sample) wherein the Company failed to use rates and/or rating rules filed with the Division of Insurance.

In 3 exceptions a primary rate class factor was applied to Medical Payments coverage. The company's computer rating program applies a primary rate class factor to all medical payments coverage written. Based upon the company's rating rule, Rule 295, Premium Determination, the primary classification factor is only applied to bodily injury, property damage, personal injury protection, comprehensive and collision coverages.

In 1 exception an inapplicable surcharge was used and in 1 exception the company failed to apply a discount for which the principal operator was eligible.

In 3 exceptions incorrect rate class factors were used.

Recommendation # 8:

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of Section 10-4-401(3)(b) C.R.S., 10-3-1104(1)(f)(II) C.R.S. and Colorado Insurance Regulation 5-1-10 section III (B). If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented a plan to ensure that rates and rules filed with the Division of Insurance are used.

In addition, the company should perform a self-audit of policies with medical payments coverage written from January 1, 2000, to the present and return any excess monies collected as determined by the self-audit. Such self-audit will be performed in accordance with the Special Guidelines for Self Audits Performed by Companies, available from the Colorado Division of Insurance Market Conduct Section.

Issue I: Failure to adopt rating rules that limit surcharges for convictions or accidents to a 36 month period

Colorado Insurance Regulation 5-2-3, as promulgated under the authority of section 10-1-109, C.R.S., states, in part:

E. RULES LIMITING INSURERS' ACTION TO REFUSE TO WRITE, CANCEL, NONRENEW, INCREASE PREMIUM, SURCHARGE OR REDUCE COVERAGES

...3. Application of time limitations.

In reviewing protests under §10-4-720, C.R.S., the Division of Insurance will apply the following time limitations:

- a. If the insurer bases its action upon the fact that an insured has been involved in an accident which resulted in payment under the policy and/or has been convicted of a motor vehicle violation, the insurer may base its action on convictions or accidents which occurred during the thirty-six (36) month period immediately preceding the date of the proposed action for that individual insured under the policy. However in case of nonrenewals, increase in premiums, or reduction in coverage, in order to take action upon incidents occurring during this thirty-six (36) period, at least one (1) incident must have occurred during the fifteen (15) month period immediately preceding the next renewal date for each individual upon whom the proposed action is being attempted. Cancellations are subject to the restrictions set forth in §10-4-602, C.R.S.
- b. An insurer may exceed the fifteen (15) month period if such renewal is the first opportunity to underwrite an additional insured, i.e., new driver in household. Surcharge or merit rating changes may only be made on the policy renewal date.

The Company's ACCIDENT RECORD RATING rule states:

311. Experience Period—Renewal Business Rating—The accident Record Rating part of the Driver Record Rating Plan applicable during the policy period is determined by totaling the number of all chargeable accidents for all assigned drivers of the insured vehicle, which become chargeable during the 36 months ending 35 days prior to the effective date of the next renewal. However, to take action upon events occurring during this three-year period, at least one chargeable conviction or accident must have occurred within 15 months of the effective date of the next renewal.

The effect of this rule is to apply a different 36 month period than the period prescribed by statute. Regulation 5-2-3 requires the 36 month period to be the period immediately preceeding the renewal date.

Recommendation #9:

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of Colorado Regulation 5-2-3. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has changed its rule and implemented a plan to assure that the company does not exceed the 36-month period immediately preceding the date of a proposed action.

In addition, the company should perform a self-audit of policies renewed from January 1, 2000, to the present to verify that no policy has been surcharged because of an accident occurring more than 36 months prior to renewal and return any excess monies collected as determined by the self-audit. Such self-audit will be performed in accordance with the Guidelines for Self Audits Performed by Companies, available from the Colorado Division of Insurance Market Conduct Section.

PERTINENT FACTUAL FINDINGS

CLAIMS

<p>Issue J: Failure to provide a statement setting forth the coverage under which payment was made</p>

Section 10-3-1104 C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

(1)...(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

...(X) Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made;

Private Passenger PIP Checks/Drafts Issued

Population	Sample Size	Number of Exceptions	Percentage to Sample
6,665	100	91	91%

An examination of 100 systematically selected checks/drafts, representing 1.5% of all PIP checks/drafts issued by the Company during the examination period, showed 91 exceptions (91% of the sample) in which the company failed to include a statement of coverage under which payment was made.

Private Passenger Auto Comprehensive and Collision Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
1514	50	36	72%

An examination of 50 systematically selected claim files, representing 3.3% of all comprehensive and collision claims paid by the Company during the examination period, showed thirty six (36) exceptions (72% of the sample) in which the company failed to include a statement of coverage under which payment was made.

Private Passenger Auto Total Loss Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
505	50	25	50%

An examination of 50 systematically selected claim files, representing 9.9% of all total loss claims paid by the Company during the examination period, showed twenty five exceptions (50% the sample) in which the company failed to include a statement of coverage under which payment was being made.

Recommendation #10:

Within 30 days, the Company should demonstrate why it should not be considered to be in violation of section 10-3-1104 (1)(h)(X), C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its practices and procedures and implemented a plan that will assure that all claims are accompanied by a statement of coverage under which the claim is paid.

Issue K: Failure to accurately calculate payments and/or adequately document claim files when determining total loss payments
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Section 10-3-1104 C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

...(f) (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

...(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

... (VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

The company's Family Automobile Policy (SA-405), Part 1-Liability, Coverage B-Property Damage, states:

We will pay damages for which an insured person is legally liable because of bodily injury or property damage resulting from the ownership, maintenance or use of a car or utility trailer.

Part III-Car Damage, Coverage D –Comprehensive and Coverage E-Collision, states:

We will pay for loss to your insured car:

- (1) Caused by **collision** (Coverage E) or
- (2) Not caused by **collision** (Coverage D)

Less any applicable deductibles. ...

Private Passenger Auto Total Loss Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
505	50	44	88%

An examination of 50 systematically selected files, representing 9.9% of all total loss claims paid by the Company during the examination period showed forty four (44) exceptions (88% of the sample) wherein the company failed to accurately calculate the amount of loss and/or document claim files.

Eleven (11) exceptions were noted wherein the company deducted various amounts described as “dealer prep” or “detailing” from the value of a vehicle. The company failed to document how or why these amounts were determined.

Two (2) exceptions were noted wherein the company deducted 50% and 30% respectively from the value of vehicles retained by an insured without obtaining a salvage bid or other basis for a determination of salvage value. The company has no written procedure to determine the salvage value of vehicles retained by insureds/claimants.

Four (4) exceptions were noted wherein the company added amounts that varied from \$77.19 to \$207.50 to vehicle values without documenting how these amounts were determined.

Twenty-seven (27) exceptions were noted wherein the Company failed to include the \$5.50 title transfer fee and the \$1.00 registration fee as part of the total loss settlement.

Private Passenger Auto Comprehensive and Collision Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
1514	50	3	6%

An examination of 50 systematically selected files, representing 3.3% of all comprehensive and collision claims paid by the Company during the examination period, showed three (3) exceptions (6% of the sample) wherein the company failed to accurately calculate the amount of total loss to the vehicles.

One (1) exception occurred because the company added \$109.37 to the value of a vehicle without documenting how this amount was determined.

Two (2) exceptions occurred because the company failed to include the \$5.50 title transfer fee and the \$1.00 registration fee as part of total loss settlements.

Recommendation #11:

Within 30 days, the Company should demonstrate why it should not be considered in violation of sections 10-3-1104(1)(f)(II) and 10-3-1104 (1)(h)(IV) C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has corrected its practices and procedures and implemented a plan that will assure proper claim file documentation and accurate loss calculation.

In addition, the Company should be required to perform a self-audit on all first party claims where a vehicle was declared a total loss from January 1, 2000, to the present and make additional payments for any amounts deducted for dealer-prep and/or detailing deductions and for any applicable unpaid taxes and fees exposed by the audit. Such self-audit will be performed in accordance with the Guidelines for Self Audits Performed by Companies, available from the Colorado Division of Insurance Market Conduct Section.

Issue L: Delay of PIP benefit payments

Section 10-3-1104(1)(h), C.R.S., defines, in part, as an unfair business practice:

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; or

Section 10-4-708 C.R.S., Prompt payment of direct benefits, provides, in part:

(1) Payment of benefits under the coverages enumerated in section 10-4-706 (1) (b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation.

Colorado Insurance regulation 5-2-8, promulgated under the authority of Section 10-1-109, provides, in part: ...

B. Prompt Payment of PIP Benefits

Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in §10-4-706, C.R.S. are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

Private Passenger Auto PIP Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
441	50	22	44%

An examination of 50 systematically selected files, representing 11.3% of all PIP claims paid by the Company during the examination period, showed twenty two (22) exceptions (44% of the sample) wherein the Company failed to pay at least one (1) PIP bill in each file within the 30 day statutory standard.

Private Passenger PIP Checks/Drafts Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
6,665	100	27	27%

An examination of 100 systematically selected drafts/checks, representing 1.5% of all PIP drafts/checks issued by the Company during the examination period, showed twenty-seven (27) exceptions (27% of the sample) wherein the Company failed to pay PIP benefits within the statutory standard of 30 days.

Recommendation #12:

Within 30 days the Company should provide documentation demonstrating why it should not be considered to be in violation of §§ 10-3-1104(1)(h)(II), (III), 10-4-708(1) C.R.S. and Colorado Insurance Regulation 5-2-8. If the Company is unable to provide such documentation, the Company should be required to provide evidence to the Division of Insurance that it has reviewed all procedures related to timeliness of handling claims, and documentation of claim files and has implemented all necessary changes to assure compliance in each area.

Summary of Recommendations

American National Property and Casualty Company Examination Report

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