

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-02-070

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF AMERICAN NATIONAL PROPERTY & CASUALTY INSURANCE COMPANY,

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of American National Property & Casualty Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated June 14, 2001 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was a corporation licensed by the Division to conduct all lines of property and casualty insurance.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on June 14, 2001, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2000, to December 31, 2000.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Order, the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Failure of the Respondent to offer collision coverage as required by Colorado insurance law. The Respondent shall implement a plan to assure that the offer of collision coverage is in compliance with Colorado insurance law.
10. Issue B concerns the following violation: Adopting a rule that allows the use of comprehensive claims to increase premiums. The Respondent shall eliminate the comprehensive free claim discount rule and implement a plan to assure discontinuance of comprehensive claims to increase premiums. Respondent shall adjust their comprehensive base rates to reflect the actual rate of coverage and provide notice to policyholders stating the reason for the loss of the discount. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue C concerns the following violation: Adopting a rule that discourages insureds from filing PIP claims and/or seeking medical attention resulting from an automobile accident. The Respondent shall 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. In addition, Respondent 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.

12. Issue D concerns the following violation: Certification and use of non-complying forms and/or unfair or deceptive acts or practices. The Respondent shall implement a plan to assure that all forms certified to the Division are in compliance with Colorado insurance law.
13. Issue E concerns the following violation: Failure to provide collision coverage in Mexico as required by statute. The Respondent shall implement a plan to assure that all policies with collision coverage in Mexico comply with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
14. Issue F concerns the following violation: Failure to provide UM/UIM coverage as required by statute. The Respondent shall implement a plan to assure that its uninsured motorist coverage endorsement complies with Colorado insurance law.
15. Issue G concerns the following violation: Failure to provide notice of premium increase when surcharging policies. The Respondent shall implement a plan to effect policy surcharge notifications to comply with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
16. Issue H concerns the following violation: Failure to utilize rates and/or rating rules filed with the Division. The Respondent shall implement a plan to ensure that its rates and rules filed with the Division are utilized. Respondent shall perform a self-audit of policies renewed from January 1, 2000 to return any excess monies collected in accordance with the Special Guidelines for Self Audits Performed by Companies. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
17. Issue I concerns the following violation: Failure to adopt rating rules that limit surcharges for convictions or accidents to a 36 month period. The Respondent shall implement a plan to assure that the Respondent does not exceed the 36 month period immediately preceding the date of a proposed action. Respondent shall perform a self-audit of policies renewed from January 1, 2000 to verify that no policy was 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.
18. Issue J concerns the following violation: Failure to provide a statement setting forth the coverage under which payment was made. The Respondent shall implement a plan to assure that all claims are accompanied by a statement of coverage under which the claim is paid. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.

19. Issue K concerns the following violation: Failure to accurately calculate payments and/or document claim files when determining total loss payments. The Respondent shall implement a plan to assure proper claim file documentation and accurate loss calculation. Respondent shall perform a self-audit on all first party claims on vehicles declared a total loss from January 1, 2000 and make additional payments for any amounts deducted for dealer-prep and/or detailing and for any applicable unpaid taxes and fees exposed by the audit. Such self-audit shall be in compliance with Colorado insurance law.
20. Issue L concerns the following violation: Delay of PIP benefit payments. The Respondent shall review all procedures related to timeliness of handling claims and documentation of claim files, and implement all necessary changes to assure compliance with Colorado insurance law.
21. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of thirteen thousand five hundred and 00/100 dollars (\$13,500.00) for the cited violations of Colorado law.
22. All requirements with this Order shall be completed on or before January 1, 2002. Respondent shall submit written evidence of compliance with all requirements to the Division within the stated time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to both the rate and forms section and the market conduct section. All audit reports must be received within ninety (90) days of the Order, with a summary of the findings, including an accounting of all monetary payments to covered persons.
23. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions as provided for by law.
24. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final examination report dated June 14, 2001, are hereby adopted as may be modified by this Order, and are filed and made an official record of this office. The above Order is hereby approved this 1st day of November, 2001.

A handwritten signature in black ink, appearing to read "Kirven III" with a stylized flourish at the end.

William J. Kirven III,
Commissioner of Insurance