

**MARKET CONDUCT EXAMINATION REPORT**

**OF**

**MGA INSURANCE COMPANY INCORPORATED**

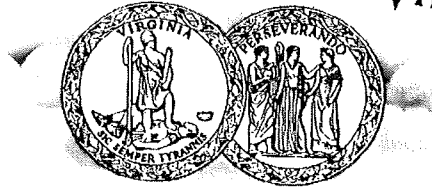
**AS OF**

**DECEMBER 31, 2016**

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE**

**Property and Casualty Division  
Market Conduct Section**

# COMMONWEALTH OF VIRGINIA



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## STATE CORPORATION COMMISSION BUREAU OF INSURANCE

I, Gloria V. Warriner, Senior Insurance Market Examiner of the Bureau of Insurance, do hereby certify that the annexed copy of the Market Conduct Examination Report of MGA Insurance Company, Inc. as of December 31, 2016, conducted at the office of the State Corporation Commission in Richmond, VA is a true copy of the original Report on file with the Bureau and also includes a true copy of the company's response to the findings set forth therein, and a true copy of the Bureau's review letters and the State Corporation Commission's Order in Case No. INS-2018-00162 finalizing the Report.

**IN WITNESS WHEREOF**, I have  
hereunto set my hand and affixed  
the official seal of the Bureau  
at the City of Richmond, Virginia,  
this 20th day of July, 2018.

A handwritten signature in black ink, appearing to read 'Gloria V. Warriner', written over a horizontal line.

Gloria V. Warriner  
Examiner in Charge

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## **INTRODUCTION**

Pursuant to the authority of § 38.2-1317 of the Code of Virginia, a comprehensive examination has been made of the private passenger automobile line of business written by MGA Insurance Company Incorporated at the office of the State Corporation Commission, Bureau of Insurance in Richmond, Virginia.

The examination commenced June 12, 2017 and concluded October 6, 2017. Brandon Ayers, Eric Ellerbe, William T. Felvey, Ju'Coby Hendrick, Latitia Orange and Gloria V. Warriner, examiners of the Bureau of Insurance, and Joyclyn M. Morton, Market Conduct Manager of the Bureau of Insurance, participated in the work of the examination. The examination was called in the Market Action Tracking System on March 11, 2015 and was assigned the examination number of VA097-6. The examination was conducted in accordance with the procedures established by the National Association of Insurance Commissioners (NAIC).

## **COMPANY PROFILE\***

MGA was incorporated on May 22, 1981, under the laws of Texas and begun business on August 13, 1981.

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\* Source: Best's Insurance Reports, Property & Casualty, 2016 Edition.

The table below indicates when the company was licensed in Virginia and the line of insurance that the company was licensed to write in Virginia during the examination period. All lines of insurance were authorized on November 2, 1993 except as noted in the table.

<b>GROUP CODE:</b>	<b>MGAIC</b>
<b>NAIC Company Number</b>	40150

LICENSED IN VIRGINIA	11/02/1993
LINES OF INSURANCE	
Accident and Sickness	
Aircraft Liability	
Aircraft Physical Damage	
Animal	
Automobile Liability	X
Automobile Physical Damage	X
Boiler and Machinery	
Burglary and Theft	03/18/1999
Commercial Multi-Peril	03/18/1999
Credit	
Farmowners Multi-Peril	03/18/1999
Fidelity	
Fire	03/18/1999
General Liability	X
Glass	03/18/1999
Homeowners Multi-Peril	03/18/1999
Inland Marine	03/18/1999
Miscellaneous Property	03/18/1999
Ocean Marine	03/18/1999
Surety	03/18/1999
Water Damage	03/18/1999
Workers' Compensation	

The table below shows the company's premium volume and approximate market share of business written in Virginia during 2016 for the line of insurance included in this examination.\* This business was developed through independent agents.

COMPANY AND LINE	PREMIUM VOLUME	MARKET SHARE
<b>MGA Insurance Company, Inc.</b>		
Private Automobile Liability	\$6,206,037	.22%
Private Automobile Physical Damage	\$2,286,204	.10%

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\* Source: The 2016 Annual Statement on file with the Bureau of Insurance and the Virginia Bureau of Insurance Statistical Report.



## SCOPE OF THE EXAMINATION

The examination included a detailed review of the company's private passenger line of business written in Virginia for the period beginning January 1, 2016 and ending December 31, 2016. This review included rating, underwriting, policy terminations, claims handling, forms, policy issuance\*, statutory notices, agent's licensing, complaint-handling, and information security practices. The purpose of this examination was to determine compliance with Virginia insurance statutes and regulations and to determine that the company's operations were consistent with public interest.

This Report is divided into three sections, Part One – The Examiners' Observations, Part Two – Corrective Action Plan, and Part Three – Recommendations. Part One outlines all of the violations of Virginia insurance laws that were cited during the examination. In addition, the examiners cited instances where the company failed to adhere to the provisions of the policies issued in Virginia. The Other Law Violations portion of Part One notes violations of other related laws that apply to insurers.

In Part Two, the Corrective Action Plan identifies the violations that rise to the level of a general business practice and are subject to a monetary penalty.

In Part Three, the examiners list recommendations regarding the company's practices that require some action by the company. This section also summarizes the violations for which the company was cited in previous examinations.

The examiners may not have discovered every unacceptable or non-compliant activity in which the company engaged. The failure to identify, comment on, or criticize specific company practices does not constitute an acceptance of the practices by the Bureau.

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\* Policies reviewed under this category reflected the company's current practices and, therefore, fell outside of the exam period.

### **STATISTICAL SUMMARY**

The files selected for the review of the rating and underwriting, termination, and claims handling processes were chosen by random sampling of the various populations provided by the company. The relationship between population and sample is shown on the following page.

In other areas of the examination, the sampling methodology is different. The examiners have explained the methodology for those areas in corresponding sections of the Report.

The details of the errors will be explained in Part One of this Report. General business practices may or may not be reflected by the number of errors shown in the summary.

<b>Population</b>						
<b>Sample Requested</b>						
AREA	MGA	TOTAL	FILES REVIEWED	FILES NOT FOUND	FILES WITH ERRORS	ERROR RATIO
<b>Private Passenger Auto</b>						
New Business	<u>5984</u> 60	<u>5984</u> 60	60	0	60	100%
Renewal Business <sup>1</sup>	<u>6121</u> 60	<u>6121</u> 60	59	0	57	97%
Co-Initiated Cancellations <sup>2</sup>	<u>281</u> 35	<u>281</u> 35	12	0	11	92%
All Other Cancellations <sup>3</sup>	<u>5137</u> 32	<u>5137</u> 32	45	0	21	47%
Nonrenewals	<u>72</u> 5	<u>72</u> 5	5	0	5	100%
<b>Claims</b>						
Auto	<u>1677</u> 72	<u>1677</u> 72	72	0	40	56%
Footnote <sup>1</sup> - One policy was canceled flat and not reviewed.						
Footnote <sup>2</sup> - Six policies were canceled flat, one policy canceled in the prior term, two policies were expirations, one policy was cancelled and rewritten to correct errors, two policies were moved to NP, 11 policies were moved to IR, and all 23 policies were not reviewed.						
Footnote <sup>3</sup> - Three policies were moved from Fst60 and ten policies were moved from Ovr60 to insured requested.						

## **PART ONE - THE EXAMINERS' OBSERVATIONS**

This section of the Report contains all of the observations that the examiners provided to the company. These include all instances where the company violated Virginia insurance statutes and regulations. In addition, the examiners noted any instances where the company violated any other Virginia laws applicable to insurers.

### **RATING AND UNDERWRITING REVIEW**

#### **Automobile New Business Policies**

The Bureau reviewed 60 new business policy files. During this review, the examiners found overcharges totaling \$859.00 and undercharges totaling \$1,671.00. The net amount that should be refunded to insureds is \$859.00 plus six percent (6%) simple interest.

- (1) The examiners found 46 violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company listed forms on the declarations page that were not applicable to the policy.
- (2) The examiners found 31 violations of § 38.2-502 1 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company misrepresented the discounts applicable to the policy.
- (3) The examiners found 54 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.
  - a. In four instances, the company failed to use the correct discounts and/or surcharges.
  - b. In one instance, the company failed to apply the correct surcharge points for accidents and/or convictions.
  - c. In 19 instances, the company failed to use the correct symbol and/or model

year factor.

- d. In five instances, the company failed to use the correct tier eligibility criteria.
- e. In 11 instances, the company failed to use the correct classification factors.
- f. In 14 instances, the company failed to use the correct increased limits factor.

### **Automobile Renewal Business Policies**

The Bureau reviewed 59 renewal business policy files. During this review, the examiners found overcharges totaling \$500.00 and undercharges totaling \$855.00. The net amount that should be refunded to insureds is \$500.00 plus six percent (6%) simple interest.

- (1) The examiners found 37 violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company listed forms on the declarations page that were not applicable to the policy.
- (2) The examiners found 33 violations of § 38.2-502 1 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company misrepresented the discounts applicable to the policy.
- (3) The examiners found 52 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.
  - a. In two instances, the company failed to use the correct discounts and/or surcharges.
  - b. In one instance, the company failed to apply the correct surcharge points for accidents and/or convictions.
  - c. In nine instances, the company failed to use the correct symbol and/or model year factor.

- d. In nine instances, the company failed to use the correct tier eligibility criteria.
- e. In 19 instances, the company failed to use the correct classification factors.
- f. In one instance, the company failed to use the correct base and/or final rates.
- g. In 11 instances, the company failed to use the correct increased limits factor.

### **TERMINATION REVIEW**

The Bureau requested cancellation files in several categories due to the difference in the way these categories are treated by Virginia insurance statutes, regulations, and policy provisions. The breakdown of these categories is described below.

### **Company-Initiated Cancellations – Automobile Policies**

#### **NOTICE MAILED PRIOR TO THE 60<sup>TH</sup> DAY OF COVERAGE**

The Bureau reviewed eight automobile cancellations that were initiated by the company where the cancellation notice was mailed prior to the 60th day of coverage in the initial policy period. During this review, the examiners found overcharges totaling \$30.00 and no undercharges. The net amount that should be refunded to insureds is \$30.00 plus six percent (6%) simple interest.

- (1) The examiners found three violations of § 38.2-512 A of the Code of Virginia. The company misrepresented the fees applicable after the policy cancelled.
- (2) The examiners found four violations of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured with written notice of an adverse underwriting decision (AUD).
- (3) The examiners found four violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the cancellation notice to the

insured.

- (4) The examiners found seven violations of § 38.2-2208 B of the Code of Virginia.
  - a. In four instances, the company failed to retain proof of mailing the cancellation notice to the insured.
  - b. In three instances, the company failed to retain proof of mailing the cancellation notice to the lienholder.

NOTICE MAILED AFTER THE 59<sup>TH</sup> DAY OF COVERAGE

The Bureau reviewed four private passenger automobile cancellations that were initiated by the company where the notice was mailed on or after the 60<sup>th</sup> day of coverage in the initial policy period. During this review, the examiners found no overcharges and no undercharges.

- (1) The examiners found four violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.
- (2) The examiners found two violations of § 38.2-2208 B of the Code of Virginia.
  - a. In one instance, the company failed to retain proof of mailing the notice of cancellation to the insured.
  - b. In one instance, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.
- (3) The examiners found nine violations of § 38.2-2212 E of the Code of Virginia.
  - a. In one instance, the company mailed the notice to an address other than the address shown in the policy.
  - b. In four instances, the company failed to mail the notice of cancellation to the insured at least 45 days prior to the effective date of cancellation.
  - c. In four instances, the company failed to provide the specific reason for cancelling the policy.

- (4) The examiners found three occurrences where the company failed to comply with the provisions of the insurance policy. The company failed to provide the required number of days' notice to the lienholder.

### **All Other Cancellations – Automobile Policies**

#### NONPAYMENT OF THE PREMIUM

The Bureau reviewed 17 private passenger automobile cancellations that were initiated by the company for nonpayment of the policy premium. During this review, the examiners found overcharges totaling \$110.00 and no undercharges. The net amount that should be refunded to insureds is \$110.00 plus six percent (6%) simple interest.

- (1) The examiners found nine violations of § 38.2-512 A of the Code of Virginia. The company misrepresented the fees applicable after the policy cancelled.
- (2) The examiners found nine violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.
- (3) The examiners found 16 violations of § 38.2-2208 B of the Code of Virginia.
- a. In eight instances, the company failed to retain proof of mailing the notice of cancellation to the insured.
  - b. In four instances, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.
  - c. In one instance, the company failed to retain a copy of the notice of cancellation sent to the lienholder.
  - d. In three instances, the company failed to retain proof of mailing the cancellation notice to the lienholder.

#### REQUESTED BY THE INSURED

The Bureau reviewed 28 automobile cancellations that were initiated by the



insured where the cancellation was to be effective during the policy term. During this review, the examiners found overcharges totaling \$37.51 and undercharges totaling \$150.17. The net amount that should be refunded to insureds is \$37.51 plus six percent (6%) simple interest.

- (1) The examiners found one violation of § 38.2-512 A of the Code of Virginia. The company misrepresented the fees applicable after the policy cancelled.
- (2) The examiners found three violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

#### **Company-Initiated Non-renewals – Automobile Policies**

The Bureau reviewed five automobile non-renewals that were initiated by the company.

- (1) The examiners found three violations of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured with written notice of an adverse underwriting decision (AUD).
- (2) The examiners found one violation of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.
- (3) The examiners found six violations of § 38.2-2208 B of the Code of Virginia.
  - a. In three instances, the company failed to retain proof of mailing the notice of cancellation to the insured.
  - b. In three instances, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.
- (4) The examiners found nine violations of § 38.2-2212 E of the Code of Virginia.
  - a. In one instance, the company failed to send the non-renewal notice to the

insured.

- b. In four instances, the company failed to include the effective date of non-renewal in the notice.
- c. In four instances, the company failed to provide the specific reason for the non-renewal in the notice.

### **CLAIMS REVIEW**

#### **Private Passenger Automobile Claims**

The examiners reviewed 72 automobile claims for the period of January 1, 2016 through December 31, 2016. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. During this review, the examiners found \$500.00 overpayments and underpayments totaling \$3,175.00. The net amount that should be paid to claimants is \$3,175.00 plus 6% simple interest.

- (1) The examiners found three violations of 14 VAC 5-400-30. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.
- (2) The examiners found 16 violations of 14 VAC 5-400-40 A. The company obscured or concealed from a first party claimant, directly or by omission, the benefits, coverages, or other provisions of an insurance policy that were pertinent to the claim.
  - a. In three instances, the company failed to accurately inform an insured of the Transportation Expenses coverage when the file indicated the coverage was applicable to the loss.
  - b. In 13 instances, the company failed to accurately inform an insured of the benefits or coverage, including rental benefits, available under the Uninsured Motorist Property Damage coverages (UMPD) and/or

Underinsured Motorist Coverage (UIM).

These findings occurred with such frequency as to indicate a general business practice.

- (3) The examiners found two violations of 14 VAC 5-400-50 C. The company failed to make an appropriate reply within ten working days to pertinent communications from a claimant, or a claimant's authorized representative, that reasonably suggested a response was expected.
- (4) The examiners found four violations of 14 VAC 5-400-60 B. The company failed to notify the insured, in writing, every 45 days of the reason for the company's delay in completing the investigation of the claim.
- (5) The examiners found one violation of 14 VAC 5-400-70 A. The company failed to deny a claim or part of a claim in writing and/or failed to keep a copy of the written denial in the claim file.
- (6) The examiners found 29 violations of 14 VAC 5-400-70 D. The company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim in accordance with the insured's policy provisions.
  - a. In five instances, the company failed to pay the insured's UMPD claim properly when Collision and UMPD coverage applied to the claim.
  - b. In five instances, the company failed to pay the insured's UMPD claim properly.
  - c. In 15 instances, the company failed to pay the proper sales and use tax, title fee, and/or license fee on a first party total loss settlement.
  - d. In three instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses

coverage.

- f. In one instance, the company failed to pay the claim in accordance with the policy provisions under the insured's Collision or Other than Collision coverage.

These findings occurred with such frequency as to indicate a general business practice.

- (7) The examiners found eight violations of 14 VAC 5-400-80 D. The company failed to provide the vehicle owner a copy of the estimate for the cost of repairs prepared by or on behalf of the company.

- a. In six instances, the company failed to provide a copy of the repair estimate to the insured.
- b. In two instances, the company failed to provide a copy of the repair estimate to the claimant.

These findings occurred with such frequency as to indicate a general business practice.

- (8) The examiners found two violations of 14 VAC 5-400-80 E. The company failed to document all information relating to the application of betterment or depreciation in the claim file.

- (9) The examiners found nine violations of § 38.2-510 A 1 of the Code of Virginia. The company misrepresented pertinent facts or insurance policy provisions relating to coverages at issue.

These findings occurred with such frequency as to indicate a general business practice.

- (10) The examiners found one violation of § 38.2-510 A 3 of the Code of Virginia. The

- company failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (11) The examiners found seven violations of § 38.2-510 A 6 of the Code of Virginia. The company failed to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.
- a. In six instances, the company failed to make a prompt settlement of the claim.
  - b. In one instance, the company failed to make an equitable settlement of the claimant's claim.
- These findings occurred with such frequency as to indicate a general business practice.
- (12) The examiners found one violation of § 38.2-510 A 13 of the Code of Virginia. The company failed to settle a claim where liability was reasonably clear under one coverage to influence a settlement under another coverage.
- (13) The examiners found two violations of § 38.2-510 C of the Code of Virginia. The company failed to disclose the required aftermarket parts notice to the vehicle owner on the estimate of repairs or in a separate document.
- a. In one instance, the company failed to disclose the required aftermarket parts notice to the insured owner on the estimate of repairs or in a separate document.
  - b. In one instance, the company failed to disclose the required aftermarket parts notice to the claimant owner on the estimate of repairs or in a separate document.
- (14) The examiners found three occurrences where the company failed to comply with the provisions of the insurance policy.

- a. In one instance, the company paid an insured more than he/she was entitled to receive under the terms of the policy.
- b. In two instances, the company failed to pay the claim under the correct coverage.

### Other Law Violations

Although not a violation of Virginia insurance laws, the examiners noted the following as a violation of other Virginia laws.

The examiners found one violation of § 46.2-624 C of the Code of Virginia. The company failed to notify the Virginia Department of Motor Vehicles when payment was made in excess of \$3,500.00 on a water-damaged vehicle.

### **REVIEW OF FORMS**

The examiners reviewed the company's policy forms and endorsements used during the examination period and those that are currently used for the line of business examined. From this review, the examiners verified the company's compliance with Virginia insurance statutes and regulations.

To obtain copies of the policy forms and endorsements used during the examination period for each line of business listed below, the Bureau requested copies from the company. In addition, the Bureau requested copies of new and renewal business policy mailings that the company was processing at the time of the Examination Data Call. The details of these policies are set forth in the Review of the Policy Issuance Process section of the Report. The examiners then reviewed the forms used on these policies to verify the company's current practices.

### **Automobile Policy Forms**

#### **POLICY FORMS USED DURING THE EXAMINATION PERIOD**

The company provided copies of 17 forms that were used during the examination

period to provide coverage on policies insuring risks located in Virginia.

The examiners found violations in this section.

#### OTHER FORMS USED DURING THE EXAMINATION PERIOD

The examiners found no additional forms to review.

#### POLICY FORMS CURRENTLY USED

The examiners found no violations in this section.

#### **REVIEW OF THE POLICY ISSUANCE PROCESS**

To obtain sample policies to review the company's policy issuance process for the lines examined, the examiners requested new and renewal business policy mailings that were sent after the company received the Examination Data Call. The company was instructed to provide duplicates of the entire packet that was provided to the insured. The details of these policies are set forth below.

For this review, the examiners verified that the company enclosed and listed all of the applicable policy forms on the declarations page. In addition, the examiners verified that all required notices were enclosed with each policy. Finally, the examiners verified that the coverages on the new business policies were the same as those requested on the applications for those policies.

#### **Automobile Policies**

The company provided five new business policies mailed on April 4, 2017. In addition, the companies provided five renewal business policies mailed on April 4, 2017.

#### NEW BUSINESS POLICIES

The examiners found five violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy as required by the statute.

a. In one instance, the company failed to list the applicable limits on the

declarations page.

- b. In four instances, the company listed forms on the declarations page that were not applicable to the policy.

#### RENEWAL BUSINESS POLICIES

- (1) The examiners found five violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy as required by the statute. The company listed forms on the declarations page that were not applicable to the policy.
- (2) The examiners found one violation of § 38.2-305 B of the Code of Virginia. The company failed to provide the “Important Information Regarding Your Insurance” notice.

#### REVIEW OF STATUTORY NOTICES

To obtain sample policies to review the content of the statutory notices that the company is required to provide to insureds and used by the company for the line examined, the examiners used the same new business policy and renewal business policy mailings that were previously described. The details of these policies have been set forth previously under the Review of the Policy Issuance Process section of the Report. The examiners verified that the notices used by the company on all applications, on all policies, and those special notices used for vehicle issued on risks located in Virginia complied with the Code of Virginia.



**General Statutory Notices**

The examiners found one violation of § 38.2-604 B of the Code of Virginia. The company's long form Notice of Information Collection and Disclosure Practices did not contain all of the information required by the statute.

**Statutory Vehicle Notices**

The examiners found no violations in this area.

**LICENSING AND APPOINTMENT REVIEW**

A review was made of new business private passenger automobile, motorcycle, and commercial automobile policies to verify that the agent of record for those policies reviewed was licensed and appointed to write business for the company as required by Virginia insurance statutes. In addition, the agent or agency to which the company paid commission for these new business policies was checked to verify that the entity held a valid Virginia license and was appointed by the company.

**Agent Review**

- (1) The examiners found one violation of § 38.2-1812 E of the Code of Virginia. The company paid commissions to a trade name that was not filed with the Commission.
- (2) The examiners found four violations of § 38.2-1822 A of the Code of Virginia. The company permitted an entity to act as an agent without first obtaining a license from the Commonwealth of Virginia.
- (3) The examiners found 17 violations of § 38.2-1833 of the Code of Virginia. The company failed to appoint an agent within 30 days of the date of the application.

**Agency Review**

- (1) The examiners found two violations of § 38.2-1833 of the Code of Virginia. The company failed to appoint an agency within 30 days of the date of application.
- (2) The examiners found five violations of § 38.2-1822 A of the Code of Virginia. The company permitted an entity to act as an agency without first obtaining a license from the Commonwealth of Virginia.

**REVIEW OF THE COMPLAINT-HANDLING PROCESS**

A review was made of the company's complaint-handling procedures and record of complaints to verify compliance with § 38.2-511 of the Code of Virginia.

The examiners found one violation of § 38.2-511 of the Code of Virginia. The company failed to maintain a complete register in compliance with the statute.

**REVIEW OF PRIVACY AND INFORMATION SECURITY PROCEDURES**

The Bureau requested a copy of the company's Information Security Program that protects the privacy of policyholder information in accordance with § 38.2-613.2 of the Code of Virginia.

The company provided its written information security procedures.

## **PART TWO – CORRECTIVE ACTION PLAN**

Business practices and the error tolerance guidelines are determined in accordance with the standards set forth by the NAIC. A seven percent (7%) error criterion was applied to claims handling. Any error ratio above this threshold for claims indicates a general business practice. In some instances, such as filing requirements, forms, notices, and agent licensing, the Bureau applies a zero tolerance standard. This section identifies the violations that were found to be business practices of Virginia insurance statutes and regulations.

### **General**

MGA Insurance shall:

Provide a Corrective Action Plan (CAP) with their response to this Report.

### **Rating and Underwriting Review**

MGA Insurance shall:

- (1) Correct the errors that caused the overcharges and undercharges, and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as of the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' accounts.
- (3) Complete and submit to the Bureau the enclosed file titled "Rating Overcharges Cited during the Examination." By returning the completed file to the Bureau, the companies acknowledge that they have refunded or credited the overcharges listed in the file.
- (4) Specify accurate information in the policy by showing only the forms applicable to

- the policy on the declarations page.
- (5) Properly represent the benefits, coverages, advantages, and conditions of the policy by showing only the applicable discounts on the declarations page.
  - (6) Use the rules and rates on file with the Bureau. Particular attention should be focused on the use of filed discounts, surcharges, points for accidents and convictions, symbols, tier eligibility criteria, driver classification factors, and increased limits factors.

### **Termination Review**

MGA Insurance shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' accounts.
- (3) Complete and submit to the Bureau the enclosed file titled "Termination Overcharges Cited during the Examination." By returning the completed file to the Bureau, the companies acknowledge they have refunded or credited the overcharges listed in the file.
- (4) Apply fees in accordance with the rules and fees on file with the Bureau.
- (5) Provide a written AUD notice when required by the statute.
- (6) Obtain valid proof of mailing cancellation notices to the insured.
- (7) Retain proof of mailing cancellation notices to the insured and lienholders.
- (8) Provide a specific reason for cancellation and/or nonrenewal.

**Claims Review**

MGA Insurance shall:

- (1) Correct the errors that caused the underpayments and overpayments, and send the amount of the underpayment to insureds and claimants.
- (2) Include six percent (6%) simple interest in the amount paid to the insureds and claimants.
- (3) Complete and submit to the Bureau the enclosed file titled "Claims Underpayments Cited During the Examination." By returning the completed file to the Bureau, the companies acknowledge that they have paid the underpayments listed in the file.
- (4) Document the claim file that all applicable coverages have been discussed with the insured. Particular attention should be given to rental benefits under UMPD and Transportation Expenses coverage.
- (5) Offer the insured an amount that is fair and reasonable as shown by the investigation of the claim, and pay the claim in accordance with the insured's policy provisions.
- (6) Provide copies of repair estimates prepared by or on behalf of the company to insureds and claimants.
- (7) Properly represent pertinent facts or insurance provisions relating to coverages at issue.
- (8) Make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.

**Review of Policy Issuance Process**

MGA Insurance shall:

- (1) Specify accurate information in the policy as required by the statute by listing only applicable forms on the declarations page.

- (2) Provide the “Important Information Regarding Your Insurance” notice as required by the statute.

### **Review of Statutory Notices**

MGA Insurance shall:

Amend the long form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 B of the Code of Virginia.

### **Licensing and Appointment Review**

MGA Insurance shall:

- (1) Appoint agents within 30 days of the application.
- (2) Pay commissions only to agencies that are appointed by the company.
- (3) Accept business only from agents and agencies that have a current license from the Commonwealth of Virginia

### **Review of the Complaint-Handling Process**

MGA Insurance shall:

Maintain a complete complaint register that is in compliance with § 38.2-511 of the Code of Virginia.

### **PART THREE – EXAMINERS’ RECOMMENDATIONS**

The examiners also found violations that did not appear to rise to the level of business practices by the company. The company should carefully scrutinize these errors and correct the causes before these errors become business practices. The following errors will not be included in the settlement offer:

#### **RECOMMENDATIONS**

We recommend that the companies take the following actions:

#### **Rating and Underwriting Review**

- The company should amend its rating manual to include a rule on how the company surcharges the insured for same day convictions.

#### **Termination**

- The company should pay closer attention to the way terminations are coded in order to comply with the cancellation provisions specified in the policy.

#### **Claims**

- The company should document the claim file when all applicable coverages have been discussed with the insured.
- The company should acknowledge correspondence that reasonably suggests a reply is expected from insureds and claimants within ten business days.
- The company should include the Tag/Title fess on claimants’ total losses.
- The company should document all information relating to the application of betterment or depreciation in the claim file.
- The company should provide the Aftermarket parts notice to the vehicle owner.
- Towing is part of the coverage under Collision and Other-Than-Collision,

towing is not separate.

### **Forms**

- The company should amend the paragraph indicating under what circumstances the endorsement applies in form PP 05 96 01 16. The form should show the 01 16 edition date in this paragraph instead 01 05.

### **Statutory Notices**

- The company should change the fraud language to the verbiage provided in § 52-40 of the Code of Virginia.
- The company should correct the Bureau of Insurance's telephone number on the Important Information to Policyholders notice, 51 IIPN (01/17).
- The company should remove all references of the insured contacting the Virginia Bureau of Insurance regarding availability of coverage on the following notices: 51NR VA (12/12) and 51CX VA (12/12).

### **SUMMARY OF PREVIOUS EXAMINATION FINDINGS**

This is the first time the Virginia Bureau of Insurance has conducted an examination of the company.



**ACKNOWLEDGEMENT**

The courteous cooperation extended by the officers and employees of the company during the course of the examination is gratefully acknowledged.

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria Warriner", written in a cursive style.

Gloria Warriner  
Senior Insurance Market Examiner

# COMMONWEALTH OF VIRGINIA



JACQUELINE K. CUNNINGHAM  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE

P.O. BOX 1157  
RICHMOND, VIRGINIA 23218  
1300 E. MAIN STREET  
RICHMOND, VIRGINIA 23219  
TELEPHONE: (804) 371-9741  
[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

October 19, 2017

**VIA UPS 2<sup>nd</sup> DAY DELIVERY**

Bettina Rudsill  
MGA Insurance Company, Inc  
3333 Lee Parkway, Suite 1200  
Dallas, TX 75219

RE: MGA Insurance Company, Inc. (NAIC# 40150)  
Market Conduct Examination

Dear Ms. Rudsill:

The Bureau of Insurance (Bureau) has conducted a market conduct examination of the above referenced company for the period of January 1, 2016 through December 31, 2016. The preliminary examination report (Report) has been drafted for the company's review.

Enclosed with this letter is a copy of the Report and copies of review sheets that have been added, withdrawn or revised since October 11, 2017. Also enclosed are several technical reports that will provide you with the specific file references for the violations listed in the Report.

Since there appears to have been a number of violations of Virginia insurance laws on the part of the company, I would urge you to closely review the Report. Please provide a written response. The company does not need to respond to any particular item with which it agrees. If the company disagrees with an item or wishes to further comment on an item, please do so in Part One of the Report. Please be aware that the examiners are unable to remove an item from the Report or modify a violation unless the company provides written documentation to support its position. When the company responds, please do not include any personal identifiable or privileged information (names, policy numbers, claim numbers, addresses, etc.). The company should use exhibits or appendices to reference any of this information. In addition, please use the same format (headings and numbering) as found in the Report. If the company fails to respond in the format of the Report the response will be returned to the company to be put in the correct order. By adhering to this practice, it will be much easier to track the responses against the Report.

Secondly, the company must provide a corrective action plan that addresses all of the issues identified in the examination, again using the same headings and numberings as are used in the Report.

Thirdly, if the company has comments it wishes to make regarding Part Three of the Report, please use the same headings and numbering for the comments. In particular, if the examiners identified issues that were numerous but did not rise to the level of a business practice, the company should outline the actions it is taking to prevent those issues from becoming a business practice.

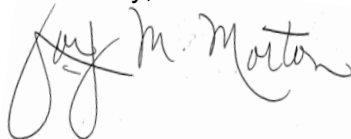
Finally, we have enclosed an Excel file that the company must complete and return to the Bureau with the company's response. This file lists the review items for which the examiners identified overcharges (rating and terminations) and underpayments (claims).

The company's response and the spreadsheet mentioned above must be returned to the Bureau by November 30, 2017.

After the Bureau has received and reviewed the company's response, we will make any justified revisions to the Report. The Bureau will then be in a position to determine the appropriate disposition of the market conduct examination.

We look forward to your reply by November 30, 2017.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is written in a cursive style with a large initial "J" and "M".

Joy Morton  
Manager  
Market Conduct Section  
Property & Casualty Division  
(804) 371-9540  
[joy.morton@scc.virginia.gov](mailto:joy.morton@scc.virginia.gov)

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**MGA Insurance Company, Inc.**

*ARE YOU DRIVEN?™*

November 29, 2017

Joy Morton, Manager  
Market Conduct Section  
1300 E. Main Street  
Richmond, Virginia 23219

Re: Market Conduct Examination  
MGA Insurance Company, Inc. (NAIC #40150)  
Examination Period January 1, 2016 through December 31, 2016

Dear Ms. Morton,

Enclosed, in separate documents, is our response to the above referenced Market Conduct Examination, exhibits and restitution worksheets.

Our response includes the same format and numbers for each section as the report. Please note, we have not processed proposed payment of items that are being contested on the attached restitution worksheet.

Sincerely,



Bettina Rudisill  
Product Manager  
Encls.

STATE CORP COMMISSION  
BUREAU OF INSURANCE  
17 DEC - 1 AM 8:43

# Preliminary Response

**PART ONE - THE EXAMINERS' OBSERVATIONS**

This section of the Report contains all of the observations that the examiners provided to the company. These include all instances where the company violated Virginia insurance statutes and regulations. In addition, the examiners noted any instances where the company violated any other Virginia laws applicable to insurers.

**RATING AND UNDERWRITING REVIEW**

This section of the Report contains all of the observations that the examiners provided to the company. These include all instances where the company violated Virginia insurance statutes and regulations. In addition, the examiners noted any instances where the company violated any other Virginia laws applicable to insurers.

**Automobile New Business Policies**

The Bureau reviewed 60 new business policy files. During this review, the examiners found overcharges totaling \$897.00 and undercharges totaling \$1,853.00. The net amount that should be refunded to insureds is \$897.00 plus six percent (6%) simple interest.

- (1) The examiners found 46 violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company listed forms on the declarations page that were not applicable to the policy.

**Company's Response:** The Company respectfully disagrees with all 46 instances. The Loss Payable Clause is a conditional endorsement and applies "at the time of the policy" if certain conditions are met. Unfortunately, at the point of sale of the policy, we do not always know if the necessary conditions are met. For example, oftentimes no lienholder is disclosed at the point of sale, and therefore no lienholder is listed on the declarations page or endorsement. However, we learn at the time of loss (or more likely subsequently upon settlement of the claim) that a lienholder did exist at the

point of sale. Please see for example of this is in review sheet ClaimVehPPA-1822200267 where we made a payment to a lienholder at the insured's request. Based on the information provided in the title, we had not been made aware of the lienholder until we were settling the claim. We make this payment to the lienholder not so much to protect the lienholder, but to protect our policyholder because public records confirm that another party, the lienholder, co-owns the vehicle. Consequently, that lienholder would have a right to recover from our policyholder any monies paid by us to the insured.

Additionally, there are a total of 11 forms and endorsements in the Virginia Auto Policy. Six of these forms are mandatory and change the policy. We know at the point of sale of the policy that these apply, and these forms and endorsements are therefore listed under the heading "Forms and Endorsements contained in this policy at its inception." on every policy we issue. There are four optional endorsements that apply only if a premium is paid. These endorsements are not listed under the heading "Forms and Endorsements contained in this policy at its inception." for every policy because we know for sure that the endorsement does not apply unless a premium is paid. The last endorsement is the Loss Payable Clause. This endorsement is unique because it is the only endorsement that we do not know for sure, at the point of sale, whether it applies to the policy. As a result, we list it under the heading "Forms and Endorsements contained in this policy at its inception." because it does not change the policy. It simply ensures the policyholder has all information they may potentially need. Finally, § 38.2-305 does not state or even suggest that a conditional form cannot be listed on the declarations page.

- (2) The examiners found 31 violations of § 38.2-502 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the

insurance policy. The company misrepresented the discounts applicable to the policy.

(3) The examiners found 59 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

a. In four instances, the company failed to use the correct discounts and/or surcharges.

b. In two instances, the company failed to apply the correct surcharge points for accidents and/or convictions.

**Company's Response:** The Company respectfully disagrees with one of the two instances. With respect to Response Sheet RPA043-158T355770, the intent is to surcharge only for the highest incident. It would be inappropriate to surcharge the customer for two minor violations that occurred from the same event.

c. In 20 instances, the company failed to use the correct symbol and/or model year factor.

d. In seven instances, the company failed to use the correct tier eligibility criteria.

**Company's Response:** The Company respectfully disagrees with five of the seven instances. With respect to Response Sheet RPA003 1251901812, the information we use for rating is provided by the insured to the agent and maintained as a stated variable within our policy records based on the insured's assertion. We are allowed to rate based on information stated by the insured, regardless of whether the insured presents this information orally or in writing. With respect to Response Sheet RPA004-391048015, the named insured holds a non-USA license,



which is not placed the Proof of Prior None tier, but is placed in the Proof of Prior Other tier. The policy is therefore rated correctly.

With respect to Response Sheet RPA016 655547477, the named insured holds a non-USA license, which is not placed in the Proof of Prior None tier, but is placed in the Proof of Prior Other tier. The policy is therefore rated correctly.

With respect to Response Sheet RPA028 761869753, the agent originally bound the policy with Proof of Prior/Transfer code "A". This policy was subsequently underwritten and changed to Proof of Prior/Transfer code "Y", because the proof provided did not qualify for "A". Documentation is provided in file "R&UNBPPA761869753 Addendum Documentation". With respect to Response Sheet RPA050 1316634877, this policy was rated correctly with our Midterm transfer discount. The proof of prior insurance provided shows the prior policy was to expire on 2/23/2017, while new policy began during that policy term, on 10/18/2016. We do not require proof of the date that the prior policy had canceled. We simply rely on the agent's entry based on their knowledge of that cancellation date. The rating therefore is based on this information that was provided by the agent.

- e. In 12 instances, the company failed to use the correct classification factors.
- f. In 14 instances, the company failed to use the correct increased limits factor.

#### **Automobile Renewal Business Policies**

The Bureau reviewed 59 new business policy files. During this review, the examiners found overcharges totaling \$603.00 and undercharges totaling \$879.00. The

net amount that should be refunded to insureds is \$603.00 plus six percent (6%) simple interest.

- (1) The examiners found 37 violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company listed forms on the declarations page that were not applicable to the policy.

**Company's Response:** The Company respectfully disagrees with all 37 instances. The Loss Payable Clause is a conditional endorsement and applies "at the time of the policy" if certain conditions are met. Unfortunately, at the point of sale of the policy, we do not always know if the necessary conditions are met. For example, oftentimes no lienholder is disclosed at the point of sale, and therefore no lienholder is listed on the declarations page or endorsement. However, we learn at the time of loss (or more likely subsequently upon settlement of the claim) that a lienholder did exist at the point of sale. Please see for example of this is in review sheet ClaimVehPPA-1822200267 where we made a payment to a lienholder at the insured's request. Based on the information provided in the title, we had not been made aware of the lienholder until we were settling the claim. We make this payment to the lienholder not so much to protect the lienholder, but to protect our policyholder because public records confirm that another party, the lienholder, co-owns the vehicle. Consequently, that lienholder would have a right to recover from our policyholder any monies paid by us to the insured.

Additionally, there are a total of 11 forms and endorsements in the Virginia Auto Policy. Six of these forms are mandatory and change the policy. We know at the point of sale of the policy that these apply, and these forms and endorsements are therefore listed under the heading "Forms and Endorsements contained in this policy at its inception." on every policy we issue. There are four optional endorsements that apply only if a premium is

paid. These endorsements are not listed under the heading "Forms and Endorsements contained in this policy at its inception." for every policy because we know for sure that the endorsement does not apply unless a premium is paid. The last endorsement is the Loss Payable Clause. This endorsement is unique because it is the only endorsement that we do not know for sure, at the point of sale, whether it applies to the policy. As a result, we list it under the heading "Forms and Endorsements contained in this policy at its inception." because it does not change the policy. It simply ensures the policyholder has all information they may potentially need. Finally, § 38.2-305 does not state or even suggest that a conditional form cannot be listed on the declarations page.

Please note in one instance the Company is unable to agree or disagree because we did not receive response sheet RPA075-2141933349.

- (2) The examiners found 33 violations of § 38.2-502 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company misrepresented the discounts applicable to the policy.
- (3) The examiners found 59 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

- a. In four instances, the company failed to use the correct discounts and/or surcharges.

**Company's response:** The Company respectfully disagrees with two of the four instances. With respect to Response Sheet RPA 092 567598745,  
1. The correct vehicle for which Ms. W\_\_\_ is the principal operator is the 2007 Dodge Durango, which was correctly rated with a Safe Driver level of 2. 2. The correct vehicle for which Mr. W\_\_\_ is the principal operator is the 2006 Pontiac Grand Prix, which was correctly rated with a Safe

Driver level of 3. Please see the addendum "R&URBPPA567598745 Addendum Documentation" included with our response.

- b. In two instances, the company failed to apply the correct surcharge points for accidents and/or convictions.

**Company's Response:** The Company respectfully disagrees with one of the two instances. With respect to Response Sheet RPA093 105359250, the intent is to surcharge only for the highest incident. It would be inappropriate to surcharge the customer for two violations that occurred from the same event.

- c. In nine instances, the company failed to use the correct symbol and/or model year factor.

**Company's Response:** The Company respectfully disagrees with three of the nine instances. With respect to Response Sheet RPA068 2088341352, the rating for this policy is for a 1996 Honda Accord. Please see the "R&URBPPA2088341352 Addendum Documentation" included for this item. With respect to Response Sheet RPA120 49891616, the policy was rated with the vehicles listed for items 1. and 2. Please see the "R&URBPPA49891616 Addendum Documentation" included with our response.

- d. In nine instances, the company failed to use the correct tier eligibility criteria.

**Company's Response:** The Company respectfully disagrees with five of the nine instances. With respect to Response Sheets RPA066 1470865630 and RPA082 1733119938, the policies were rated correctly. Policies age 12+ months at renewal do not receive the Proof of Prior

"None" surcharge, but receive the "Other" proof of prior rate. Response sheets RPA096 1950748178 and RPA100 -1950771222 The named insured holds a non-USA license, which does not receive the Proof of Prior None tier, but is placed in the Proof of Prior Other tier. The policy is therefore rated correctly. Please note in one instance the Company is unable to agree or disagree because we did not receive Response Sheet RPA083-47449012.

- e. In 19 instances, the company failed to use the correct classification factors.
- f. In five instances, the company failed to use the correct base and/or final rates.

**Company's Response:** The Company respectfully disagrees with three of the five instances. With respect to Response Sheet RPA065 831556645, the 2006 Honda was not listed on the policy at inception (9/24/2013). It was added on the first renewal term on 7/26/2014. It was added by the agent online where the agent selected '0-2 months' for length of ownership. This indicates that the length returned in the vendor report is related to the prior owner and not the length of ownership by our insured who had recently acquired the vehicle.

The screen, named Vehicle History Report Viewer, is a user friendly way to review the data as it was returned in the report and is not intended to reflect and overridden values used in rating. While the override data is not displayed in any of the various user inquiry screens, we do capture and store the drop down selection in the transaction level vehicle data file, DRVEHICLE. If the override flag is "Y" in field VEHCFOXVRD, then the value in the length of ownership field, VEHLENOWN, is based on the agent selected drop down option. A value of 1 is populated for a selection of '0-2 months'.

Included with this response is the documentation named "RPA065 831556645 Addendum Documentation" that consists of a copy of the declarations page prior to the vehicle being added and the declarations page where the vehicle was added, and a screen shot of the aforementioned values in the DRVEHCLE file.

With respect to Response Sheet RPA089 1077586549, the 2003 Toyota was not listed on the policy at inception (06/01/2015). It was added on the second renewal term on 6/01/2016. It was added by the agent online where the agent selected '0-2 months' for length of ownership. This indicates that the length returned in the vendor report is related to the prior owner and not the length of ownership by our insured who had acquired the vehicle.

The screen, named Vehicle History Report Viewer, is a user friendly way to review the data as it was returned in the report and is not intended to reflect any overridden values used in rating. While the override data is not displayed in any of the various user inquiry screens, we do capture and store the drop down selection in the transaction level vehicle data file, DRVEHCLE. If the override flag is "Y" in field VEHCFXOVRD, then the value in the length of ownership field, VEHLENOWN, is based on the agent selected drop down option. A value of 1 is populated for a selection of '0-2 months'.

Included with this response is the documentation named "RPA089 1077586549 Addendum Documentation" that consists of a copy of the declarations page prior to the vehicle being added and the declarations page where the vehicle was added, and a screen shot of the aforementioned values in the DRVEHCLE file.

With respect to Response Sheet RPA069-151166371, the 2001 Ford was not listed on the policy at inception (12/04/2013). It was added on the first

renewal term on 7/22/2014. It was added by the agent online where the agent selected '0-2 months' days for length of ownership. This indicates that the length returned in the vendor report is related to the prior owner and not the length of ownership by our insured who had recently acquired the vehicle.

The screen, named Vehicle History Report Viewer, is a user friendly way to review the data as it was returned in the report and is not intended to reflect and overridden values used in rating. While the override data is not displayed in any of the various user inquiry screens, we do capture and store the drop down selection in the transaction level vehicle data file, DRVEHCLE. If the override flag is "Y" in field VEHCFOXVRD, then the value in the length of ownership field, VEHLENOWN, is based on the agent selected drop down option. A value of 1 is populated for a selection of '0-2 months'.

Included with this response is documentation named "RPA069 151166371 Addendum Documentation" that consists of a copy of the declarations page prior to the vehicle being added and the declarations page where the vehicle was added, and a screen shot of the aforementioned values in the DRVEHCLE file.

- g. In 11 instances, the company failed to use the correct increased limits factor.

#### **TERMINATION REVIEW**

The Bureau requested cancellation files in several categories due to the difference in the way these categories are treated by Virginia insurance statutes, regulations, and policy provisions. The breakdown of these categories is described below.

#### **Company-Initiated Cancellations – Automobile Policies**

NOTICE MAILED PRIOR TO THE 60<sup>TH</sup> DAY OF COVERAGE

The Bureau reviewed eight automobile cancellations that were initiated by the company where the cancellation notice was mailed prior to the 60th day of coverage in the initial policy period. During this review, the examiners found overcharges totaling \$30.00 and no undercharges. The net amount that should be refunded to insureds is \$30.00 plus six percent (6%) simple interest.

- (1) The examiners found four violations of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured with written notice of an adverse underwriting decision (AUD).
- (2) The examiners found three violations § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

**Company's Response:** The Company respectfully disagrees with all three instances. Code § 38.2-1906 D states the following:

D. No insurer shall make or issue an insurance contract or policy of a class to which this chapter applies, except in accordance with the rate and supplementary rate information filings that are in effect for the insurer.

This code section does not relate to installment fees; however, there is provision in the code that prohibits us from issuing a bill on a policy that is set up for non-pay cancellation. With respect to all three incidents, we have filed with the BOI a \$10 installment fee, and if we were to remove this fee, we would be out of compliance with our filing and subject to violation. The Company has a very generous advance billing day notice of 15 days because it wants to provide insureds with as much time as possible in advance of their due date, while not providing too much time so that a premium adding endorsement is pushed to the following billing period having a negative impact on an insured's ability to pay their bill. This 15 day billing notice works very well in each of our other states with the



exception of those states, such as Virginia, that require 15 day notice of cancellation for non-pays.

In this case, there are instances where a bill will be issued on a pending non-pay cancellation and we are required by our filing to charge the installment fee. While we disagree with this violation, we do understand that there are unintended consequences of our generous advance days billing notice. As a result, we respectfully request that the BOI issue a Recommendation to the Company and we will research the Commonwealth's statutes and insurance codes to determine whether we are allowed to reduce our advance days billing notice to prevent the second installment from being issued while a policy is in non-pay cancellation status.

- (2) The examiners found four violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain proof of mailing the cancellation notice to the insured.

**Company's Response:** The Company respectfully disagrees with all four instances, we believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure

(i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. With that said, we continued to think about additional options for responding to your guidance throughout 2016. As we were in the process of weighing our options, we discovered that the United States Postal Service was introducing a Certificate of Mailing form (PS Form 3665) that would meet the mailing requirements in Virginia 2016 House Bill 31 via VA Code Ann. § 38.2-2208(A)(1)(b) and would not be cost prohibitive to use or implement via our current IT and printing processes. As a result, we officially implemented

this form in January 2017. Additionally, we chose to keep the IMb tracing process in place in order to be absolutely certain that we remain in full compliance with Virginia's Proof of Mailing laws at all times. Needless to say, we are very proud of the fact that we have chosen to "double layer" our compliance efforts by implementing the processes mandated via VA Code Ann. § 38.2-2208(A)(1)(a)(3) and VA Code Ann. § 38.2-2208(A)(1)(b). Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelop, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- (4) The examiners found seven violations of § 2208 B of the Code of Virginia.
  - a. In four instances, the company failed to retain proof of mailing the cancellation notice to the insured.
  - b. In three instances, the company failed to retain proof of mailing the cancellation notice to the lienholder.
- (5) The examiners found one occurrence where the company failed to comply with the provisions of the insurance policy. The company failed to provide advance notice of cancellation to the insured.

**Company's Response:** The Company respectfully disagrees with Response Sheet TPA006 656877621; we are unable to provide advance notice of cancelation on a policy that is rescinded.

NOTICE MAILED AFTER THE 59<sup>TH</sup> DAY OF COVERAGE

The Bureau reviewed four private passenger automobile cancellations that were initiated by the company where the notice was mailed on or after the 60<sup>th</sup> day of coverage in the initial policy period. During this review, the examiners found no overcharges and no undercharges.

- (1) The examiners found six violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.

**Company's Response:** The Company respectfully disagrees with all six instances. We believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine

how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. With that said, we continued to think about additional options for responding to your guidance throughout 2016. As we were in the process of weighing our options, we discovered that the United States Postal Service was introducing a Certificate of Mailing form (PS Form 3665) that would meet the mailing requirements in Virginia 2016 House Bill 31 via VA Code Ann. § 38.2-2208(A)(1)(b) and would not be cost prohibitive to use or implement via our current IT and printing processes. As a result, we officially implemented this form in January 2017. Additionally, we chose to keep the IMb tracing process in place in order to be absolutely certain that we remain in full compliance with Virginia's Proof of Mailing laws at all times. Needless to say, we are very proud of the fact that we have chosen to "double layer" our compliance efforts by implementing the processes mandated via VA Code Ann. § 38.2-2208(A)(1)(a)(3) and VA Code Ann. § 38.2-2208(A)(1)(b). Again, while we

certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelop, (b) when they were mailed to our insureds, and (c) each step of the way after that.

(2) The examiners found two violations of § 38.2-2208 B of the Code of Virginia.

- a. In one instance, the company failed to retain proof of mailing the notice of cancellation to the insured.
- b. In one instance, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.

**Company's Response:** The Company respectfully disagrees with the one instance. We believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our

IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. With that said, we continued to think about additional options for responding to your guidance throughout 2016. As we were in the process of weighing our options, we discovered that the United States Postal Service was introducing a Certificate of Mailing form (PS Form

3665) that would meet the mailing requirements in Virginia 2016 House Bill 31 via VA Code Ann. § 38.2-2208(A)(1)(b) and would not be cost prohibitive to use or implement via our current IT and printing processes. As a result, we officially implemented this form in January 2017. Additionally, we chose to keep the IMb tracing process in place in order to be absolutely certain that we remain in full compliance with Virginia's Proof of Mailing laws at all times. Needless to say, we are very proud of the fact that we have chosen to "double layer" our compliance efforts by implementing the processes mandated via VA Code Ann. § 38.2-2208(A)(1)(a)(3) and VA Code Ann. § 38.2-2208(A)(1)(b). Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelop, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- (3) The examiners found nine violations of § 38.2-2212 E of the Code of Virginia.
  - a. In one instance, the company mailed the notice to an address other than the address shown in the policy.
  - b. In four instances, the company failed to mail the notice of cancellation to the insured at least 45 days prior to the effective date of cancellation.
  - c. In four instances, the company failed to provide the specific reason for cancelling the policy.



- (3) The examiners found three occurrences where the company failed to comply with the provisions of the insurance policy. The company failed to provide the required number of days' notice to the lienholder.

### **All Other Cancellations – Automobile Policies**

#### NONPAYMENT OF THE PREMIUM

The Bureau reviewed 17 private passenger automobile cancellations that were initiated by the company for nonpayment of the policy premium. During this review, the examiners found overcharges totaling \$110.00 and no undercharges. The net amount that should be refunded to insureds is \$110.00 plus six percent (6%) simple interest.

- (1) The examiners found nine violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

**Company's Response:** The Company respectfully disagrees with all nine instances. Code § 38.2-1906 D states the following:

D. No insurer shall make or issue an insurance contract or policy of a class to which this chapter applies, except in accordance with the rate and supplementary rate information filings that are in effect for the insurer.

This code section does not relate to installment fees; however, there is provision in the code that prohibits us from issuing a bill on a policy that is set up for non-pay cancellation. With respect to all three incidents, we have filed with the BOI a \$10 installment fee, and if we were to remove this fee, we would be out of compliance with our filing and subject to violation. The Company has a very generous advance billing day notice of 15 days because it wants to provide insureds with as much time as possible in advance of their due date, while not providing too much time so that a premium adding endorsement is pushed to the following billing period having a negative impact on an insured's ability to

pay their bill. This 15 day billing notice works very well in each of our other states with the exception of those states, such as Virginia, that require 15 day notice of cancellation for non-pays.

In this case, there are instances where a bill will be issued on a pending non-pay cancellation and we are required by our filing to charge the installment fee. While we disagree with this violation, we do understand that there are unintended consequences of our generous advance days billing notice. As a result, we respectfully request that the BOI issue a Recommendation to the Company and we will research the Commonwealth's statutes and insurance codes to determine whether we are allowed to reduce our advance days billing notice to prevent the second installment from being issued while a policy is in non-pay cancellation status.

- (2) The examiners found nine violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.

**Company's Response:** The Company respectfully disagrees with all nine instances. We believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes

prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. With that said, we continued to think about additional options for responding to your guidance throughout 2016. As we were in the process of weighing our options, we discovered that the United States Postal Service was introducing a Certificate of Mailing form (PS Form 3665) that would meet the mailing requirements in Virginia 2016 House Bill 31 via VA Code Ann. § 38.2-2208(A)(1)(b) and would not be cost prohibitive to use or implement via our current IT and printing processes. As a result, we officially implemented this form in January 2017. Additionally, we chose to keep the IMb tracing process in place in order to be absolutely certain that we remain in full compliance with Virginia's Proof of Mailing laws at all times. Needless to say, we are very proud of the fact that we have chosen to "double layer" our compliance efforts by implementing the processes mandated via VA Code Ann. § 38.2-2208(A)(1)(a)(3) and VA Code Ann. § 38.2-2208(A)(1)(b). Again,

while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelop, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- (3) The examiners found 16 violations of § 38.2-2208 B of the Code of Virginia.
  - a. In eight instances, the company failed to retain proof of mailing the notice of cancellation to the insured.
  - b. In four instances, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.

**Company's Response:** The Company respectfully disagrees with all four instances. We believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this

procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. With that said, we continued to think about additional options for responding to your guidance throughout 2016. As we were in the process of weighing our options, we discovered that the United States Postal Service was introducing a Certificate of Mailing form (PS Form 3665) that would meet the mailing requirements in Virginia 2016 House

Bill 31 via VA Code Ann. § 38.2-2208(A)(1)(b) and would not be cost prohibitive to use or implement via our current IT and printing processes. As a result, we officially implemented this form in January 2017. Additionally, we chose to keep the IMb tracing process in place in order to be absolutely certain that we remain in full compliance with Virginia's Proof of Mailing laws at all times. Needless to say, we are very proud of the fact that we have chosen to "double layer" our compliance efforts by implementing the processes mandated via VA Code Ann. § 38.2-2208(A)(1)(a)(3) and VA Code Ann. § 38.2-2208(A)(1)(b). Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelop, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- c. In one instance, the company failed to retain a copy of the notice of cancellation sent to the lienholder.
- d. In three instances, the company failed to retain proof of mailing the cancellation notice to the lienholder.

Other Law Violations

Although not a violation of Virginia insurance laws, the examiners noted the following as a violation of another Virginia law.

The examiners found two violations of § 46.2-482 of the Code of Virginia. The company failed to file an SR-26 within 15 days of cancelling the policy as required by the Virginia Motor Vehicle Code.

**Company's Response:** The Company respectfully disagrees with both instances. With respect to Response Sheet TPA049 1037445228, this policy was cancelled flat due to the down payment not being honored by the bank. While the policy was cancelled effective October 7, 2016, the policy was not cancelled or terminated until November 16, 2016, the date we filed the SR-26. We were not notified by the bank of insufficient funds until November 15, 2016. Obviously, we cannot predict in advance if a check we receive will not be honored by a bank.

With respect to Response Sheet TPA050 1580244205, notification of the returned down payment from the bank, rendering the policy null and void, prompted the flat cancellation of the policy to be processed on 2/17/2017. The policy originally cancelled for non-payment on and effective 2/4/2017. We filed the SR-26 on 2/6/2017, well within the 15 day time frame. Furthermore, the statute states "within fifteen days after the cancellation" and does not reference effective date of cancellation. It is not reasonable to submit an SR-26 prior to the action of cancelling a policy, regardless of the effective date of cancellation.

REQUESTED BY THE INSURED

The Bureau reviewed 28 automobile cancellations that were initiated by the insured where the cancellation was to be effective during the policy term. During this review, the examiners found overcharges totaling \$37.51 and undercharges totaling \$150.17. The net amount that should be refunded to insureds is \$37.51 plus six percent (6%) simple interest.

The examiners found four violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

Other Law Violations

Although not a violation of Virginia insurance laws, the examiners noted the following as a violation of another Virginia law.

The examiners found one violation of § 46.2-482 of the Code of Virginia. The company failed to file an SR-26 within 15 days of cancelling the policy as required by the Virginia Motor Vehicle Code.

**Company's response:** The Company respectfully disagrees with this instance. With respect to Response Sheet TPA023 2541715, this policy was set up on auto draft at the request of the customer prompting the renewal down payment to be auto drafted on April 19, 2016. On April 21, 2016 the agent contacted us stating the insured did not intend to renew and took out other coverage on April 19, 2016, when this policy was set to expire/terminate, but they failed to contact us in time to stop the renewal down payment from being drafted. It was not until April 27, 2016 that we received the proof of duplicate coverages on all vehicles in order to cancel the policy flat back to the renewal date. While the policy was cancelled effective April 19, 2016, the policy was not cancelled or terminated until April 28, 2016, 11 days prior our filing of the SR-26.

#### **Company-Initiated Non-renewals – Automobile Policies**

The Bureau reviewed five automobile non-renewals that were initiated by the company.

- (1) The examiners found three violations of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured with written notice of an adverse underwriting decision (AUD).
- (2) The examiners found one violation of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.

**Company's Response:** The Company respectfully disagrees with this instance. With Respect to Response Sheet TPA068 1332915135, we believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia



Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. With that said, we continued to think about additional options for responding

to your guidance throughout 2016. As we were in the process of weighing our options, we discovered that the United States Postal Service was introducing a Certificate of Mailing form (PS Form 3665) that would meet the mailing requirements in Virginia 2016 House Bill 31 via VA Code Ann. § 38.2-2208(A)(1)(b) and would not be cost prohibitive to use or implement via our current IT and printing processes. As a result, we officially implemented this form in January 2017. Additionally, we chose to keep the IMb tracing process in place in order to be absolutely certain that we remain in full compliance with Virginia's Proof of Mailing laws at all times. Needless to say, we are very proud of the fact that we have chosen to "double layer" our compliance efforts by implementing the processes mandated via VA Code Ann. § 38.2-2208(A)(1)(a)(3) and VA Code Ann. § 38.2-2208(A)(1)(b). Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelop, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- (3) The examiners found six violations of § 38.2-2208 B of the Code of Virginia.
  - a. In three instances, the company failed to retain proof of mailing the notice of cancellation to the insured.
  - b. In three instances, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.

**Company's Response:** The Company respectfully disagrees with all three instances. The Mailing Transaction Receipt is receipt from the third party printing company used by our vendor. It is a receipt for items

processed on a given date and the Secure Mailer page is related to the actual item mailed.

- (4) The examiners found ten violations of § 38.2-2212 E of the Code of Virginia.
- a. In one instance, the company failed to send the non-renewal notice to the insured.
  - b. In one instance the company failed to provide 45 days' notice prior to cancelling the policy.
  - c. In four instances, the company failed to include the effective date of non-renewal in the notice.
  - d. In four instances, the company failed to provide the specific reason for the non-renewal in the notice.

#### **CLAIMS REVIEW**

The examiners reviewed 72 automobile claims for the period of January 1, 2016 through December 31, 2016. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. During this review, the examiners found \$500.00 overpayments and underpayments totaling \$34,995.88. The net amount that should be paid to claimants is \$34,995.88 plus 6% simple interest.

#### **Private Passenger Automobile Claims**

- (1) The examiners found four violations of 14 VAC 5-400-30. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.

**Company's Response:** The Company respectfully disagrees with two of the four instances. With respect to Response Sheet CPA003 61654817, the appraiser's claim note documented on 1/12/16 confirms that he obtained the salvage bid. In the note, the salvage vendor, Copart, is shown as a contact, with Copart's information indicating that Copart was utilized to establish the salvage bid for the evaluation. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA071 1016814873, the Reservation of Rights "ROR" letter was referenced by the supervisor as being needed if there was no cooperation from the named insured and the unlisted driver. The unlisted driver was represented by an attorney, and the attorney didn't allow a statement. The claim was actively and timely worked, and coverage was resolved and afforded without the need of a ROR letter. The resolution of coverage supports the non issuance of the ROR letter. Because there was no additional activity to document, the observation should be removed.

- (2) The examiners found ten violations of 14 VAC 5-400-40 A. The company obscured or concealed from a first party claimant, directly or by omission, the benefits, coverages, or other provisions of an insurance policy that were pertinent to the claim.
- a. In two instances, the company failed to accurately inform an insured of the Transportation Expenses coverage when the file indicated the coverage was applicable to the loss.
  - b. In eight instances, the company failed to accurately inform an insured of the benefits or coverage, including rental benefits, available under the Uninsured Motorist Property Damage coverage (UMPD) and/or Underinsured Motorist Coverage (UIM).

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with five of the eight instances. With respect to Response Sheet CPA023 -852777380, there was no indication that alternative transportation was required; therefore, there can be no violation. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA043 1774931124, the claim note on 8/18/16 from the claim representative indicates that the insured's uninsured motorist deductible was discussed, which indicates that the company reviewed benefits with the insured. Although there is no specific documentation that a rental was offered, verbatim notes are not required from these types of communications. Furthermore, the insured did not indicate a

need for a replacement vehicle during the duration of the repairs. From a review of the estimated damages, the estimated repair time was only one day based on the labor hours. Subsequent follow up on this matter on 6/13/17 has revealed that the minor damages were never completed by the body shop. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA052 434372026, uninsured motorist property damage coverage was not afforded because it appears that there was an underlying layer of liability coverage with the at fault party. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA054 907995126, the claim note on 11/8/16 indicates that the estimate and repair process was explained via a translator. The vehicle was drivable and the repair process was documented and explained, which includes discussions of the estimate, repairs and any rental needs. Subsequent calls from the lienholder verify that the vehicle was repossessed with a description of damages from the same area as the loss, indicating that the damages were never repaired. Thus, no rental would have been needed. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA055 726011420, there was no indication that alternative transportation was required; therefore, there can be no violation. Because there was no additional activity to document, the observation should be removed.

- (3) The examiners found two violations of 14 VAC 5-400-50 C. The company failed to make an appropriate reply within ten working days to pertinent communications from a claimant, or a claimant's authorized representative, that reasonably suggested a response was expected.

- (4) The examiners found nine violations of 14 VAC 5-400-60 B. The company failed to notify the insured, in writing, every 45 days of the reason for the company's delay in completing the investigation of the claim.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with five of the nine violations. With respects to Response Sheet CPA052 543918089, there was no clear communication from the attorney for the insured that there was any actual intent to present either a UMBI or a UMPD claim. The attorney's letter of representation dated 11/9/16 indicates that the letter was intended as notice only. It further states that there might be a claim communicated by the insured attorney in the future, and it asks that the company verify the coverages of the policy on the date of loss. That request was responded to, and to date, there has been no further communication from the insured's attorney to indicate that they are pursuing either an UMBI or UMPD claim. Because there was no additional activity to document, the observation should be removed.

- (5) The examiners found one violation of 14 VAC 5-400-70 A. The company failed to deny a claim or part of a claim in writing and/or failed to keep a copy of the written denial in the claim file.
- (6) The examiners found 36 violations of 14 VAC 5-400-70 D. The company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim in accordance with the insured's policy provisions.
- a. In five instances, the company failed to pay the insured's UMPD claim properly when Collision and UMPD coverage applied to the claim.
  - b. In 10 instances, the company failed to pay the insured's UMPD claim properly.

**Company's Response:** The Company respectfully disagrees with seven of the ten instances. With respect to Response Sheet CPA027 -175436230, there was no indication that alternative transportation was required; therefore, there can be no violation.

Additionally, the insured settled the claim by signing a release of all claims. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA049 12663822, the appraiser's claim note on 10/3/16, referencing rental supports the company's position that its claims handling was fair and reasonable with regard to the repair process. The repair process explanation includes informing the insured of their relevant rental benefits under UMPD. There was no indication that the vehicle was actually ever repaired, and rental expenses were not submitted or otherwise requested by the insured. The relative amounts offered were fair and reasonable. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA052 290112080, the insured is represented by legal counsel, who indicated that they are assisting the insured with prosecuting a claim against the negligent party and the reported carrier for the insured's damage resulting from the accident. The attorney for the insured has indicated that they are researching the issue of underlying coverage with the at-fault party. If they find there is no coverage, counsel will notify us that they would in turn present a UMBI claim to the Company. Repeated attempts were made by the Company to determine if AIG was accepting or disclaiming coverage for the loss; however AIG has not responded. To date, the Company has not received any indication from the insured's attorney that they intend to present UM claims to the Company. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA053 698015174, the claim note on 8/18/16 from the claim representative shows that the insured's UM deductible was discussed, indicating that benefits were reviewed with the insured. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA066 -329535276, there was no indication that alternative transportation was required; therefore, there can be no violation. The Company requests removal of the observation.

With respect to Response Sheet CPA017 -1162044850, there was no indication that alternative transportation was required; therefore, there can be no violation. Because there was no additional activity to document, the observation should be removed.

- c. In 15 instances, the company failed to pay the proper sales and use tax, title fee, and license fee on a first party total loss settlement.
- d. In four instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses coverage.

**Company's Response:** The Company respectfully disagrees with two of the four instances. With respect to Response Sheet CPA004 -1268581160, there was no indication that alternative transportation was required; therefore, there can be no violation. Furthermore, the claim note on 1/25/16 outlines that rental coverage was available. The claim note on 3/14/16 documents that not rental was obtained. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA046 1134490916, a pending coverage flag needed to be addressed at the time of the initial request for rental. The rental was set up upon the next contact with the insured on 9/6/16. On 9/13/16, the last day of rental was scheduled due to a subsequent attempt to contact the insured and resolve the total loss on 9/12/16. Upon resolution of the total loss there were no further rental needs presented by the insured. Thus, reasonable rental was provided and the observation should be removed.

- f. In two instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Collision or Other than Collision coverage.

These findings occurred with such frequency as to indicate a general business practice.



**Company's Response:** The Company respectfully disagrees with one of the two instances. With respect to Response Sheet CPA063 709214099, the original estimate was written and communication was evident during the repair process with the customer. Although there is no tow coverage on the policy, a payment was made for the original \$96 tow from the insured's residence to insured's shop of choice (Service King/ Southern Auto Body). Service King was unable to perform the repairs. The insured then had the vehicle towed to another repair facility, Four Mile Fork Garage. This shop claimed to have completed a diagnostic check of the vehicle. Four Mile Fork Garage did not produce a diagnostic report or a work order signed by the insured authorizing the diagnosis despite the Company's request for the details and supporting documentation. According to Four Mile's own documentation on its billing invoice, Four Mile could not determine the cause of the fire or recommend a repair plan. There was a third tow to Safford Auto where the vehicle's problems were finally diagnosed and repaired. Without a diagnostic report or authorized work order from Four Mile, the Company maintains that Four Mile Fork Garage did not have the proper basis to charge the customer for this service. Our Insuring Agreement in Part D. of the VA Auto Policy reads: *"We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto", including their equipment, minus any applicable deductible shown in the declarations."* Please provide the Company with the basis of its responsibility to afford towing coverages under Part D. of the Auto Insurance contract, relative to having diagnostic checks performed on the vehicle.

- (7) The examiners found eight violations of 14 VAC 5-400-80 D. The company failed to provide the vehicle owner a copy of the estimate for the cost of repairs prepared by or on behalf of the company.
  - a. In six instances, the company failed to provide a copy of the repair estimate to the insured.

**Company's Response:** The Company respectfully disagrees with two of the six instances.

With respect to Response Sheet CPA026 -2002871981, our process for issuing the payment to the insured includes attaching the estimate. Verbal confirmation of this was received on 5/16/16 from the insured advising that the independent appraiser had completed the appraisal and provided a copy. The check details further indicate that the estimate was sent to the insured, as the check instructions note: "Hold for attachments." The Company maintains its position that "Hold for attachments" relates to the printing and attaching of the estimate with the check via the internal process. Thus, this observation should be removed.

With respect to Response Sheet CPA027 -542177375, the check was mailed directly to the insured with the body shop's name included. Although the claim note doesn't document that the estimate was attached, the check details support that the check was held for attachments. The attachment accompanying the check is the estimate. Thus, this observation should be removed.

b. In two instances, the company failed to provide a copy of the repair estimate to the claimant.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with one of the two instances. With respect to review sheet CPA029 1517942975, upon issuing the payment to the Insured, our process includes attaching the estimate. A repair process discussion was also documented in the file on 6/1/16. Thus, this observation should be removed.

- (8) The examiners found four violations of 14 VAC 5-400-80 E. The company failed to document all information relating to the application of betterment or depreciation in the claim file.

**Company's Response:** The Company respectfully disagrees with all of the noted instances. With respect to Response Sheet CPA026 137038777, the appraiser

made a conservative assessment of actual wear based on the condition of the brakes, which assessment was confirmed during a physical inspection and itemized as such on the estimate. The percentage of the betterment deduction was properly noted on the estimate along with the actual dollar amount being deducted.

With respect to Response Sheet CPA044 -791021691, the damage to the rear bumper did not result from this accident. The vehicle was visually inspected and the conservative assessment was confirmed and itemized properly, indicating the betterment percentage and corresponding dollar amount being deducted.

With respect to Response Sheet CPA058 1233159289, the appraiser made a conservative assessment of actual wear based on the condition of the suspension parts, which assessment was confirmed during physical inspection and itemized as such on the estimate.

With respect to Response Sheet CPA063 -234903857, the betterment assessment was based on the actual condition of the part when it was physically inspected by the appraiser. The useful life of a fuel injector averages 150,000 miles. This vehicle had over 95,000 miles and was over 10 years old. The appraiser made a conservative assessment to determine that only 35% of its useful life had elapsed. The percentage of the betterment deduction was properly noted in the estimate along with the actual dollar amount being deducted. The customer was contacted on 1/26/17, and the details of the betterment deduction were explained. The Company respectfully requests that these four observations be removed from the report.

- (9) The examiners found ten violations of § 38.2-510 A 1 of the Code of Virginia. The company misrepresented pertinent facts or insurance policy provisions relating to coverages at issue.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with six of the ten instances. With respect to Response Sheet CPA027 -716926599, there was a coverage flag for "loss occurred within 30 days of coverage change". In an attempt to independently verify the date of loss, in accordance with our standard operating procedures, we requested and received the police report. The investigation was ultimately resolved without the need for the police report, with UMPD coverage being provided. Because there was no additional activity to document, the observations should be removed.

With respect to Response Sheet CPA044 -568784799, there was an original request, not a requirement, for photos from the insured to complete the initial estimate. Following receipt of the claim on 8/26/16, phone messages were left on 8/26/16; we contacted the insured on 8/29/16 and 8/30/16 to, among other things, request photos. On 9/7/16 the insured returned the messages and requested an appraisal from the Company. During the call the adjuster agreed to the request for an appraisal and set up an inspection of the vehicle. Because there was no additional activity to document, the observations should be removed.

With respect to Response Sheet CPA059 175643453, there was no misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue by the Company. The insured had previously sent us a copy of the driver's exchange report on the date of report, indicating the insured's desire to assist and cooperate in the process. The prior discussion with the insured's agent on 11/22/16 further shows the insured's request resulted in the insured's willingness and not because we required it. A copy of the police report was ultimately obtained from the insured's attorney on 12/2/16, which was 13 business days after the loss report on 11/11/16. Because there was no additional activity to document, the observations should be removed.

The Company did not receive Response Sheet CPA061 1585992123 from VA BOI.

With respect to Response Sheet CPA066 693219105, the police report was ordered by the adjuster on the date of the loss report. Coverage for UMPD was afforded timely and the police report was required to obtain independent verification of the date of loss, an

essential element for coverage for this claim. Because there was no additional activity to document, the observation should be removed.

With respect to Response Sheet CPA030 -638755736, the claimant was originally provided a comparable vehicle to the vehicle damaged in the loss. The adjuster's explanation, in response to the claimant's request for a larger than comparable vehicle, was an attempt to clarify the term "comparable". Because there was no additional activity to document, the observation should be removed.

- (10) The examiners found one violation of § 38.2-510 A 3 of the Code of Virginia. The company failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

**Company's Response:** The Company respectfully disagrees with the reported instance. With respect to Response Sheet CPA059 1502136502, the investigation and documentation in the claim supports contributory negligence. The insured indicated in her statement that she continued to drive after the accident, eventually coming to rest in the left inside lane. The insured had a duty to not obstruct the roadway and create a hazard after the accident. The investigation included a police report, review of the damages and a statement from the insured. The adjuster reviewed jury instructions regarding negligence with defense counsel and considered the issues at hand before concluding the insured was a percentage at fault in this loss. The decision was provided to the insured's attorney and there was no further reference to additional factors or a challenge of liability. Thus, the Company requests that this observation be removed.

- (11) The examiners found seven violations of § 38.2-510 A 6 of the Code of Virginia. The company failed to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with five of the seven instances. With respect to Response Sheet CPA044 2066587406, due to minor damage

and a drivable vehicle, the Company originally requested, but did not receive photos from the insured to complete the initial estimate. Following receipt of the claim on 8/26/16, the Company attempted to contact the insured to, among other things, request photos by leaving phone messages on 8/26/16, 8/29/16 and 8/30/16. On 9/7/16 the insured returned our adjuster's messages and requested an appraisal from the Company. During the call, the adjuster agreed to the request for an appraisal from the insured and scheduled an inspection of the vehicle.

With respect to Response Sheet CPA052 -1555473350, an attorney is currently representing the insured. To date, there has been no demand made for payment under UMPD or UMBI coverage, and the Company has received no indication that a UM claim will be asserted.

With respect to Response Sheet CPA059 500537274; the police report is an independent source of information used to help verify the facts of loss, including the identity of operators of vehicles. The police report was needed to verify driver information relative to the accuracy of the recorded statement obtained in the course of the investigation.

With respect to Response Sheet CPA065 584551991, the investigation was timely and involved a referral to the Company's Special Investigative Unit due to inconsistencies, including a prior loss involving the unlisted driver found via ISO. Upon conclusion of our SIU investigation we promptly resolved the claim.

With respect to Response Sheet CPA066 -1980535090, our claim representative ordered the police report and received it on 1/2/17. The uninsured motorist bodily injury exposure was identified and opened on the date of report. A portion of the delay involved attempts to work through an interpreter to obtain the insured's statement and obtaining all of the medical bills to complete an evaluation. Because of the responses provided, the company respectfully requests that these five observations be removed.

(12) The examiners found one violation of § 38.2-510 A 13 of the Code of Virginia.

The company failed to settle a claim where liability was reasonably clear

under one portion of the insurance policy in order to influence a settlement under another portion of the policy coverage.

- (13) The examiners found two violations of § 38.2-510 C of the Code of Virginia. The company failed to disclose the required aftermarket parts notice to the vehicle owner on the estimate of repairs or in a separate document.
- a. In one instance, the company failed to disclose the required aftermarket parts notice to the insured owner on the estimate of repairs or in a separate document.
  - b. In one instance, the company failed to disclose the required aftermarket parts notice to the claimant owner on the estimate of repairs or in a separate document.
- (14) The examiners found three occurrences where the company failed to comply with the provisions of the insurance policy.
- a. In one instance, the company paid an insured more than he/she was entitled to receive under the terms of the policy.
  - b. In two instances, the company failed to pay an Uninsured Motorist (UM) claim properly.

Other Law Violations

Although not a violation of Virginia insurance laws, the examiners noted the following as a violation of other Virginia laws. The examiners found one violation of § 46.2-624 of the Code of Virginia. The company failed to notify the Virginia Department of Motor Vehicles when payment was made in excess of \$3,500.00 on a water-damaged vehicle.

**Company's Response:** The Company respectfully disagrees with the reported instance. With respect to Response Sheet CPA035 1498228965, we provided notice to the Virginia DMV regarding salvage by filing the non-repairable certificate, a copy which is in the claim file. Our follow up with the VA DMV Salvage Department confirmed that the non-repairable certificate is proper and

sufficient notice for this type of situation. Thus, the Company requests that this observation be removed.

### **REVIEW OF FORMS**

The examiners reviewed the company's policy forms and endorsements used during the examination period and those that are currently used for the line of business examined. From this review, the examiners verified the company's compliance with Virginia insurance statutes and regulations.

To obtain copies of the policy forms and endorsements used during the examination period for each line of business listed below, the Bureau requested copies from the company. In addition, the Bureau requested copies of new and renewal business policy mailings that the company was processing at the time of the Examination Data Call. The details of these policies are set forth in the Review of the Policy Issuance Process section of the Report. The examiners then reviewed the forms used on these policies to verify the company's current practices.

### **Automobile Policy Forms**

#### **POLICY FORMS USED DURING THE EXAMINATION PERIOD**

The company provided copies of 17 forms that were used during the examination period to provide coverage on policies insuring risks located in Virginia.

The examiners found three violations of § 38.2-2220 of the Code of Virginia.

- a. In two instances, the company used policy forms that were not in the precise language of the standard forms filed and adopted by the Bureau.
  
- b. In one instance, the company failed to have available for use the Suspension of Insurance endorsement.



**Company's Response:** The Company is unable to agree or disagree with this instance because we did not receive Response Sheet FPA004 645039846.

OTHER FORMS USED DURING THE EXAMINATION PERIOD

The examiners found no additional forms to review.

POLICY FORMS CURRENTLY USED

The examiners found no violations in this section.

REVIEW OF THE POLICY ISSUANCE PROCESS

To obtain sample policies to review the company's policy issuance process for the lines examined, the examiners requested new and renewal business policy mailings that were sent after the company received the Examination Data Call. The company was instructed to provide duplicates of the entire packet that was provided to the insured. The details of these policies are set forth below.

For this review, the examiners verified that the company enclosed and listed all of the applicable policy forms on the declarations page. In addition, the examiners verified that all required notices were enclosed with each policy. Finally, the examiners verified that the coverages on the new business policies were the same as those requested on the applications for those policies.

**Automobile Policies**

The company provided five new business policies mailed on April 4, 2017. In addition, the companies provided five renewal business policies mailed on April 4, 2017.

NEW BUSINESS POLICIES

The examiners found five violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy as required by the statute.

- a. In one instance, the company failed to list the applicable limits on the declarations page.

- b. In four instances, the company listed forms on the declarations page that were not applicable to the policy.

**Company's Response:** The Company respectfully disagrees with all four instances. The Loss Payable Clause is a conditional endorsement and applies "at the time of the policy" if certain conditions are met. Unfortunately, at the point of sale of the policy, we do not always know if the necessary conditions are met. For example, oftentimes no lienholder is disclosed at the point of sale, and therefore no lienholder is listed on the declarations page or endorsement. However, we learn at the time of loss (or more likely subsequently upon settlement of the claim) that a lienholder did exist at the point of sale. Please see for example of this is in review sheet ClaimVehPPA-1822200267 where we made a payment to a lienholder at the insured's request. Based on the information provided in the title, we had not been made aware of the lienholder until we were settling the claim. We make this payment to the lienholder not so much to protect the lienholder, but to protect our policyholder because public records confirm that another party, the lienholder, co-owns the vehicle. Consequently, that lienholder would have a right to recover from our policyholder any monies paid by us to the insured.

Additionally, there are a total of 11 forms and endorsements in the Virginia Auto Policy. Six of these forms are mandatory and change the policy. We know at the point of sale of the policy that these apply, and these forms and endorsements are therefore listed under the heading "Forms and Endorsements contained in this policy at its inception." on every policy we issue. There are four optional endorsements that apply only if a premium is paid. These endorsements are not listed under the heading "Forms and Endorsements contained in this policy at its inception." for every policy because we know for sure that the

endorsement does not apply unless a premium is paid. The last endorsement is the Loss Payable Clause. This endorsement is unique because it is the only endorsement that we do not know for sure, at the point of sale, whether it applies to the policy. As a result, we list it under the heading "Forms and Endorsements contained in this policy at its inception." because it does not change the policy. It simply ensures the policyholder has all information they may potentially need. Finally, § 38.2-305 does not state or even suggest that a conditional form cannot be listed on the declarations page

RENEWAL BUSINESS POLICIES

- (1) The examiners found five violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy as required by the statute. The company listed forms on the declarations page that were not applicable to the policy.

**Company's Response:** The Company respectfully disagrees with all five instances. The Loss Payable Clause is a conditional endorsement and applies "at the time of the policy" if certain conditions are met. Unfortunately, at the point of sale of the policy, we do not always know if the necessary conditions are met. For example, oftentimes no lienholder is disclosed at the point of sale, and therefore no lienholder is listed on the declarations page or endorsement. However, we learn at the time of loss (or more likely subsequently upon settlement of the claim) that a lienholder did exist at the point of sale. Please see for example of this is in review sheet ClaimVehPPA-1822200267 where we made a payment to a lienholder at the insured's request. Based on the information provided in the title, we had not been made aware of the lienholder until we were settling the claim. We make this payment to the lienholder not so much to protect the lienholder, but to protect our policyholder because public records confirm that another party, the lienholder, co-owns the vehicle. Consequently, that lienholder would have a right to recover from our policyholder any monies paid by us to the insured.

Additionally, there are a total of 11 forms and endorsements in the Virginia Auto Policy. Six of these forms are mandatory and change the policy. We know at the point of sale of the policy that these apply, and these forms and endorsements are therefore listed under the heading "Forms and Endorsements contained in this policy at its inception." on every policy we issue. There are four optional endorsements that apply only if a premium is paid. These endorsements are not listed under the heading "Forms and Endorsements contained in this policy at its inception." for every policy because we know for sure that the endorsement does not apply unless a premium is paid. The last endorsement is the Loss Payable Clause. This endorsement is unique because it is the only endorsement that we do not know for sure, at the point of sale, whether it applies to the policy. As a result, we list it under the heading "Forms and Endorsements contained in this policy at its inception." because it does not change the policy. It simply ensures the policyholder has all information they may potentially need. Finally, § 38.2-305 does not state or even suggest that a conditional form cannot be listed on the declarations page

- (2) The examiners found one violation of § 38.2-305 B of the Code of Virginia. The company failed to provide the "Important Information Regarding Your Insurance" notice.

#### **REVIEW OF STATUTORY NOTICES**

To obtain sample policies to review the content of the statutory notices that the company is required to provide to insureds and used by the company for the line examined, the examiners used the same new business policy and renewal business policy mailings that were previously described. The details of these policies have been set forth previously under the Review of the Policy Issuance Process section of the Report. The examiners verified that the notices used by the company on all applications, on all policies, and those special notices used for vehicle issued on risks located in Virginia complied with the Code of Virginia.

#### **General Statutory Notices**

The examiners found one violation of § 38.2-604 B of the Code of Virginia. The company's long form Notice of Information Collection and Disclosure Practices did not contain all of the information required by the statute.

### **Statutory Vehicle Notices**

The examiners found no violations in this area.

### **LICENSING AND APPOINTMENT REVIEW**

A review was made of new business private passenger automobile, motorcycle, and commercial automobile policies to verify that the agent of record for those policies reviewed was licensed and appointed to write business for the companies as required by Virginia insurance statutes. In addition, the agent or agency to which each company paid commission for these new business policies was checked to verify that the entity held a valid Virginia license and was appointed by the company.

### **Agent Review**

- (1) The examiners found one violation of § 38.2-1318 of the Code of Virginia. The company failed to provide convenient access to the files, documents, and records relating to the examination. The company failed to provide a copy of the new business application.

Company Response: The Company is unable to agree or disagree with this instance because we did not receive Response Sheet AG050 369775535.

- (2) The examiners found one violation of § 38.2-1812 E of the Code of Virginia. The company paid commissions to a trade name that was not filed with the Commission.

**Company's Response:** The Company is unable to agree or disagree with this instance because we did not receive Response Sheet AG024 1506533360.

- (3) The examiners found four violations of § 38.2-1822 A of the Code of Virginia. The company permitted an entity to act as an agent without first obtaining a license from the Commonwealth of Virginia.

**Company's Response:** The Company respectfully disagrees with all four instances. The Company is unable to agree or disagree with this instance because we did not receive Response Sheet AG054 462076371. With respect to Response sheet AG058 968632923, the agent had initially provided us the alias under which he conducts his business. We entered this (alias) name in our agency system and provided it to the BOI. He is licensed and we have updated our records. The license number and name were provided on our last response sheet.

With respect to Response Sheets AG064 2020392967 and AG065 970189519, we disagree that we are in violation of § 38.2-1822 A for permitting a person to act in the capacity of an agent who was not licensed in the Commonwealth of Virginia. After reviewing Sircon we agree that the individual agent was not licensed in the Commonwealth when the policy was written however, we were not aware of this until you brought it to our attention. It is the responsibility of the agent's agency to ensure individuals acting as an agent in their agency are licensed. Section 38.2-1822 A of the Code of Virginia specifically states that ".....no insurer or licensed agent shall knowingly permit a person to act, in this Commonwealth as an agent of an insurer licensed to transact the business of insurance in this Commonwealth without first obtaining a license". We did not "knowingly" permit a non-licensed person to act as an agent, and therefore we are not in violation of § 38.2-1822 A.

- (4) The examiners found 17 violations of § 38.2-1833 of the Code of Virginia. The company failed to appoint an agent within 30 days of the date of the application.

**Company's Response:** The Company respectfully disagrees with 15 of the 17 instances. As respects to Response Sheets; AG010-1528831774, AG011466942432, AG012-1020660978, AG014-882974726, AG015-1602392392, AG024-1479567914, AG035-46525456, AG036920279650, AG0381700000138, AG0512087657808, AG056-819439978, AG057-910772556, AG0621542246170, AG0671476353712, and AG069-

365078084; we disagree that we failed to appoint the agent that wrote this policy within 30 days of the execution of the insurance application as required under § 38.2-1833 of the Virginia Code. These policies were bound by the agencies and the agencies were appointed by us prior to this date. Their names appear on the applications and declaration pages and we paid commission to them. Code § 38.2-1800 defines an agent and appointed agent as an individual OR a business entity, and in this case, we appointed the business entity. An interpretation of the code requiring an insurance company to appoint all individuals within an appointed agency that may sell a policy for the insurance company appears to be overly burdensome given the "or" language of the code provision. By including "business entity" in the definition of an "appointed agent", and by prohibiting an entity from selling a policy or earning continuing education credits, the code clearly allows an insurance company to appoint the business entity over the individual who bound the policy. If the Bureau were to require us to appoint every individual in an agency they would be asking us to go beyond the scope of the code.

### **Agency Review**

- (1) The examiners found two violations of § 38.2-1812 of the Code of Virginia. The company failed to appoint an agency within 30 days of the date of application.
  
- (2) The examiners found five violations of § 38.2-1822 A of the Code of Virginia. The company permitted an entity to act as an agency without first obtaining a license from the Commonwealth of Virginia.

**Company's Response:** The Company respectfully disagrees with all five instances. We disagree that we are in violation of § 38.2-1822 A for permitting a person to act in the capacity of an agent who was not licensed in the Commonwealth of Virginia. After reviewing Sircon we agree that the individual agent was not licensed in the Commonwealth when the policy was written however, we were not aware of this until you brought it to our attention because it is the responsibility of the agent's agency to ensure

individuals acting as an agent in their agency be licensed. Section 38.2-1822 A of the Code of Virginia specifically states that ".....no insurer or licensed agent shall knowingly permit a person to act, in this Commonwealth as an agent of an insurer licensed to transact the business of insurance in this Commonwealth without first obtaining a license". We did not "knowingly" permit a non-licensed person to act as an agent, and therefore we are not in violation of § 38.2-1822 A.

#### **REVIEW OF THE COMPLAINT-HANDLING PROCESS**

A review was made of the company's complaint-handling procedures and record of complaints to verify compliance with § 38.2-511 of the Code of Virginia. The examiners found one violation of § 38.2-511 of the Code of Virginia. The company failed to maintain a complete register in compliance with the statute.

**Company's Response:** The Company respectfully disagrees with this instance. We have provided documentation that shows we have maintained a complete complaint register in compliance with the statute. The complaints not included in our 2016 register were included in our 2017 register. We log our complaints by the date we respond to them. While these complaints were received in late December 2016, our response was issued in early January 2017. The code does not specify whether the received or response date should be included in the response log. Please see attached word doc exhibit 01 showing screenshots of the actual complaint file folder. Please note the dates.

#### **REVIEW OF PRIVACY AND INFORMATION SECURITY PROCEDURES**

The Bureau requested a copy of the company's Information Security Program that protects the privacy of policyholder information in accordance with § 38.2-613.2 of the Code of Virginia.

The company provided its written information security procedures.



## **PART TWO – CORRECTIVE ACTION PLAN**

Business practices and the error tolerance guidelines are determined in accordance with the standards set forth by the NAIC. A seven percent (7%) error criterion was applied to claims handling. Any error ratio above this threshold for claims indicates a general business practice. In some instances, such as filing requirements, forms, notices, and agent licensing, the Bureau applies a zero tolerance standard. This section identifies the violations that were found to be business practices of Virginia insurance statutes and regulations.

### **General**

MGA Insurance shall:

- (1) Provide a Corrective Action Plan (CAP) with their response to this Report.

### **Rating and Underwriting Review**

MGA Insurance shall:

- (1) Correct the errors that caused the overcharges and undercharges, and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as of the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' accounts.
- (3) Complete and submit to the Bureau the enclosed file titled "Rating Overcharges Cited during the Examination." By returning the completed file to the Bureau, the companies acknowledge that they have refunded or credited the overcharges listed in the file.
- (4) Specify accurate information in the policy by showing only the forms applicable to the policy on the declarations page. Company's Response: The Company's

response to this recommendation pends on the outcome of the concerns in response to observations raised in Part One Response.

- (5) Properly represent the benefits, coverages, advantages, and conditions of the policy by showing only the applicable discounts on the declarations page.
- (6) Use the rules and rates on file with the Bureau. Particular attention should be focused on the use of filed discounts, surcharges, points for accidents and convictions, symbols, tier eligibility criteria, driver classification factors, and increased limits factors. Company's Response: The Company response to this recommendation is pending the outcome of the concerns the Company raised in its Part One response.

#### **Termination Review**

MGA Insurance shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' accounts.
- (3) Complete and submit to the Bureau the enclosed file titled "Termination Overcharges Cited during the Examination." By returning the completed file to the Bureau, the companies acknowledge they have refunded or credited the overcharges listed in the file.
- (4) Provide a written AUD notice when required by the statute. Company's Response: The Company is in the process of updating the letters to comply with the prototype language.
- (5) Calculate return premium according to the filed rules and policy provisions.

- (7) Obtain valid proof of mailing cancellation notices to the insured. Company's Response: The Company response to this recommendation pends the outcome of the concerns the company raised in Part One response.
- (8) Retain proof of mailing cancellation notices to the insured and lienholders. Company's Response: The Company response to this recommendation pends the outcome of the concerns the company raised in Part One response.
- (6) Send the cancellation notice at least 45 days before the effective date of cancellation when the notice on a private passenger automobile policy is mailed after the 59th day of coverage.
- (7) Send the cancellation notice at least 15 days before the effective date of cancellation when cancelling for nonpayment of premium.
- (8) Provide a specific reason for cancellation and/or nonrenewal. Company's Response: The Company is in the process of updating the letters to comply with the recommendation.

### **Claims Review**

MGA Insurance shall:

- (1) Correct the errors that caused the underpayments and overpayments, and send the amount of the underpayment to insureds and claimants. **Company's Response:** See attached claims reconciliation sheet
- (2) Include six percent (6%) simple interest in the amount paid to the insureds and claimants. **Company's Response:** See attached claims reconciliation sheet
- (3) Complete and submit to the Bureau the enclosed file titled "Claims Underpayments Cited During the Examination." By returning the completed file to the Bureau, the companies acknowledge that they have paid the underpayments listed in the file. **Company's Response:** See attached claims reconciliation sheet
- (4) Document the claim file that all applicable coverages have been discussed with the insured. Particular attention should be given to deductibles, rental benefits under UMPD

and Transportation Expenses coverage, and Medical Expense coverage. **Company's**

**Response:** The Company has policies and procedures in place to document the communication of applicable coverages with the insured.

- (5) Notify the insured every 45 days of the reason for the delay in completing the investigation of the claim. **Company's Response:** The Company has policies and procedures in place to notify the insured every 45 days of the reason for the delay in completing the investigation of the claim.
- (6) Offer the insured an amount that is fair and reasonable as shown by the investigation of the claim, and pay the claim in accordance with the insured's policy provisions. **Company's Response:** The Company has policies and procedures in place to offer the insured an amount that is fair and reasonable per the Company's investigation and to pay the claim in accordance with the policy provisions.
- (7) Provide copies of repair estimates prepared by or on behalf of the company to insureds and claimants. **Company's Response:** The Company has policies and procedures in place to provide copies of repair estimates prepared by or on behalf of the Company to insureds and claimants.
- (8) Properly represent pertinent facts or insurance provisions relating to coverages at issue. **Company's Response:** The Company has policies and procedures in place to properly represent pertinent facts or contract provisions relating to coverage.
- (9) Make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear. **Company's Response:** The Company has policies and procedures in place to make prompt, fair, and equitable settlements of claims in which liability is reasonably clear.

#### **Forms Review**

MGA Insurance shall:

- (1) Use the precise language of the standard automobile forms adopted by the Bureau.
- (2) Have available for use standard automobile forms as adopted by the Bureau.

### **Review of Policy Issuance Process**

MGA Insurance shall:

- (1) Specify accurate information in the policy as required by the statute by listing only applicable forms on the declarations page. Company's Response: The Company response to this recommendation is pending the outcome of the concerns the Company raised in its Part One response.
- (2) Provide the "Important Information Regarding Your Insurance" notice as required by the statute.

### **Review of Statutory Notices**

MGA Insurance shall:

- (9) Amend the long form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 B of the Code of Virginia. Company's Response: The Company response to this recommendation is pending the outcome of the concerns the Company raised in its Part One response..

### **Licensing and Appointment Review**

MGA Insurance shall:

- (3) (1) Appoint agents within 30 days of the application. Company's Response: The Company response to this recommendation pends the outcome of the concerns the company raised in Part One response.
- (4) (2) Pay commissions only to agencies that are appointed by the company.

- (3) Accept business only from agents and agencies that have a current license from the Commonwealth of Virginia
- (5) Company's Response: The Company response to this recommendation pends the outcome of the concerns the company raised in Part One response.

### **Review of the Complaint-Handling Process**

MGA Insurance shall:

- (10) Maintain a complete complaint register that is in compliance with § 38.2-511 of the Code of Virginia. Company's Response: The Company response to this recommendation pends the outcome of the concerns the company raised in Part One response.

### **PART THREE – EXAMINERS' RECOMMENDATIONS**

The examiners also found violations that did not appear to rise to the level of business practices by the company. The company should carefully scrutinize these errors and correct the causes before these errors become business practices. The following errors will not be included in the settlement offer:

#### **RECOMMENDATIONS**

We recommend that the companies take the following actions:

#### **Termination**

- The company should pay closer attention to the way terminations are coded in order to comply with the cancellation provisions specified in the policy.

#### **Claims**

- The company should document the claim file when all applicable coverages have been discussed with the insured.

- The company should acknowledge correspondence that reasonably suggests a reply is expected from insureds and claimants within ten business days.
- The company should include the Tag/Title fess on claimants' total losses.
- The company should document all information relating to the application of betterment or depreciation in the claim file.
- The company should provide the Aftermarket parts notice to the vehicle owner.

### **Forms**

- The company should use caution when combining paragraphs; combining of paragraphs could potentially change the coverage.

### **Statutory Notices**

- The company should change the fraud language to the verbiage provided in § 52-40 of the Code of Virginia.
- The company should correct the Bureau of Insurance's telephone number on the Important Information to Policyholders notice, 51 IIPN (01/17).
- The company should revise the AUD language found on the following notices: CRBR (11/11), CRUR (11/11), and FCRAMV. The company should review the prototype AUD language as found in A.L. 2015-07 and revise the language in the aforementioned notices to be similar to that of the prototype language.
- The company should remove all references of the insured contacting the Virginia Bureau of Insurance regarding availability of coverage on the following notices: 51NR VA (12/12) and 51CX VA (12/12).

# COMMONWEALTH OF VIRGINIA

SCOTT A. WHITE  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE



P.O. BOX 1157  
RICHMOND, VIRGINIA 23218  
1300 E. MAIN STREET  
RICHMOND, VIRGINIA 23219  
TELEPHONE: (804) 371-9741  
[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

January 26, 2018

## VIA UPS 2<sup>nd</sup> DAY DELIVERY

Bettina Rudsill  
MGA Insurance Company, Inc.  
3333 Lee Parkway, Suite 1200  
Dallas, TX 75219

Re: Market Conduct Examination  
MGA Insurance Company, Inc. (NAIC# 40150)  
Examination Period: January 1, 2016 – December 31, 2017

Dear Ms. Rudsill:

The Bureau of Insurance (Bureau) has reviewed the November 29, 2017 response to the Preliminary Market Conduct Report (Report) of MGA Insurance Company (Company). The Bureau has referenced only those items in which the Company has disagreed with the Bureau's findings, or items that have changed in the Report. This response follows the format of the Report.

## PART ONE – EXAMINERS' OBSERVATIONS

### Automobile New Business Rating

- (1) These violations remain in the Report. The Company should only list forms that are applicable to the policy. Section 38.2-305 A 6 of the Code of Virginia states "The contract shall specify the conditions pertaining to the insurance. In addition, each policy of property and casualty insurance shall contain a list of all policy forms and endorsements applicable to **that** policy, which shall display the respective form numbers and, if those forms numbers are not unique identifiers of such forms, the applicable edition dates."
- (3b) After further review, the violation for RPA043 has been withdrawn and replaced with a recommendation.
- (3d) The violation for RPA003 remains in the Report. The Company is responsible for maintaining and capturing all pertinent policy information. The insurance card from the prior carrier shows the insured's prior policy term as July 1, 2015 – January 1, 2016, the effective date of this policy is January 2, 2016. An entry from the agent of a two day lapse is not sufficient proof to support applying a



lapse to the policy. The Company or agent should obtain a copy of the insured's cancellation notice from their prior carrier. This is an audit and the information in the policy file does not support a two day lapse in coverage.

The violations for RPA004 and RPA016 remain in the Report. The Company stated in its response that the named insured holds a non-USA license, which does not receive the Proof of Prior None tier, but is placed in the Proof of Prior Other tier. The tier pages effective at the time these policies were written do not include an option for "Other" under proof of prior. The Company did not add the "Other" option to their tiering pages until the GNCS-130569411 SERFF filing which was effective May 13, 2016 for new business policies. The effective dates of these policies are January 4, 2016 March 16, 2016 respectively.

The violation for RPA028 remains in the Report. The examiners informed the Company in the August 17, 2017 review sheet response, for reconsideration, the Company should provide the amended declarations page which reflects the premium change as result of the change in the proof of prior insurance. The Company should provide this information for reconsideration.

The violation for RPA050 remains in the Report. The Company's filed rule states the following: "If the prior policy was a Mid-Term Cancellation of the first term, a cancellation notice with a cancellation date within 30 days of the effective date of the GAINSCO policy effective date must also be provided in order to qualify for the Midterm Transfer Discount." The Company must provide evidence that the prior policy was not in the first term; therefore, would not require a cancellation notice with a cancellation date within 30 days of the effective date of the GAINSCO policy. Simply relying upon the agent's entry based on their knowledge of the cancellation date is not sufficient for application of the discount according to the filed rule.

### **Automobile Renewal Business Rating**

(3a) The Company indicated they disagreed with two out of four instances but only referenced one in its response.

The violation for RPA092 remains in the Report. The screen prints provided with the response are different than the screen prints available to the examiners during the examination. The access the Company gave the examiners was to the Policy Inquiry System. The screen prints provided in response to the Report are from the Personal Auto Review System. The Company has failed to address the difference between the pages made available to the examiners for the examination and the pages provided in response to this violation. The Policy Inquiry information show driver 1 as the principal operator of the 2006 Pontiac Grand Prix and driver 3 as the principal operator of the 2007 Dodge Durango. In addition, the documentation from the Policy Inquiry System indicates the 2006 Pontiac should have received a safe driver level of 2 and the 2007 Dodge Durango should have received a safe driver level of 3. Because the information from the two systems conflict, the information from the Personal Auto Review System was provided after the BOI gave the Company the violation and the information in the Policy Inquiry System is more advantageous to the insured the violation remains in the Report.

(3b) After further review, the violation for RPA093 has been withdrawn and replaced with a recommendation.

(3c) The Company indicated they disagreed with three out of nine instances but only referenced two in their response.

The violation for RPA068 remains in the Report. The Company applied the incorrect model year factors to the 1996 Honda Accord. The examiners acknowledge the Company's system shows factors for a model year of 1996; however, the factors in the Company's system do not correspond to the factors on file with the Bureau. Please see Exhibit RPA068 for the filed model year factors.

The violation for RPA120 remains in the Report. The Company applied the incorrect model year factors to the 2001 Buick Park Ave and the 2003 Ford Explorer. The model year factors in the Company's system for each vehicle do not correspond to the factors on file with the Bureau. Please see Exhibit RPA120 for the filed model year factors.

(3d) The Company indicated they disagreed with five out of nine instances but only referenced two in their response.

The violations for RPA066, RPA082, and RPA096 remain in the Report. The Company stated in their response that policies age 12+ months at renewal do not receive the Proof of Prior "None" surcharge, but receive the "Other" proof of prior rate. The tier pages effective during the time this policy was written do not include an option for "Other" under proof of prior. The Company did not add the "Other" option to their tiering pages until the GNSC-130569411 SERFF filing effective July 12, 2016 for renewal business policies. The effective date of these policies is April 25, 2016, February 13, 2016 and January 20, 2016 respectively.

The violation for RPA083 remains in the Report. The Company stated in their response that they have not received review sheet ending in -47449012. The Bureau has provided a copy of the review sheet with its response.

The violation for RPA100 remains in the Report. The Company stated in their response that the named insured holds a non-USA license, which does not receive the Proof of Prior None tier, but is placed in the Proof of Prior Other tier. The tier pages effective at the time this policy was written do not include an option for "Other" under proof of prior. The Company did not add the "Other" option to their tiering pages until the GNSC-130569411 SERFF filing effective July 12, 2016 for renewal business policies. The effective date on this policy is January 30, 2016.

(3e) The violation for RPA069 remains in the Report. The Company has not provided any additional information for the Bureau to reconsider its initial findings.

The violation for RPA092 remains in the Report. The Company has not provided any additional information for the Bureau to reconsider its initial findings.

(3f) After further review, the violations for RPA065, RPA069 and RPA089 have been withdrawn from the Report.

### **Cancellation Notice Mailed Prior to the 59<sup>th</sup> Day of Coverage**

- (2) The violations for TPA004, TPA005, and TPA007 remain in the Report. The cancellations cited in this section of the Report are not cancellations due to nonpayment of premium. These cancellations are all Company initiated cancellations in the first 60 days of coverage, and the statute requires 10 days advance notice of cancellation. If the Company has issued a notice of cancellation for cause this is not a nonpay cancellation and the insured should not be billed for installment fees beyond the cancellation date or late fees that are not late because the policy terminates and the premium is not paid therefore it cannot be considered late.
- (3) The violations for TPA007, TPA011, TPA014, and TPA015 remain in the Report. The Company's IMB process does not meet the minimum standards set forth in Administrative Letter 2016-08. The Bureau agrees the Administrative Letter is guidance on how to comply with IMB tracing requirements; however, the letter also sets forth the minimum standards of which the Bureau expects Companies to comply. The Company's practices must meet or exceed the minimum standards set forth by the Bureau. MGA's IMB process doesn't place the barcode on the notice of cancellation; therefore, the Bureau is unable to tie the cancellation notice to the IMB barcode associated with the mailing. The Bureau needs to be able to verify that the document the Company mailed to the insured was in fact the notice of cancellation under review. The Bureau is willing to review the Company's new Certificate of Mailing process to ensure the new process is compliant.
- (5) After further review, the violation for TPA006 has been withdrawn from the Report. The Company provided evidence of rescinding coverage for material misrepresentation.

### **Cancellation Notice Mailed After the 59<sup>th</sup> Day of Coverage**

- (1) The violations for TPA024, TPA025, and TPA034 remain in the Report. The Company's IMB process does not meet the minimum standards set forth in Administrative Letter 2016-08. The Bureau agrees the Administrative Letter is guidance on how to comply with IMB tracing requirements; however, the letter also sets forth the minimum standards of which the Bureau expects Companies to comply. The Company's practices must meet or exceed the minimum standards set forth by the Bureau. MGA's IMB process doesn't place the barcode on the notice of cancellation; therefore, the Bureau is unable to tie the cancellation notice to the IMB barcode associated with the mailing. The Bureau needs to be able to verify that the document the Company mailed to the insured was in fact the notice of cancellation under review. The Bureau is willing to review the Company's new Certificate of Mailing process to ensure the new process is compliant.

The violation for TPA028 remains in the Report. The violation count is being reduced from three violations to one violation. The Company's IMB process does not meet the minimum standards set forth in Administrative Letter 2016-08. The Bureau agrees the Administrative Letter is guidance on how to comply with IMB tracing requirements; however, the letter also sets forth the minimum standards of which the Bureau expects Companies to comply. The Company's

practices must meet or exceed the minimum standards set forth by the Bureau. MGA's IMB process doesn't place the barcode on the notice of cancellation; therefore, the Bureau is unable to tie the cancellation notice to the IMB barcode associated with the mailing. The Bureau needs to be able to verify that the document the Company mailed to the insured was in fact the notice of cancellation under review. The Bureau is willing to review the Company's new Certificate of Mailing process to ensure the new process is compliant.

- (2b) The violation for TPA028 remains in the Report. The Company's IMB process does not meet the minimum standards set forth in Administrative Letter 2016-08. The Bureau agrees the Administrative Letter is guidance on how to comply with IMB tracing requirements; however, the letter also sets forth the minimum standards of which the Bureau expects Companies to comply. The Company's practices must meet or exceed the minimum standards set forth by the Bureau. MGA's IMB process doesn't place the barcode on the notice of cancellation; therefore, the Bureau is unable to tie the cancellation notice to the IMB barcode associated with the mailing. The Bureau needs to be able to verify that the document the Company mailed to the insured was in fact the notice of cancellation under review. The Bureau is willing to review the Company's new Certificate of Mailing process to ensure the new process is compliant.

#### **Cancellation for Nonpayment of Premium**

- (1) These violations remain in the Report. The insured should not be billed for installment fees beyond the cancellation date or late fees that are not late because the policy terminates and the premium is not paid therefore it cannot be a late payment. Further, the Company has stated that it has a "generous" 15 day advanced notice of cancellation. The statute requires 15 days' notice for nonpay cancellations.
- (2) These violations remain in the Report. The Company's IMB process does not meet the minimum standards set forth in Administrative Letter 2016-08. The Bureau agrees the Administrative Letter is guidance on how to comply with IMB tracing requirements; however, the letter also sets forth the minimum standards of which the Bureau expects Companies to comply. The Company's practices must meet or exceed the minimum standards set forth by the Bureau. MGA's IMB process doesn't place the barcode on the notice of cancellation; therefore, the Bureau is unable to tie the cancellation notice to the IMB barcode associated with the mailing. The Bureau needs to be able to verify that the document the Company mailed to the insured was in fact the notice of cancellation under review. The Bureau is willing to review the Company's new Certificate of Mailing process to ensure the new process is compliant.
- (3b) The violations for TPA036, TPA037, and TPA042 remain in the Report. The Company's IMB process does not meet the minimum standards set forth in Administrative Letter 2016-08. The Bureau agrees the Administrative Letter is guidance on how to comply with IMB tracing requirements; however, the letter also sets forth the minimum standards of which the Bureau expects Companies to comply. The Company's practices must meet or exceed the minimum standards set forth by the Bureau. MGA's IMB process doesn't place the barcode on the notice of cancellation; therefore, the Bureau is unable to tie the cancellation notice to the IMB barcode associated with the mailing. The Bureau

needs to be able to verify that the document the Company mailed to the insured was in fact the notice of cancellation under review. The Bureau is willing to review the Company's new Certificate of Mailing process to ensure the new process is compliant.

### **Other Law Violations**

After further review the violations for TPA049 and TPA050 have been withdrawn from the Report.

### **Automobile Insured Requested Cancellations**

#### **Other Law Violations**

After further review, the violation for TPA023 has been withdrawn from the Report.

#### **Automobile Nonrenewal**

- (2) The violation of TPA068 remains in the Report. The Company's IMB process does not meet the minimum standards set forth in Administrative Letter 2016-08. The Bureau agrees the Administrative Letter is guidance on how to comply with IMB tracing requirements; however, the letter also sets forth the minimum standards of which the Bureau expects Companies to comply. The Company's practices must meet or exceed the minimum standards set forth by the Bureau. MGA's IMB process doesn't place the barcode on the notice of cancellation; therefore, the Bureau is unable to tie the cancellation notice to the IMB barcode associated with the mailing. The Bureau needs to be able to verify that the document the Company mailed to the insured was in fact the notice of cancellation under review. The Bureau is willing to review the Company's new Certificate of Mailing process to ensure the new process is compliant.
- (3b) These violations remain in the Report. The Company's IMB process does not meet the minimum standards set forth in Administrative Letter 2016-08. The Bureau agrees the Administrative Letter is guidance on how to comply with IMB tracing requirements; however, the letter also sets forth the minimum standards of which the Bureau expects Companies to comply. The Company's practices must meet or exceed the minimum standards set forth by the Bureau. MGA's IMB process doesn't place the barcode on the notice of cancellation; therefore, the Bureau is unable to tie the cancellation notice to the IMB barcode associated with the mailing. The Bureau needs to be able to verify that the document the Company mailed to the insured was in fact the notice of cancellation under review. The Bureau is willing to review the Company's new Certificate of Mailing process to ensure the new process is compliant.

### **Private Passenger Auto Claims**

- (1) The violation for CPA003 remains in the Report. There is no corresponding documentation to confirm that \$297.59 was the amount offered by Copart for the vehicle's salvage. The salvage amount was deducted when the insured retained salvage on her total loss vehicle.

After further review, the violation for CPA071 has been withdrawn.

- (2a) A violation has been added for CPA017 for more consistent Report writing from review sheet ClaimVehPPA-1162044850.

- (2b) The violations for CPA023, CPA043, CPA054, CPA055 remain in the Report. The note in the claim files summarizes coverages. This is insufficient documentation to demonstrate that applicable coverages were discussed with the insured.

The violation for CPA052 remains in the Report. Ultimately this was an Uninsured Motorist Property Damage (UMPD) claim and the Company failed to inform the insured of the coverages afforded under UMPD.

A violation has been added for CPA004 for more consistent Report writing. This replaces the violation of CPA004 in item 6d below.

- (4) The violation for CPA052 remains in the Report. The Company responded to the Attorney's letter of November 9, 2016 but failed to update the insured every 45 days thereafter that the claim remained open.

The Company disagreed with five of the nine violations but no written response was provided for four of the five violations. The Company only provided a written response for CPA052 as discussed above.

- (6b) The Company indicated they disagreed with seven out of ten instances but only referenced six in their response.

The violation for CPA017 #2 was withdrawn and rewritten under 14 VAC 5-400-40-A for more consistent Report writing.

The violation for CPA027 remains in the Report. The Company did not inform the insured of the transportation expenses benefits available under UMPD prior to him signing the Full and Final Release. The Company must provide evidence the insured was contacted to determine if she incurred any transportation expenses due to the covered loss.

The violation for CPA049 remains in the Report. The claim note of October 3, 2016 is insufficient documentation to demonstrate that all of the applicable coverages were reviewed with the insured. The Company must provide evidence the insured was contacted to determine if they incurred any transportation expenses due to the covered loss.

The violation for CPA052 remains in the Report. The Company was fully aware of the damages to the vehicle. There is no explanation in the claim file as to why the damages were not paid to the insured.

The violation for CPA053 remains in the Report. There are no claim notes dated August 8, 2016 as indicated in the Company's response. The date of loss was October 25, 2016. The Company has not provided any additional information

for the Bureau to reconsider this violation. The Company must provide evidence the insured was contacted to determine if they incurred any transportation expenses due to the covered loss.

The violation for CPA066 remains in the Report. This was a total loss with moderate to severe damage to the insured's vehicle. The vehicle was not drivable from the scene of the accident. The Company has not provided any additional information for the Bureau to reconsider this violation. The Company must provide evidence the insured was contacted to determine if they incurred any transportation expenses due to the covered loss.

The violation for CPA017 remains in the Report. The Company has not provided any additional information for the Bureau to reconsider this violation. The Company must provide evidence the insured was contacted to determine if they incurred any transportation expenses due to the covered loss.

- (6d) After further review, the violation for CPA004 has been withdrawn from the Report and rewritten under 14 VAC 5-400-40 A for more consistent Report writing.

The violation for CPA046 remains in the Report. The Company has not provided any additional information that would cause the Bureau to reconsider its initial findings. The Company advised the Bureau in its response "a pending coverage flag" needed to be addressed at the time of initial request for rental. The Company investigated the loss and determined it was a covered loss on September 6, 2016. The insured's rental coverage was applicable from the date of loss (September 2, 2016). The Company stopped rental on September 13, 2016, the same day the total loss offer was presented to the insured. The Company owes rental for a reasonable time following a settlement offer to allow the insured time to receive the payment for a replacement vehicle and time for the check to clear. The Company must provide evidence the insured was contacted to determine if they incurred any additional transportation expenses due to the covered loss.

- (6f) After further review, the violation for CPA063 has been withdrawn.

- (7a) The violations for CPA026 and CPA027 remain in the Report. Showing "hold for attachment" on the check detail is insufficient documentation to demonstrate the estimate was attached to the checks.

- (7b) The violation for CPA029 remains in the Report. Showing "hold for attachment" on the check detail is insufficient documentation to demonstrate the estimate was attached to the check.

- (8) The violation for CPA026 remains in the Report. The estimate does not show the percentage for betterment. There are no notes in the claim file to show how the adjustor (HA) determined the betterment percentage.

The violation for CPA044 remains in the Report. There are no notes in the claim files on how the independent adjustor (IA) determined the fifty percent (50%) betterment on the bumper.

The violation for CPA058 remains in the Report. There are no notes in the claim file on how the IA determined the thirty percent (30%) betterment on the front suspension.

After further review, the violation for CPA063 has been withdrawn from the Report.

- (9) The violation for CPA027 remains in the Report. A police report is not necessary for a UMPD claim. The insured followed the duties outlined in the policy after the accident when she contacted the Company. The Police Report was not necessary to resolve this claim. The Company has not provided any additional information that would cause the Bureau to reconsider this its initial findings. The file is also documented that the Company has to wait three business days before inspecting a vehicle. This creates a delay in processing the claim. The Company's Claims Handling Manual does not indicate this is a process in the claims process.

The violation for CPA044 remains in the Report. The claim notes of August 31, 2016 read in part "No pix received of IV dmgs to date, multiple attempts to secure same, at this time cancel assignment, request resubmit assignment if/when pics received." No insurer may require an owner of a motor vehicle to submit photographs. The Company has not provided any additional information that would cause the Bureau to reconsider its initial findings.

The violation for CPA059 remains in the Report. The claim notes of November 11, 2016 read in part "Advd if the NI is willing to secure PR and forward to us we will reimburse her the cost of same." It is not the responsibility of the insured to get a Police Report for the Company.

The violation for CPA061 remains in the Report. A copy of the review sheet is attached.

The violation for CPA066 remains in the Report. The insured followed the duties after the accident when they contacted the Company. If a Police Report was required to obtain independent verification of the date of loss then it is the Company's responsibility to obtain the report.

The violation for CPA030 remains in the Report. The claim file reads in part "clmt wanted a bigger size vehicle Explained that we only owe for the number of seatbelts which is 5, advised I cannot approve an upgrade." There are no adjuster's notes showing their attempt to clarify the term "comparable". The Company has not provided any additional information that would cause the Bureau to reconsider its initial findings.

- (10) The violation for CPA059 remains in the Report. The Company and it appears the defense counsel decided negligence without a thorough investigation.

- (11) The violation for CPA044 remains in the Report. Twenty-six days from report to appraisal is an unacceptable delay in the investigation. The Company has not provided any additional information that would cause the Bureau to reconsider its initial findings.

The violation for CPA052 remains in the Report. After eight months of investigation and being advised by several carriers that no policy exists for the known claimant; the police report shows one hundred percent (100%) adverse to the claimant. It is unreasonable to continue to delay payment on this claim. Whether the insured is represented by counsel or not. The Company has not



provided any additional information that would cause the Bureau to reconsider its initial findings.

The violation for CPA059 remains in the Report. The Company should have obtained the police report if it was necessary to investigate the loss.

The violation for CPA065 remains in the Report. Eighty-three days from first notice of loss (FNOL) until settlement is an unreasonable delay. The Special Investigation Unit ruled out any coverage issues on February 14, 2017.

The violation for CPA066 remains in the Report. Eighty-six days from FNOL until settlement is an unreasonable delay. The claim notes of December 19, 2016 reveal the Company required the insured to obtain an actual police report for the Company before moving forward with the UMPD claim. The claim notes of January 27, 2017 show the BI adjustor gave the okay to move on the UMPD claim. The insured attempted to contact the adjustor multiple times with no response between January 13, 2017 through January 26, 2017 and February 9, 2017 through March 9, 2017. The UMPD claim was not settled until March 9, 2017 when the insured signed the Full and Final Release Form.

#### **Other Law Violation**

The violation for CPA035 remains in the Report. The Nonrepairable Certificate does not specify the vehicle was damaged by water. The Company advised the Bureau in the response "Our follow up with the VA DMV Salvage Department confirmed that the non-repairable certificate is proper and sufficient notice for this type of situation." Did the Company make Virginia Department of Motor Vehicles aware the vehicle was damaged by water and payment was made in excess of \$3,500.00?

#### **Automobile Policy Forms**

The violation for FPA004 remains in the Report. The Company stated in its response that it has not received review sheet ending in 645039846. The Bureau has provided a copy of the review sheet with this response.

#### **New Business Policy Issuance**

- b. The violations for this section remain in the Report. The Company should only list forms and endorsements on the declarations page that are applicable to the policy. Since the insured did not have a lienholder, the Company should not have listed the Loss Payable form (PP 03 05 08 86) on the declarations page. Section 38.2-305 states that only policy forms and endorsements that are applicable to that policy should be listed.

#### **Renewal Business Policy Issuance**

- (1) The violations for this section remain in the Report. The Company should only list forms and endorsements on the declarations page that are applicable to the policy. Since the insured did not have a lienholder, the Company should not have listed the Loss Payable form (PP 03 05 08 86) on the declarations page.

Section 38.2-305 states that only policy forms and endorsements that are applicable to that policy should be listed.

### **Agent Review**

- (1) The violation for AG050 remains in the Report. The Company stated in its response that review sheet ending in 369775535 was never received. The Bureau has provided a copy of the review sheet with its response.
- (2) The violation for AG024 remains in the Report. The Company stated in its response that they have not received review sheet ending in 1506533360. The Bureau has provided a copy of the review sheet with its response.
- (3) The violation for AG054 remains in the Report. The Company stated in its response that they have not received review sheet ending in 462076371. The Bureau has provided a copy of the review sheet with its response.

The violation for AG058 remains in the Report. The Agent's alias name is not on file with the Bureau.

The violations for AG064 and AG065 remain in the Report. The Company is ultimately responsible for ensuring that the agent selling or negotiating the sale of insurance on MGA's behalf is licensed in the Commonwealth of Virginia prior to accepting business from the agent.

- (4) These violations remain in the Report. The Company failed to file with the Commission a written notice of appointment within 30 days of the execution of an insurance application. Any agent/agency soliciting or negotiating the sale of insurance in the Commonwealth of Virginia shall hold a valid agent's license and be appropriately appointed by the Company he/she is representing. In addition, § 38.2-1822 of the Code of Virginia states, "No individual shall act as an agent on behalf of a business entity in the transaction of insurance unless he is licensed as an agent and appointed."

### **Agency Review**

- (2) These violations remain in the Report. Any agent/agency soliciting or negotiating the sale of insurance in the Commonwealth of Virginia shall hold a valid agent's license and be appropriately appointed by the Company he/she is representing.

### **Complaint**

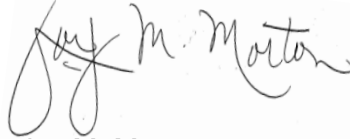
This violation remains in the Report. The Company is required to maintain a record of all complaints received, and the complaints cited in the Report were received during the exam period. The Bureau forwards all Company correspondences regarding complaints via email ensuring prompt delivery, given the original dates of these complaints there was ample time for the Company to log and begin investigating these complaints during the audit period.

## **PART TWO – CORRECTIVE ACTION PLAN**

The Company must provide a corrective action for each item sited in this section of the Report.

We have made the changes noted above to the Market Conduct Examination Report. Enclosed with this letter is a revised version of the Report, technical reports, the Restitution spreadsheet and any review sheets withdrawn, added or altered as a result of this review. The Company's response to this letter is due in the Bureau's office by February 19, 2018.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is written in a cursive style with a large, looping initial "J".

Joy M. Morton  
Manager  
Market Conduct Section  
Property and Casualty Division  
(804) 371-9540  
[joy.morton@scc.virginia.gov](mailto:joy.morton@scc.virginia.gov)

Enclosures



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**MGA Insurance Company, Inc.**

*ARE YOU DRIVEN?™*

February 28, 2018

Joy Morton, Manager  
Market Conduct Section  
1300 E. Main Street  
Richmond, Virginia 23219

Re: Market Conduct Examination  
MGA Insurance Company, Inc. (NAIC #40150)  
Examination Period January 1, 2016 through December 31, 2016

Dear Ms. Morton,

Thank you for giving us the opportunity to respond to your report dated January 26, 2018. Enclosed in separate documents are our responses to the Market Conduct Examination, Restitution worksheets and supporting documentation. We understand and respect the intent of this Market Conduct Examination and trust that the Bureau accepts our position and responses as an indication of our commitment to compliance.

Our response includes those areas where procedures have been, or will be, amended or where we respectfully dispute the findings of the examiners. Our responses track with the order and sequence of the findings. Please note that neither these comments nor any of our actions are admissions on our part of any violation, wrongdoing or fault, and should not be interpreted by the Bureau or any other party as constituting any admissions.

If you have any questions please feel free to contact me by email at [Kevin.Williams@GAINSCO.com](mailto:Kevin.Williams@GAINSCO.com) or by telephone at (972) 629-4484.

Sincerely,

A handwritten signature in cursive script that reads "Kevin Williams".

Kevin Williams  
Director, Product and Underwriting

Encls.

## PART ONE - THE EXAMINERS' OBSERVATIONS

This section of the Report contains all of the observations that the examiners provided to the company. These include all instances where the company violated Virginia insurance statutes and regulations. In addition, the examiners noted any instances where the company violated any other Virginia laws applicable to insurers.

### RATING AND UNDERWRITING REVIEW

#### **Automobile New Business Policies**

The Bureau reviewed 60 new business policy files. During this review, the examiners found overcharges totaling \$897.00 and undercharges totaling \$1,730.00. The net amount that should be refunded to insureds is \$897.00 plus six percent (6%) simple interest.

- (1) The examiners found 46 violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company listed forms on the declarations page that were not applicable to the policy.

**Company's Response:** On February 22, 2018 we updated our Declarations page to only show the Loss Payable Clause when a Loss Payee is listed on the policy.

- (2) The examiners found 31 violations of § 38.2-502 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company misrepresented the discounts applicable to the policy.

- (3) The examiners found 56 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

- a. In four instances, the company failed to use the correct discounts and/or surcharges.

- b. In one instance, the company failed to apply the correct surcharge points

for accidents and/or convictions.

- c. In 19 instances, the company failed to use the correct symbol and/or model year factor.
- d. In seven instances, the company failed to use the correct tier eligibility criteria.

**Company's Response:** The Company respectfully disagrees with three of the seven instances. With respect to Response Sheet RPA003 1251901812, the information we use for rating is provided by the insured to the agent and maintained as a stated variable within our policy records based on the insured's assertion. We are allowed to rate based on information stated by the insured, regardless of whether the insured presents this information orally or in writing.

With respect to Response Sheet RPA028 761869753, the agent originally bound the policy with Proof of Prior/Transfer code "A". This policy was subsequently underwritten and changed to Proof of Prior/Transfer code "Y", because the proof provided did not qualify for "A". Documentation is provided in file "R&UNBPPA761869753 Addendum Documentation". With respect to Response Sheet RPA050 1316634877, this policy was rated correctly with our Midterm transfer discount. The proof of prior insurance provided shows the prior policy was to expire on 2/23/2017, while our new policy began during that policy term, on 10/18/2016. We do not require proof of the date that the prior policy had canceled. We simply rely on the insured's statement/knowledge of their cancellation date. The rating therefore is based on this information that was provided by the insured to the agent. Further, their policy that would have expired 2/23/2017 must be cancelled midterm in order to be replaced on 10/18/2016; it would be impossible for the policy to qualify for a full-term prior policy discount.

- e. In 11 instances, the company failed to use the correct classification factors.
- f. In 14 instances, the company failed to use the correct increased limits factor.

### **Automobile Renewal Business Policies**

The Bureau reviewed 59 renewal business policy files. During this review, the examiners found overcharges totaling \$510.00 and undercharges totaling \$855.00. The net amount that should be refunded to insureds is \$510.00 plus six percent (6%) simple interest.

- (1) The examiners found 37 violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company listed forms on the declarations page that were not applicable to the policy.

**Company's Response:** On February 22, 2018 we updated our Declarations page to only show the Loss Payable Clause when a Loss Payee is listed on the policy.

- (2) The examiners found 33 violations of § 38.2-502 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company misrepresented the discounts applicable to the policy.

- (3) The examiners found 54 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

- a. In four instances, the company failed to use the correct discounts and/or surcharges.

**Company's response:** The Company respectfully disagrees with one of the four instances. With respect to Response Sheet RPA 092 567598745, 1. The correct vehicle for which Ms. W\_\_\_ is the principal operator is the 2007 Dodge Durango, which was correctly rated with a Safe Driver level of

2.

2. The correct vehicle for which Mr. W\_\_\_\_\_ is the principal operator is the 2006 Pontiac Grand Prix, which was correctly rated with a Safe Driver level of 3. Please see the addendum "R&URBPPA567598745 Addendum Documentation" included with our response. These documents are screen prints from locations on our system that were available to the examiners during the examination. We will be happy to show the examiners where these screens are located.

- b. In one instance, the company failed to apply the correct surcharge points for accidents and/or convictions.
- c. In nine instances, the company failed to use the correct symbol and/or model year factor.

**Company's Response:** The Company respectfully disagrees with two of the nine instances. With respect to Response Sheet RPA068 2088341352, the rating for this policy is for a 1996 Honda Accord. Please see the "R&URBPPA2088341352 Addendum Documentation" included for this item. With respect to Response Sheet RPA120 49891616, the policy was rated with the vehicles listed for items 1. and 2. Please see the "R&URBPPA49891616 Addendum Documentation" included with our response.

- d. In nine instances, the company failed to use the correct tier eligibility criteria.
- e. In 19 instances, the company failed to use the correct classification factors.
- f. In one instance, the company failed to use the correct base and/or final rates.
- g. In 11 instances, the company failed to use the correct increased limits



factor.

### **TERMINATION REVIEW**

The Bureau requested cancellation files in several categories due to the difference in the way these categories are treated by Virginia insurance statutes, regulations, and policy provisions. The breakdown of these categories is described below.

### **Company-Initiated Cancellations – Automobile Policies**

#### **NOTICE MAILED PRIOR TO THE 60<sup>TH</sup> DAY OF COVERAGE**

The Bureau reviewed eight automobile cancellations that were initiated by the company where the cancellation notice was mailed prior to the 60th day of coverage in the initial policy period. During this review, the examiners found overcharges totaling \$30.00 and no undercharges. The net amount that should be refunded to insureds is \$30.00 plus six percent (6%) simple interest.

- (1) The examiners found four violations of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured with written notice of an adverse underwriting decision (AUD).
- (2) The examiners found three violations § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

**Company's Response:** The Company respectfully disagrees with TPA004. Code § 38.2-1906 D states the following:

D. No insurer shall make or issue an insurance contract or policy of a class to which this chapter applies, except in accordance with the rate and supplementary rate information filings that are in effect for the insurer.

This code section does not relate to installment fees; however, there is no provision

in the code that prohibits us from issuing a bill on a policy that is set up for cancellation. We issued a cancellation on 4/5/16 to be effective 5/20/16. An invoice was generated on 4/25/16, due 5/10/16, that generated the installment fee of \$10. When this was not paid, we applied a \$10 late fee on 5/11/16. Both the installment fee and late fee were applied prior to, and for the time period before the effectiveness of the policy cancellation on 5/20/16. We have filed with the BOI our installment and late fee, and if we were to remove these fees, we would be out of compliance with our filing and subject to violation.

- (3) The examiners found four violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the cancellation notice to the insured.

**Company's Response:** The Company respectfully disagrees with all four instances, we believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and

mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/ mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelope, (b)

when they were mailed to our insureds, and (c) each step of the way after that.

- (4) The examiners found seven violations of § 2208 B of the Code of Virginia.
- a. In four instances, the company failed to retain proof of mailing the cancellation notice to the insured.
  - b. In three instances, the company failed to retain proof of mailing the cancellation notice to the lienholder.

NOTICE MAILED AFTER THE 59<sup>TH</sup> DAY OF COVERAGE

The Bureau reviewed four private passenger automobile cancellations that were initiated by the company where the notice was mailed on or after the 60<sup>th</sup> day of coverage in the initial policy period. During this review, the examiners found no overcharges and no undercharges.

- (1) The examiners found four violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.

**Company's Response:** The Company respectfully disagrees with all four instances. We believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing

which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in

- Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelope, (b) when they were mailed to our insureds, and (c) each step of the way after that.
- (2) The examiners found two violations of § 38.2-2208 B of the Code of Virginia.
- a. In one instance, the company failed to retain proof of mailing the notice of cancellation to the insured.
  - b. In one instance, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.

**Company's Response:** The Company respectfully disagrees with the one instance. We believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our

only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader

interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelope, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- (3) The examiners found nine violations of § 38.2-2212 E of the Code of Virginia.
  - a. In one instance, the company mailed the notice to an address other than the address shown in the policy.
  - b. In four instances, the company failed to mail the notice of cancellation to the insured at least 45 days prior to the effective date of cancellation.
  - c. In four instances, the company failed to provide the specific reason for cancelling the policy.
- (4) The examiners found three occurrences where the company failed to comply with the provisions of the insurance policy. The company failed to provide the required number of days' notice to the lienholder.

### **All Other Cancellations – Automobile Policies**

#### NONPAYMENT OF THE PREMIUM

The Bureau reviewed 17 private passenger automobile cancellations that were initiated by the company for nonpayment of the policy premium. During this review, the examiners found overcharges totaling \$110.00 and no undercharges. The net amount that should be refunded to insureds is \$110.00 plus six percent (6%) simple interest.

- (1) The examiners found nine violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

**Company's Response:** The Company respectfully disagrees with all nine instances. Code § 38.2-1906 D states the following:



D. No insurer shall make or issue an insurance contract or policy of a class to which this chapter applies, except in accordance with the rate and supplementary rate information filings that are in effect for the insurer.

This code section does not relate to installment fees; however, there is provision in the code that prohibits us from issuing a bill on a policy that is set up for non-pay cancellation. With respect to all three incidents, we have filed with the BOI a \$10 installment fee, and if we were to remove this fee, we would be out of compliance with our filing and subject to violation. The Company has a very generous advance billing day notice of 15 days (**please note, we are referring to a 15 day advance billing notice and not our 15 day notice of cancellation**) because we want to provide insureds with as much time as possible in advance of their due date, while not providing too much time so that a premium adding endorsement is pushed to the following billing period having a negative impact on an insured's ability to pay their bill.

Because we have both a 15 day advance billing notice and 15 advance notice of cancellation, there are instances where a bill will be issued on a pending non-pay cancellation and we are required by our filing to charge the installment fee. While we disagree with this violation, we do understand that there are unintended consequences of our generous advance days billing notice. As a result, we respectfully request that the BOI issue a Recommendation to the Company and we will research the Commonwealth's statutes and insurance codes to determine whether we are allowed to reduce our advance days billing notice to prevent the second installment from being issued while a policy is in non-pay cancellation status.

- (2) The examiners found nine violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.

**Company's Response:** The Company respectfully disagrees with all nine instances. We believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/ mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial

logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance’s Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelope, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- (3) The examiners found 16 violations of § 38.2-2208 B of the Code of Virginia.
- a. In eight instances, the company failed to retain proof of mailing the notice of cancellation to the insured.
  - b. In four instances, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.

**Company’s Response:** The Company respectfully disagrees with all four instances. We believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the

BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options

would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelope, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- c. In one instance, the company failed to retain a copy of the notice of cancellation sent to the lienholder.
- d. In three instances, the company failed to retain proof of mailing the cancellation notice to the lienholder.

#### REQUESTED BY THE INSURED

The Bureau reviewed 28 automobile cancellations that were initiated by the insured where the cancellation was to be effective during the policy term. During this review, the examiners found overcharges totaling \$37.51 and undercharges totaling \$150.17. The net amount that should be refunded to insureds is \$37.51 plus six percent (6%) simple interest.

The examiners found four violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

**Company-Initiated Non-renewals – Automobile Policies**

The Bureau reviewed five automobile non-renewals that were initiated by the company.

- (1) The examiners found three violations of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured with written notice of an adverse underwriting decision (AUD).
- (2) The examiners found one violation of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the notice of cancellation to the insured.

**Company's Response:** The Company respectfully disagrees with this instance. With Respect to Response Sheet TPA068 1332915135, we believe that we are in compliance with the law because our use of IMb Tracing is a permitted first-class mail tracking method per VA Code Ann. § 38.2-2208(A)(1)(a)(3). This is not just confirmed in the Virginia Insurance Code, but also in the 3/13/16 Memorandum referenced in the BOI's most recent response: "House Bill 31 clarifies that Intelligent Mail barcode tracing (IMb Tracing™) is a permitted first-class mail tracking method and identifies a requirement for insurers to maintain records regarding the sending of such notices for one year, regardless of the method used to send the notices".

We want to assure you that we appreciate the additional guidance that the Bureau provided in this same Memorandum relative to placing the IMb barcode on the notice. However, we contract with vendors to handle our IMb Tracing and mailing which prevented us from implementing this procedure (i.e. placing the IMb barcode on the notice). The reason for this is that we print out our letters and insert them into envelopes prior to handing them off to our vendors to assign the barcode and mail them. Our only options for responding to the Bureau's excessive

interpretative guidance were to either (a) outsource our entire printing/mailing operation so the IMb could be placed on both the envelope and the letter, (b) purchase IMb equipment ourselves and determine how to integrate that new equipment and any new processes that come along with it into our IT and printing systems, or (c) cease using IMb tracing and begin using registered or certified mail. We determined that outsourcing our mailing operation was not a good business decision because we would lose control of the process and we would still be responsible for the third party's actions. Also, purchasing new and expensive equipment and creating new processes and implementing/incorporating them into our existing IT and printing systems would be expensive and cause substantial logistical issues due to the scale of our operations. Lastly, replacing IMb tracing with registered or certified mail would be cost prohibitive. Realizing that we could not effectively or immediately implement these process changes in response to the Administrative Letter – not to mention that these options would provide no real additional benefit to our customers, we met with our Virginia insurance regulatory counsel who assured us that our process for IMb tracing was compliant with the current Virginia law and that changes to our process were not necessary. Again, while we certainly appreciate the guidance provided in the Virginia Bureau of Insurance's Administrative Letter 2016-08, it is our understanding that interpretive guidance does not mandate that we implement any extra steps that are not referenced via direct statutory authority. This is especially true since the Administrative Letter in question did not mandate that insurers doing business in Virginia take any specific actions and the interpretive guidance is a broader interpretation of the law. The IMb tracing method allows us to tie the letter back to the bar code and determine, (a) when we inserted the letters in the envelope, (b) when they were mailed to our insureds, and (c) each step of the way after that.

- (3) The examiners found six violations of § 38.2-2208 B of the Code of Virginia.
- a. In three instances, the company failed to retain proof of mailing the notice of cancellation to the insured.
  - b. In three instances, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.
- (4) The examiners found ten violations of § 38.2-2212 E of the Code of Virginia.
- a. In one instance, the company failed to send the non-renewal notice to the insured.
  - b. In one instance the company failed to provide 45 days' notice prior to cancelling the policy.
  - c. In four instances, the company failed to include the effective date of non-renewal in the notice.
  - d. In four instances, the company failed to provide the specific reason for the non-renewal in the notice.

### **CLAIMS REVIEW**

#### **Private Passenger Automobile Claims**

The examiners reviewed 72 automobile claims for the period of January 1, 2016 through December 31, 2016. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. During this review, the examiners found \$500.00 overpayments and underpayments totaling \$34,705.88. The net amount that should be paid to claimants is \$34,705.88 plus 6% simple interest.

- (1) The examiners found three violations of 14 VAC 5-400-30. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.



(2) The examiners found 12 violations of 14 VAC 5-400-40 A. The company obscured or concealed from a first party claimant, directly or by omission, the benefits, coverages, or other provisions of an insurance policy that were pertinent to the claim.

- a. In three instances, the company failed to accurately inform an insured of the Transportation Expenses coverage when the file indicated the coverage was applicable to the loss.

**Company's Response:** The Company respectfully disagrees with one of the three instances. With respect to Response Sheet CPA004 1621103628, there was no indication that alternative transportation was required and the claim note on March 14, 2016, indicates there was no rental; therefore, there can be no violation.

- b. In nine instances, the company failed to accurately inform an insured of the benefits or coverage, including rental benefits, available under the Uninsured Motorist Property Damage coverages (UMPD) and/or Underinsured Motorist Coverage (UIM).

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with six of the nine instances. With respect to Response Sheet CPA017 599476920, there was no indication that alternative transportation was required; therefore, there can be no violation. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA023 -852777380, there was no indication that alternative transportation was required; therefore, there can be no violation. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA043 1774931124, the claim note on 8/18/16 from the claim

representative indicates that the insured's uninsured motorist deductible was discussed, which indicates that the company reviewed benefits with the insured. Although there is no specific documentation that a rental was offered, verbatim notes are not required from these types of communications. Furthermore, the insured did not indicate a need for a replacement vehicle during the duration of the repairs. From a review of the estimated damages, the estimated repair time was only one day based on the labor hours. Subsequent follow up on this matter on 6/13/17 has revealed that the minor damages were never completed by the body shop. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA052 434372026, uninsured motorist property damage coverage was not afforded because it appears that there was an underlying layer of liability coverage with the at fault party. The investigation into the underlying liability coverage is ongoing and obligations related to this coverage have been met via communication with the insured's attorney. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA054 907995126, the claim note on 11/8/16 indicates that the estimate and repair process was explained via a translator. The vehicle was drivable and the repair process was documented and explained, which includes discussions of the estimate, repairs and any rental needs. Subsequent calls from the lienholder verify that the vehicle was repossessed with a description of damages from the same area as the loss, indicating that the damages were never repaired. Thus, no rental would have been needed. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA055 726011420, there was no indication that alternative transportation was required; therefore, there can be no violation. Additionally, there are five vehicles listed on the policy and 3 parties, providing a further indication that there was not a need for alternative transportation. Because there was no additional activity to document, the observation should be removed.

- (3) The examiners found two violations of 14 VAC 5-400-50 C. The company failed to make an appropriate reply within ten working days to pertinent communications from a claimant, or a claimant's authorized representative, that reasonably suggested a response was expected.
- (4) The examiners found nine violations of 14 VAC 5-400-60 B. The company failed to notify the insured, in writing, every 45 days of the reason for the company's delay in completing the investigation of the claim.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company and market conduct violation summary show a count of five reference numbers with nine violations. CPA028, CPA065, CPA066 and CPA071 each had one violation. CPA052 is listed with 5 consecutive violations. The Company respectfully disagrees with five of the nine violations. With respects to Response Sheet CPA052 543918089, there was no clear communication from the attorney for the insured that there was any actual intent to present either a UMBI or a UMPD claim. The attorney's letter of representation dated 11/9/16 indicates that the letter was intended as notice only. It further states that there might be a claim communicated by the insured attorney in the future, and it asks that the company verify the coverages of the policy on the date of loss. That request was responded to, and to date, there has been no further communication from the insured's attorney to indicate that they are pursuing either an UMBI or UMPD claim. Thus, the company has met its obligation of communication to report to the insured as there was no further claim being presented. Because there was no additional activity to document, the observation should be removed.

- (5) The examiners found one violation of 14 VAC 5-400-70 A. The company failed to deny a claim or part of a claim in writing and/or failed to keep a copy of the written denial in the claim file.
- (6) The examiners found 33 violations of 14 VAC 5-400-70 D. The company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim in accordance with the insured's policy provisions.
- a. In five instances, the company failed to pay the insured's UMPD claim properly when Collision and UMPD coverage applied to the claim.
  - b. In nine instances, the company failed to pay the insured's UMPD claim properly.

**Company's Response:** The Company respectfully disagrees with five of the nine instances. With respect to Response Sheet CPA027 -175436230, there was no indication that alternative transportation was required; therefore, there can be no violation. Additionally, the insured settled the claim by signing a release of all claims and did not submit receipts for rental or other forms of transportation. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA049 12663822, the appraiser's claim note on 10/3/16, referencing rental supports the company's position that its claims handling was fair and reasonable with regard to the repair process. The repair process explanation includes informing the insured of their relevant rental benefits under UMPD. There was no indication that the vehicle was actually ever repaired, and rental expenses were never submitted or otherwise requested by the insured. The relative amounts offered were fair and reasonable, and there was no attempt to deny reimbursement for expenses incurred by the insured. Because there was no

additional activity to document, the observation should be removed. With respect to Response Sheet CPA052 290112080, the insured is represented by legal counsel, who indicated that they are assisting the insured with prosecuting a claim against the negligent party and the reported carrier for the insured's damage resulting from the accident. The attorney for the insured has indicated that they are researching the issue of underlying coverage with the at-fault party. If they find there is no coverage, counsel will notify us that they would in turn present a UMBI claim to the Company. Repeated attempts were made by the Company to determine if AIG was accepting or disclaiming coverage for the loss; however, AIG has not responded. To date, the Company has not received any indication from the insured's attorney that they intend to present UM claims to the Company. Based on the current handling of this claim, the Company has met its obligations to their insured. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA053 698015174, the claim note on 11/8/16 supports that the claim representative met with the insured and the estimate and process were discussed. Although not documented, during these meetings coverage is reviewed and any need for rental benefits are discussed with the insured. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA066 -329535276, there was no indication that alternative transportation was required; therefore, there can be no violation. The Company requests removal of the observation.

- c. In 15 instances, the company failed to pay the proper sales and use tax, title fee, and license fee on a first party total loss settlement.
- d. In three instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses coverage.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with one of the three instances. With respect to Response Sheet CPA046 1134490916, a pending coverage flag needed to be addressed at the time of the initial request for rental. The rental was set up upon the next contact with the insured on 9/6/16. On 9/13/16, the last day of rental was scheduled due to a subsequent attempt to contact the insured and resolve the total loss on 9/12/16. Upon resolution of the total loss there were no further rental needs presented by the insured. Thus, reasonable rental was provided and the observation should be removed.

- (7) The examiners found eight violations of 14 VAC 5-400-80 D. The company failed to provide the vehicle owner a copy of the estimate for the cost of repairs prepared by or on behalf of the company.
  - a. In six instances, the company failed to provide a copy of the repair estimate to the insured.

**Company's Response:** The Company respectfully disagrees with two of the six instances. With respect to Response Sheet CPA026 -2002871981, our process for issuing the payment to the insured includes attaching the estimate. Verbal confirmation of this was received on 5/16/16 from the insured advising that the independent appraiser had completed the appraisal. The check details further indicate that the estimate was sent to the insured, as the check instructions note: "Hold for attachments." The Company maintains its position that "Hold for attachments" is directly related to the printing and attaching of the estimate with the check via the internal process. Thus, this observation should be removed. With respect to Response Sheet CPA027 -542177375, the check was mailed directly to the insured with the body shop's name included. The check details

support that the check was held for attachments. The attachment accompanying the check is the estimate. Thus, this observation should be removed.

- b. In two instances, the company failed to provide a copy of the repair estimate to the claimant.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with one of the two instances. With respect to review sheet CPA029 1517942975, upon issuing the payment to the Insured, our process includes attaching the estimate. A repair process discussion was also documented in the file on 6/1/16. Thus, this observation should be removed.

- (8) The examiners found three violations of 14 VAC 5-400-80 E. The company failed to document all information relating to the application of betterment or depreciation in the claim file.

**Company's Response:** The Company respectfully disagrees with all three of the noted instances. With respect to Response Sheet CPA026 137038777, the appraiser made an assessment of actual wear based on the condition of the brakes, which assessment was confirmed during a physical inspection and itemized as such on the estimate. The percentage of the betterment deduction was properly noted on the estimate along with the actual dollar amount being deducted. With respect to Response Sheet CPA044 -791021691, the damage to the rear bumper did not result from this accident. The vehicle was visually inspected and the assessment was confirmed and itemized properly, indicating the betterment percentage and corresponding dollar amount being deducted. With respect to Response Sheet CPA058 1233159289, the appraiser made an assessment of actual wear based on the condition of the suspension parts, which assessment was confirmed during physical inspection and itemized as such on the estimate

- (9) The examiners found ten violations of § 38.2-510 A 1 of the Code of Virginia. The

company misrepresented pertinent facts or insurance policy provisions relating to coverages at issue.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with six of the ten instances. With respect to Response Sheet CPA027 -716926599, there was a coverage flag for "loss occurred within 30 days of coverage change". In an attempt to independently verify the date of loss, in accordance with our standard operating procedures, the police report was needed to aid in the coverage investigation. The investigation was ultimately resolved without the need for the police report, with UMPD coverage being provided. Because there was no additional activity to document, the observations should be removed.

With respect to Response Sheet CPA044 -568784799, there was an original request, not a requirement, for photos from the insured to complete the initial estimate. Following receipt of the claim on 8/26/16, phone messages were left on 8/26/16; we contacted the insured on 8/29/16 and 8/30/16 to, among other things, request photos. The notation of cancelling the assignment was a reference to a potential lack of interest on the insured's part, not due to non-compliance of a photo request. On 9/7/16 the insured returned the messages and requested an appraisal from the Company. During the call the adjuster agreed to the request for an appraisal and set up an inspection of the vehicle. Because there was no additional activity to document, the observations should be removed.

With respect to Response Sheet CPA059 175643453, there was no misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue by the Company. The insured had previously sent us a copy of the driver's exchange report on the date of report, indicating the insured's desire to assist and cooperate in the process.



The prior discussion with the insured's agent on 11/22/16 further shows the insured's request resulted in the insured's willingness and not because we required it. A copy of the police report was ultimately obtained from the insured's attorney on 12/2/16, which was 13 business days after the loss report on 11/11/16. Because there was no additional activity to document, the observations should be removed. With respect to the recent receipt of Response Sheet CPA061 1585992123, the adjuster did not limit the amount of rental coverage as indicated in the observation. On November 17, 2016, the insured was made aware that they had \$600 rental coverage. A reservation was set up on the same date. The insured elected to obtain a rental vehicle, Mitsubishi Mirage, that was comparable to their loss vehicle, Mazda 3.4D. Upon reconciling the rental invoice at the end of the term, the adjuster approved the duration and notated the previous rate that the insured had obtained. Because the rate notation was not a limitation set by the insurance company, the observation should be removed. With respect to Response Sheet CPA066 693219105, the police report was ordered by the adjuster on the date of the loss report. Coverage for UMPD was afforded timely and the police report was required to obtain independent verification of the date of loss, an essential element for coverage for this claim. Because there was no additional activity to document, the observation should be removed. With respect to Response Sheet CPA030 -638755736, the claimant was originally provided a comparable vehicle to the vehicle damaged in the loss. The adjuster's explanation, in response to the claimant's request for a larger than comparable vehicle, was an attempt to clarify the term "comparable". Because there was no additional activity to document, the observation should be removed.

- (10) The examiners found one violation of § 38.2-510 A 3 of the Code of Virginia. The company failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

**Company's Response:** The Company respectfully disagrees with the reported instance.

With respect to Response Sheet CPA059 1502136502, the proper investigation and documentation in the claim supports contributory negligence. The insured indicated in her statement that she continued to drive after the accident, eventually coming to rest in the left inside lane. The insured had a duty to not obstruct the roadway and create a hazard after the accident. The investigation included a police report, review of the damages and a statement from the insured. The adjuster reviewed jury instructions regarding negligence with defense counsel and considered the issues at hand before concluding the insured was a percentage at fault in this loss. The decision was provided to the insured's attorney and there was no further reference to additional factors or a challenge of liability. Thus, the Company requests that this observation be removed.

(11) The examiners found seven violations of § 38.2-510 A 6 of the Code of Virginia.

The company failed to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.

These findings occurred with such frequency as to indicate a general business practice.

**Company's Response:** The Company respectfully disagrees with five of the seven instances. With respect to Response Sheet CPA044 2066587406, due to minor damage and a drivable vehicle, the Company originally requested, but did not receive photos from the insured to complete the initial estimate. Following receipt of the claim on 8/26/16, the Company attempted to contact the insured to, among other things, request photos by leaving phone messages on 8/26/16, 8/29/16 and 8/30/16. On 9/7/16 the insured returned our adjuster's messages and requested an appraisal from the Company. During the call, the adjuster agreed to the request for an appraisal from the insured and scheduled an inspection of the vehicle. With respect to Response Sheet CPA052 -1555473350, an attorney is currently representing the insured. To date, there has been no demand made

for payment under UMPD or UMBI coverage, and the Company has received no indication that a UM claim will be asserted. With respect to Response Sheet CPA059 500537274, the police report is an independent source of information used to help verify the facts of loss, including the identity of operators of vehicles. The police report was needed to verify driver information relative to the accuracy of the recorded statement obtained in the course of the investigation. With respect to Response Sheet CPA065 584551991, the investigation was timely and involved a referral to the Company's Special Investigative Unit due to inconsistencies, including a prior loss involving the unlisted driver found via ISO. Upon conclusion of our SIU investigation we promptly resolved the claim. With respect to Response Sheet CPA066 -1980535090, our claim representative ordered the police report and received it on 1/2/17. The uninsured motorist bodily injury exposure was identified and opened on the date of report. A portion of the delay involved attempts to work through an interpreter to obtain the insured's statement and obtaining all of the medical bills to complete an evaluation. Because of the responses provided, the company respectfully requests that these five observations be removed.

- (12) The examiners found one violation of § 38.2-510 A 13 of the Code of Virginia. The company failed to settle a claim where liability was reasonably clear under one portion of the insurance policy in order to influence a settlement under another portion of the policy coverage.
- (13) The examiners found two violations of § 38.2-510 C of the Code of Virginia. The company failed to disclose the required aftermarket parts notice to the vehicle owner on the estimate of repairs or in a separate document.
  - a. In one instance, the company failed to disclose the required aftermarket parts notice to the insured owner on the estimate of repairs or in a separate document.
  - b. In one instance, the company failed to disclose the required aftermarket

parts notice to the claimant owner on the estimate of repairs or in a separate document.

- (14) The examiners found three occurrences where the company failed to comply with the provisions of the insurance policy.
- a. In one instance, the company paid an insured more than he/she was entitled to receive under the terms of the policy.
  - b. In two instances, the company failed to pay an Uninsured Motorist (UM) claim properly.

#### Other Law Violations

Although not a violation of Virginia insurance laws, the examiners noted the following as a violation of other Virginia laws.

The examiners found one violation of § 46.2-624 of the Code of Virginia. The company failed to notify the Virginia Department of Motor Vehicles when payment was made in excess of \$3,500.00 on a water-damaged vehicle.

**Company's Response:** The Company respectfully disagrees with the reported instance. With respect to Response Sheet CPA035 1498228965, notice was provided to the Virginia DMV regarding salvage by filing the non-repairable certificate, a copy which is in the claim file. A follow up call with the VA DMV Salvage Department confirmed that the non-repairable certificate is proper and sufficient notice for this type of claim. Thus, the Company requests that this observation be removed.

#### REVIEW OF FORMS

The examiners reviewed the company's policy forms and endorsements used during the examination period and those that are currently used for the line of business examined. From this review, the examiners verified the company's compliance with Virginia insurance statutes and regulations.

To obtain copies of the policy forms and endorsements used during the

examination period for each line of business listed below, the Bureau requested copies from the company. In addition, the Bureau requested copies of new and renewal business policy mailings that the company was processing at the time of the Examination Data Call. The details of these policies are set forth in the Review of the Policy Issuance Process section of the Report. The examiners then reviewed the forms used on these policies to verify the company's current practices.

### **Automobile Policy Forms**

#### POLICY FORMS USED DURING THE EXAMINATION PERIOD

The company provided copies of 17 forms that were used during the examination period to provide coverage on policies insuring risks located in Virginia.

The examiners found three violations of § 38.2-2220 of the Code of Virginia.

- a. In two instances, the company used policy forms that were not in the precise language of the standard forms filed and adopted by the Bureau.
- b. In one instance, the company failed to have available for use the Suspension of Insurance endorsement.

#### OTHER FORMS USED DURING THE EXAMINATION PERIOD

The examiners found no additional forms to review.

#### POLICY FORMS CURRENTLY USED

The examiners found no violations in this section.

### **REVIEW OF THE POLICY ISSUANCE PROCESS**

To obtain sample policies to review the company's policy issuance process for the lines examined, the examiners requested new and renewal business policy mailings that were sent after the company received the Examination Data Call. The company was instructed to provide duplicates of the entire packet that was provided to the insured. The details of these policies are set forth below.

For this review, the examiners verified that the company enclosed and listed all of the applicable policy forms on the declarations page. In addition, the examiners verified that all required notices were enclosed with each policy. Finally, the examiners verified that the coverages on the new business policies were the same as those requested on the applications for those policies.

### **Automobile Policies**

The company provided five new business policies mailed on April 4, 2017. In addition, the companies provided five renewal business policies mailed on April 4, 2017.

#### NEW BUSINESS POLICIES

The examiners found five violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy as required by the statute.

- a. In one instance, the company failed to list the applicable limits on the declarations page.
- b. In four instances, the company listed forms on the declarations page that were not applicable to the policy.

**Company's Response:** On February 22, 2018 we updated our Declarations page to only show the Loss Payable Clause when a Loss Payee is listed on the policy.

#### RENEWAL BUSINESS POLICIES

- (1) The examiners found five violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy as required by the statute. The company listed forms on the declarations page that were not applicable to the policy.

**Company's Response:** On February 22, 2018 we updated our Declarations page to only show the Loss Payable Clause when a Loss Payee is listed on the policy.

- (2) The examiners found one violation of § 38.2-305 B of the Code of Virginia. The company failed to provide the "Important Information Regarding Your Insurance" notice.

### **REVIEW OF STATUTORY NOTICES**

To obtain sample policies to review the content of the statutory notices that the company is required to provide to insureds and used by the company for the line examined, the examiners used the same new business policy and renewal business policy mailings that were previously described. The details of these policies have been set forth previously under the Review of the Policy Issuance Process section of the Report. The examiners verified that the notices used by the company on all applications, on all policies, and those special notices used for vehicle issued on risks located in Virginia complied with the Code of Virginia.

#### **General Statutory Notices**

The examiners found one violation of § 38.2-604 B of the Code of Virginia. The company's long form Notice of Information Collection and Disclosure Practices did not contain all of the information required by the statute.

#### **Statutory Vehicle Notices**

The examiners found no violations in this area.

### **LICENSING AND APPOINTMENT REVIEW**

A review was made of new business private passenger automobile, motorcycle, and commercial automobile policies to verify that the agent of record for those policies reviewed was licensed and appointed to write business for the company as required by Virginia insurance statutes. In addition, the agent or agency to which the company paid commission for these new business policies was checked to verify that the entity held a valid Virginia license and was appointed by the company.

### **Agent Review**

- (1) The examiners found one violation of § 38.2-1318 of the Code of Virginia. The company failed to provide convenient access to the files, documents, and records relating to the examination. The company failed to provide a copy of the new business application.

**Company's Response:** The Company respectfully disagrees with this violation. The agent asked that we flat cancel this policy on the effective date as they accidentally bound the policy. There is no completed application to provide as the policy contract was never completed.

- (2) The examiners found one violation of § 38.2-1812 E of the Code of Virginia. The company paid commissions to a trade name that was not filed with the Commission.

**Company's Response:** The Company paid commissions to Allrisk Insurance Agency, Tax Id# 51-05594341.

- (3) The examiners found four violations of § 38.2-1822 A of the Code of Virginia. The company permitted an entity to act as an agent without first obtaining a license from the Commonwealth of Virginia.

**Company's Response:** The Company respectfully disagrees with all four instances. With respect to Response Sheet AG054 462076371, while Sircon



indicates the agent was terminated effective 12/21/16 the notice from the Virginia BOI advising us of the termination was not dated until 12/27/16. We are unable to determine when we received this letter but because it was not electronically mailed, it likely wasn't received until the week of January 2<sup>nd</sup>. Our termination process is manual but we did terminate this agent promptly, effective 1/5/2017, one day after he bound the policy in question. With respect to Response sheet AG058 968632923, the agent had initially provided us the alias under which he conducts his business. We entered this (alias) name in our agency system and provided it to the BOI. He is licensed and we have updated our records. The license number and name were provided on our last response sheet.

With respect to Response Sheets AG064 2020392967 and AG065 970189519, we disagree that we are in violation of § 38.2-1822 A for permitting a person to act in the capacity of an agent who was not licensed in the Commonwealth of Virginia. After reviewing Sircon we agree that the individual agent was not licensed in the Commonwealth when the policy was written however, we were not aware of this until you brought it to our attention. It is the responsibility of the agent's agency to ensure individuals acting as an agent in their agency are licensed. Section 38.2-1822 A of the Code of Virginia specifically states that ".....no insurer or licensed agent shall **knowingly** permit a person to act, in this Commonwealth as an agent of an insurer licensed to transact the business of insurance in this Commonwealth without first obtaining a license". We did not "knowingly" permit a non-licensed person to act as an agent, and therefore we are not in violation of § 38.2-1822 A.

- (4) The examiners found 17 violations of § 38.2-1833 of the Code of Virginia. The company failed to appoint an agent within 30 days of the date of the application.

**Company's Response:** We have already begun reaching out to our agencies to get a list of all individuals that may sell a policy on behalf of the agency so that we can appoint them. For any new agencies we request a list of all individuals that

they may sell a policy on behalf of the agency and appoint them as well.

### **Agency Review**

- (1) The examiners found two violations of § 38.2-1812 of the Code of Virginia. The company failed to appoint an agency within 30 days of the date of application.
- (2) The examiners found five violations of § 38.2-1822 A of the Code of Virginia. The company permitted an entity to act as an agency without first obtaining a license from the Commonwealth of Virginia.

**Company's Response:** The Company respectfully disagrees with all five instances. We disagree that we are in violation of § 38.2-1822 A for permitting a person to act in the capacity of an agent who was not licensed in the Commonwealth of Virginia. After reviewing Sircon we agree that the individual agent was not licensed in the Commonwealth when the policy was written however, we were not aware of this until you brought it to our attention because it is the responsibility of the agent's agency to ensure individuals acting as an agent in their agency be licensed. Section 38.2-1822 A of the Code of Virginia specifically states that ".....no insurer or licensed agent shall **knowingly** permit a person to act, in this Commonwealth as an agent of an insurer licensed to transact the business of insurance in this Commonwealth without first obtaining a license". We did not "knowingly" permit a non-licensed person to act as an agent, and therefore we are not in violation of § 38.2-1822 A.

### **REVIEW OF THE COMPLAINT-HANDLING PROCESS**

A review was made of the company's complaint-handling procedures and record of complaints to verify compliance with § 38.2-511 of the Code of Virginia. The examiners found one violation of § 38.2-511 of the Code of Virginia. The company failed to maintain a complete register in compliance with the statute.

**Company's Response:** The Company respectfully disagrees with this instance. We have provided documentation that shows we have maintained a complete complaint register in compliance with the statute. The complaints not included in our 2016 register were included in our 2017 register. We log our complaints by the date we respond to them. While these complaints were received in late December 2016, our response was issued in early January 2017. The code does not specify whether the received or response date should be included in the response log. Please see attached word doc exhibit 01 showing screenshots of the actual complaint file folder. Please note the dates.

#### **REVIEW OF PRIVACY AND INFORMATION SECURITY PROCEDURES**

The Bureau requested a copy of the company's Information Security Program that protects the privacy of policyholder information in accordance with § 38.2-613.2 of the Code of Virginia.

The company provided its written information security procedures.

#### **PART TWO – CORRECTIVE ACTION PLAN**

Business practices and the error tolerance guidelines are determined in accordance with the standards set forth by the NAIC. A seven percent (7%) error criterion was applied to claims handling. Any error ratio above this threshold for claims indicates a general business practice. In some instances, such as filing requirements, forms, notices, and agent licensing, the Bureau applies a zero tolerance standard. This section identifies the violations that were found to be business practices of Virginia insurance statutes and regulations.

**General**

MGA Insurance shall:

Provide a Corrective Action Plan (CAP) with their response to this Report.

**Rating and Underwriting Review**

MGA Insurance shall:

- (1) Correct the errors that caused the overcharges and undercharges, and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as of the date the error first occurred.

**Company's Response:** The Company issued refunds for the violations not currently disputed.

- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' accounts.

**Company's Response:** The Company issued refunds included Six percent interest for the violations not currently disputed.

- (3) Complete and submit to the Bureau the enclosed file titled "Rating Overcharges Cited during the Examination." By returning the completed file to the Bureau, the companies acknowledge that they have refunded or credited the overcharges listed in the file.

**Company's Response:** Included in this response.

- (4) Specify accurate information in the policy by showing only the forms applicable to the policy on the declarations page.

**Company's Response:** On February 22, 2018 we updated our Declarations page to only show the Loss Payable Clause when a Loss Payee is listed on the policy.

- (5) Properly represent the benefits, coverages, advantages, and conditions of the policy by showing only the applicable discounts on the declarations page.

**Company's Response:** Acknowledged. Appropriate changes will be made.

- (6) Use the rules and rates on file with the Bureau. Particular attention should be focused on the use of filed discounts, surcharges, points for accidents and convictions, symbols, tier eligibility criteria, driver classification factors, and increased limits factors.

**Company's Response:** Acknowledged. Appropriate changes will be made.

### **Termination Review**

MGA Insurance shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as the date the error first occurred.

**Company's Response:** The Company issued refunds for the violations not currently disputed.

- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' accounts.

**Company's Response:** The Company issued refunds included Six percent interest for the violations not currently disputed.

- (3) Complete and submit to the Bureau the enclosed file titled "Termination Overcharges Cited during the Examination." By returning the completed file to the Bureau, the companies acknowledge they have refunded or credited the overcharges listed in the file.

**Company's Response:** Included in this response.

- (4) Provide a written AUD notice when required by the statute.

- Company's Response:** Acknowledged. Appropriate changes will be made.
- (5) Calculate return premium according to the filed rules and policy provisions.
- Company's Response:** Please note, these violations are currently disputed.
- (6) Obtain valid proof of mailing cancellation notices to the insured.
- Company's Response:** Please note, these violations are currently disputed.
- (7) Retain proof of mailing cancellation notices to the insured and lienholders.
- Company's Response:** Acknowledged. Appropriate changes will be made.
- (8) Send the cancellation notice at least 45 days before the effective date of cancellation when the policy has been in effect more than 59 days.
- Company's Response:** This is our current process. The violation was removed in the BOI's latest correspondence.
- (9) Send the cancellation notice at least 15 days before the effective date of cancellation when cancelling for nonpayment of premium.
- Company's Response:** This is our current process. The violation was removed in the BOI's latest correspondence.
- (10) Provide a specific reason for cancellation and/or nonrenewal.
- Company's Response:** Acknowledged. Appropriate changes will be made.

### Claims Review

MGA Insurance shall:

- (1) Correct the errors that caused the underpayments and overpayments, and send the amount of the underpayment to insureds and claimants.
- Company's Response:** See attached claims reconciliation sheet
- (2) Include six percent (6%) simple interest in the amount paid to the insureds and claimants.
- Company's Response:** See attached claims reconciliation sheet

- (3) Complete and submit to the Bureau the enclosed file titled "Claims Underpayments Cited During the Examination." By returning the completed file to the Bureau, the companies acknowledge that they have paid the underpayments listed in the file.

**Company's Response:** See attached claims reconciliation sheet

- (4) Document the claim file that all applicable coverages have been discussed with the insured. Particular attention should be given to deductibles, rental benefits under UMPD and Transportation Expenses coverage.

**Company's Response:** The Company has policies and procedures in place to document the communication of applicable coverages with the insured.

- (5) Notify the insured every 45 days of the reason for the delay in completing the investigation of the claim.

**Company's Response:** The Company has policies and procedures in place to notify the insured every 45 days of the reason for the delay in completing the investigation of the claim.

- (6) Offer the insured an amount that is fair and reasonable as shown by the investigation of the claim, and pay the claim in accordance with the insured's policy provisions.

**Company's Response:** The Company has policies and procedures in place to offer the insured an amount that is fair and reasonable per the Company's investigation and to pay the claim in accordance with the policy provisions.

- (7) Provide copies of repair estimates prepared by or on behalf of the company to insureds and claimants.

**Company's Response:** The Company has policies and procedures in place to provide copies of repair estimates prepared by or on behalf of the Company to

insureds and claimants.

- (8) Properly represent pertinent facts or insurance provisions relating to coverages at issue.

**Company's Response:** The Company has policies and procedures in place to properly represent pertinent facts or contract provisions relating to coverage.

- (9) Make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.

**Company's Response:** The Company has policies and procedures in place to make prompt, fair, and equitable settlements of claims in which liability is reasonably clear.

### Forms Review

MGA Insurance shall:

- (1) Use the precise language of the standard automobile forms adopted by the Bureau.

**Company's Response:** Acknowledged. Appropriate changes will be made.

- (2) Have available for use standard automobile forms as adopted by the Bureau.

**Company's Response:** Acknowledged. Appropriate changes will be made.

### Review of Policy Issuance Process

MGA Insurance shall:

- (1) Specify accurate information in the policy as required by the statute by listing only applicable forms on the declarations page.

**Company's Response:** On February 22, 2018 we updated our Declarations page to only show the Loss Payable Clause when a Loss Payee is listed on the policy.

- (2) Provide the "Important Information Regarding Your Insurance" notice as required



by the statute.

**Company's Response:** Acknowledged. Appropriate changes will be made.

### **Review of Statutory Notices**

MGA Insurance shall:

Amend the long form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 B of the Code of Virginia.

**Company's Response:** Acknowledged. Appropriate changes will be made.

### **Licensing and Appointment Review**

MGA Insurance shall:

- (1) Appoint agents within 30 days of the application.

**Company's Response:** We have already begun reaching out to our agencies to get a list of all individuals that may sell a policy on behalf of the agency so that we can appoint them. For any new agencies we request a list of all individuals that they may sell a policy on behalf of the agency and appoint them as well.

- (2) Pay commissions only to agencies that are appointed by the company.

**Company's Response:** Acknowledged. Appropriate changes will be made.

- (3) Accept business only from agents and agencies that have a current license from the Commonwealth of Virginia

**Company's Response:** Acknowledged. Please note, the violations are currently disputed.

### **Review of the Complaint-Handling Process**

MGA Insurance shall:

Maintain a complete complaint register that is in compliance with § 38.2-511 of the Code of Virginia.

**Company's Response:** Acknowledged. Please note, the violations are currently disputed.

### PART THREE – EXAMINERS’ RECOMMENDATIONS

The examiners also found violations that did not appear to rise to the level of business practices by the company. The company should carefully scrutinize these errors and correct the causes before these errors become business practices. The following errors will not be included in the settlement offer:

#### RECOMMENDATIONS

We recommend that the companies take the following actions:

#### Rating and Underwriting Review

- The company should amend its rating manual to include a rule on how the company surcharges the insured for same day convictions.  
**Company’s Response:** Acknowledged. Appropriate changes will be made.

#### Termination

- The company should pay closer attention to the way terminations are coded in order to comply with the cancellation provisions specified in the policy.  
**Company’s Response:** Acknowledged. Appropriate changes will be made.

#### Claims

- The company should document the claim file when all applicable coverages have been discussed with the insured.
- The company should acknowledge correspondence that reasonably suggests a reply is expected from insureds and claimants within ten business days.
- The company should include the Tag/Title fess on claimants’ total losses.
- The company should document all information relating to the application

of betterment or depreciation in the claim file.

- The company should provide the Aftermarket parts notice to the vehicle owner.
- Towing is part of the coverage under Collision and Other-Than-Collision, towing is not separate.

### Forms

- The company should use caution when combining paragraphs; combining of paragraphs could potentially change the coverage.

**Company's Response:** Acknowledged. Appropriate changes will be made.

### Statutory Notices

- The company should change the fraud language to the verbiage provided in § 52-40 of the Code of Virginia.

**Company's Response:** Acknowledged. Appropriate changes will be made.

- The company should correct the Bureau of Insurance's telephone number on the Important Information to Policyholders notice, 51 IIPN (01/17).

**Company's Response:** Acknowledged. Appropriate changes will be made.

- The company should revise the AUD language found on the following notices: CRBR (11/11), CRUR (11/11), and FCRAMV. The company should review the prototype AUD language as found in A.L. 2015-07 and revise the language in the aforementioned notices to be similar to that of the prototype language.

**Company's Response:** Acknowledged. Appropriate changes will be made.

- The company should remove all references of the insured contacting the Virginia Bureau of Insurance regarding availability of coverage on the following notices: 51NR VA (12/12) and 51CX VA (12/12).

**Company's Response:** Acknowledged. Appropriate changes will be made.

### SUMMARY OF PREVIOUS EXAMINATION FINDINGS

This is the first time the Virginia Bureau of Insurance has conducted an examination of the company.

**ACKNOWLEDGEMENT**

The courteous cooperation extended by the officers and employees of the company during the course of the examination is gratefully acknowledged.

Sincerely,

Gloria Warriner  
Senior Insurance Market Examiner

# COMMONWEALTH OF VIRGINIA

SCOTT A. WHITE  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE



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RICHMOND, VIRGINIA 23219  
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[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

April 27, 2018

## VIA UPS 2<sup>nd</sup> DAY DELIVERY

Bettina Rudsill  
MGA Insurance Company, Inc.  
3333 Lee Parkway, Suite 1200  
Dallas, TX 75219

Re: Market Conduct Examination  
MGA Insurance Company, Inc. (NAIC# 40150)  
Examination Period: January 1, 2016 – December 31, 2017

Dear Ms. Rudsill:

The Bureau of Insurance (Bureau) has reviewed the February 28, 2018 response to the Preliminary Market Conduct Report (Report) of MGA Insurance Company (Company). The Bureau has referenced only those items in which the Company has disagreed with the Bureau's findings, or items that have changed in the Report. This response follows the format of the Report.

### PART ONE – EXAMINERS' OBSERVATIONS

#### Automobile New Business Rating

(3d) After further review, the violation for RPA003 has been withdrawn from the Report.

The violation for RPA028 remains in the Report. The Company has provided screen prints showing codes that are relevant to the Company. For reconsideration of this violation the Company should provide a copy of the amended declarations page which reflects the premium change as result of the change in the proof of prior insurance.

The violation for RPA050 remains in the Report. The Company has not provided any additional information to cause the examiners to reconsider the violation. The Company has failed to provide evidence of the prior policy being outside of the first term. Without evidence to support the prior policy not being in the first term the Company is required to obtain a cancellation notice with a cancellation date within 30 days of the effective date of the GAINSCO policy. Please refer to the filed rule.

### **Automobile Renewal Business Rating**

(3a) After further review, the violation for RPA092 has been withdrawn from the Report.

(3c) The violation for RPA068 remains in the Report. The Company has not provided any additional information that would cause the examiners to reconsider the its initial findings. The factors in the Company's system (the factors used) for the 1996 model year do not correspond to the factors on file with the Bureau.

The violation for RPA120 remains in the Report. The Company has not provided any additional information to cause the examiners to reconsider the violations. The factors in the Company's system (the factors used) for the 2001 and 2003 model years do not correspond to the factors on file with the Bureau.

### **Cancellation Notice Mailed Prior to the 59<sup>th</sup> Day of Coverage**

(1) The violations of § 38.2-1906 D of the Code of Virginia now appear as item (2) of the Report.

(2) After further review, three violations have been changed from violations of § 38.2-1906 D of the Code of Virginia to violations of § 38.2-512 A of the Code of Virginia. The Company sent a bill for insurance beyond the cancellation notice and/or after the cancellation notice had been mailed. Sending a premium notice after a cancellation date has been established and advising the insured that failure to pay the premium will result in cancellation infers that paying would affect the cancellation date that has already been established. This practice misrepresents the cancellation already in process. Further, the Company is applying a late premium charge when the Company has not collected the premium late as the premium was never paid.

(3) These violations remain in the report. The Company has not provided any additional information that would cause the Bureau to reconsider its initial original findings. In addition to the IMb barcode not being included on the notice, the company has not provided the facility identification, routing and IMb tracing codes as required by the Memorandum dated March 3, 2016 associated with Administrative Letter 2016-08.

### **Cancellation Notice Mailed After the 59<sup>th</sup> Day of Coverage**

(1) These violations remain in the Report. The Company has not provided any additional information that would cause the Bureau to reconsider its initial findings. In addition to the IMb barcode not being included on the notice, the Company's IMb documentation does not provide the facility identification, routing and IMb tracing codes as required by the Memorandum dated March 3, 2016 associated with Administrative Letter 2016-08.

(2b) This violation remains in the Report. The Company has not provided any additional information that would cause the Bureau to reconsider its initial findings. In addition to the IMb barcode not being included on the notice, the Company's IMb documentation does not provide the facility identification, routing and IMb tracing codes as required by the Memorandum dated March 3, 2016 associated with Administrative Letter 2016-08.



### **Cancellation for Nonpayment of Premium**

- (1) Nine violations that were previously cited as violations of § 38.2-1906 D of the Code of Virginia have been moved to violations of § 38.2-512 A of the Code of Virginia. The Company sent a bill for insurance beyond the cancellation notice and/or after the cancellation notice had been mailed. Sending a premium notice after a cancellation date has been established and advising the insured that failure to pay the premium will result in cancellation infers that paying would affect the cancellation date that has already been established. This practice misrepresents the cancellation already in process. Further, the Company is applying a late premium charge when the Company has not collected the premium late as the premium was never paid.
- (2) These violations remain in the Report. The Company has not provided any additional information that would warrant a change from the Bureau's original position. In addition to the IMb barcode not included on the notice, the Company's IMb documentation does not provide the facility identification, routing and IMb tracing codes as required by the Memorandum dated March 3, 2016 associated with Administrative Letter 2016-08.
- (3b) These violations remain in the report. The Company has not provided any additional information that would warrant a change from the Bureau's original position. In addition to the IMb barcode not included on the notice, the Company's IMb documentation does not provide the facility identification, routing and IMb tracing codes as required by the Memorandum dated March 3, 2016 associated with Administrative Letter 2016-08. These violations now appear as item (4b) in the Report.

### **Insured Request Cancellations**

- (1) These violations now appear as item (2) of the Report.
- (2) After further review, the violation for TPA055 has been moved to item (1) of the Report for violations of § 38.2-512 A of the Code of Virginia. The Company sent a bill for insurance beyond the cancellation notice and/or after the cancellation notice had been mailed; which inferred that the Company had rescinded the cancellation notice. No late payment occurred because the insured never made a payment.

### **Company Initiated Non-Renewals**

- (2) This violation remains in the Report. The Company has not provided any additional information that would warrant a change from the Bureau's original position. In addition to the IMb barcode not included on the notice, the Company's IMb documentation does not provide the facility identification, routing and IMb tracing codes as required by the Memorandum dated March 3, 2016 associated with Administrative Letter 2016-08.
- (4) After further review, the violation for TPA068 for failing to provide 45 days advance notice of non-renewal to the insured is withdrawn.

### **Private Passenger Auto Claims**

(2a) The violation for CPA004 remains in the Report. The Company indicates that the notes of March 14, 2016 stating “No Rental” means the coverage was discussed with the insured. The claim notes are insufficient documentation to demonstrate that all the applicable coverages were reviewed with the insured.

The violation for CPA024 remains in the Report. The Company responded in the Restitution Spreadsheet that “Contact on October 24, 2017 with insured confirmed no rental needed, thus no restitution owed.” The Company must provide evidence of the conversation that took place on 10/24/17 with the insured to determine no transportation expenses were incurred.

(2b) Violations have been added for CPA007, CPA053 and CPA066 due to the Company’s failure to inform the insured of the rental benefits coverage available under UMPD coverage.

The violation for CPA017 remains in the Report. The Company did not inform the insured of the rental benefits coverage available under UMPD.

The violations for CPA023, CPA043, CPA052 and CPA054 remain in the Report. The Company has not provided any evidence that the insured was advised that rental benefits coverage was available.

A violation has been added for CPA049. The claim note of October 3, 2016 is insufficient documentation to demonstrate that all of the applicable coverages were reviewed with the insured. This note advises what the adjuster (HA) would do once the vehicle is at the shop. The Company must provide evidence the insured was contacted to determine if they incurred any transportation expenses due to the covered loss.

The violation for CPA055 remains in the Report. Rental benefits under UMPD were pertinent to this claim. The fact that the policy had five vehicles listed on the policy is irrelevant. The Company did not advise the insured of Rental benefits coverage available under UMPD.

(4) After further review, the violation for CPA052 has been withdrawn from the Report.

(6a) The violation for CPA028 remains in the Report. The Company responded in the Restitution Spreadsheet. The insured requested the claim be closed because the Company continually requested a copy of the Police Report for a UMPD claim. A Police Report is not necessary for payment of a UMPD claim. The Company must reopen this claim and pay the insured the repair estimate of \$1,091.53 (\$1,291.53 less \$200 UMPD deductible). Additionally, the estimate shows 14.2 labor hours. The Company must contact the insured to determine if any transportation expenses were incurred due to this covered loss.

The violation for CPA040 remains in the Report. The Company responded in the Restitution Spreadsheet that “subsequent contact confirms no rental needed.” The Company must provide evidence of the Company’s contact with the insured subsequent to receiving the violations from the Bureau.

The violation for CPA046 remains in the Report. The Company responded in the restitution spreadsheet. The insured initially requested a rental immediately following the accident. The Company did not provide rental until four days later. The Company stopped the insured's rental the same day the total loss offer was presented. The Company owes rental for a reasonable time following a settlement offer to allow the insured to receive and process the settlement check. The Company must contact the insured to determine if any additional transportation expenses were incurred.

The violation for CPA065 remains in the Report. The Company responded in the Restitution Spreadsheet "Contact on 10/24/17 with insured confirmed no rental needed, paid for rides no receipts..". The Company must contact the insured for the names of the drivers to determine the amount that was paid by the insured for rides.

- (6b) The Company responded to CPA007 in the Restitution Spreadsheet that "subsequent contact confirms no rental needed." The Company must provide evidence that the insured was contacted to determine if they incurred any transportation expenses.

The violation for CPA027 remains in the Report. The Company has not provided any new information for the Bureau to reconsider its original position.

After further review, the violations for CPA049, CPA052, CPA053 and CPA066 have been withdrawn from the Report. The violations for CPA049, CPA053 and CPA066 have been cited in section 2.b of the Report pertaining to violations of 14 VAC 5-400-40-A.

- (6d) The violation for CPA046 remains in the Report. The Company terminated the insured's rental on the same day that the total loss offer was extended. The Company failed to pay the \$50.00 deposit shown on the invoice. The Company should reimburse the \$50.00 plus 6% interest. The restitution spreadsheet has been amended to show \$50.00.

- (7a) The violation for CPA026 and CPA027 remain in the Report. The Company has not provided any new information for the Bureau to reconsider its original position.

- (7b) The violation for CPA029 remains in the Report. The Company's response to the Report indicates how the Company would handle an insured. The violations cited in this section pertains to claimants.

- (8) The violations for CPA026 and CPA058 remain in the Report. For CPA026 the estimate shows a \$52.96 reduction for betterment but does specify what item on the estimate this applies to. The estimate for CPA058 shows a total amount for the reduction due to betterment. However, the estimate does not itemize what percentage applies to each of the items reduced.

After further review, the violation for CPA044 has been withdrawn.

- (9) The violations for CPA027, CPA030, CPA044, CPA059 and CPA066 remain in the Report. In each of these claims the Company has misrepresented the policy provisions by making demands for settling the claim that are not supported by the policy provisions.

After further review, the violation for CPA061 has been withdrawn from the Report.

- (10) The violation for CPA059 remains in the Report. The Company has not provided any new information for the Bureau to reconsider its original position.
- (11) The violations for CPA044, CPA052, CPA059, CPA065 and CPA066 remain in the Report. For CPA044 the Company waited 3 days after the claims reported to contact the insured and once contact was made and the insured agreed to an appraisal it took the Company two weeks to complete the appraisal. This was prompt handling of this claim. Further, requiring a police report delayed the process.
- (14) The Report has been renumbered to add a violation of § 38.2-2201 B of the Code of Virginia for the Company's failure to obtain a valid Assignment of Benefits before paying medical expense benefits directly to the medical provider.

#### **Other Law Violation**

The violation for CPA035 remains in the Report. The Company failed to make the appropriate filing with the Division of Motor Vehicles (DMV) for a water damaged vehicle where the company has paid \$3500.00. There are two different types of total loss notices that should be reported to DMV. There is the salvage information that is required on any total loss; then there is the requirement to satisfy a total loss that involves a total loss that involves a vehicle totaled due to a water and/or flood loss. The Company did not make the correct filing with DMV.

#### **Forms**

After further review the violations of § 38.2-2220 of the Code of Virginia are withdrawn from the Report. A Recommendation has been added for form PP 05 96 01 16.

#### **Agent Review**

- (1) After further review, the violation for AG050 has been withdrawn from the Report. The company provided evidence that the agent issued the policy in error and requested the policy to be cancelled on the same date. The report has been renumbered to reflect this change.
- (2) This violation for AG024 remains in the Report. The agent's name and license number provided by the Company does not match the information included in the Bureau's records.
- (3) The violation for AG054 remains in the Report. The Company acknowledges that the agent's license was terminated prior to the inception date of the policy.  
  
The violation for AG058 remains in the Report. The Company's response indicates that the agent initially provided an alias name and the Company has since updated their records. However, the agent's alias name was not on file with the Bureau at the time the application was taken.

The violations for AG064 and AG065 remain in the Report. It is the Company's responsibility to accept business only from agents licensed by the Commonwealth of Virginia and agents that the Company has properly appointed and notified the Bureau of the appointment.

- (4) The Bureau acknowledges that the Company is taking the necessary steps to correct this issue.

### **Agency Review**

- (2) These violations remain in the Report. It is the Company's responsibility to accept business only from agencies licensed by the Commonwealth of Virginia and agencies that the Company has properly appointed and notified the Bureau of the appointment.

### **Complaint**

This violation remains in the Report. The Company has not provided any new information for the Bureau to reconsider its original position.

## **PART TWO – CORRECTIVE ACTION PLAN**

The Company must provide a corrective action for each item sited in this section of the Report.

### **Rating and Underwriting Review**

- (5) Please provide the estimated completion date for showing only the applicable discounts on the declarations page.
- (6) Please provide the estimated completion date on using the rules and rates on file with the Bureau.

### **Forms Review**

- (1) Please provide the estimated completion date for correcting the auto forms language.
- (2) Please provide the estimated completion date for having available for use standard automobile forms as adopted by the Bureau.

### **Policy Issuance**

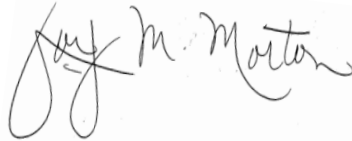
- (2) Please provide the estimated completion date for having the "Important Information Regarding Your Insurance" notice as required by the statute.

### **Review of Statutory Notices**

Please provide the estimated completion date for correcting the long form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 B of the Code of Virginia.

We have made the changes noted above to the Market Conduct Examination Report. Enclosed with this letter is a revised version of the Report, technical reports, the Restitution spreadsheet and any review sheets withdrawn, added or altered as a result of this review. The Company's response to this letter is due in the Bureau's office by May 23, 2018.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is written in a cursive style with a large initial "J" and "M".

Joy M. Morton  
Manager  
Market Conduct Section  
Property and Casualty Division  
(804) 371-9540  
[joy.morton@scc.virginia.gov](mailto:joy.morton@scc.virginia.gov)

Enclosures

**MGA Insurance Company, Inc.**

*ARE YOU DRIVEN?®*

May 22, 2018

Joy Morton, Manager  
Market Conduct Section  
1300 E. Main Street  
Richmond, Virginia 23219



Re: Market Conduct Examination  
MGA Insurance Company, Inc. (NAIC #40150)  
Examination Period January 1, 2016 through December 31, 2016

Dear Ms. Morton,

Thank you for giving us the opportunity to respond to your report dated April 27, 2018. Our response below follows the order of the preliminary report. We have also enclosed under separate cover any additional exhibits and completed Restitution worksheets.

We understand and respect the intent of this Market Conduct Examination and trust that the Bureau accepts our position and responses as an indication of our commitment to compliance. Our response includes those areas where procedures have been, or will be, amended or where we respectfully dispute the findings of the examiners. Our responses track with the order and sequence of the findings.

## **PART ONE - THE EXAMINERS' OBSERVATIONS**

### **RATING AND UNDERWRITING REVIEW**

#### **Automobile New Business Policies**

- (1) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. On February 22, 2018 we updated our Declarations page to only show Loss Payable Clause when a Loss Payee is listed on the policy.
- (3d) The Company appreciates the Bureau's reconsideration of RPA028 761869753, and a copy of the amended declarations page is included as an exhibit.

#### **Automobile Renewal Business Policies**

- (1) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. On February 22, 2018 we updated our Declarations page to show the Loss Payable Clause only when a Loss Payee is listed on the policy.

**Company-Initiated Cancellations – Automobile Policies**  
NOTICE MAILED PRIOR TO THE 60TH DAY OF COVERAGE

- (3) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. Effective January 1, 2017 we implemented a new process to obtain certificate of mailing that complies with Administrative letter 2016-08.

NOTICE MAILED AFTER THE 59TH DAY OF COVERAGE

- (1) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. Effective January 1, 2017 we implemented a new process to obtain valid certificate of mailing that complies with Administrative letter 2016-08.
- (2b) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. Effective January 1, 2017 we implemented a new process to obtain valid certificate of mailing that complies with Administrative letter 2016-08.
- (3b) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. Effective January 1, 2017 we implemented a new process to obtain valid certificate of mailing that complies with Administrative letter 2016-08.

**All Other Cancellations – Automobile Policies**

NONPAYMENT OF THE PREMIUM

- (2) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. Effective January 1, 2017 we implemented a new process to obtain valid certificate of mailing that complies with Administrative letter 2016-08.

**Company-Initiated Non-renewals – Automobile Policies**

- (2) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. Effective January 1, 2017 we implemented a new process to obtain valid certificate of mailing that complies with Administrative letter 2016-08.

**CLAIMS REVIEW**

**Private Passenger Automobile Claims**

- (2a) The Company acknowledges the Bureau's request to provide additional evidence, included as Exhibits #1 and #2, with reference to CPA004 1621103628 and CPA024 1467317936 pertaining to restitution.
- (2b) The Company has provided evidence, included as Exhibit #3, to further support its position with reference to CPA007 1289593122. The Company is currently in the process of following up with the applicable insureds to determine if additional transportation expenses were incurred pertaining to CPA053 152276804, CPA066 719327931, CPA023 852777380, CPA043 1774931124, and CPA054 907995126. The Company acknowledges the Bureau's request to provide additional evidence, included as Exhibit #4, with reference to CPA017 599476920 pertaining to restitution.
- (6a) The Company has provided additional evidence, included as Exhibit #5, to further support its position pertaining to restitution with reference to CPA028 1688539264. The Company has provided additional evidence, included as Exhibit #6, to further support its position with reference to restitution pertaining to CPA040 1775375636. The Company is currently in the process of following up with the insured to determine if additional transportation expenses were incurred



pertaining to CPA046 1134490916. The Company has contacted the insured and is in the process of obtaining supporting documentation to review and reimburse transportation expenses related to CPA065 377029462.

- (6b) The Company appreciates the Bureau's request to provide additional evidence, included as Exhibit #7, with reference to CPA007 1289593122 pertaining to restitution. The Company is currently in the process of attempting to contact the insured to follow up on CPA027 175436230.
- (6d) The Company has paid the additional restitution, pertaining to the \$50 deposit, for CPA046 1134490916.
- (7a) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer related to CPA026 2002871981 and CPA027 542177375.
- (9) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer related to CPA027 716926599, CPA030 638755736, CPA044 568784799, CPA059 175643453 and CPA066 693219105.
- (10) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer related to CPA059 1502136502.
- (11) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer related to CPA044 2066587406, CPA052 1555473350, CPA059 500537274, CPA065 584551991, and CPA066 1980535090.
- (14) The Company respectfully disagrees with the Bureau's assessment related to CPA066 1523969249. The payment for Uninsured Motorists Bodily Injury settlement was issued directly to the insured, see Exhibit #8. There were no payments issued to medical providers on this claim.

## **REVIEW OF FORMS**

### NEW BUSINESS POLICIES

#### **REVIEW OF THE POLICY ISSUANCE PROCESS**

- b. The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. On February 22, 2018 we updated our Declarations page to show the Loss Payable Clause only when a Loss Payee is listed on the policy.

#### **REVIEW OF THE POLICY ISSUANCE PROCESS**

### RENEWAL BUSINESS POLICIES

- b. The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer. On February 22, 2018 we updated our Declarations page to show the Loss Payable Clause only when a Loss Payee is listed on the policy.

## **LICENSING AND APPOINTMENT REVIEW**

### **Agent Review**

- (3) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer.

**Agency Review**

- (2) The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer.

**REVIEW OF THE COMPLAINT-HANDLING PROCESS**

The Company continues to respectfully disagree with the Bureau assessment but has no additional information to offer.

**PART TWO – CORRECTIVE ACTION PLAN**

**Rating and Underwriting Review**

- (1) The Company has issued all refunds due.
- (2) The Company has issued all refunds due inclusive of 6% simple interest.
- (5) The Company is in the process of implementing and will have this remedied no later than September 15, 2018.
- (6) The Company had filed the corrective change on July 29, 2017.

**Termination Review**

- (1) The Company has issued all refunds due.
- (2) The Company has issued all refunds due inclusive of 6% simple interest.

**Forms Review**

- (1) The Company implemented to production the new form on September 01, 2017.
- (2) The Company implemented to production the new form on September 01, 2017.

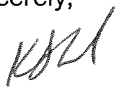
**Review of Policy Issuance Process**

- (2) The Company is in the process of implementing and will have this remedied no later than November 15, 2018.

Please note that neither these comments nor any of our actions are admissions on our part of any violation, wrongdoing, or fault, and should not be interpreted by the Bureau or any other party as constituting any admissions.

If you have any questions please feel free to contact me by email at [Kevin.Williams@GAINSCO.com](mailto:Kevin.Williams@GAINSCO.com) or by telephone at (972) 629-4484.

Sincerely,



Kevin Williams  
Director, Product and Underwriting

Encls.

# COMMONWEALTH OF VIRGINIA



SCOTT A. WHITE  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE

P.O. BOX 1157  
RICHMOND, VIRGINIA 23218  
1300 E. MAIN STREET  
RICHMOND, VIRGINIA 23219  
TELEPHONE: (804) 371-9741  
[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

June 1, 2018

## VIA UPS 2<sup>nd</sup> DAY DELIVERY

Bettina Rudsill  
MGA Insurance Company, Inc  
3333 Lee Parkway, Suite 1200  
Dallas, TX 75219

RE: MGA Insurance Company, Inc. (NAIC# 40150)  
Market Conduct Examination

Dear Ms. Rudsill:

The Bureau of Insurance (Bureau) has concluded its review of the company's response of May 22, 2018. Based upon the Bureau's review of the company's November 29, 2017, February 28, 2018 and May 22, 2018 correspondence, we are now in a position to conclude this examination. Enclosed is the final Market Conduct Examination Report of MGA Insurance Company (Report).

Based on the Bureau's review of the Report and the company's responses, it appears that a number of Virginia insurance laws and regulations have been violated, specifically:

Sections 38.2-305 A, 38.2-305 B, 38.2-502 1, 38.2-510 A 1, 38.2-510 A 6, 38.2-511, 38.2-512 A, 38.2-604 B, 38.2-610 A, 38.2-1812 E, 38.2-1822 A, 38.2-1833, 38.2-1906 D, 38.2-2208 A, 38.2-2208 B and 38.2-2212 E of the Code of Virginia; and 14 VAC 5-400-40 A, 14 VAC 5-400-70 D and 14 VAC 5-400-80 D of the Virginia Administrative Code.

Violations of the laws mentioned above provide for monetary penalties of up to \$5,000 for each violation as well as suspension or revocation of an insurer's license to engage in the insurance business in Virginia.

In light of the above, the Bureau will be in further communication with you shortly regarding the appropriate disposition of this matter.

Sincerely,

Joy M. Morton  
Manager  
Market Conduct Section  
Property and Casualty Division  
(804) 371-9540  
[joy.morton@scc.virginia.gov](mailto:joy.morton@scc.virginia.gov)

**MGA Insurance Company, Inc.**

*ARE YOU DRIVEN?\**

June 19, 2018

Rebecca Nichols Deputy  
Commissioner Property and  
Casualty Bureau of Insurance  
P. O. Box 1157  
Richmond, VA 23218



RE: Market Conduct Examination Settlement Offer  
Ecase/Docket Number:INS-2018-00162

Dear Ms. Nichols:

This will acknowledge receipt of the Bureau of Insurance's letter dated June 5, 2018, concerning the above referenced matter.

We wish to make a settlement offer on behalf of the insurance company listed below for the alleged violations of §§ 38.2-305 A, 38.2-305 B, 38.2-502 1, 38.2-510 A 1, 38.2-510 A 6, 38.2-511, 38.2-512 A, 38.2-604 B, 38.2-610 A, 38.2-1812 E, 38.2-1822 A, 38.2-1833, 38.2-1906 D, 38.2-2208 A, 38.2-2208 Band 38.2-2212 E of the Code of Virginia; and 14 VAC 5-400-40 A, 14 VAC 5-400-70 D and 14 VAC 5-400-80 D of the Virginia Administrative Code.

1. We enclose with this letter a check payable to the Treasurer of Virginia in the amount of \$56,700.00.
2. We agree to comply with the corrective action plan set forth in the company's letters of November 29, 2017, February 28, 2018 and May 22, 2018.
3. We confirm that restitution was made to 42 consumers for \$5,189.87 in accordance with the company's letters of November 29, 2017, February 28, 2018 and May 22, 2018.
4. We further acknowledge the company's right to a hearing before the State Corporation Commission in this matter and waive that right if the State Corporation Commission accepts this offer of settlement.

This offer is being made solely for the purpose of a settlement and does not constitute, nor should it be construed as, an admission of any violation of law.

Sincerely,

MGA Insurance Company

Brian Dossier  
(Signed)

Brian Dossier  
(Type or Print Name)

SVP  
(Title)

6-19-18

Enclosure

# COMMONWEALTH OF VIRGINIA



**SCOTT A. WHITE**  
**COMMISSIONER OF INSURANCE**  
**STATE CORPORATION COMMISSION**  
**BUREAU OF INSURANCE**

**P.O. BOX 1157**  
**RICHMOND, VIRGINIA 23218**  
**1300 E. MAIN STREET**  
**RICHMOND, VIRGINIA 23219**  
**TELEPHONE: (804) 371-9741**  
**[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)**

MGA Insurance Company, Inc. has tendered to the Bureau of Insurance the settlement amount of \$56,700.00 by their check numbered 027612 and dated June 19, 2018, a copy of which is located in the Bureau's files.

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 10, 2018

SCC-CLERK'S OFFICE  
DOCUMENT CONTROL CENTER

2018 JUL 10 P 4: 09

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2018-00162

MGA INSURANCE COMPANY, INC.,  
Defendant

SETTLEMENT ORDER

Based on a market conduct examination conducted by the Bureau of Insurance ("Bureau"), it is alleged that MGA Insurance Company, Inc. ("Defendant"), duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia ("Virginia"), in certain instances violated § 38.2-305 A of the Code of Virginia ("Code") by failing to provide the information required by statute in the insurance policy; §§ 38.2-305 B, 38.2-604 B, 38.2-610 A of the Code by failing to accurately provide the required notices to insureds; § 38.2-502 (1) of the Code by misrepresenting the benefits, advantages, conditions or terms of an insurance policy; § 38.2-511 of the Code by failing to maintain a complete complaint register; § 38.2-512 A of the Code by making false or fraudulent statements or representations on or relative to any document relating to the business of insurance for the purpose of obtaining a fee; § 38.2-1812 E of the Code by paying commissions to a trade name that was not registered with the Bureau; § 38.2-1822 A of the Code by permitting an unlicensed agent to act on the company's behalf; § 38.2-1833 of the Code by paying commissions to agencies or agents that are not appointed by the Defendant; 38.2-1906 D of the Code by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendant; §§ 38.2-2208 A, 38.2-2208 B, and 38.2-2212 E of the Code by failing to

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properly terminate insurance policies; §§ 38.2-510 A (1) and 38.2-510 A (6) of the Code and 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D of the Commission's Rules Governing Unfair Claim Settlement Practices, 14 VAC 5-400-10 *et seq.* ("Rules"), by failing to properly handle claims with such frequency as to indicate a general business practice.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke a defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that a defendant has committed the aforesaid alleged violations.

The Defendant has been advised of the right to a hearing in this matter whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has agreed to comply with the corrective action plan outlined in company correspondence dated November 29, 2017, February 28, 2018, and May 22, 2018, confirmed that restitution was made to 42 consumers in the amount of Five Thousand One Hundred Eighty-nine Dollars and Eighty-seven cents (\$5,189.87), has tendered to Virginia the sum of Fifty-six Thousand Seven Hundred Dollars (\$56,700), and waived the right to a hearing.

The Bureau has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau, is of the opinion that the Defendant's offer should be accepted.



Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.

(2) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Brian C. Dosser, Senior Vice President, MGA Insurance Company, Inc., P.O. Box 199023, Dallas, Texas 75219; and a copy shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Rebecca Nichols.