MARKET CONDUCT EXAMINATION REPORT

OF

DAIRYLAND INSURANCE COMPANY
PEAK PROPERTY AND CASUALTY INSURANCE CORPORATION

AS OF

DECEMBER 31, 2017

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

Property and Casualty Division
Market Conduct Section

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

COMMONWEALTH OF VIRGINIA

P.O. BOX 1157
RICHMOND, VIRGINIA 23218

1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219

TELEPHONE: (804) 371-9741
www.scc.virginia.gov/boi

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

I, Melody S. Morrissette, Senior Insurance Market Examiner of the Bureau of Insurance, do hereby certify that the annexed copy of the Market Conduct Examination Report of Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation as of December 31, 2017, conducted at the companies' office in Stevens Point, Wisconsin is a true copy of the original Report on file with the Bureau and also includes a true copy of the companies' 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 Number INS-2020-00111 finalizing this Report.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this the Bureau at the City of Richmond, Virginia, this 20th of August, 2020.

Melody Morrissette

Examiner in Charge

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EXECUTIVE SUMMARY

The examination included a detailed review of Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation's (Sentry) private passenger automobile and motorcycle lines of business in Virginia for the period beginning January 1, 2017 and ending December 31, 2017. This review included rating and underwriting, policy terminations, claims handling, forms, policy issuance, statutory notices, agent/agency licensing, complaint-handling, and information security practices.

This is the first Market Conduct Examination the Bureau of Insurance (Bureau) has performed on these companies in the past 20 years. The 20-year span is due to the introduction of Market Analysis. During this time, the analysis of Sentry's data did not generate sufficient anomalies for the companies to be considered for a market conduct examination. In comparison to the prior examination, the examiners noted a significant increase in violations and an overall lack of attention to detail.

The current examination revealed violations that were significant. There was a total of 466 violations in this Report. Of these 466 violations, it should be noted that the companies had only 23 violations in the area of terminations for private passenger automobile and motorcycle combined. The bulk of these violations were for failing to accurately calculate the earned premium.

In contrast to the low number of termination violations, the report revealed 149 rating and underwriting violations. These violations included the companies' failure to include the effective time of coverage on the declarations page, the companies' failure to file all rates and supplementary rating information with the Bureau prior to use, the companies' failure to use the rates and rules on file with Bureau, and the companies' failure to update the insured's credit information after three years.

In the area of claims there were 202 violations and 11 general business practices (GBP). There were four GBP's in private passenger automobile and seven GBP's in motorcycle. The violations that rose to the level of a GBP were failure to properly document the claim files in the auto claims, failure to disclose all of the pertinent coverages to the insured, failure to offer the insured a fair and reasonable amount, failure to adopt standards for the prompt investigation of claims, and failure to make a prompt, fair, and equitable settlement in both auto and motorcycle, as well as the failure to notify the insured in writing every 45 days, the reason the claim is still pending.

In the area of forms, the companies had only one violation. This was for failure to use the rating information statement that was on file with the Bureau. The report included 33 violations in the area of policy issuance, another 33 in agent/agency licensing and appointments, and 25 notice violations.

The Corrective Action Plan (CAP) requested amendments to the information entered on the declarations page, providing accurate and timely notices, using the rules and rates on file with the Bureau, and filing all rates and supplementary rating information with the Bureau prior to use. The CAP also requested that the companies terminate policies only for the reasons permitted by the statute. In addition, the companies should document all claim files accurately, disclose to the insured all coverages applicable to the loss, offer an amount that is fair and reasonable, implement standards for a prompt, fair, and equitable settlement, and conduct an internal audit of the companies' auto total loss and rental payments on motorcycle claims. The CAP also requested that restitution of $62,492.38 be made to 83 Virginia consumers.

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 and motorcycle lines of business written by Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation at their office in Stevens Point, Wisconsin.

The examination commenced June 4, 2018 and concluded February 22, 2019. Andrea D. Baytop, Karen S. Gerber, Ju'Coby D. Hendrick, Dan R. Koch, Latitia L. Orange, Melody S. Morrissette, and Gloria V. Warriner, examiners of the Bureau of Insurance, and Joy 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 January 26, 2018 and was assigned the Action Number of VA-VA097-15. The examination was conducted in accordance with the guidelines contained in the National Association of Insurance Commissioners (NAIC) Market Regulation Handbook.

COMPANY PROFILES*

Dairyland Insurance Company (DIC) was formed on August 1, 1965, under the laws of Wisconsin to become successor to the Dairyland Mutual Insurance Company, organized in 1953. The assets and liabilities of the mutual insurance carrier were taken over by the Dairyland Insurance Company on July 31, 1965, after a pro rata distribution of the net worth of the mutual to policyholders, in either stock or cash. Shares not acquired by policyholders were purchased by the company's founder, Stuart H. Struck, and allied interests.

Peak Property and Casualty Insurance Corporation (PPCIC) was incorporated on August 16, 1985, under the laws of North Carolina as General Electric Residential Mortgage Reinsurance Corporation and began business on August 29, 1985. On July 10, 1991, the name was changed to Peak Property and Casualty Insurance Corporation. Concurrent with the change in ownership, the company was re-domesticated to Colorado in November 1993. Due to change in ownership in November 2005, the company was re-domesticated to Wisconsin in December 2006.

* Source: Best's Insurance Reports, Property & Casualty, 2017 Edition.

The table below indicates when the companies were licensed in Virginia and the lines of insurance that the companies were licensed to write in Virginia during the examination period. All lines of insurance were authorized on the date that the companies were licensed in Virginia except as noted in the table.

GROUP CODE: 0169	**DIC**	**PPCIC**
NAIC Company Number	21164	18139
LICENSED IN VIRGINIA	9/14/1965	12/9/1994
LINES OF INSURANCE		
Accident and Sickness		
Aircraft Liability		
Aircraft Physical Damage		
Animal		
Automobile Liability	X	X
Automobile Physical Damage	X	X
Boiler and Machinery		X
Burglary and Theft	12/14/1979	X
Commercial Multi-Peril	12/14/1979	X
Credit		
Farmowners Multi-Peril	12/14/1979	X
Fidelity	12/14/1979	
Fire	12/14/1979	X
General Liability	12/14/1979	X
Glass	12/14/1979	X
Homeowners Multi-Peril	12/14/1979	X
Inland Marine	12/14/1979	X
Miscellaneous Property	12/14/1979	X
Ocean Marine	12/14/1979	
Surety	4/14/1988	
Water Damage	12/14/1979	X
Workers' Compensation		

The table below shows the companies' premium volume and approximate market share of business written in Virginia during 2017 for those lines of insurance included in this examination.* This business was developed through independent agents.

COMPANY AND LINE	PREMIUM VOLUME	MARKET SHARE
Dairyland Insurance Company		
Automobile Liability	$1,696,114	.06%
Automobile Physical Damage	$1,442,264	.06%
Peak Property and Casualty Insurance Company		
Automobile Liability	$8,750,344	.29%
Automobile Physical Damage	$1,142,595	.05%

* Source: The 2017 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 companies' private passenger automobile and motorcycle lines of business written in Virginia for the period beginning January 1, 2017 and ending December 31, 2017. This review included rating, underwriting, policy terminations, claims handling, forms, policy issuance[1], statutory notices, agent/agency 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 companies' 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 companies failed to adhere to the provisions of the policies issued in Virginia. The Other Law Violations section 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 companies' practices that require some action by the companies. This section also summarizes the violations for which the companies were cited in previous examinations.

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

[1] Policies reviewed under this category reflected the companies' current practices and, therefore, fell outside of the exam period.

STATISTICAL SUMMARY

The files selected for the review of the rating and underwriting, terminations, and claims handling processes were chosen by random sampling of the various populations provided by the companies. 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.

AREA	DIC	PPCIC	**Population / Sample Requested TOTAL**	FILES REVIEWED	FILES NOT FOUND	FILES WITH ERRORS	ERROR RATIO
Private Passenger Auto							
New Business[1]	0 / 0	9935 / 25	**9935 / 25**	23	0	12	52%
Renewal Business	0 / 0	6294 / 25	**6294 / 25**	25	0	20	80%
Co-Initiated Cancellations[2]	0 / 0	480 / 15	**480 / 15**	15	0	7	47%
All Other Cancellations[3]	0 / 0	8482 / 18	**8482 / 18**	9	0	5	56%
Nonrenewals	0 / 0	33 / 7	**33 / 7**	7	0	0	0%
Motorcycle							
New Business[4]	1377 / 15	237 / 15	**1614 / 30**	29	0	28	97%
Renewal Business[5]	5885 / 20	21 / 10	**5906 / 30**	29	0	23	79%
Co-Initiated Cancellations	142 / 5	2 / 2	**144 / 7**	7	0	1	14%
All Other Cancellations[6]	1124 / 12	29 / 8	**1153 / 20**	19	0	5	26%
Nonrenewals[7]	12 / 11	0 / 0	**12 / 11**	6	0	1	17%
Claims							
Auto[8]	0 / 0	955 / 86	**955 / 86**	85	0	51	60%
Motorcycle	194 / 60	10 / 9	**204 / 69**	69	0	48	70%

Footnote[1] - One file was a flat cancelled policy and one file was cancelled within the first 60 days of coverage and were not reviewed.

Footnote[2] - One file was a nonrenewal and was not reviewed. One file was moved from the insured requested category.

Footnote[3] - Two files were expira ions and were not reviewed. One file was moved to he over 60 days of coverage category.

Footnote[4] - One file was an ATV policy and was not reviewed.

Footnote[5] - One file was an ATV policy and was not reviewed.

Footnote[6] - One file was an expiration and was not reviewed.

Footnote[7] - One file was not a nonrenewal and was not reviewed. One file was an insured requested cancellation and was not reviewed. Five files were the result of he policy being transferred to ano her state and were not reviewed.

Footnote[8] - One file was a California policy and was not reviewed.

PART ONE – THE EXAMINERS' OBSERVATIONS

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

RATING AND UNDERWRITING REVIEW

Automobile New Business Policies

The examiners reviewed 23 new business policy files. During this review, the examiners found overcharges totaling $2,605.24 and undercharges totaling $151.73. The net amount that should be refunded to insureds is $2,605.24 plus six percent (6%) simple interest.

(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 failed to display the effective time of coverage in the policy.

(2) The examiners found one violation of § 38.2-1905 C of the Code of Virginia. The company failed to assign points to the vehicle customarily driven by the operator responsible for incurring points.

(3) The examiners found one violation of § 38.2-1906 A of the Code of Virginia. The company failed to file with the Commission all rates and supplementary rate information including fees.

(4) The examiners found 12 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 seven instances, the company failed to use the correct discounts and/or surcharges.

   b. In three instances, the company failed to apply accident and conviction

surcharge points under its Safe Driver Insurance Plan (SDIP) correctly.

c. In two instances, the company failed to use the correct symbol.

(5) The examiners found one violation of § 38.2-2234 A of the Code of Virginia. The company failed to provide the insured/applicant the Insurance Credit Score Disclosure notice.

Automobile Renewal Business Policies

The examiners reviewed 25 renewal business policy files. During this review, the examiners found overcharges totaling $751.16 and undercharges totaling $112.89. The net amount that should be refunded to insureds is $751.16 plus six percent (6%) simple interest.

(1) The examiners found 19 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 failed to display the effective time of coverage in the policy.

(2) The examiners found one violation of § 38.2-502 1 of the Code of Virginia. The company misrepresented the benefits, advantages, and conditions or terms of the insurance policy by indicating incorrect surcharges applied to the policy.

(3) The examiners found two violations of § 38.2-1905 C of the Code of Virginia. The company failed to assign points to the vehicle customarily driven by the operator responsible for incurring points.

(4) The examiners found four violations of § 38.2-1906 A of the Code of Virginia. The company failed to file with the Commission all rates and supplementary rate information including fees.

(5) The examiners found eight 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 one instance, the company failed to use the correct discounts and/or

surcharges.

b. In one instance, the company failed to apply accident and conviction surcharge points under its SDIP correctly.

c. In four instances, the company failed to use the correct symbol.

d. In two instances, the company failed to follow its driver assignment rule.

Motorcycle New Business Policies

The examiners reviewed 29 new business policy files. During this review, the examiners found overcharges totaling $2,872.39 and undercharges totaling $2,334.32. The net amount that should be refunded to insureds is $2,872.39 plus six percent (6%) simple interest.

(1) The examiners found 15 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 failed to display the effective time of coverage in the policy.

(2) The examiners found 44 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 18 instances, the company failed to use the correct discounts and/or surcharges.

b. In one instance, the company failed to apply accident and conviction surcharge points under its SDIP correctly.

c. In 23 instances, the company failed to use the correct symbol.

d. In one instance, the company failed to use the correct tier eligibility criteria.

e. In one instance, the company failed to use proper credit score information when rating a policy.

Motorcycle Renewal Business Policies

The examiners reviewed 29 renewal business policy files. During this review, the examiners found overcharges totaling $3,896.71 and undercharges totaling $242.51. The net amount that should be refunded to insureds is $3,896.71 plus six percent (6%) simple interest.

The examiners found 36 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 six instances, the company failed to use the correct discounts and/or surcharges.

b. In one instance, the company failed to apply accident and conviction surcharge points under its SDIP correctly.

c. In 22 instances, the company failed to use the correct symbol.

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

e. In one instance, the company failed to use the correct base and/or final rates.

f. In four instances, the company failed to obtain credit information in accordance with its filed rules.

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 60TH DAY OF COVERAGE

The examiners reviewed five automobile cancellations that were initiated by the company where the notice was mailed prior to the 60th day of coverage in the initial policy

period. During this review, the examiners found no overcharges and no undercharges.

The examiners found one occurrence where the company failed to comply with the provisions of the insurance policy. The company failed to provide adequate days' notice of cancellation to the insured.

NOTICE MAILED AFTER THE 59TH DAY OF COVERAGE

The examiners reviewed ten automobile cancellations that were initiated by the company where the notice was mailed on or after the 60th day of coverage in the initial policy period or at any time during the term of a subsequent renewal policy. During this review, the examiners found no overcharges and undercharges totaling $720.81.

(1) 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.

(2) The examiners found five violations of § 38.2-2212 D of the Code of Virginia.

a. In one instance, the company cancelled the policy for a reason not permitted by the statute.

b. In four instances, the company failed to obtain sufficient documentation from the insured verifying relocation to another state that would permit the company to cancel the policy.

(3) The examiners found one violation of § 38.2-2212 E of the Code of Virginia. The company failed to mail the cancellation notice to the insured at least 45 days prior to the effective date of cancellation.

All Other Cancellations – Automobile Policies

NONPAYMENT OF THE PREMIUM

The examiners reviewed five automobile cancellations that were initiated by the company for nonpayment of the policy premium. During this review, the examiners found

no overcharges and undercharges totaling $113.75.

(1) The examiners found one violation of § 38.2-502 1 of the Code of Virginia. The company incorrectly combined the installment notice with the cancellation notice.

(2) The examiners found two 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.

(3) The examiners found two violations of § 38.2-2212 E of the Code of Virginia.

a. In one instance, the company failed to mail the cancellation notice to the insured at least 15 days prior to the effective date of cancellation.

b. In one instance, the company failed to advise the insured of the right to request a review by the Commissioner of Insurance.

REQUESTED BY THE INSURED

The examiners reviewed four 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 no overcharges and no undercharges.

The examiners found one violation of § 38.2-2212 F of the Code of Virginia. The company failed to obtain a written request from the insured to cancel the policy.

Company-Initiated Nonrenewals – Automobile Policies

The examiners reviewed seven automobile nonrenewals that were initiated by the company.

The examiners found no violations in this area.

Company-Initiated Cancellations – Motorcycle Policies

NOTICE MAILED PRIOR TO THE 60TH DAY OF COVERAGE

The examiners reviewed seven motorcycle cancellations that were initiated by the

companies where the companies mailed the notices prior to the 60th day of coverage in the initial policy period. During this review, the examiners found no overcharges and no undercharges.

The examiners found one violation of § 38.2-1318 C of the Code of Virginia. The company failed to provide convenient access to the files, documents, and records relating to the examination. The company was unable to provide complete billing information.

NOTICE MAILED AFTER THE 59TH DAY OF COVERAGE

The companies were unable provide any files for the Bureau's review.

All Other Cancellations – Motorcycle Policies

NONPAYMENT OF THE PREMIUM

The examiners reviewed 12 motorcycle cancellations that were initiated by the companies for nonpayment of the policy premium. During this review, the examiners found no overcharges and no undercharges.

The examiners found one violation of § 38.2-1318 C of the Code of Virginia. The company failed to provide convenient access to the files, documents, and records relating to the examination. The company was unable to provide complete billing information.

REQUESTED BY THE INSURED

The examiners reviewed seven motorcycle cancellations that were initiated by the insured where the cancellation was to be effective during the policy term. During this review, the examiners found no overcharges and undercharges totaling $70.82.

(1) The examiners found two 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.

(2) The examiners found one occurrence where the company failed to comply with the provisions of the insurance policy. The company failed to use the cancellation date requested by the insured.

Other Law Violations

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-Initiated Nonrenewals – Motorcycle Policies

The examiners reviewed six motorcycle nonrenewals that were initiated by the companies.

Other Law Violations

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.

CLAIMS REVIEW

Private Passenger Automobile Claims

The examiners reviewed 85 automobile claims for the period of January 1, 2017 through December 31, 2017. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. During this review, the examiners found overpayments totaling $2,397.01 and underpayments totaling $12,999.73. The net amount that should be paid to claimants is $12,999.73 plus six percent (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 26 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 four instances, the company failed to accurately inform an insured of the physical damage deductible when the file indicated that the coverage was applicable to the loss.

b. In four instances, the company failed to accurately inform an insured of the Medical Expense Benefits (MEB) coverage when the file indicated the coverage was applicable to the loss.

c. In five 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.

d. In 13 instances, the company failed to accurately inform an insured of the

benefits or coverages, including rental benefits, available under the Uninsured Motorist Property Damage coverage (UMPD) and/or Underinsured Motorist coverage (UIM) when the file indicated the coverage was applicable to the loss.

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

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

(4) The examiners found two 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 two violations 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 16 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 two instances, the company failed to pay the insured's UMPD claim properly when Collision and/or UMPD coverages applied to the claim.

b. In three instances, the company failed to pay the insured's UMPD claim properly.

c. In one instance, 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 two instances, the company failed to pay the claim in accordance with the policy provisions under the insured's MEB coverage.

e. 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 five instances, the company failed to pay the insured's Collision or Other Than Collision claim properly.

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

(7) The examiners found five 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 two instances, the company failed to provide a copy of the repair estimate to the insured.

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

(8) The examiners found one violation 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 five violations of § 38.2-236 A of the Code of Virginia.

a. In three instances, the company failed to notify the claimant within five business days that a settlement payment was issued to the claimant's attorney or representative.

b. In two instances, the company failed to send the claimant's attorney or

other representative a copy of the claimant's notice regarding the settlement payment.

(10) The examiners found two 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.

(11) The examiners found six violations 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.

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

(12) The examiners found 13 violations of § 38.2-510 A 6 of the Code of Virginia. The company failed to attempt, in good faith, to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.

a. In nine instances, the company unreasonably delayed the settlement of a claim.

b. In two instances, the company failed to promptly process the insured's UMPD deductible.

c. In one instance, the company failed to reimburse the claimant for damages incurred.

d. In one instance, the company failed to pay the claimants properly for the loss incurred.

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

(13) The examiners found two violations of § 38.2-510 A 10 of the Code of Virginia. The company made a claim payment to the insured or beneficiary that was not

accompanied by a statement setting forth the correct coverage(s) under which payment was made.

(14) The examiners found six occurrences where the company failed to comply with the provisions of the insurance policy.

a. In two instances, the company adjusted the claim contrary to the policy provisions.

b. In three instances, the company paid an insured more than the insured was entitled to receive under the terms of the policy.

c. In one instance, the company failed to pay an Uninsured Motorist (UM) claim properly.

Motorcycle Claims

The examiners reviewed 69 automobile claims for the period of January 1, 2017 through December 31, 2017. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. During this review, the examiners found no overpayments and underpayments totaling $17,778.59. The net amount that should be paid to claimants is $17,778.59 plus six percent (6%) simple interest.

(1) The examiners found six 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.

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

(2) The examiners found 38 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 21 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 nine instances, the company failed to accurately inform an insured of the benefits or coverage, including rental benefits, available under the UMPD coverage and/or UIM coverage.

c. In one instance, the company failed to inform the insured of his coverage for Transportation Expenses as a result of a theft loss.

d. In seven instances, the company failed to disclose to an insured all coverages or provisions of the insurance policy that were pertinent to his claim.

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

(3) The examiners found one violation of 14 VAC 5-400-50 A. The company failed, upon receiving notification of a claim, to acknowledge within ten working days receipt of such notice where no payment was made within such period of time.

(4) The examiners found six 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.

(5) The examiners found three violations 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 25 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 four instances, the company failed to pay the insured's UMPD claim properly when Collision and/or UMPD coverages applied to the claim.

b. In two instances, the company failed to pay the insured's UMPD claim properly.

c. In three instances, the company failed to pay the claim in accordance with the policy provisions under the insured's MEB coverage.

d. In three instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses coverage.

e. In two instances, the company failed to pay the insured's Collision or Other Than Collision claim properly.

f. In 11 instances, the company failed to pay the claim in accordance with the policy provisions where there was no dispute as to the coverage or liability.

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

(7) The examiners found ten 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 four 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 one violation of § 38.2-236 A of the Code of Virginia. The company failed to notify the claimant that a settlement payment was issued to the claimant's attorney or representative.

(9) The examiners found three 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

a. In one instance, the company misrepresented pertinent facts and insurance policy provisions relating to MEB coverage.

b. In two instances, the company misled the claimant as to the company's obligations regarding payment of the claimant's rental or loss of use claim.

(10) The examiners found six violations 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.

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

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

a. In six instances, the company unreasonably delayed the settlement of a claim.

b. In one instance, the company failed to promptly process the insured's UMPD deductible.

c. In one instance, the company failed to make payment for towing and

storage charges.

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

(12) The examiners found one violation of § 38.2-510 C of the Code of Virginia. The company failed to disclose the required aftermarket parts notice to the insured owner on the estimate of repairs or in a separate document.

FORMS REVIEW

The examiners reviewed the companies' policy forms and endorsements used during the examination period and those that are currently used for all of the lines of business examined. From this review, the examiners verified the companies' 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 companies. In addition, the Bureau requested copies of new and renewal business policy mailings that the companies were processing at the time of the Examination Data Call. The details of these policies are set forth in the Policy Issuance Process Review section of the Report. The examiners then reviewed the forms used on these policies to verify the companies' current practices.

Automobile Policy Forms

POLICY FORMS USED DURING THE EXAMINATION PERIOD

The companies provided copies of 19 forms that were used during the examination period to provide coverage on policies insuring risks located in Virginia.

The examiners found no violations in this area.

POLICY FORMS CURRENTLY USED

The examiners found no additional forms to review

Motorcycle Policy Forms

POLICY FORMS USED DURING THE EXAMINATION PERIOD

The companies provided copies of 34 forms that were used during the examination period to provide coverage on policies insuring risks located in Virginia.

The examiners found one violation of § 38.2-2214 of the Code of Virginia. The company used a rate classification statement other than the one approved for use by the Bureau during the examination period.

POLICY FORMS CURRENTLY USED

The examiners found no additional forms to review

POLICY ISSUANCE PROCESS REVIEW

To obtain sample policies to review the companies' policy issuance process for the lines examined, the examiners requested new and renewal business policy mailings that were sent after the companies received the Examination Data Call. The companies were 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 companies 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 companies provided five new business policies sent on the following dates: January 2 and 3, February 7, 20, and 26, 2018. In addition, the companies provided five renewal business policies sent on the following dates: December 19, 21, 28, 2017 and January 17 and March 1, 2018.

NEW BUSINESS POLICIES

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

a. In three instances, the company failed to include the effective time of coverage in the policy.

b. In five instances, the company failed to list all forms applicable to the policy on the declarations page.

RENEWAL BUSINESS POLICIES

The examiners found three 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 failed to list all forms applicable to the policy on the declarations page.

Motorcycle Policies

The companies provided five new business policies sent on the following dates: January 3, 10, 11, 15, and 27, 2018. In addition, the companies provided ten renewal business policies sent on the following dates: December 15, and 18, 2017, and January 15, 16, and 26, and February 8, 13, and 28, and March 1, 2018.

NEW BUSINESS POLICIES

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

a. In five instances, the company failed to include the effective time of coverage in the policy.

b. In five instances, the company failed to list all forms applicable to the policy on the declarations page.

RENEWAL BUSINESS POLICIES

(1) The examiners found six violations of § 38.2-305 A of the Code of Virginia. The company failed to specify in the insurance policy all of the information required by the statute.

a. In four instances, the company failed to include the effective time of coverage in the policy.

b. In two instances, the company failed to list all forms applicable to the policy on the declarations page.

(2) The examiners found three violations of § 38.2-305 B of the Code of Virginia. The company failed to provide the Important Information Regarding Your Insurance notice as required by the Code of Virginia.

(3) The examiners found three violations of § 38.2-604.1 of the Code of Virginia. The Company failed to provide the Notice of Financial Information Collection and Disclosure Practices as required by this statute.

STATUTORY NOTICES REVIEW

The examiners reviewed the companies' statutory notices used during the examination period and those that are currently used for all of the lines of business examined. From this review, the examiners verified the companies' compliance with

Virginia insurance statutes.

To obtain copies of the statutory notices used during the examination period for each line of business listed below, the Bureau requested copies from the companies. For those currently used, the Bureau used the same new and renewal business policy mailings that were previously described in the Review of the Policy Issuance Process section of the Report.

The examiners verified that the notices used by the companies on all applications, on all policies, and those special notices used for vehicle policies issued on risks located in Virginia complied with the Code of Virginia. The examiners also reviewed documents that were created by the companies but were not required by the Code of Virginia. These documents are addressed in the Other Notices category below.

General Statutory Notices

(1) The examiners found two violations of § 38.2-604 B of the Code of Virginia. The company's Notice of Information Collection and Disclosure Practices did not include all of the information required by this statute.

(2) The examiners found one violation of § 38.2-604 C of the Code of Virginia. The companies' short form Notice of Information Collection and Disclosure Practices did not contain all of the information required by the statute.

(3) The examiners found two violations of § 38.2-610 A of the Code of Virginia. The company failed to have an Adverse Underwriting Decision (AUD) notice containing substantially similar language as that of the prototype set forth in Administrative Letter 2015-07.

Statutory Vehicle Notices

(1) The examiners found two violations of § 38.2-1905 A of the Code of Virginia.

a. In one instance, the company failed to have a Point Surcharge notice that notifies the insured of the right to appeal to the Commissioner of Insurance the company's decision to surcharge the insured's policy.

b. In one instance, the company failed to have available a Point Surcharge notice that informs the insured that the policy has been surcharged due to an at fault accident.

(2) The examiners found five violations of 38.2-2202 A of the Code of Virginia. The company's MEB notice was not in the precise wording required by the statute.

(3) The examiners found three violations of § 38.2-2202 B of the Code of Virginia. The rejection of higher UM Limits notice was not in the precise language as required by the statute.

(4) The examiners found one violation of § 38.2-2210 A of the Code of Virginia. The company failed to include the 60-day Cancellation Warning notice on the application.

(5) The examiners found four violations of § 38.2-2230 of the Code of Virginia. The company's rental reimbursement notice did not comply with the requirements of the statute.

(6) The examiners found five violations of § 38.2-2234 A 1 of the Code of Virginia. The company's Insurance Credit Score Disclosure notice did not include all of the information required by the statute.

Other Notices

The companies provided copies of 19 other notices including applications that were used during the examination period.

The examiners found no violations in this area.

LICENSING AND APPOINTMENT REVIEW

A review was made of new business private passenger auto and motorcycle 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 the companies paid commission for the new business policies was checked to verify that the entity held a valid Virginia license and was appointed by the companies.

Agency

The examiners found 25 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.

Agent

(1) The examiners found one violation of § 38.2-1822 A of the Code of Virginia. The company permitted a person to act in the capacity of an agent who was not licensed in Virginia.

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

COMPLAINT-HANDLING PROCESS REVIEW

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

The examiners found no violations in this area.

PRIVACY AND INFORMATION SECURITY PROCEDURES REVIEW

The Bureau requested a copy of the companies' information security program that protects the privacy of policyholder information in accordance with § 38.2-613.2 of the Code of Virginia.

The examiners found no violations in this area.

PART TWO – CORRECTIVE ACTION PLAN

Business practices and the error tolerance guidelines are determined in accordance with the guidelines contained in the NAIC Market Regulation Handbook. 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, statutory notices, and agent/agency 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

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation shall:

Provide a CAP with their response to the Report.

Rating and Underwriting Review

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation 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 the effective time of coverage

in the policy.

(5) Properly represent the benefits, coverage, advantages, and conditions of the policy by indicating correct surcharges applied to the policy.

(6) Properly assign points under a SDIP to the vehicle customarily driven by the operator incurring the points.

(7) File all rates and supplementary rate information prior to using the rates.

(8) Use the rules and rates on file with the Bureau. Particular attention should be given to the use of filed discounts, points for accidents and convictions, symbols, tier eligibility, base and/or final rates, driver assignment, and credit score information.

(9) Provide the Credit Score Disclosure notice as required by §38.2-2234 A of the Code of Virginia.

Termination Review

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation 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 "Termination 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) Calculate return premium according to the filed rules and policy provisions.

(5) Obtain sufficient documentation from the insured verifying relocation to another state.

(6) Provide adequate days' notice of cancellation to the insured.

(7) Cancel policies only for the reasons permitted by statute.

(8) Advise the insured of the right to review by the Commissioner of Insurance.

(9) Obtain a written notice when the insured requests to cancel a policy as required by the provisions of the insurance policy.

Claims Review

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation 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 claim files so that all events and dates pertinent to the claim can be reconstructed.

(5) Document the claim file so that all applicable coverages have been disclosed to the insured. Particular attention should be given to deductibles, rental benefits under UMPD, Transportation Expenses coverage, and MEB coverage.

(6) Notify the insured, in writing, every 45 calendar days of the reason for the company's delay in completing the investigation of the claim.

(7) 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.

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

(9) Adopt and implement reasonable standards for the prompt investigation of claims.

(10) Make a prompt, fair, and equitable settlement of a claim in which liability and/or coverage is reasonably clear.

(11) Conduct an internal audit of all total loss claims in the population during the audit period and reevaluate the CCC valuations to determine that all amounts owed were paid to the insured. The company should then prepare an excel spreadsheet indicating the payments made as a result of the internal audit. This spreadsheet should be in the same format as the Restitution Spreadsheet sent by the Bureau for the Claims Underpayments.

(12) Conduct an internal audit of all motorcycle claims and determine if the insured obtained a rental vehicle, and reimburse any amount owed under Transportation Expense coverage. The company should then prepare an excel spreadsheet indicating the payments made as a result of the internal audit. This spreadsheet should be in the same format as the Restitution Spreadsheet sent by the Bureau for the Claims Underpayments.

Forms Review

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation shall:

Use the rate classification statement filed and approved by the Bureau.

Policy Issuance Process Review

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation shall:

(1) Specify accurate information in the policy by including the effective time of coverage in the policy.

(2) Provide the insured the Important Information Regarding Your Insurance notice with all new automobile and motorcycle policies.

(3) Provide the Notice of Financial Information Collection and Disclosure Practices notice as required by the statute.

(4) List only forms applicable to the policy on the declarations page.

Statutory Notices Review

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation shall:

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

(2) Amend the Short Form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 C of the Code of Virginia.

(3) Have available for use the AUD notice to comply with § 38.2-610 A of the Code of Virginia.

(4) Have available the Accident Point Surcharge notice to comply with § 38.2-1905 A of the Code of Virginia.

(5) Amend the MEB notice to comply with § 38.2-2202 A of the Code of Virginia.

(6) Amend the UM Limits notice to comply with § 38.2-2202 B of the Code of Virginia.

(7) Develop a 60-day Cancellation Warning notice for the application to comply with § 38.2-2210 A of the Code of Virginia.

(8) Amend the Rental Reimbursement notice to comply with § 38.2-2230 of the Code of Virginia.

(9) Amend the Insurance Credit Score Disclosure notice to comply with the provisions of § 38.2-2234 A 1 of the Code of Virginia.

Licensing and Appointment Review

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation shall:

Accept business only from agents and agencies who are properly licensed and appointed in the Commonwealth of Virginia.

PART THREE – RECOMMENDATIONS

The examiners also found violations that did not appear to rise to the level of business practices by the companies. The companies should carefully scrutinize these errors and correct the causes before these errors become business practices.

RECOMMENDATIONS

We recommend that the companies take the following actions:

Rating and Underwriting

- Provide convenient access to files, documents, and records relating to the examination.
- Properly represent the benefits, coverages, advantages, and conditions of the policy by showing an accurate premium on the declaration page.

Terminations

- Separate the installment notice and the cancellation notice.

Claims

- Acknowledge correspondence that reasonably suggests a reply is expected from insureds and claimants within ten business days.
- Provide reasonable assistance to an insured in the management of a claim.
- Acknowledge correspondence that reasonably suggests a reply is expected from insureds and claimants within ten calendar days of receipt.
- Make all denials in writing and keep a copy in the claim file.
- Document all information relating to the application of betterment or depreciation in the claim file.
- Notify the claimant within five business days when a settlement check $5,000 or greater is sent to the claimant's attorney or representative.
- Include a correct statement of the coverages under which payments are made with all claim payments to insureds.
- Provide the aftermarket parts notice to the vehicle owner.

- Properly represent pertinent facts or insurance provisions relating to coverage(s) at issue.
- Cease sending letters to claimants advising that the claim could be reduced by the percentage of the claimant's negligence. Virginia is not a comparative negligence state.

Statutory Notices

- Correct the Bureau of Insurance's telephone numbers on the Important Information Regarding Your Insurance notice.
- Add the abbreviated Notice of Collection and Disclosure Practices provided by § 38.2-604 C, to its passenger auto and motorcycle applications to ensure the applicants are provided the notice at the correct time.
- Add company contact information should the insured request information regarding the AUD.
- Correct any typographical errors on notices provided to the insured.
- Amend the fees statement on the application to correctly inform the insured that the fees are charged for the policy term instead of the life of the policy.

SUMMARY OF PREVIOUS EXAMINATION FINDINGS

The Virginia Bureau of Insurance conducted an examination of the companies in 1999.

ACKNOWLEDGEMENT

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

Sincerely,

Melody Morrissette
Insurance Market Examiner

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

April 23, 2019

VIA E-MAIL

Wendy Whitrock-Keller
Sentry Insurance
1800 North Point Drive
Stevens Point, WI 54481

RE: Market Conduct Examination
Dairyland Insurance Company (NAIC# 21164)
Peak Property and Casualty Corporation (NAIC# 18139)
Exam Period: January 1, 2017 – December 31, 2017

Dear Ms. Whitrock-Keller:

The Bureau of Insurance (Bureau) has conducted a market conduct examination of the above referenced companies for the period of January 1, 2017 – December 31, 2017. The preliminary examination report (Report) has been drafted for the companies' review.

Enclosed with this letter is a copy of the Report and copies of review sheets that have been added, withdrawn or revised since February 22, 2019. 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 companies, I would urge you to closely review the Report. Please provide a written response. The companies do not need to respond to any particular item with which they agree. If the companies disagree with an item or wish 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 companies provide written documentation to support their position. When the companies respond, please do not include any personal identifiable or privileged information (names, policy numbers, claim numbers, addresses, etc.). The companies should use exhibits or appendices to reference such information. In addition, please use the same format (headings and numbering) as found in the Report. If not, the response will be returned to the companies 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 companies 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 companies have comments they wish 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 companies should outline the actions they are taking to prevent those issues from becoming a business practice.

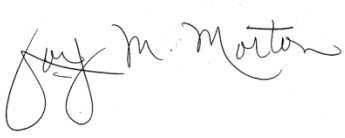
Finally, we have enclosed an Excel file that the companies must complete and return to the Bureau with their response. This file lists the review items for which the examiners identified overcharges (rating and terminations) and underpayments (claims).

The companies' response and the spreadsheet mentioned above must be returned to the Bureau by May 24, 2019.

After the Bureau has received and reviewed the companies' 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 May 24, 2019.

Sincerely,



Joy Morton, AMCM
Manager
Market Conduct Section
Property & Casualty Division
(804) 371-9540
joy.morton@scc.virginia.gov

JMM/pgh

July 1, 2019

Sent Via Email and Overnight Delivery

Ms. Joy Morton, AMCM
Manager, Market Conduct Section
Property & Casualty Division
Bureau of Insurance
Tyler Building, 1300 E Main Street
Richmond, Virginia 23219
(804) 371-9540
joy.morton@scc.virginia.gov

RE: Responses to the Market Conduct Examination Report
Dairyland Insurance Company (NAIC #2164)
Peak Property and Casualty Corporation (NAIC # 18139)
Exam Period: January 1, 2017 – December 31, 2017

Dear Ms. Morton:

On behalf of Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation (collectively known as the "company" or "Companies" interchangeably), we write for purposes of responding to the Market Conduct Examination Report as of December 31, 2017 ("Report"). As requested, the Companies' response follows the format of the Report in terms of headings, parts and sub-parts.

Any confidential exhibits referenced throughout the Companies' response will be provided to the examiners via a secure filing sharing system. Pursuant to your letter dated April 23, 2019, the Companies have provided a corrective action plan addressing each of the issues identified in the Report (including restitution). For ease of reference, this plan is incorporated in the responses to Part One under each heading, part and sub-part.

The Bureau requested that the Companies confidentially reply to the restitution items provided by the Bureau with the response to the Report ("Restitution Reply"). The Companies takes the position that the Restitution Reply is conditional upon several open items pending with the Bureau. These include clarification of several points of disagreement, several outstanding legal interpretation issues that need clarification from the Bureau, and the finalizing of the Report. For these reasons, the Companies have not provided this with the response to the Report. However, the Companies have prepared an interim draft and are prepared to share this with the Bureau

immediately upon its request. Also, the Companies are prepared to quickly act to finalize the Restitution Reply once the forgoing issues are finally concluded.

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PART ONE - THE EXAMINERS' OBSERVATIONS

Rating and Underwriting Review

Automobile New 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 failed to display the effective time of coverage in the policy.

The Companies acknowledge the examiners' observation. There was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to provide information required by statute in its policies. There was no impact, positive or negative, to the insured/applicant due to this error.

(2) The examiners found one violation of § 38.2-1905 C of the Code of Virginia. The company failed to assign points to the vehicle customarily driven by the operator responsible for incurring points.

The Companies acknowledge the examiners' observation. This was an administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to appropriately assign points to the correct operator.

(3) The examiners found one violation of § 38.2-1906 A of the Code of Virginia. The company failed to file with the Commission all rates and supplementary rate information including fees.

The Companies acknowledge and respectfully disagree with the examiners' observations. The forgoing notwithstanding, Section 38.2-1906 A of the Code of Virginia requires insurers to file

all rates and supplementary rating information with the Bureau prior to use. The Companies filed their rates in accordance with § 38.2-1906 A of the Code of Virginia. The Companies have consistently applied these filed rating factors to all policyholders in accordance with Virginia law.

(4) The examiners found 12 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 seven instances, the company failed to use the correct discounts and/or surcharges.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam.

b. In three instances, the company failed to apply accident and conviction surcharge points under its Safe Driver Insurance Plan (SDIP) correctly.

The Companies acknowledge and respectfully disagree with the examiners' observation. The Companies' established procedure is to appropriately apply accident and conviction surcharge points as reported by each policyholder.

The Companies respectfully point out that Section 38.2-1904 D of the Code of Virginia states:

> **No insurer shall use any information pertaining to any motor vehicle conviction or accident to produce increased or surcharged rates above their filed manual rates for individual risks for a period longer than 36 months. This period shall begin no later than 12 months after the date of the conviction or accident.**

When policyholders self-report the convictions cited on their new business applications, the Companies take this into account. Section 38.2-1904 D does not require convictions or accidents to be reported through a specific reporting agency. The Companies' rating and underwriting took policyholders' convictions into account in accordance with Section 38.2-1904 D.

c. In two instances, the company failed to use the correct symbol.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to use the correct symbol. This was administrative error that did not impact the underwriting or rating of the policy.

(5) The examiners found one violation of § 38.2-2234 A of the Code of Virginia. The company failed to provide the insured/applicant the Insurance Credit Score Disclosure notice.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to provide required notices and disclosures. There was no impact, positive or negative, to the insured/applicant due to this error.

Automobile Renewal Business Policies

The examiners reviewed 25 renewal business policy files. During this review, the examiners found overcharges totaling $956.25 and undercharges totaling $112.89. The net amount that should be refunded to insureds is $956.25 plus six percent (6%) simple interest.

(1) The examiners found 19 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 failed to display the effective time of coverage in the policy.

According to the Companies' records, the Companies received 18 instances rather than 19. Notwithstanding the discrepancy, the Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to provide information required by statute in its policies. There was no impact, positive or negative, to the policyholders due to this error.

(2) The examiners found one violation of § 38.2-502 1 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions or terms of the insurance policy by indicating incorrect surcharges applied to the policy.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to accurately apply surcharges.

(3) The examiners found two violations of § 38.2-1905 C of the Code of Virginia. The company failed to assign points to the vehicle customarily driven by the operator responsible for incurring points.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with the observations as set forth in our responses during the exam.

(4) The examiners found four violations of § 38.2-1906 A of the Code of Virginia. The company failed to file with the Commission all rates and supplementary rate information including fees.

The Companies acknowledge the examiners' observation. However, the Companies respectfully disagree with them. Section 38.2-1906 A of the Code of Virginia requires insurers to file all rates and supplementary rating information with the Bureau prior to use. The Companies filed its rates in accordance with § 38.2-1906 A of the Code of Virginia. The

Companies implemented their filing as it was written. The Companies have consistently applied these filed rating factors to all policyholders in accordance with Virginia law.

(5) 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.

a. In one instance, the company failed to use the correct discounts and/or surcharges

The Companies acknowledge the examiners' observation and continue to respectfully disagree with the observation as set forth in our response during the exam. Companies' established procedure is to accurately apply discounts and surcharges. There was no impact, positive or negative, to the insured/applicant due to this error.

b. In one instance, the company failed to apply accident and conviction surcharge points under its Safe Driver Insurance Plan (SDIP) correctly.

The Companies acknowledge the examiners' observation and continue to respectfully disagree with the observation as set forth in our response during the exam. The Companies' established procedure is to accurately apply surcharges. This was an administrative error that did not impact the underwriting or rating of the policy.

The Companies respectfully point out that Section 38.2-1904 D of the Code of Virginia states:

> **No insurer shall use any information pertaining to any motor vehicle conviction or accident to produce increased or surcharged rates above their filed manual rates for individual risks for a period longer than 36 months. This period shall begin no later than 12 months after the date of the conviction or accident.**

When policyholders self-report the convictions cited on their new business applications, the Companies take this into account. Section 38.2-1904 D does not require convictions or accidents to be reported through a specific reporting agency. The Companies' rating and underwriting took policyholders' convictions into account in accordance with Section 38.2-1904 D.

c. In four instances, the company failed to use the correct symbol.

According to the Companies' records, the Companies received three observations rather than four. Notwithstanding the discrepancies, the Companies acknowledge the examiners' observation. The Companies' established procedure is to utilize the appropriate symbol. This was an administrative error that did not impact the underwriting or rating of the policy.

d. In one instance, the company failed to use the correct base and/or final rates.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to use appropriate base and final rates.

The company respectfully disagrees with the examiners' observation. For the benefit of the customer—to avoid duplicate charges or to pay premium for a vehicle which he or she no longer owns—the company has consistently allowed customers to backdate cancellations so we do not penalize them.

e. In two instances, the company failed to follow its driver assignment rule.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to follow their rules. This was administrative error that did not impact the underwriting or rating of the policy.

Motorcycle New Business Policies

(1) The examiners found 15 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 failed to display the effective time of coverage in the policy.

According to the Companies' records, the Companies did not receive any review sheets referenced by the Department.

Notwithstanding the discrepancy, the Companies acknowledge that this was an issued cited in other areas. The Companies' established procedure is to provide information required by statute in its policies. This was an administrative error that did not impact the underwriting or rating of the policy. There was no impact, positive or negative, to the insured/applicant due to this error.

(2) 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 Companies acknowledge the examiners' observation. However, the Companies respectfully disagree as set forth in our response during the exam. At most, this was administrative error that did not impact the underwriting or rating of the policy. There was no impact, positive or negative, to the insured/applicant due to this error. The Bureau has had discussions with the Companies agreeing with this position. The supporting documentation in included in a separate Confidential Exhibit which has been uploaded to the FTP site.

(3) The examiners found 44 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 18 instances, the company failed to use the correct discounts and/or surcharges.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies did not retain copies of the discount proof that its agents obtained. However, this was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to appropriately apply discounts and surcharges.

b. In one instance, the company failed to apply accident and conviction surcharge points under its Safe Driver Insurance Plan (SDIP) correctly.

The Companies acknowledge the examiners' observation and continue to respectfully disagree with some of the observation as set forth in our response during the exam. This is particular This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to appropriately apply discounts and surcharges.

The Companies respectfully point out that Section 38.2-1904 D of the Code of Virginia states:

> **No insurer shall use any information pertaining to any motor vehicle conviction or accident to produce increased or surcharged rates above their filed manual rates for individual risks for a period longer than 36 months. This period shall begin no later than 12 months after the date of the conviction or accident.**

When policyholders self-report the convictions cited on their new business applications, the Companies take this into account. Section 38.2-1904 D does not require convictions or accidents to be reported through a specific reporting agency. The Companies' rating and underwriting took policyholders' convictions into account in accordance with Section 38.2-1904 D.

c. In 23 instances, the company failed to use the correct symbol.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to use the appropriate symbol.

d. In one instance, the company failed to use the correct tier eligibility criteria.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to use the appropriate eligibility criteria.

e. In one instance, the company failed to use proper credit score information when rating a policy.

The Companies acknowledge and disagree with the examiners' observation. The Companies' established procedure is to use appropriate credit score information.

Motorcycle Renewal Business Policies

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

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to use the appropriate discounts and surcharges.

b. In one instance, the company failed to apply accident and conviction surcharge points under its Safe Driver Insurance Plan (SDIP) correctly.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to apply the appropriate surcharges.

The Companies respectfully point out that Section 38.2-1904 D of the Code of Virginia states:

> **No insurer shall use any information pertaining to any motor vehicle conviction or accident to produce increased or surcharged rates above their filed manual rates for individual risks for a period longer than 36 months. This period shall begin no later than 12 months after the date of the conviction or accident.**

When policyholders self-report the convictions cited on their new business applications, the Companies take this into account. Section 38.2-1904 D does not require convictions or accidents to be reported through a specific reporting agency. The Companies' rating and underwriting took policyholders' convictions into account in accordance with Section 38.2-1904 D.

c. In 22 instances, the company failed to use the correct symbol.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to use the appropriate symbol.

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

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to use the appropriate eligibility criteria.

e. In one instance, the company failed to use the correct base and/or final rates.

The Companies acknowledge the examiners' observation. The company respectfully disagrees with the examiners' observation. The policy was both rated and endorsed correctly to determine the premium amount.

f. In four instances, the company failed to obtain credit information in accordance with its filed rules.

According to the Companies' records, the Companies received three review sheets rather than four. Notwithstanding the discrepancy, the Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to use appropriate credit information. The associate did not follow the Companies' procedure; however, the associate was retrained on proper handling. The forgoing notwithstanding, the Companies incorporated a procedure whereby every policy is reviewed by the Companies' underwriting division prior to policy issuance. The Companies maintain that this change will prevent future instances.

Termination Review

Company-Initiated Cancellations – Automobile Policies

Notice Mailed Prior to the 60th Day of Coverage

The examiners reviewed five automobile cancellations that were initiated by the company where the notice was mailed prior to the 60th day of coverage in the initial policy period. During this review, the examiners found no overcharges and no undercharges.

The examiners found one occurrence where the company failed to comply with the provisions of the insurance policy. The company failed to provide adequate days' notice of cancellation to the insured.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to comply with statutory requirements. There was no impact, positive or negative, to the insured/applicant due to this error.

Notice Mailed After the 59th Day of Coverage

(1) 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.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to appropriately calculate earned premium.

(2) The examiners found five violations of § 38.2-2212 D of the Code of Virginia.

a. In one instance, the company cancelled the policy for a reason not permitted by the statute.

The Companies acknowledge the examiners' observation. This was an administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to comply with statutory requirements. The associate did not follow the Companies' procedure. There was no impact, positive or negative, to the insured/applicant due to this error.

b. In four instances, the company failed to obtain sufficient documentation from the insured verifying relocation to another state that would permit the company to cancel the policy.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to comply with document requirements. There was no impact, positive or negative, to the insured/applicant due to this error.

(3) The examiners found one violation of § 38.2-2212 E of the Code of Virginia. The company failed to mail the cancellation notice to the insured at least 45 days prior to the effective date of cancellation.

The Companies acknowledge the examiners' observation. This was an administrative. The Companies' established procedure is to comply with statutory requirements. There was no impact, positive or negative, to the insured/applicant due to this error.

All Other Cancellations – Automobile Policies

Nonpayment of the Premium

(1) The examiners found one violation of § 38.2-502 1 of the Code of Virginia. The company incorrectly combined the installment notice with the cancellation notice.

The Companies acknowledge the examiners' observation. The Companies respectfully disagree with the observation. Virginia Code § 38.2-502 1 provides that an insurer shall not "misinterpret the benefits, advantages, conditions or terms of any insurance policy." The statute does not appear applicable on its face to combination notices. There was no impact, positive or negative, to the insured/applicant due to this error.

(2) The examiners found two 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.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to appropriately calculate earned premium. There was no impact, positive or negative, to the insured/applicant due to this error.

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

The Companies acknowledge the examiners' observations. However, during a teleconference with the examiners, the Companies described their process of sending a termination for both paperless and electronic submissions. Subsequently, the Companies provided the examiners with documentation including print screens of the process and proof of mailing. Upon receiving this documentation, the examiners withdrew other similar violations.

(4) The examiners found two violations of § 38.2-2212 E of the Code of Virginia.

a. In one instance, the company failed to mail the cancellation notice to the insured at least 15 days prior to the effective date of cancellation.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to comply with statutory requirements. There was no impact, positive or negative, to the insured/applicant due to this error.

b. In one instance, the company failed to advise the insured of the right to request a review by the Commissioner of Insurance.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to advise insured of statutory rights were required to do so. There was no impact, positive or negative, to the insured/applicant due to this error.

All Other Cancellations – Auto Policies
Requested by the Insured

The examiners reviewed four 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 no overcharges and no undercharges.

The examiners found one violation of § 38.2-2212 F of the Code of Virginia. The company failed to obtain a written request from the insured to cancel his policy.

The Companies acknowledge the examiners' observation. This was administrative error that did not impact the underwriting or rating of the policy. The Companies' established procedure is to comply with statutory requirements.

Company-Initiated Cancellations – Motorcycle Policies
Notice Mailed Prior to the 60th Day of Coverage

The examiners found one violation 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.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to appropriately calculate earned premium.

All Other Cancellations – Motorcycle Policies
Nonpayment of the Premium

The examiners reviewed 12 motorcycle cancellations that were initiated by the Companies for nonpayment of the policy premium. During this review, the examiners found no overcharges and no undercharges.

The examiners found one violation 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.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to appropriately calculate earned premium.

Requested by the Insured

The examiners reviewed seven motorcycle cancellations that were initiated by the insured where the cancellation was to be effective during the policy term. During this review, the examiners found no overcharges and undercharges totaling $70.82.

(1) The examiners found two 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.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to appropriately calculate earned premium.

(2) The examiners found three occurrences where the company failed to comply with the provisions of the insurance policy.

a. In one instance, the company failed to use the cancellation date requested by the insured.

The Companies acknowledge the examiners' observation. This was an administrative error. The Companies' established procedure is to comply with statutory requirements and terms of their insurance policies. There was no impact, positive or negative, to the insured/applicant due to this error.

b. In two instances, the company failed to obtain advance notice of cancellation from the insured.

The Companies acknowledge the examiners' observation. However, the Companies respectfully disagree. For the benefit of the customer — to avoid duplicate charges or to pay premium for a vehicle which he or she no longer owns — the Companies have consistently allowed customers to backdate a cancellation, so they are not penalized. However, in these instances the backdating occurred at the insured's request pursuant to ISO approved language. In addition, the backdating occurred the date after a total loss. In this instance, the insured no longer has an insurable interest and to collect premium for coverage would be illusory. The Companies are amenable to updating the contract to outline instances in which backdating a cancellation is approved without advanced notice.

Company-Initiated Non-renewals – Auto Policies
Other Law Violations

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.

The Companies acknowledge the examiners' observation. This was an administrative error. The Companies' established procedure is to comply with statutory requirements. The associate did not follow the Companies' procedure; however, the associate was retrained on proper handling. The Companies maintain that this change will prevent future instances. There was no impact, positive or negative, to the insured/applicant due to this error. The Companies acknowledge the SR26 was filed; however, it was not filed within 15 days.

Company-Initiated Non-renewals – Motorcycle Policies

The examiners reviewed six motorcycle non-renewals that were initiated by the Companies.

Other Law Violations

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.

The Companies acknowledge the examiners' observation. This was an administrative error. The Companies' established procedure is to comply with statutory requirements. The associate did not follow the Companies' procedure; however, the associate was retrained on proper handling. There was no impact, positive or negative, to the insured/applicant due to this error. The Companies acknowledge the SR26 was filed; however, it was not filed within 15 days.

Claims Review

Private Passenger Automobile Claims

(1) The examiners found six 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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. This was an administrative error by an associate. Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA002, the Companies respectfully disagree with the examiners' observation. The note in question states the file is being closed, "as appears dmg was under ded." While the Bureau is correct that there is nothing in the file to confirm whether the damage was or was not under the deductible, the associate made this determination due to insured not

following-up after obtaining an estimate. The file reflects the associate explained the coverage, claim process and that a $500.00 deductible applies to this loss. The associate then requested that the insured to obtain an estimate and notify claims. The notes reflect that the insured understood. The Companies will reach out to the insured to determine any amount of the estimate obtained, if any.

With respect to CPA014, the Companies respectfully disagree with the observations noted. The claim was reported on 2/18/17 and the police report was ordered on 2/20/17. A response was received on 3/30/17 advising the agency was unable to locate a report. The insured was unable to provide information to assist in the identification of the at-fault party and the Companies were unable to obtain an accident report or other information to assist in identifying this hit and run vehicle.

With respect to CPA041, the Companies respectfully disagree with the examiners' observations. The Bureau maintains that the claim file did not include a copy of the rental bill. However, the Companies' rental management system is accessed directly through our claims system, which stores all relevant rental billings. The invoice has previously been provided to the Bureau.

With respect to CPA066, the Companies respectfully disagree with the examiners' observations. The previously provided work notes and papers clearly outline the settlement offer that was communicated to the insured and accepted on 10/26/17. The customer settled the total loss with the Companies on the first phone call. The cited statute and regulations do not stipulate that the Companies need to send a total loss settlement letter, only that the amounts can be reconstructed by the file notes.

While acknowledging with the examiner's observations, the Companies respectfully disagree that they have a general business practice of failing to document claim files sufficiently. The Companies' training for claims associates emphasizes clear and concise documentation of all actions the associates take on claims. These violations were made without knowledge of the detailed standard applied and without intent to violate it. The facts do not demonstrate otherwise.

It is the Companies' understanding that isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual performance of the insurance policies, and between basic principles

of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See Minutes from NAIC Market Conduct Examination Standards (D) Working Group* (April 27, 2017) https://www.naic.org/documents/cmte_d_market_conduct_exam_standards_170614_materials.pdf. While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. Here there were 85 claims. 6 were categorized here. This is right at 7%. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(2) The examiners found 27 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 four instances, the company failed to accurately inform an insured of the physical damage deductible when the file indicated that the coverage was applicable to the loss.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies agree that two of the instances resulted from an administrative error. The Companies respectfully disagree with the examiners' observation of the remaining two instances in that the Companies advised the insured of First Party Coverages, which includes limits and deductibles. Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA043, the Companies respectfully disagree with the examiners observation. The examiners maintained that the Companies did not sufficiently inform the insured of his Collision or Other Than Collision deductible. The Companies assert that the claim was reported on 6/15/17. While the file does not evidence the insured was advised of the option of proceeding under his collision coverage, it does show that on 6/23/17 the claim representative confirmed that the adverse carrier confirmed coverage and liability. That carrier placed the insured in a rental and assigned inspection of the insured's damages. There was no impact, positive, negative or otherwise to the insured.

With respect to CPA077, the Companies respectfully disagree with the examiners observation. The file handler spoke with the insured on 11/15/17 and made an offer on the total loss. The notes previously submitted to the Bureau clearly reflect the insured's deductible amount and that it was discussed with him.

b. In four instances, the company failed to accurately inform an insured of the Medical Expense Benefits coverage when the file indicated the coverage was applicable to the loss.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. Three of the instances resulted from an administrative error. In the remaining instance, the Companies advised the insured of First Party Coverages, which includes limits and deductibles. Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA030, payments have been issued. The insured has not responded to inquiries regarding eye glasses. With respect to CPA048, the Companies misstated the coverage limit to the insured. With respect to CPA049, the Companies acknowledge interest is owed.

With respect to CPA077, the Companies respectfully disagree with the examiners' observation. The Bureau maintains that the Companies erred for not advising the insured of medical benefits coverage when he stated he "felt some pain." The file notes previously provided to the Bureau indicate that the Companies discussed coverages with the insured. The insured sought no medical treatment.

c. In five 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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. Three of the instances resulted from an administrative error. In the remaining instances, the Companies advised the insured of First Party Coverages, which includes limits and deductibles. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA037, the Companies agree with reimbursement of the $200 UMPD deductible and will contact the insured to see if there was additional rental incurred as a result of the horn not working/inspection.

d. In 14 instances, the company failed to accurately inform an insured of the benefits or coverages, including rental benefits, available under the Uninsured Motorist Property Damage coverage (UMPD) and/or Underinsured Motorist coverage (UIM) when the file indicated the coverage was applicable to the loss.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. In the remaining instances, the Companies advised the insured of First Party Coverages, which includes limits and deductibles. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA014, the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree. The note entry of 3/20/17, which has been previously provided to the Bureau, states the claim representative explained coverages and the claim process to the insured.

With respect to CPA018, the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree that rental/loss of use was not discussed with the insured. The claim was reported to the company on Monday 3/6/17 and an independent appraiser was assigned Thursday 3/9/17. The IA inspected the vehicle on Monday 3/13/17 and its estimate was completed and sent to the Companies on Thursday 3/16/17. These were not unreasonable delays. The Companies acknowledge the changes in 14 VAC 5-400-80-I that were effective January 1, 2018. Prior to those changes, it was the Companies' position that only a reasonable amount of rental was owed on total loss scenarios. In this 2017 claim, the insured and their lienholder unnecessarily delayed providing the needed title for the processing of their claim. The lienholder challenged the settlement offer for the insured vehicle for a couple weeks. The insured didn't sign the POA until between 5/3/17 and 5/11/17. The Companies didn't receive the original power of attorney until Monday May 22 due to this delay. The delays were attributable to the insured and their lienholder. As a result, the Companies were not required to provide transportation expense reimbursement during those delays.

With respect to CPA036, the Companies acknowledge the examiner's observations that there was a miscoding issue. However, there is no money owed to this insured. Total estimate to repair $1,758.49, and $1,558.49 was paid under Collision (which applied the UMPD deductible of $200 for the coding issue.)

With respect to CPA037, the Companies acknowledge the examiner's observations regarding reimbursement of the $200 UMPD deductible and will contact the insured to see if there was additional rental incurred as a result of the horn not working/inspection.

With respect to CPA049, the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree. The base value was $1437 then a deduction of $600 for unrelated prior damage was applied, making the ACV $837. The appropriate 5.22% tax and fees of $12 were applied making the settlement $892.69 if the Companies obtained the salvage, which is what the insured agreed upon. It appears no deductible was applied to the settlement, so the claim was actually overpaid by $200.

With respect to CPA057, the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree that rental/loss of use was not discussed with the insured. The damages to the insured vehicle were found to be less than the insured's deductible, so no claim was pursued. Nonetheless, the Companies will reopen the file and will continue to make contact attempts with our named insured in an effort to determine if he incurred any rental/loss of use.

With respect to CPA070, the Companies acknowledge the examiner's observations that $200.00 is owed for deductible reimbursement and will correct this payment. The remaining observations appear to stem from the Bureau's challenge to the Companies' total loss

valuation and a request that the Companies contact the insured's attorney regarding transportation expenses. The $111 condition rating was for the vehicle's interior, which is documented on the CCC report. In addition, the vehicle had sudden and accidental-type, unrelated prior damage to its exterior. That damage was beyond a normal condition rating as defined by CCC for a vehicle of this age/make/model. Therefore, the total loss representative determined a UPD deduction was warranted. UPD of $752.54 was deducted for the exterior prior damage only. The Companies did not deduct for the same thing twice. The Companies maintain the file is correctly documented and no further payments are owed to the insured as outlined in our response that was provided during the exam. Nonetheless, the Companies will reach out to the insured and accommodate any further payment.

With respect to all of the citations under 14 VAC 5-400-40-A, it is the Companies' established procedure to explain all coverages potentially applicable to the claim to the insured at the earliest point of communication in the claim process. The Companies' established procedure is to require a note in the claim filing documenting the date and time that all potentially applicable coverages were discussed with the insured. In each instance involving a citation for the failure to properly inform an insured of relevant coverage, the Companies have provided their claim notes in response to the inquiry. The claim notes reflect a notation that the Companies have discussed coverage with the insured and that the insured understands the relevant coverages as discussed. It is the Companies' position that the actions taken on each claim, with respect to the violations under 14VAC5-400-40 cited during the examination, are in compliance with the requirements of the Code and its Regulations.

In attempting to address the concerns of the Bureau, the Companies have again reviewed the relevant regulations which provide the following:

> **14VAC5-400-40. Misrepresentation of policy provisions.**
>
> **A. No insurer shall fail to fully disclose to a first party claimant all pertinent benefits, coverages, or other provisions of an insurance policy under which a claim is presented and document the claim file accordingly.**
>
> **B. No person shall misrepresent benefits, coverages, or other provisions of any insurance policy when such benefits, coverages, or other provisions are pertinent to a claim.**

The Companies have looked for further guidance and understanding in the Bureau's Report titled "Common Problems Found During Property and Casualty Market Conduct Examinations" ("Report") which states in relevant part (emphasis added):

> **CLAIMS - ALL LINES**

> **Failure to document adequately claims file. The Rules Governing Unfair Claim Settlement Practices (14 VAC 5-400-10 et seq.) require that a claim file contain all notes and work papers pertaining to the claim and that they be in enough detail that pertinent events and the dates of those events can be reconstructed (see 14 VAC 5-400-30). The old claims adage "If it isn't in the file, it never happened" is the governing rule with regard to documentation. If the file does not contain a denial letter, a copy of the estimate, a note indicating a coverage has been discussed, a response to an inquiry, etc., the examiner cannot assume the file was handled correctly. Claim handlers should be instructed that their actions must be documented and that written company procedures do not take the place of supporting documentation.**
>
> **Failure to advise insured of benefits or coverages of the policy. The Rules Governing Unfair Claim Settlement Practices (14 VAC 5-400-10 et seq.) require a company to advise first party claimants of the benefits, coverages or other provisions of the policy when those benefits, coverages or other provisions are pertinent to a claim (see 14 VAC 5-400-40). Examiners frequently see examples of a claim handler failing to mention the first party coverages available, even though the claims report clearly indicates that the coverage is pertinent to the claim. The areas where this happens most often are medical expense/loss of income coverage, rental reimbursement coverage, uninsured/underinsured motorist coverage (including bodily injury, rental reimbursement, loss of income, reimbursement of collision deductible), and personal effects coverage on the auto policy in the case of a fire loss. The problems in this area are often caused by the failure to document properly the file regarding the discussions held with the claimant.**

The Companies are respectfully requesting clarification as to the Bureau's position and interpretation of these Regulations as there appears to be conflicting standards in application during the Market Conduct Examination. First, both the Regulations and the Report contain statements that purportedly require "a note indicating a coverage has been discussed." However, in the instances cited, the claims notes make it clear that coverage has been discussed with the insured, yet the citation was not withdrawn. The Companies request clarification as to what further information the Bureau seeks in this regard.

Second, the Report appears to reflect that the Bureau has interpreted the Regulations to create an affirmative duty on insurers to advise of all coverages. Neither the language of the Code or the implementing Regulations include this requirement. During the drafting and comment phases of the Regulations this issue was raised and briefed. The proposed language of 14VAC5-400-40 was changed before reaching its final form in response to the comments submitted. The final language, in large part, tracks the comments and language proposed by the National Association of Mutual Insurance Companies ("NAMIC"). See May 1, 2017 letter from NAMIC to Bureau of Insurance available at https://www.namic.org/pdf/testimony/170502_20170501154802563.pdf ("While the Code states that you may not misrepresent pertinent facts, this draft regulation expands to an affirmative duty to fully disclose all pertinent issues. While certainly insurers agree with informing insureds and intend to do so, we feel the Code language does not enable an expansion of the duty via regulation.") The Companies request clarification as to whether the Bureau is interpreting the Regulation to impose an affirmative obligation on insurers in this respect. The Companies also asked that the Bureau reconsider all of these citations in light of the forgoing.

The Companies acknowledge the other observations, but respectfully disagree that the Companies have a general business practice of obscuring or concealing 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. The Companies' training for claims associates emphasizes transparency and accurate communication with respect to policy terms of all actions the associates take on claims.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer

or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See* Minutes from NAIC Market Conduct Examination Standards (D) Working Group (April 27, 2017) https://www.naic.org/documents/cmte_d_market_conduct_exam_standards_170614_materials.pdf

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. Here there were 85 claims. 27 were categorized here. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(3) The examiners found five violations of 14 VAC 5-400-50 C. The company failed to make an appropriate reply within 10 calendar days to pertinent communications from a claimant, or a claimant's authorized representative, that reasonably suggested a response was expected.

According to the Companies' records, the Companies received three review sheets rather than five as indicated above. The Companies believe the report incorrectly reflects 3 violations for CPA070 Review Sheet 107242681 rather than 1 violation.

Notwithstanding the discrepancies, the Companies acknowledge the examiners' observation. The Companies' established procedure is to send a letter in compliance with 14 VAC 5-400-50 C. The associates did not follow the Companies' procedure in these claims; however, the associates were retrained on proper handling. This was an administrative error that did not impact the handling of the claim. There was no impact, positive or negative, to the insured/applicant due to this error. The Companies maintain that this change will prevent future instances.

(4) The examiners found three 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 companies' delay in completing the investigation of the claim.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to send a delay letter in compliance with 14 VAC 5-400-60 while an investigation is ongoing. The associates did not follow the Companies' procedure in these claims; however, the associates were retrained on proper handling. This was an administrative error that did not impact the handling of the claim. There was no impact, positive or negative, to the insured/applicant due to this error. The Companies maintain that this change will prevent future instances.

With respect to CPA004, the Companies respectfully disagree with the examiners' observation. The Companies sent two letters to the insured advising that the investigation was still ongoing, one on 2/7/2017 and the other on 3/7/2017. The claim was originally closed on 03/17/17. Thus, no further 45-day notice was required. Additionally, this citation is specific to first party claims, and when the claim was reopened it was a third-party claim that was arbitrated and subsequently damages were paid to the third-party carrier.

(5) The examiners found two violations 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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with one of the observations as set forth in our response during the exam. The Companies' established procedure is to issue any claim denial in writing. The associates did not follow the Companies' procedure in certain claims; however, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA067, the amount alleged as owed of $83.41 was paid to the insured by check issued on 9/25/2017. This payment cleared on 10/2/2017. This was an administrative

error that did not impact the handling of the claim. There was no impact, positive or negative, to the insured/applicant due to this error.

(6) The examiners found 26 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 two instances, the company failed to pay the insured's UMPD claim properly when Collision and/or UMPD coverages applied to the claim.

The Companies acknowledge the examiners' observations. The associates did not follow the Companies' procedure in these claims; however, the Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances

With respect to CPA018, it appears that $800.00 of the amount stated is for deductible refund which was issued to the insured on 6/15/18 but then returned undeliverable on 6/28. The Company will attempt redelivery of the check. While the file does reflect the claim rep initially advised the insured of a $1,000.00 collision deductible on 3/9/17, this was before the claim was confirmed as an UM claim. Once confirmed as an UM claim, the claim representative advised the insured UMPD was being extended on 3/17/17, and sent a letter to that effect.

b. In seven instances, the company failed to pay the insured's UMPD claim properly.

According to the Companies' records, there were six instances in that the Company has no record of CPA049 Review Sheet 1554319932.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. These instances resulted from administrative error that did not impact the underwriting or rating of the policy. The Companies advised the insured of First Party Coverages, which includes limits and deductibles. The forgoing notwithstanding, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized.

With respect to CPA018, it appears that $800.00 of the amount stated is for deductible refund which was issued to the insured on 6/15/18 but then returned undeliverable on 6/28. Therefore, the Companies maintain that they offered a fair and reasonable settlement with respect to UMPD and rental coverage. While the file does reflect that the claim rep initially advised the insured of a $1,000.00 collision deductible on 3/9/17, this was before the claim was confirmed as a UM claim. Once confirmed as a UM claim, the claim representative advised the insured UMPD was being extended on 3/17/17, and sent a letter to that effect.

With respect to CPA037, the Companies acknowledge the examiner's observations regarding reimbursement of the $200 UMPD deductible and will contact the insured to see if there was additional rental incurred as a result of the horn not working/inspection.

With respect to CPA049, the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree. The base value was $1437 then a deduction of $600 for unrelated prior damage was applied, making the ACV $837. The appropriate 5.22% tax and fees of $12 were applied making the settlement $892.69 if the Companies obtained the salvage, which is what the insured agreed upon. It appears no deductible was applied to the settlement, so the claim was actually overpaid by $200.

With respect to CPA057, the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree that rental/loss of use was not discussed with the insured. The damages to the insured vehicle were found to be less than the insured's deductible, so no claim was pursued. In the interest of resolving this finding, the Companies will reopen the file and will continue to make contact attempts with our named insured in an effort to determine if he incurred any rental/loss of use.

With respect to CPA059, the Companies acknowledge the examiner's observations. Although the insured indicated in the initial conversation with the claims handler that he may have the license plate number of the at fault party, he did not provide it with proof of that information to verify its authenticity after requests were made. Therefore, there is no proof that the at fault party was known and that the UM deductible would not apply.

With respect to CPA065, the Companies respectfully disagree. The initial evaluation of the vehicle's value was $2,951, which is the base value of $2,960 minus a $9 adjustment for the major wear on the rear tires (3/32 tread on the tires when new tires have normal tread of 11/32) and was based upon "unknown" mileage, which assumes an average odometer on this year, make, and model of vehicle in this market to be 159,400 miles. Upon further investigation the loss vehicle was found to have 216,000 miles. This deducted $599 from the market actual cash value of the loss vehicle, making the evaluation to be $2,352. An estimate of $509.81 was written for unrelated prior damage on the vehicle. The Companies applied a deduction for this prior damage of $260 to the vehicle's value. This made the market value of the vehicle $2,092. The insured elected to keep his vehicle, so the Companies deducted an estimated value for the salvage of $260. The insured was owed $12 in fees, $86.82 in sales tax, and had a $200 deductible. This made the final evaluation $1,730.82.

With respect to CPA070, the Companies respectfully disagree with the examiner's observations. The observations appear to stem from the Bureau's challenge to the Companies' total loss valuation and a request that the Companies contact the insured's attorney regarding transportation expenses. The $111 condition rating was for the vehicle's interior, which is

documented on the CCC report. In addition, the vehicle had sudden and accidental-type, unrelated prior damage to its exterior. That damage was beyond a normal condition rating as defined by CCC for a vehicle of this age/make/model. Therefore, the total loss representative determined a UPD deduction was warranted. UPD of $752.54 was deducted for the exterior prior damage only. The Companies did not deduct for the same thing twice. The Companies maintain the file is correctly documented and no further payments are owed to the insured. Nonetheless, the Companies will reach out to the insured and accommodate any further payment as requested by the examiners. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to make further payment to the insured.

With respect to CPA071, the Companies respectfully disagree with the examiner's observations. The file reflects the Companies confirmed UM applied on receipt of coverage denial letter on 1/11/17 and contacted the insured on 1/15/17 and told of UM availability for loss.

c. In two 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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with one of the observations as set forth in our responses during the exam. The Companies' established procedure is to pay proper sales and use tax, title fee, and/or license fees. Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA049, the Companies respectfully disagree with the examiners' observations. As noted in the previously provided TLValuationScreen the ACV was $1437 with a deduction of $600 for unrelated prior damage, making the ACV $837. As noted in the TLSettlSummary, the appropriate 5.22% tax and fees of $12 were applied making the settlement $892.69 if the Companies retained the salvage, which is what the insured agreed upon. Appropriate tax upon the ACV and fees were included in the $892.69 payment issued to the insured.

d. In two instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Medical Expense Benefits coverage.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to appropriately pay Medical Expense Benefits pursuant to policy provisions and applicable law. However, training material is being finalized and will be distributed to claim

associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA030, payments have been issued. The insured has not responded to inquiries regarding eye glasses. The Companies acknowledge interest is owed for any underpayment amount.

With respect to CPA048 (Review Sheet 441749032), an additional $1000 was issued under medical expense coverage. The Companies agree to pay 6% interest on this amount in the amount of $60.

e. In four instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses coverage.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to appropriately pay Transportation Expenses pursuant to policy provisions and applicable law. However, raining material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA0015, the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree with the examiner's observations. While the insured was advised on 2/27/17, the file reflects that the insured was called on 2/28/17 and advised of collision coverage. The file also reflects that the insured was placed in a rental on 2/23/17 and remained in a rental during the course of the investigation.

With respect to CPA028, the Companies respectfully disagree with the observation that rental was owed beyond what was paid. The file handler spoke with the insured on 04/10/17 and the notes indicate rental was discussed with the insured. The insured elected not to obtain a rental vehicle until 04/12/17, but that was her choice, not ours. The Companies acknowledge the changes in 14 VAC 5-400-80-I that became effective January 1, 2018. Prior to those changes, it is the Companies' position that the rental offered on this claim was timely and reasonable. Additionally, that nothing further is owed to the insured.

With respect to CPA036, the Companies acknowledge the examiner's observations that there was a miscoding issue. However, there is no money owed to this insured. Total estimate to repair was $1,758.49, and $1,558.49 was paid under Collision (which applied the UMPD deductible of $200 for the coding issue.)

With respect to CPA037, the Companies respectfully disagree with the examiner's observations regarding reimbursement of additional rental expense. The file reflects that on 5/22 the

coverages were reviewed with the insured. A file entry of 6/23 notes that rental is needed. This implies knowledge of the insured's intent to obtain a rental. The note of 7/18 states the insured asked about "how the rental process goes" and that the process was explained. This implies knowledge of eligibility. The rental bill, in the amount of $96.76, is available via link from the claim file. A file entry of 8/11/17 reflects the insured's insistence the vehicle could not be driven without a horn. It also reflects the claim representative conducted a three-way call with the insured and the shop and that agreement was reached with the insured and shop to look into the horn issue that day and see what they could do. The Companies maintain that the lack of further contact from the insured or shop regarding the horn supports the issue was resolved that day and required no additional rental.

f. In nine instances, the company failed to pay the insured's Collision or Other Than Collision claim properly.

According to the Companies' records, the Companies received seven instances rather than nine instances. The Companies have no record of CPA054 Review Sheet 2041027066 and CPA071 Review Sheet 1180246240.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to appropriately pay Collision or Other Than Collision pursuant to policy provisions and applicable law. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA0015, the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree. While the insured was advised on 2/27/17, the file reflects that the insured was called on 2/28/17 and advised of collision coverage. Prior to this loss, the bumper was in need of replacement, the left front wheel was damaged in an unsafe manner from impacts to the outer rim and in need of replacement, the same wheel had a missing center cap, and the upper trim piece on the rear liftgate was missing. This was all prior damage that was properly accounted for in handling the claim.

With respect to CPA0053 (Review Sheet 1944441628), the Companies acknowledge the examiner's observations. However, the Companies respectfully disagree with the examiner's observations. The initial evaluation had incorrect mileage for the insured vehicle and this finding added $927 to the ACV once the independent adjuster inspected the insured vehicle. The revised ACV was $11,207 and a deduction of $200 was taken for pre-existing damage to the door. This made the ACV $11,007; adding $456.79 in tax and $12 in fees made the ACV $11,475.79. The Companies do not see anywhere in the file where the ACV was listed as $11,672.09. The settlement breakdown is documented in the claim file. The Companies

maintain the file is correctly documented and no further payments are owed to the insured. Nonetheless, the Companies will reach out to the insured and accommodate any further payment as requested by the examiners. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to make further payment to the insured.

With respect to CPA061, the Companies acknowledge the examiner's observations. The forgoing notwithstanding, the Companies respectfully disagree. The Bureau states:

> **There is a CCC evaluation for 671.45. There is another CCC evaluation for $2448.57. The company's total loss screen shows ACV at $1660 based on condition which is not itemized. It is not possible to know what the company deducted from the CCC valuation or which evaluation they chose to use. Further, there is $905 in prior damage and it is not possible to know how or if this was applied in the evaluation. Since the company cannot document their settlement, the settlement amount should be as follows:**
>
> **$2671.45 less $500 = $2171.45.**
>
> **The company owes the insured $740.89 ($2171.45 less paid of $1240.89).**

The previously provided "97a164467CopartNotesBattery" show that when the vehicle was picked up at the shop of choice that it was found to be missing a battery. The vehicle clearly had prior damage that was outside Normal Wear defined by CCC. Therefore, the Companies appropriately estimated the retail cost of the repairs required to make this equal to other vehicles of the same make/model/year.

With respect to CPA069, the Companies acknowledge the examiner's observations. The forgoing notwithstanding, the Companies respectfully disagree. The examiner was provided a photo of the loss vehicle which clearly shows a very large dent in the pickup bed on the side opposite of where the loss occurred. This is clearly not damage which comparable 2-year old vehicles would have, and the Companies are entitled to a deduction of prior damage. The photos clearly show previous damage of a large dent to the driver's side pickup bed. This damage exceeds what would be normal wear for other vehicles of this age. The total loss representative determined rather than taking an entire body condition adjustment instead to just deduct unrelated prior damage to the panel that was damaged more than normal wear for this year/make/model in this market. The Companies maintain that the unrelated prior

damage deducted from this loss vehicle was more than normal wear and tear as defined by CCC's methodology but did not warrant taking an entire body condition deduction.

With respect to CPA075, the Companies acknowledge the examiner's observations. The forgoing notwithstanding, the Companies respectfully disagree with the examiner's observations. This vehicle was 16 years old at the time of loss. The CCC methodology assumes for vehicles 10 or more years old Normal Wear Interior to have a headliner with a few small holes and lightly scuffed. The photos (UPDPhotos previously provided) clearly show the headliner sagging significantly from the roof in a number of large areas. The total loss representative determined rather than taking an entire interior condition adjustment instead to just deduct unrelated prior damage to the headliner that demonstrated more than normal wear for this year /make/model in this market. The Companies maintain the unrelated prior damage deducted from this loss vehicle was more than the normal wear and tear as defined by CCC's methodology for this age vehicle but did not warrant taking an entire interior condition deduction.

With respect to CPA080, the Companies acknowledge the examiner's observations. The forgoing notwithstanding, the Companies respectfully disagree with the examiner's observations. The vehicle's actual cash value was determined using the CCC Base Value of $16,057 less a deduction for prior damage, which included missing keys. The rear bumper had damage that was sudden/direct/accidental in nature as opposed to expected wear and tear that can be captured via a CCC condition rating. The Companies believe the UPD would have to be fully repaired in order for the vehicle to reach a normal condition to be comparable to other vehicles listed on the report which are in a retail/dealer setting. The rear bumper likely warranted replacement but was written conservatively for repair. As such, the prior damage deduction is accurate.

The Companies acknowledge the other observations, but respectfully disagree that they have a general business practice of failing to offer insureds an amount that is fair and reasonable as shown by the investigation of the claim or failing to pay a claim in accordance with the insured's policy provisions. The Companies' training for claims associates emphasizes handling of claims in accord with policy provisions and applicable law.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual

performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. Here there were 85 claims. 26 were categorized here. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(7) The examiners found five 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 two instances, the company failed to provide a copy of the repair estimate to the insured.

The Companies acknowledge the examiners' observations.

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

The Companies acknowledge the examiners' observations.

(8) The examiners found one violation 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.

The Companies acknowledge the examiners' observation.

(9) The examiners found five violations of § 38.2-236 A of the Code of Virginia.

a. In three instances, the company failed to notify the claimant within five business days that a settlement payment was issued to the claimant's attorney or representative.

The Companies acknowledge the examiners' observation.

b. In two instances, the company failed to send the claimant's attorney or other representative a copy of the claimant's notice regarding the settlement payment.

The Companies acknowledge the examiners' observation.

(10) The examiners found two 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.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to represent pertinent facts and policy provisions relating to coverage. Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA070, the Companies acknowledge the examiner's observations that $200.00 is owed for deductible reimbursement and will correct this payment. The remaining observations appear to stem from the Bureau's challenge to the Companies' total loss valuation and a request that the Companies contact the insured's attorney regarding

transportation expenses. The $111 condition rating was for the vehicle's interior, which is documented on the CCC report. In addition, the vehicle had sudden and accidental-type, unrelated prior damage to its exterior. That damage was beyond a normal condition rating as defined by CCC for a vehicle of this age/make/model. Therefore, the total loss representative determined a UPD deduction was warranted. UPD of $752.54 was deducted for the exterior prior damage only. The Companies did not deduct for the same thing twice. The Companies maintain the file is correctly documented and no further payments are owed to the insured. Nonetheless, the Companies will reach out to the insured and accommodate any further payment as requested by the examiners. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to make further payment to the insured.

(11) The examiners found nine violations 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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. Further, the Companies respectfully disagree that they have a general business practice of failing to promptly investigate claims arising under insurance policies. The Companies' training for claims associates emphasizes prompt claim investigation.

With respect to CPA023, the Companies respectfully disagree with the examiner's observations. The examiner stated:

> **"The company failed to thoroughly investigate this claim. The insured stated "C ran into her vehicle while running through a parking lot. Only damage was to the side mirror on the passenger side. There was no impact with B, B may have witnessed the impact." The claimants' attorney stated " the child was properly crossing the 1005 Mount Vernon Avenue ...when he was struck and knocked to the ground.." These statements are conflicting. The claimant's attorney indicates only one child in his letter of March 16, 2017., but the company paid claims on two minors. Did the company investigate the scene of the accident to determine the correct version of the accident? If the children were struck while crossing 1005 Mount Vernon Ave with "great force and violence causing personal injuries", wouldn't the damage be to the front of the vehicle?"**

While the insured alleged that claimant C ran into the side of his car, he also said that claimant C then fell in front of the car. The insured advised there was no impact with claimant B. The insured also stated the police responded and stated he was not at fault. Despite the Companies' efforts, which included retaining an independent adjuster, an accident report could not be located or verified. While the attorney's letter of March 16, 2017, references "the child" being struck as opposed to the children being struck, it is of note that the attorney sent two letters, one for each child which both referenced "the child." As for the attorney's reference to the child being struck with "great force and violence causing personal injuries", the medical records provided do support that both children were seen in the ER the day of the loss and recorded both of them as being struck. Furthermore, these assertions are supported by the injuries. It is the Companies belief that sufficient evidence existed to warrant settlement efforts and these were in the best interest of our insured.

With respect to CPA047, the Companies respectfully disagree with the examiner's observations. There was some question about who was driving the vehicle -- the insured or his wife. There was discussion in the file regarding coverage since the wife was not listed on the policy. The Companies, as stated in their initial response, believes they resolved the question regarding operator at the time of loss. Notice of the wife has been submitted to underwriting.

With respect to CPA063, the Companies respectfully disagree with the examiner's observations. The Fire Department said the fire started in the left wheel area. The Companies respectfully disagree with the Bureau's assertion that we failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. While there is no indication in the file that the insured was asked about any recent work on the vehicle, that is not relevant to the prompt investigation of the claim. Any maintenance work performed is irrelevant to whether the loss was covered under the policy. A full investigation was performed, coverage was afforded, and the insured was paid for his damages.

The Companies acknowledge the other observations, but respectfully disagree that they have a general business practice of failing to offer insureds an amount that is fair and reasonable as shown by the investigation of the claim or failing to pay a claim in accordance with the insured's policy provisions. The Companies' training for claims associates emphasizes handling of claims in accord with policy provisions and applicable law. Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by

the insurer to the insured and the actual performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. Here there were 85 claims. 9 were categorized here. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to promptly investigate claims relating to coverage. However. the Companies maintain that this change will prevent future instances.

With respect to CPA070 (Review Sheet 1528996468), the Companies acknowledge the examiner's observations that $200.00 is owed for deductible reimbursement and will correct this payment. The remaining observations appear to stem from the Bureau's challenge to the Companies' total loss valuation and a request that the Companies contact the insured's attorney regarding transportation expenses. The $111 condition rating was for the vehicle's interior, which is documented on the CCC report. In addition, the vehicle had sudden and accidental-type, unrelated prior damage to its exterior. That damage was beyond a normal condition rating as defined by CCC for a vehicle of this age/make/model. Therefore, the total loss representative determined a UPD deduction was warranted. UPD of $752.54 was deducted for the exterior prior damage only. The Companies did not deduct for the same thing twice. The Companies maintain the file is correctly documented and no further payments are owed to the insured. Nonetheless, the Companies will reach out to the insured and accommodate any further payment as requested by the examiners. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to make further payment to the insured.

(12) The examiners found 13 violations of § 38.2-510 A 6 of the Code of Virginia. The company failed to attempt, in good faith, to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.

a. In nine instances, the company unreasonably delayed the settlement of a claim.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to promptly investigate and settle claims relating to coverage. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA036, the Companies acknowledge the examiner's observations that there was a miscoding issue. However, the Companies respectfully disagree that additional money is owed to this insured. The total estimate to repair was $1,758.49, and $1,558.49 was paid under Collision (which applied the UMPD deductible of $200 for the coding issue.)

With respect to CPA037, the Companies agree with reimbursement of the $200 UMPD deductible and will contact the insured to see if there was additional rental incurred as a result of the horn not working/inspection.

With respect to CPA049 the Companies acknowledge interest is owed. The base value of the vehicle was $1437, then a deduction of $600 for unrelated prior damage was applied, making the ACV $837. The appropriate 5.22% tax and fees of $12 were applied making the settlement $892.69 if the Companies obtained the salvage, which is what the insured agreed upon. It appears no deductible was applied to the settlement, so the claim was overpaid by $200. The Companies did not deduct for the same thing twice. The Companies maintain the file is correctly documented and no further payments are owed to the insured. Nonetheless, the Companies will reach out to the insured and accommodate any further payment.

With respect to CPA070(Review Sheet 1528996468), the Companies acknowledge the examiner's observations that $200.00 is owed for deductible reimbursement and will correct this payment. The remaining observations appear to stem from the Bureau's challenge to the Companies' total loss valuation and a request that the Companies contact the insured's attorney regarding transportation expenses. The $111 condition rating was for the vehicle's interior, which is documented on the CCC report. In addition, the vehicle had sudden and accidental-type, unrelated prior damage to its exterior. That damage was beyond a normal condition rating as defined by CCC for a vehicle of this age/make/model. Therefore, the total loss representative determined a UPD deduction was warranted. UPD of $752.54 was deducted for the exterior prior damage only. The Companies did not deduct for the same thing twice. The Companies maintain the file is correctly documented and no further payments are owed to the insured. Nonetheless, the Companies will reach out to the insured and accommodate any further payment as requested by the examiners. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation; however, the Companies chose to remediate the insured.

b. In two instances, the company failed to promptly process the insured's UMPD deductible.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The adjuster was retrained on proper handling. The Companies' established procedure is promptly processing claims relating to coverage. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA029, the Companies respectfully disagree with the examiners' observations. Initial contact was made with the claimant on April 20, 2017 and subsequent contacts were made on May 4, 2017 and May 16, 2017. The complainant indicated in the

conversation on May 16, 2017 that she was only available after 5:30pm and indicated that she would call the morning of May 17, 2017 to provide a statement. The claimant never contacted the adjuster back as she indicated she would, therefore, a letter was sent to the claimant on May 23, 2017 advising of the statute of limitation and that we would be closing the file if we had not heard from her. The initial statement taken from the insured indicates that he had used his turn signal to merge left and was partially into his merge when the claimant vehicle struck the insured vehicle. The claimant failed to acknowledge the insureds intentions to merge to the left and take appropriate evasive action. Therefore, the complainant was found to have contributed to the loss, thereby, baring her from recovery.

c. In one instance, the company failed to reimburse the claimant for damages incurred.

The Companies acknowledge and disagree with the examiners' observations. The adjuster was retrained on proper handling. The Companies' established procedure is promptly processing and accurately paying claims relating to coverage. However, raining material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CPA040, while the Companies agree that LOU is owed, they respectfully disagree that the amount is $3,000.00. While the Companies appreciate that it appears the examiners are in agreement that the $8,296.33 for 46 days alleged by the claimant is excessive, the Companies also maintain $3,000.00 is an overstatement. This was determined to be an 8-day repair. Documentation provided by claimant shows cost of substitute vehicle to be $180.36/day. At 8 days this is $1,442.88. Even allowing for two weekends, 12 days the amount is $2,167.56 plus 6% interest is $2,297.61.

d. In one instance, the company failed to pay the claimants properly for the loss incurred.

The Companies acknowledge the examiners' observations. The adjuster was retrained on proper handling. The Companies' established procedure is promptly processing and accurately paying claims relating to coverage. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

The Companies acknowledge the other observations, but respectfully disagree that they have a general business practice of failing to attempt, in good faith, to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear. The Companies' training for claims associates emphasizes prompt investigation to determine liability and further emphasize fair and prompt claim resolution.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an

individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. Here there were 85 claims. 13 were

categorized here. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(13) The examiners found three violations of § 38.2-510 A 10 of the Code of Virginia. The company made a claim payment to the insured or beneficiary that was not accompanied by a statement setting forth the correct coverage(s) under which payment was made.

The Companies acknowledge the examiners' observations. The adjuster was retrained on proper handling. The Companies' established procedure is promptly processing and accurately paying claims relating to coverage. However, Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

(14) The examiners found five occurrences where the company failed to comply with the provisions of the insurance policy.

a. In two instances, the company adjusted the claim contrary to the policy provisions.

The Companies acknowledge the examiners' observations. The Companies' established procedure is to accurately pay claims relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

b. In two instances, the company paid an insured more than the insured was entitled to receive under the terms of his policy.

The Companies acknowledge the examiners' observations. The associate miscalculated the amount of loss of income coverage that should have been paid to the claimant, contrary to established procedures. The Companies' established procedure is promptly processing and accurately paying claims relating to coverage. However, Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

c. In one instance, the company failed to pay an Uninsured Motorist (UM) claim properly.

The Companies acknowledge the examiners' observations. The Companies' established procedure is accurately paying claims relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

Motorcycle Claims

The examiners reviewed 69 automobile claims for the period of January 1, 2017 through December 31, 2017. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. During this review, the examiners found overpayments totaling $353.54 and underpayments totaling $85,914.44. The net amount that should be paid to claimants is $ 85,914.44 plus six percent (6%) simple interest.

(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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is accurately document claims files and pay claims according to policy provisions and applicable law. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

The Companies note that the Bureau withdrew part two of CMC048 relating to a signed release in the claims file. With respect to CMC045, the Companies respectfully disagree as the alleged phantom vehicle was not identified. The police concluded the license plate/vehicle reported was not involved. This is documented in the file.

(2) The examiners found 36 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 21 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.

According to the Companies' records, the Companies received 20 review sheets rather than 21. The Companies have no record of receiving CMC033 Review Sheet 388792831.

Notwithstanding the discrepancy in the number of review sheets, the Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is accurately informing insureds relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within

90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC002, the Companies respectfully disagree with the finding on the amount of underpayment for transportation expenses. The insured traded motorcycles with the driver involved in this loss prior to the loss. Because the insured driver caused damage to the insured's motorcycle, the insured driver gave the insured his motorcycle. The insured was registering the insured driver's motorcycle in the insured's name on June 19, two days after the accident. Additionally, the insured had the insured driver's motorcycle for use and was not without transportation. The Companies maintain that consideration of two days of transportation expenses for the insured is reasonable. The Companies agree with the under payment of $76.08 for applying depreciation on safety items. $63.60 + $76.08 = $139.68.

With respect to CMC005, the Companies respectfully disagree with the Bureau's findings on the aftermarket parts which were included in the total loss evaluation. The CCC report illustrates an $1,861 equipment submission which added $970 to the base value to arrive at the $11,194 actual cash value. The company agrees with the examiner's observations regarding safety equipment for gloves ($50 + 6% interest). The Companies respectfully disagree with the Bureau's findings that they failed to explain coverages and owe the transportation expenses. Nothing in Virginia law prohibits the Companies from providing ACV for optional equipment. Virginia's Code provides for an ACV definition for entire vehicles (Section 46.2-1600). On its website, the Virginia State Corporation Commission Bureau of Ins. Provides form PP-00-01-01-05 "Personal Auto Policy" which under "Limit of Liability" provides that the limit of liability is the lesser of the "actual cash value of the stolen or damaged property "or the "amount necessary to repair or replace the property with other property of like kind and quality". The Companies' approved policies have this limitation of liability language. (See attached policies). However, the amended policy does not contain subsection C which provides "C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment." Given that nothing prohibits the Companies from limiting OE to ACV, that the law provides for ACV for vehicles, that the sample personal auto policies provided by the Virginia provides only for ACV, and these limitations are also found in the forms provided by the Companies, the Companies assert that this is not an appropriate citation. The Bureau, during discussions while the response to the Report was being prepared, was unable to clarify a prohibition for providing the ACV for OE.

With respect to CMC013, the Companies respectfully disagree that transportation was not advised to the insured's representative as the file note outlines "coverages discussed". The insured was severely injured and would not have been able to operate a vehicle. The company believes the file is correctly documented. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation; however, in the

interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to CMC014, the Companies respectfully disagree. Further, it is the Companies' understand that this violation is now withdrawn. Nonetheless, the Companies will reopen and reach out to the insured to determine any helmet/safety apparel damaged in loss to submit items for reimbursement.

With respect to CMC033, the examiners and the company have a difference of opinion regarding proper handling and thorough file documentation. Further, it is the Companies' understanding that this violation is now withdrawn.

With respect to CMC04, the Companies respectfully disagree that they failed to advise the insured of trip interruption or rental coverage. The file handler's note of 08/21/17 clearly outlines her conversation with the insured, and references that she went over the policy coverages with the insured. The company believes the file is correctly documented. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to CMC050, the Companies respectfully disagree with finding that they failed to advise the insured of transportation expense coverage. The Companies believes the file is correctly documented. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to CMC055, the Companies respectfully disagree with the finding that they failed to offer fair and reasonable amount for transportation expense. The claim notes clearly reflect the file handler reviewed all of the applicable coverages with the insured in their first conversation, which occurred on 09/20/17. The Companies maintain the file is correctly documented. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to CMC057, the Companies respectfully disagree with the finding that they failed to offer fair and reasonable amount. --transportation expense. The claim notes clearly reflect the file handler reviewed all of the applicable coverages with the insured in their first conversation, which occurred on 09/20/17. As this coverage was discussed with the insured,

the Companies respectfully disagree that any follow-up is necessary. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to all of the citations under 14 VAC 5-400-40-A, it is The Companies' established procedure to explain all coverages potentially applicable to the claim to the insured at the earliest point of communication in the claim process. The Companies' established procedure is to require a note in the claim filing documenting the date and time that all potentially applicable coverages were discussed with the insured. In each instance involving a citation for the failure to properly inform an insured of relevant coverage, the Companies have provided their claim notes in response to the inquiry. The claim notes reflect a notation that the Companies have discussed coverage with the insured and that the insured understands the relevant coverages as discussed. It is the Companies' position that the actions taken on each claim, with respect to the violations under 14VAC5-400-40 cited during the examination, are in compliance with the requirements of the Code and its Regulations.

In attempting to address the concerns of the Bureau, the Companies have again reviewed the relevant regulations which provide the following:

> **14VAC5-400-40. Misrepresentation of policy provisions.**
>
> **A. No insurer shall fail to fully disclose to a first party claimant all pertinent benefits, coverages, or other provisions of an insurance policy under which a claim is presented and document the claim file accordingly.**
>
> **B. No person shall misrepresent benefits, coverages, or other provisions of any insurance policy when such benefits, coverages, or other provisions are pertinent to a claim.**

The Companies have looked for further guidance and understanding in the Bureau's Report titled "Common Problems Found During Property and Casualty Market Conduct Examinations" ("Report") which states in relevant part (emphasis added):

> **CLAIMS - ALL LINES**
>
> **Failure to document adequately claims file. The Rules Governing Unfair Claim Settlement Practices (14 VAC 5-400-10 et seq.) require that a claim file contain all notes and work papers pertaining to the claim and that they be in enough detail that**

> **pertinent events and the dates of those events can be reconstructed (see 14 VAC 5-400-30). The old claims adage "If it isn't in the file, it never happened" is the governing rule with regard to documentation. If the file does not contain a denial letter, a copy of the estimate, a note indicating a coverage has been discussed, a response to an inquiry, etc., the examiner cannot assume the file was handled correctly. Claim handlers should be instructed that their actions must be documented and that written company procedures do not take the place of supporting documentation.**
>
> **Failure to advise insured of benefits or coverages of the policy. The Rules Governing Unfair Claim Settlement Practices (14 VAC 5-400-10 et seq.) require a company to advise first party claimants of the benefits, coverages or other provisions of the policy when those benefits, coverages or other provisions are pertinent to a claim (see 14 VAC 5-400-40). Examiners frequently see examples of a claim handler failing to mention the first party coverages available, even though the claims report clearly indicates that the coverage is pertinent to the claim. The areas where this happens most often are medical expense/loss of income coverage, rental reimbursement coverage, uninsured/underinsured motorist coverage (including bodily injury, rental reimbursement, loss of income, reimbursement of collision deductible), and personal effects coverage on the auto policy in the case of a fire loss. The problems in this area are often caused by the failure to document properly the file regarding the discussions held with the claimant.**

The Companies are respectfully requesting clarification as to the Bureau's position and interpretation of these Regulations as there appears to be conflicting standards in application during the Market Conduct Examination. First, both the Regulations and the Report contain statements that purportedly require "a note indicating a coverage has been discussed." However, in the instances cited, the claims notes make it clear that coverage has been discussed with the insured, yet the citation was not withdrawn. The Companies request clarification as to what further information the Bureau seeks in this regard.

Second, the Report appears to reflect that the Bureau has interpreted the Regulations to create an affirmative duty on insurers to advise of all coverages. Neither the language of the Code or the implementing Regulations include this requirement. During the drafting and comment phases of the Regulations this issue was raised and briefed. The proposed language of 14VAC5-

400-40 was changed before reaching its final form in response to the comments submitted. The final language, in large part, tracks the comments and language proposed by the National Association of Mutual Insurance Companies ("NAMIC"). See May 1, 2017 letter from NAMIC to Bureau of Insurance available at https://www.namic.org/pdf/testimony/170502_20170501154802563.pdf ("While the Code states that you may not misrepresent pertinent facts, this draft regulation expands to an affirmative duty to fully disclose all pertinent issues. While certainly insurers agree with informing insureds and intend to do so, we feel the Code language does not enable an expansion of the duty via regulation.") The Companies request clarification as to whether the Bureau is interpreting the Regulation to impose an affirmative obligation on insurers in this respect. The Companies also asked that the Bureau reconsider all of these citations in light of the forgoing.

b. In ten 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).

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to accurately inform the insured relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC024. This was a California loss. The Companies respectfully disagree with the Bureau's findings on the payment owed to the insured for UM benefits. The insured went to the hospital by ambulance with arm pain. The insured further advised he would follow up with his physician upon his return to Virginia. However, the Companies will reopen the file and contact the insured to determine the amount of benefits owed.

With respect to CMC033, the Companies respectfully disagree as an estimated salvage value of $3,340.50 was deducted from the owner retained settlement. The Companies provided the examiner a ProQuote one year after the settlement that showed the salvage value (of a now 1-year older motorcycle) as $3,609. Further, it is the Companies' understanding that this violation is now withdrawn. The Companies agree they owe the insured $300 for the difference in deductibles with 6% interest equal to $318.00. The Companies respectfully disagree with the other criticisms. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing

specific coverages in the claim note, modifying its loss calculations, and will make further payment to the insured.

With respect to CMC039, the insured refused to cooperate or respond to contact attempts. Without his cooperation the Companies were unable to verify whether another vehicle was involved or not, so UM was not proven and did not apply.

With respect to CMC045, the Companies respectfully disagree as the alleged phantom vehicle was not identified. The police concluded the license plate/vehicle reported was not involved.

c. In one instance, the company failed to inform the insured of his coverage for Transportation Expenses as a result of a theft loss.

The Companies acknowledge the examiner's observations. The Companies' established procedure is accurately informing the insured relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

d. In four instances, the company failed to disclose to an insured all coverages or provisions of the insurance policy that were pertinent to his claim.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with one of the observations as set forth in our responses during the exam. The Companies' established procedure is accurately informing the insured relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC003, the Companies respectfully disagree with the department's finding that the Companies did not explain the coverages and that it owes transportation expense. The Companies did explain the coverages has documented in the file. The Companies' established procedure is accurately paying claims relating to coverage and policy provisions. The forgoing notwithstanding, the Companies have instituted procedures and training to address the issues raised by the examiners. The Companies maintain that this change will prevent future instances.

With respect to CMC014, the Companies respectfully disagree. Further, it is the Companies' understanding that this violation is now withdrawn. Nonetheless, the Companies will reopen and reach out to the insured to determine any helmet/safety apparel damaged in loss to submit items for reimbursement.

The Companies acknowledge the other observations, but respectfully disagree that they have a general business practice of obscuring or concealing 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. The Companies' training for claims associates emphasizes transparency and accurate communication with respect to policy terms of all actions the associates take on claims.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal

presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(3) The examiners found one violation of 14 VAC 5-400-50 A. The company failed, upon receiving notification of a claim, to acknowledge within ten working days the receipt of such notice where no payment was made within such period of time.

The Companies acknowledge the examiners' observation. The Companies' established procedure is to send a letter in compliance with 14 VAC 5-400-50 A. The associates did not follow the Companies' procedure in these claims. Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

(4) The examiners found one violation of 14 VAC 5-400-50 C. The company failed to make an appropriate reply within 10 calendar days to pertinent communications from a claimant, or a claimant's authorized representative, that reasonably suggested a response was expected.

The Companies acknowledge and disagree with the examiners' observation. The Companies' established procedure is to send a letter in compliance with 14 VAC 5-400-50 C.

(5) The examiners found five 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 companies' delay in completing the investigation of the claim.

The Companies acknowledge the examiners' observation. However, the Bureau's Violation Summary lists only three violations (CMC017, CMC062, and CMC045). The Companies' established procedure is to send a delay letter in compliance with 14 VAC 5-400-60 while an investigation is ongoing. The associates did not follow the Companies' procedure in these claims. Training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized.

With respect to CMC045, the Companies respectfully disagree as the alleged phantom vehicle was not identified. The police concluded the license plate/vehicle reported was not involved.

The Companies acknowledge the other observations, but respectfully disagree that they have a general business practice of failing to notify insureds in writing every 45 days of the Companies' reason for delay in completing the claim investigation. The Companies' training for claims associates emphasizes clear, concise, regular and statutory compliant communication with insureds.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. Here there were 69 claims. 5 were flagged as citations here. This is an initial sampling and not the benchmark error rate. This sampling rate is barely threshold at 7.2% for the threshold for a second sampling to determine benchmark rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(6) The examiners found four violations 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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. However, the Violation Summary lists only three violations. The Companies' established procedure is to record claim denial in writing in accordance with policy provisions and applicable law. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC033, the Companies respectfully disagree as an estimated salvage value of $3,340.50 was deducted from the owner retained settlement. The Company provided the examiner a ProQuote one year after the settlement that showed the salvage value (of a now 1-year older motorcycle) as $3,609. Further, it is the Companies' understanding that this violation is now withdrawn. The Companies agree they owe the insured $300 for the difference in deductibles with 6% interest equal to $318.00. The Companies respectfully disagree with the other criticisms. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, the company choses to adopt the procedures of citing specific coverages in its claim notes, modifying its loss calculations process and remediating with the insured.

(7) The examiners found 57 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 four instances, the company failed to pay the insured's UMPD claim properly when Collision and/or UMPD coverages applied to the claim.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to pay claims in accordance with policy provisions and applicable law. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC033, the Companies respectfully disagree as an estimated salvage value of $3,340.50 was deducted from the owner retained settlement. The Company provided the examiner a ProQuote one year after the settlement that showed the salvage value (of a now 1-year older motorcycle) as $3,609. Further, it is the Companies' understanding that this violation is now withdrawn. The Companies agree they owe the insured $300 for the difference in deductibles with 6% interest equal to $318.00. The Companies respectfully disagree with the other criticisms. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, the company choses to adopt the procedures of citing specific coverages in its claim notes, modifying its loss calculations process and remediating with the insured.

b. In four instances, the company failed to pay the insured's UMPD claim properly.

The Company has received comments during the investigation which cite concern over the handling of liability determinations made during the investigation and resulting denial of UM coverage. As an initial matter, in each of these instances where comments were received on UM claims, there was never a judgment against an uninsured driver obtained by the insured as required by statute. Further, the comments were received for purported violations which focus on the investigation of liability. Comments from the Bureau include statements such as: "the question is what would the reasonable man do. This remains unanswered as a jury did not hear and decide the case;" and "the police statement that the insured 'laid the bike down' does not prove that the insured was not cut off by the phantom vehicle. The police are not witnesses but instead took a report after the fact. The report is only part of an investigation. Not the full and final arbitor of the facts." Despite these comments, and the demonstratable lack of any showing that the insured was "legally entitled to recover" damages from an at-fault uninsured driver, the Bureau in one instance stated that the insurer should reopen the claim and pay the UMPD and UMBI claims. "[T]he phrase 'legally entitled to recover damages' imposes as a

condition precedent to a UM carrier's obligation to pay its insured, that the insured obtain a judgment against the uninsured tortfeasor whose actions come within the purview of the UM policy." *Manu*, 293 Va. 371. The Company is respectfully requesting clarification as to the Bureau's position and interpretation of the Code and Regulations as there appears to be conflicting standards in application during the Market Conduct Examination with regard to the handling of UM claims. The Company remains committed to working with the Bureau in finalizing its Examination. For the forgoing reasons, the Companies respectfully disagree with the examiners' observations with respect to CMC0015. Similarly, with respect to CMC045, the Companies respectfully disagree as the alleged phantom vehicle was not identified. The police concluded the license plate/vehicle reported was not involved.

With respect to CMC024, the Companies respectfully disagree with the examiner's observations. This was a California loss. The Companies respectfully disagree with a finding on the payment owed to the insured for UM benefits. The insured went to the hospital by ambulance with arm pain. The insured further advised he would follow up with his physician upon his return to Virginia. The forgoing notwithstanding, the Companies will reopen the file and contact the insured to determine any amount of benefits owed.

With respect to CMC039, the Companies respectfully disagree with the examiner's observations as the insured refused to cooperate or respond to contact attempts. Without his cooperation the Companies were unable to verify whether another vehicle was involved or not, so UM was not proven and did not apply.

c. In three instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Medical Expense Benefits coverage.

The Companies acknowledge the examiner's observations.

d. In 18 instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses coverage.

According to the Companies' records, the Companies received 17 review sheets rather than 18. The Companies have no record of CMCo24 – Review Sheet 505223743.

Notwithstanding the discrepancy, the Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. Companies' established procedure is to pay claims in accordance with policy provisions and applicable law. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC002, the Companies respectfully disagree with the finding on the amount of underpayment for transportation expenses. The insured traded motorcycles with the driver involved in this loss prior to the loss. Because the insured driver caused damage to the insured's motorcycle, the insured driver gave the insured his motorcycle. The insured was registering the insured driver's motorcycle in the insured's name on June 19, two days after the accident. Additionally, the insured had the insured driver's motorcycle for use and was not without transportation. The company would be willing to consider two days of transportation expenses for the insured. The company does agree with the under payment of $76.08 for applying depreciation on safety items. $63.60 + $76.08 = $139.68. The Companies' established procedure is accurately paying claims relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC003, the Companies respectfully disagree with the department's finding that the Company did not explain the coverages and that it owes transportation expense. The Companies explained coverages, and this is documented in the file. The Companies' established procedure is accurately paying claims relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC005, the Companies respectfully disagree with the Bureau's findings on the aftermarket parts which were included in the total loss evaluation. You can see on the CCC report an $1,861 equipment submission which added $970 to the base value to arrive at the $11,194 actual cash value. Liability: The company agrees with the bureau's findings regarding safety equipment for gloves ($50 + 6% interest). The company respectfully disagrees with the Bureau's findings it failed to explain coverages and owe the transportation expenses. Nothing in Virginia law prohibits the Companies from providing ACV for optional equipment. Virginia's Code provides for an ACV definition for entire vehicles (Section 46.2-1600). On its website, the Virginia State Corporation Commission Bureau of Ins. Provides form PP-00-01-01-05 "Personal Auto Policy" which under "Limit of Liability" provides that the limit of liability is the lesser of the "actual cash value of the stolen or damaged property "or the "amount necessary to repair or replace the property with other property of like kind and quality". The Companies' approved policies have this limitation of liability language. (See attached policies). However, the amended policy does not contain subsection C which provides "C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment." Given that nothing prohibits the Companies from limiting OE to ACV, that the law provides for ACV for vehicles, that the sample personal auto policies provided by the Virginia provides only

for ACV, and these limitations are also found in the forms provided by the Companies, the Companies assert that this is not an appropriate citation. The Bureau, during discussions while the response to the Report was being prepared, was unable to clarify a prohibition for providing the ACV for OE.

With respect to CMC013, the Companies respectfully disagree that transportation was not advised to the insured's representative as the file note outlines "coverages discussed". The insured was severely injured and would not have been able to operate a vehicle. The company believes the file is correctly documented. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to CMC014, the Companies respectfully disagree. Further, it is the Companies' understanding that this violation is now withdrawn. Nonetheless, the Companies will reopen and reach out to the insured to determine any helmet/safety apparel damaged in loss to submit items for reimbursement.

With respect to CMC033, the Company respectfully disagrees as an estimated salvage value of $3,340.50 was deducted from the owner retained settlement. The Companies provided the examiner a ProQuote one year after the settlement that showed the salvage value (of a now 1-year older motorcycle) as $3,609. Further, it is the Companies' understanding that this violation is now withdrawn. The Companies agree they owe the insured $300 for the difference in deductibles with 6% interest equal to $318.00. The Companies respectfully disagree with the other criticisms. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to CMC050, the Companies respectfully disagree with finding that they failed to advise insured of transportation expense coverage. The Companies maintain the file is correctly documented. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to CMC055, the Companies respectfully disagree with the finding that they failed to offer fair and reasonable amount for transportation expense. The claim notes clearly reflect the file handler reviewed all of the applicable coverages with the insured in their first conversation, which occurred on 09/20/17. The company believes the file is correctly documented. The examiners and the company have a difference of opinion regarding proper

handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

With respect to CMC056, it is the Companies' understanding that this citation is now withdrawn.

With respect to CMC057, the Companies respectfully disagree with the finding that they failed to offer fair and reasonable amount. --transportation expense. The claim notes clearly reflect the file handler reviewed all of the applicable coverages with the insured in their first conversation, which occurred on 09/20/17. As this coverage was discussed with the insured, the Companies respectfully disagree that any follow-up is necessary. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

e. In ten instances, the company failed to pay the insured's Collision or Other Than Collision claim properly.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. . The Companies' established procedure is to pay claims in accordance with policy provisions and applicable law. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC061, it is the Companies' understanding that this citation is now withdrawn.

With respect to CMC014, the Companies respectfully disagree. Further, it is the Companies' understanding that this violation is now withdrawn. Nonetheless, the Companies will reopen and reach out to the insured to determine any helmet/safety apparel damaged in loss to submit items for reimbursement.

With respect to CMC029, the Companies respectfully disagree. The OE was submitted to CCC and considered in the ACV determination. Nothing additional is owed. Further, it is the Companies' understanding that this violation is now withdrawn. The Companies agree helmet and safety apparel coverage would apply. The Companies will reopen the file and contact the insured to verify any amount owed.

With respect to CMC033, the Companies respectfully disagree as an estimated salvage value of $3,340.50 was deducted from the owner retained settlement. The Company provided the

examiner a ProQuote one year after the settlement that showed the salvage value (of a now 1-year older motorcycle) as $3,609. Further, it is the Companies' understanding that this violation is now withdrawn.

The Companies agree they owe the insured $300 for the difference in deductibles with 6% interest equal to $318.00. The Companies respectfully disagree with the other criticisms. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, the company choses to adopt the procedures of citing specific coverages in its claims notes, modifying its loss calculations process and remediating with the insured.

With respect to CMC046, the Companies respectfully disagree that they failed to advise insured of trip interruption or rental coverage. The file handler's note of 08/21/17 clearly outlines her conversation with the insured, and references that she went over the policy coverages with the insured. The examiners and the company have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, the company choses to adopt the procedures of citing specific coverages in its claims notes, modifying its loss calculations process and remediating with the insured. Further, it is the Companies' understanding that this violation is now withdrawn.

With respect to CMC056, it is the Companies' understanding that this has been withdrawn.

f. In 18 instances, the company failed to pay the claim in accordance with the policy provisions where there was no dispute as to the coverage or liability.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to pay claims in accordance with policy provisions and applicable law. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC002, the Companies respectfully disagree with the finding on the amount of underpayment for transportation expenses. The insured traded motorcycles with the driver involved in this loss prior to the loss. Because the insured driver caused damage to the insured's motorcycle, the insured driver gave the insured his motorcycle. The insured was registering the insured driver's motorcycle in the insured's name on June 19, two days after the accident. Additionally, the insured had the insured driver's motorcycle for use and was not without transportation. The company would be willing to consider two days of transportation expenses for the insured. The company does agree with the under payment of $76.08 for applying depreciation on safety items. $63.60 + $76.08 = $139.68. The Companies' established

procedure is accurately paying claims relating to coverage and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC005, the Companies respectfully disagree with the Bureau's findings on the aftermarket parts which were included in the total loss evaluation. You can see on the CCC report an $1,861 equipment submission which added $970 to the base value to arrive at the $11,194 actual cash value. Liability: The company agrees with the bureau's findings regarding safety equipment for gloves ($50 + 6% interest). The Companies respectfully disagree with the department's findings it failed to explain coverages and owe the transportation expenses. Nothing in Virginia law prohibits the Companies from providing ACV for optional equipment. Virginia's Code provides for an ACV definition for entire vehicles (Section 46.2-1600). On its website, the Virginia State Corporation Commission Bureau of Ins. Provides form PP-00-01-01-05 "Personal Auto Policy" which under "Limit of Liability" provides that the limit of liability is the lesser of the "actual cash value of the stolen or damaged property "or the "amount necessary to repair or replace the property with other property of like kind and quality". The Companies' approved policies have this limitation of liability language. (See attached policies). However, the amended policy does not contain subsection C which provides "C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment." Given that nothing prohibits the Companies from limiting OE to ACV, that the law provides for ACV for vehicles, that the sample personal auto policies provided by the Virginia provides only for ACV, and these limitations are also found in the forms provided by the Companies, the Companies assert that this is not an appropriate citation. The Bureau, during discussions while the response to the Report was being prepared, was unable to clarify a prohibition for providing the ACV for OE.

With respect to CMC014, the Companies respectfully disagree. Further, it is the Companies' understanding that this violation is now withdrawn. Nonetheless, the Companies will reopen and reach out to the insured to determine any helmet/safety apparel damaged in loss to submit items for reimbursement.

With respect to CMC025, the Companies respectfully disagree. The adverse carrier, State Farm, accepted liability for the loss and the insured went through it for damages.

With respect to CMC027, the Companies respectfully disagree. This is a TX loss. The Companies agree that it took depreciation on the safety apparel but respectfully disagrees with the amount owed. Payment of $531.72 was already issued on safety apparel and the policy language limits payment to $1,000. Therefore, only an additional $468.28 is owed in safety

apparel. In addition, $80 would be owed for the depreciation taken on the helmet. The $581.18 includes the 6% interest.

With respect to CMC029, the Companies respectfully disagree. The OE was submitted to CCC and considered in the ACV determination. Nothing additional is owed. Further, it is the Companies' understanding that this violation is now withdrawn. The Companies agree helmet and safety apparel coverage would apply. The Companies will reopen the file and contact the insured to verify any amount owed.

With respect to CMC033, the Companies respectfully disagree as an estimated salvage value of $3,340.50 was deducted from the owner retained settlement. The Companies provided the examiner a ProQuote one year after the settlement that showed the salvage value (of a now 1-year older motorcycle) as $3,609. Further, it is the Companies' understanding that this violation is now withdrawn. The Companies agree they owe the insured $300 for the difference in deductibles with 6% interest equal to $318.00. The Companies respectfully disagree with the other criticisms. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, the Companies chose to adopt the procedures of citing specific coverages in its claims' notes, modifying its loss calculations process and remediating with the insured.

With respect to CMC045, the Companies respectfully disagree as the alleged phantom vehicle was not identified. The police concluded the license plate/vehicle reported was not involved.

With respect to CMC046, the Companies respectfully disagree that it failed to advise insured of trip interruption or rental coverage. The file handler's note of 08/21/17 clearly outlines her conversation with the insured, and references that she went over the policy coverages with the insured. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, the Companies chose to adopt the procedures of citing specific coverages in its claims' notes, modifying its loss calculations process and remediating with the insured. Further, it is the Companies' understanding that this violation is now withdrawn.

With respect to CMC053, the Companies respectfully disagree that it failed to offer fair and reasonable settlement. -- check was not cashed. This payment will fell into the Companies' escheat process. The check was cashed by the customer as part of our escheat follow-up process.

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

The Companies acknowledge the other observations, but respectfully disagree that they have a general business practice of failing to offer insureds an amount that is fair and reasonable as shown by the investigation of the claim or failing to pay a claim in accordance with the insured's

policy provisions. The Companies' training for claims associates emphasizes handling of claims in accord with policy provisions and applicable law.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of

noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(8) The examiners found ten 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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is to provide required documentation. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC055, the Companies respectfully disagree with the finding that it failed to offer fair and reasonable amount for transportation expense. The claim notes clearly reflect the file handler reviewed all of the applicable coverages with the insured in their first conversation, which occurred on 09/20/17. The Companies maintain the file is correctly documented. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation; however, in the interest of resolving this issue, the Companies have chosen to adopt the procedures of citing specific coverages in the claim notes and will make further payment to the insured.

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

The Companies acknowledge the examiner's observations. The Companies' established procedure is to provide required documentation. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

The Companies acknowledge the other observations, but respectfully disagree that the Companies have a general business practice of failing to provide the vehicle owner a copy of the estimate for the cost of repairs prepared by or on behalf of the Companies. The Companies'

training for claims associates emphasizes compliance with all statutory requirements, including providing a copy of the repair estimate.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of

noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(9) The examiners found one violation of § 38.2-236 A of the Code of Virginia. The company failed to notify the claimant that a settlement payment was issued to the claimant's attorney or representative.

The Companies acknowledge the examiner's observations. The Companies' established procedure is to provide required notifications and documentation. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

(10) The examiners found three 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

a. In one instance, the company misrepresented pertinent facts and insurance policy provisions relating to Medical Expense coverage.

According to the Companies' records, the Companies did not receive CMC031 (Review Sheet 1554467407).

b. In two instances, the company misled the claimant as to the companies' obligations regarding payment of the claimant's rental or loss of use claim.

The Companies acknowledge the examiner's observations. The Companies' established procedure is to provide pertinent facts and accurate information on policy provisions, as well as the Companies obligations. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

(11) The examiners found five violations 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.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The

Companies' established procedure is to promptly investigate claims. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC019, the company will reopen the file and investigate the additional coverage available for the insured to receive benefits (transportation and safety apparel).

With respect to CMC024, the Companies respectfully disagree with the examiner's observations. This was a California loss. The Companies disagree with a finding on the payment owed to the insured for UM benefits. The insured went to the hospital by ambulance with arm pain. The insured further advised he would follow up with his physician upon his return to Virginia. The forgoing notwithstanding, the Companies will reopen the file and contact the insured to determine any amount of benefits owed.

With respect to CMC028, this is a SC loss. The Companies agree that they did not address rental with the insured. The Companies will reopen the file and investigate the additional coverage available for the insured to receive benefits.

With respect to CMC033, the Companies respectfully disagree as an estimated salvage value of $3,340.50 was deducted from the owner retained settlement. The Companies provided the examiner a ProQuote one year after the settlement that showed the salvage value (of a now 1-year older motorcycle) as $3,609. Further, it is the Companies' understanding that this violation is now withdrawn. The Companies agree they owe the insured $300 for the difference in deductibles with 6% interest equal to $318.00. The Companies respectfully disagree with the other criticisms. The examiners and the Companies have a difference of opinion regarding proper handling and thorough file documentation, as well as loss calculation; however, the Companies chose to adopt the procedures of citing specific coverages in its claims notes, modifying its loss calculations process and remediating with the insured.

The Companies acknowledge the other observations, but respectfully disagree that the Companies have a general business practice of failing to promptly investigate claims arising under insurance policies. The Companies' training for claims associates emphasizes prompt claim investigation.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual

performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation. If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. The sample is just at threshold of 7.2% before any of the above citations were withdrawn. This is an initial sampling and not the benchmark error rate. The Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts. CMC033 is now withdrawn thereby lowering the sampling rate to 5.7% -- below the trigger for even a determination of a benchmark error rate.

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

a. In six instances, the company unreasonably delayed the settlement of a claim.

The Companies acknowledge the examiners' observations and continue to respectfully disagree with some of the observations as set forth in our responses during the exam. The Companies' established procedure is prompt investigation and processing of claims. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

With respect to CMC024, the Companies respectfully disagree with the examiners' observations. This was a California loss. The Companies further respectfully disagree with a finding on the payment owed to the insured for UM benefits. The insured went to the hospital by ambulance with arm pain. The insured further advised he would follow up with his physician upon his return to Virginia. The forgoing notwithstanding, the Companies will reopen the file and contact the insured to determine any amount of benefits owed.

With respect to CMC028, this is a SC loss. The Companies agree that they did not address rental with the insured. The Companies will reopen the file and investigate the additional coverage available for the insured to receive benefits.

With respect to CMC039, the Companies respectfully disagree with the examiner's observations as the insured refused to cooperate or respond to contact attempts. Without his cooperation the Companies were unable to verify whether another vehicle was involved or not, so UM was not proven and did not apply.

With respect to CMC045, the Companies respectfully disagree as the alleged phantom vehicle was not identified. The police concluded the license plate/vehicle reported was not involved.

b. In one instance, the company failed to promptly process the insured's UMPD deductible.

The Companies acknowledge the examiner's observations. The Companies' established procedure is to prompt investigation and processing of claims. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

c. In one instance, the company failed to make payment for towing and storage charges.

The Companies acknowledge and respectfully disagree with the examiner's observation. The Companies' established procedure is to properly process claims in accordance with applicable

law and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

d. In one instance, the company failed to promptly process the insured's rental reimbursement under UMPD.

The Companies acknowledge and respectfully disagree with the examiner's observations. The Companies' established procedure is to properly and promptly process claims in accordance with applicable law and policy provisions. However, training material is being finalized and will be distributed to claim associates within 90 days after the report is finalized. The Companies maintain that this change will prevent future instances.

The Companies acknowledge the other observations, but respectfully disagree that the Companies have a general business practice of failing to attempt, in good faith, to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear. The Companies training for claims associates emphasizes prompt investigation to determine liability and further emphasize fair and prompt claim resolution.

Isolated incidents are not considered a general business practice. The Virginia Supreme Court found in *Allstate Ins. Co. v. United Services Auto Assn.* 249 Va. 9, 14 (1995) that even if an individual act of refusing to negotiate a settlement was unfair, it was not a violation of §38.2-510(A)(6) as it was an "isolated incident" insufficient to be considered a general business practice. The plain meaning of Va.Code §§ 38.2–502, 503 and 510 shows that the primary purpose of these Sections is to regulate the performance of insurance contracts by assuring conformity between representations made by the insurer to the insured and the actual performance of the insurance policies, and between basic principles of fair practices and the actual performance of the policies. In other words, each statute is designed to regulate the representations made to form, and the practices which comprise, the relationship between insurer and insured and the performance of the insurance contract which is the foundation of that relationship. *Department of Treasury v. Fabe*, 113 S.Ct. 2202, 2209 (1993); *Ambrose v. Blue Cross & Blue Shield of Virginia, Inc.*, 891 F.Supp. 1153 (E.D. Va. 1995).

With these purposes in mind, it is apparent based on the facts presented that the Companies did not stray so far in conduct as to compromise the relationship between insured and insurer or the foundation of the insurance contract. The conduct by the Companies does not rise to a level to be considered a general business practice. The conduct is more akin to isolated incident(s).

Further, under NAIC guidance, the tolerance level represents a critical threshold used during the initial acceptance sample to determine whether a process requires additional investigation.

If the results of an initial sample cannot confidently rule out the possibility that the true processing error rate is above the tolerance level, a second sample of sufficient size to estimate the actual rate of processing errors should be taken. There was no second sample set forth in this Report.

The tolerance level is used to provide parameters for a mathematical construction. Historically, a benchmark error rate of 7 percent has been established for auditing claim practices. This benchmark error rate has been applied previously by the Bureau.

With respect to sampling, "tolerance level" and "benchmark error rate", it is important to note that they are not the same. The former is a statistical construct with meaning only in terms of making probabilistic inferences, while the latter is a threshold used to establish the legal presumption of a general business practice. Important in this respect, the first stage sample cannot be used to establish with confidence that the true rate of noncompliance exceeds 7 percent. The small sample sizes only support the inference that one cannot confidently rule out such a possibility. The larger second stage sample is required to infer the actual rate of noncompliance and determine whether this true rate exceeds some specified threshold. *See* NAIC Market Regulation Handbook.

While it is understood that that a percentage is not be used as a hard and fast rule. Sample size and other considerations must enter into the analysis. This is an initial sampling and not the benchmark error rate. In addition, the Bureau should respectfully take into account violations that are withdrawn, and violations that repeat with the group. For example, there are reference numbers that are cited in multiple sub-parts.

(13) The examiners found one violation of § 38.2-510 C of the Code of Virginia. The company failed to disclose the required aftermarket parts notice to the insured owner on the estimate of repairs or in a separate document.

The Companies acknowledge the examiner's observations.

Forms Review

Motorcycle Policy Forms

Policy Forms Used During the Examination Period

The Companies provided copies of 34 forms that were used during the examination period to provide coverage on policies insuring risks located in Virginia.

The examiners found one violation of § 38.2-2214 of the Code of Virginia. The company used a rate classification statement other than the one approved for use by the Bureau during the examination period.

The Companies acknowledge the examiners' observation. This was an administrative error.

Policy Issuance Process Review

Automobile Policies

New Business Policies

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

a. In three instances, the company failed to include the effective time of coverage in the policy.

The Companies acknowledge the examiners' observation. This was an administrative error.

b. In five instances, the company failed to list all forms applicable to the policy on the declarations page.

The Companies acknowledge the examiners' observation. This was an administrative error.

Renewal Business Policies

The examiners found three 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 failed to list all forms applicable to the policy on the declarations page.

The Companies provided five new business policies sent on the following dates: January 3, 10, and 11, 15, and 27, 2018. In addition, the Companies provided ten renewal business policies sent on the following dates: December 15, and 18, 2017, and January 15, 16, and 26, 2018, and February 8, 13, and 28, 2018, and March 1, 2018.

The Companies acknowledge the examiners' observation. This was an administrative error.

Motorcycle Policies

New Business Policies

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

a. In five instances, the company failed to include the effective time of coverage in the policy.

The Companies acknowledge the examiners' observation. This was an administrative error.

b. In five instances, the company failed to list all forms applicable to the policy on the declarations page.

The Companies acknowledge the examiners' observation. This was an administrative error.

Renewal Business Policies

(1) The examiners found six violations of § 38.2-305 A of the Code of Virginia. The company failed to specify in the insurance policy all of the information required by the statute.

a. In four instances, the company failed to include the effective time of coverage in the policy.

The Companies acknowledge the examiners' observation. This was an administrative error.

b. In two instances, the company failed to list all forms applicable to the policy on the declarations page.

The Companies acknowledge the examiners' observation. This was an administrative error.

(2) The examiners found three violations of § 38.2-305 B of the Code of Virginia. The company failed to provide the Important Information Regarding Your Insurance notice as required by the Code of Virginia.

The Companies acknowledge the examiners' observation. This was an administrative error.

(3) The examiners found three violations of § 38.2-604.1 of the Code of Virginia. The Company failed to provide the Notice of Financial

The Companies acknowledge the examiners' observation. This was an administrative error.

Statutory Notices Review

General Statutory Notices

(1) The examiners found two violations of § 38.2-604 B of the Code of Virginia. The companies' Notice of Information Collection and Disclosure Practices did not include all of the information required by this statute.

The Companies acknowledge the examiners' observation. The forgoing notwithstanding, the Companies respectfully disagree with the examiners' observation. Due to the fact that an applicant receives the long form notice upon the issuance of a policy, the sending of the short

notice is not required. Based on review of § 38.2-604 C of the Code of Virginia, the short form notice is an option for an insurance company and may be sent instead of the long form notice.

(2) The examiners found one violation of § 38.2-604 C of the Code of Virginia. The companies' short form Notice of Information Collection and Disclosure Practices did not contain all of the information required by the statute.

The Companies acknowledge the examiners' observation. This was an administrative error that did not impact the underwriting or rating of the policy. There was no impact, positive or negative, to the insured/applicant due to this error.

(3) The examiners found two violations of § 38.2-610 A of the Code of Virginia. The company failed to have an adverse underwriting decision notice containing substantially similar language as that of the prototype set forth in Administrative Letter 2015-07.

The Companies acknowledge the examiners' observation.

Statutory Vehicle Notices

(1) The examiners found two violations of § 38.2-1905 A of the Code of Virginia.

a. In one instance, the company failed to have a point surcharge notice that notified the insured of his right to appeal to the Commissioner of Insurance the companies' decision to surcharge his policy. This was an administrative error.

The Companies acknowledge the examiners' observation. This was an administrative error.

b. In one instance, the company failed to have available a Point Surcharge notice that informs the insured that his policy has been surcharged due to an at fault accident.

The Companies acknowledge the examiners' observation. This was an administrative error.

(2) The examiners found five violations of 38.2-2202 A of the Code of Virginia. The companies' Medical Expense Benefits notice was not in the precise wording required by the statute.

The Companies acknowledge the examiners' observation. This was an administrative error.

(3) The examiners found three violations of § 38.2-2202 B of the Code of Virginia. The rejection of higher uninsured motorist limits notice was not the precise language as required by the statute.

The Companies acknowledge the examiners' observation. This was an administrative error.

(4) The examiners found one violation of § 38.2-2210 A of the Code of Virginia. The company failed to include the 60-day Cancellation Warning notice on the application.

The Companies acknowledge the examiners' observation. This was an administrative error.

(5) The examiners found four violations of § 38.2-2230 of the Code of Virginia. The companies' rental reimbursement notice did not comply with the requirements of the statute.

The Companies acknowledge the examiners' observation. This was an administrative error.

(6) The examiners found five violations of § 38.2-2234 A 1 of the Code of Virginia. The companies' Insurance Credit Score Disclosure notice did not include all of the information required by the statute.

The Companies acknowledge the examiners' observation. This was an administrative error.

Licensing and Appointment Review

Agency

The examiners found 25 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.

The Companies acknowledge the examiners' observation. This was an administrative error.

Agent

(1) The examiners found one violation of § 38.2-1822 A of the Code of Virginia. The company permitted a person to act in the capacity of an agent who was not licensed in Virginia.

The Companies acknowledge the examiners' observation, but respectfully disagree. The Bureau has been provided the appropriate information and the Companies have not received a response. The Company has followed up with the agency and determined the writing agent for the policy and the license number. The supporting documentation in included in a separate Confidential Exhibit which has been uploaded to the FTP site.

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

The Companies acknowledge the examiners' observation. This was an administrative error.

Part Two – CORRECTIVE ACTION PLAN
Rating and Underwriting Review

(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.

Response

The Bureau requested that the Companies confidentially reply to the restitution items provided by the Bureau with the response to the Report ("Restitution Reply"). The Companies takes the position that the Restitution Reply is conditional upon several open items pending with the Bureau. These include clarification of several points of disagreement, several outstanding legal interpretation issues that need clarification from the Bureau, and the finalizing of the Report. For these reasons, the Companies have not provided this with the response to the Report. However, the Companies have prepared an interim draft and are prepared to share this with the Bureau immediately upon its request. Also, the Companies are prepared to quickly act to finalize the Restitution Reply once the forgoing issues are finally concluded.

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

Response

Six percent interest will apply to any payments.

(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.

Response

The Companies will provide this to the Bureau under separate cover when all payments have been made. The uncontested items are being addressed currently. The contested items will await the examiners' final response.

(4) Specify accurate information in the policy by showing the effective time of coverage in the policy.

Response

The Companies will issue the policies showing the effective time of coverage in the policy.

(5) Properly assign points under a Safe Driver Insurance Plan (SDIP) to the vehicle customarily driven by the operator incurring the points.

Response

The Companies will properly assign points under a Safe Driver Insurance Plan (SDIP) to the vehicle customarily driven by the operator incurring the points.

(6) File all rates and supplementary rate information prior to using the rates.

Response

The Companies will properly assign points under a Safe Driver Insurance Plan (SDIP) to the vehicle customarily driven by the operator incurring the points.

(7) Use the rules and rates on file with the Bureau. Particular attention should be given to the use of filed discounts, points for accidents and convictions, symbols, tier eligibility, base and/or final rates, driver assignment, and credit score information.

Response

The Companies will continue to use the rules and rates on file with the Bureau. Particular attention will be paid the use of filed discounts, points for accidents and convictions, symbols, tier eligibility, base and/or final rates, driver assignment, and credit score information.

Termination Review

(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.

Response

The Bureau requested that the Companies confidentially reply to the restitution items provided by the Bureau with the response to the Report ("Restitution Reply"). The Companies takes the position that the Restitution Reply is conditional upon several open items pending with the Bureau. These include clarification of several points of disagreement, several outstanding legal interpretation issues that need clarification

from the Bureau, and the finalizing of the Report. For these reasons, the Companies have not provided this with the response to the Report. However, the Companies have prepared an interim draft and are prepared to share this with the Bureau immediately upon its request. Also, the Companies are prepared to quickly act to finalize the Restitution Reply once the forgoing issues are finally concluded.

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

Response

Six percent interest will apply to any payments.

(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 that they have refunded or credited the overcharges listed in the file.

Response

The Companies will provide this to the Bureau under separate cover when all payments have been made. The uncontested items are being addressed currently. The contested items will await the examiners' final response.

(4) Calculate return premium according to the filed rules and policy provisions.

Response

The Companies will calculate return premium according to the filed rules and policy provisions.

(5) Obtain sufficient documentation from the insured verifying relocation to another state.

Response

The Companies will obtain sufficient documentation from the insured verifying relocation to another state.

(6) Provide adequate days' notice of cancellation to the insured.

Response

The Companies will provide adequate days' notice of cancellation to the insured.

(7) Retain proof of sending cancellation notices to the insured.

Response

The Companies will retain proof of sending cancellation notices to the insured.

(8) Obtain and retain valid proof of mailing the cancellation notice to the insured.

Response

The Companies will obtain and retain proof of mailing the cancellation notice to the insured

(9) Send the cancellation notice to the address listed on the policy.

Response

The Companies will send cancellation notices to the address listed on the policy.

(10) Cancel policies only for the reasons permitted by statute.

Response

The Companies will cancel policies only for the reasons permitted by statute.

(11) Advise the insured of the right to review by the Commission of Insurance.

Response

The Companies will advise the insured of the right to review by the Commission of Insurance.

(12) Obtain a written notice when the insured requests to cancel his policy as required by the provisions of the insurance policy.

Response

The Companies will obtain a written notice when the insured request to cancel a policy as required by the provisions of the insurance policy.

Claims Review

(1) Correct the errors that caused the underpayments and overpayments and send the amount of the underpayment to insureds and claimants.

Response

The Bureau requested that the Companies confidentially reply to the restitution items provided by the Bureau with the response to the Report ("Restitution Reply"). The Companies takes the position that the Restitution Reply is conditional upon several open items pending with the Bureau. These include clarification of several points of disagreement, several outstanding legal interpretation issues that need clarification from the Bureau, and the finalizing of the Report. For these reasons, the Companies have not provided this with the response to the Report. However, the Companies have prepared an interim draft and are prepared to share this with the Bureau immediately upon its request. Also, the Companies are prepared to quickly act to finalize the Restitution Reply once the forgoing issues are finally concluded.

(2) Include six percent (6%) simple interest in the amount paid to the insureds and claimants.

Response

The Companies will 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.

Response

The Companies will complete and submit to the Bureau, the enclosed file titled "Claims Underpayments Cited During the Examination" when payments have been made. The uncontested items are being addressed currently. The contested items will await the examiners' final response.

(4) Document claim files so that all events and dates pertinent to the claim can be reconstructed.

Response

The Companies will document claim files so that all events and dates pertinent to the claim can be reconstructed. The uncontested items are being addressed currently. The contested items will await the examiners' final response.

(5) 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, Transportation Expenses coverage, and Medical Expense coverage.

Response

The Companies will document the claim file that all applicable coverages have been discussed with the insured. Particular attention will be given to deductibles, rental benefits under UMPD, Transportation Expenses coverage, and Medical Expense coverage.

(6) Notify the insured, in writing, every 45 calendar days of the reason for the company's delay in completing the investigation of the claim.

Response

The Companies will notify the insured, in writing, every 45 calendar days of the reason for the company's delay in completing the investigation of the claim.

(7) Make all claim denials in writing and keep a copy of the written denial in the claim file.

Response

The Companies will make all claim denials in writing and keep a copy of the written denial in the claim file.

(8) 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.

Response

The Companies will continue to 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.

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

Response

The Companies will provide copies of repair estimates prepared by or on behalf of the company to insureds and claimants.

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

Response

The Companies will continue to properly represent pertinent facts or insurance provisions relating to coverages at issue

(11) Adopt and implement reasonable standards for the prompt investigation of claims.

Response

The Companies will continue to adopt and implement reasonable standards for the prompt investigation of claims.

(12) Adopt and implement reasonable standards for the prompt, fair, and equitable settlement of a claim in which liability and/or coverage is reasonably clear.

Response

The Companies will continue to adopt and implement reasonable standards for the prompt, fair, and equitable settlement of a claim in which liability and/or coverage is reasonably clear.

(13) The Company should conduct an internal audit of all total loss claims in the population during the audit period and reevaluate the CCC evaluations to determine that all amounts owed were paid to the insured. The company should then prepare an excel spreadsheet indicating the payments made as a result of the internal audit. This spreadsheet should be in the same format as the Restitution Spreadsheet sent by the Bureau for the Claims Underpayments.

Response

The Companies have begun this audit and have preliminary results. During discussion with the Bureau, the Companies were advised to await submission of their response and further direction from the Bureau before completing the audit in full. With respect to this issue, the Companies are adopting a new CCC process. The Companies will be shifting from 6 to 9 CCC categories in terms of placing a vehicle in an initial category. The Companies will also adopt a new approach in line with Report results and feedback from the Bureau. Previously, the Companies would give a vehicle with prior damage a higher CCC rating and then deduct the actual valuation of pre-existing damage from that amount. This was done with the goal in mind that the insured benefited from a higher

overall valuation as the deduction from a higher category often resulted in an overall value that was higher than if the vehicle had been placed in the lower category (because no deduction for prior damage was taken). The Bureau raised concern that it is difficult to discern that the Companies are always giving the insureds the benefit of the doubt under such an approach. Thus, the approach could have the appearance of the Companies taking a deduction for prior damage twice. Although this was not the case, the Companies wish to avoid any such appearance. This has led to the change described above.

(14) The Company should conduct an internal audit of all motorcycle claims and determine if the insured obtained a rental vehicle and reimburse any amount owed under transportation expense coverage. The company should then prepare an excel spreadsheet indicating the payments made as a result of the internal audit. This spreadsheet should be in the same format as the Restitution Spreadsheet sent by the Bureau for the Claims Underpayments.

Response

The Companies have begun this audit and have preliminary results. During discussion with the Bureau the Companies were advised await submission of their response and further direction from the Bureau before completing the audit in full.

Forms Review

Use the rate classification statement filed and approved by the Bureau.

Response

The Companies will continue to use the rate classification statement filed and approved by the Bureau.

Policy Issuance Process Review

(1) Specify accurate information in the policy by including the effective time of coverage in the policy.

Response

The Companies will ensure inclusion of the effective time of the coverage in policies.

(2) Provide the insured the Important Information Regarding Your Insurance notice with all new homeowner policies.

Response

The Companies will provide the insured the Important Information Regarding Your Insurance notice with all new private passenger auto policies.

(3) Provide the Notice of Financial Information Collection and Disclosure Practices notice as required by the statute.

Response

The Companies will provide the Notice of Financial Information Collection and Disclosure Practices notice as required by the statute.

(4) List only forms applicable to the policy on the declarations page.

Response

The Companies will list only forms applicable to the policy on the declarations page and will not include the application.

Statutory Notices Review

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

Response

The Companies will amend their long-form notice,

(2) Amend the short form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 C of the Code of Virginia.

Response

The Companies will amend the short form Notice of Information Collection and Disclosure Practices.

(3) Have available the AUD notice to comply with § 38.2-610 A of the Code of Virginia.

Response

The Companies AUD notice is available.

(4) Have available the Accident Point Surcharge notice to comply with § 38.2-1905 A of the Code of Virginia.

Response

The Companies Accident Point Surcharge is available.

(5) Amend the Medical Expense Benefits notice to comply with § 38.2-2202 A of the Code of Virginia.

Response

The Companies have amended the Medical Expense Benefits notice

(6) Amend the Uninsured Motorist Limits notice to comply with § 38.2-2202 B of the Code of Virginia.

Response

The Companies have amended the Uninsured Motorist Limits notice.

(7) Develop a 60-day Cancellation Warning notice for the application to comply with § 38.2-2210 A of the Code of Virginia.

Response

The Companies will develop a 60-day Cancellation Warning notice

(8) Amend the rental reimbursement notice to comply with § 38.2-2230 of the Code of Virginia.

Response

The Companies will amend the rental reimbursement notice.

(9) Amend the Insurance Credit Score Disclosure notice to comply with § 38.2-2126 A 1 and 38.2-2234 A 1 of the Code of Virginia.

Response

The Companies will amend the Insurance Credit Score Disclosure notice.

Licensing and Appointment Review

Accept business only from agents and agencies who are properly licensed and appointed in the Commonwealth of Virginia.

Response

The Companies will only accept business from agents and agencies who are properly licensed and appointed in the Commonwealth of Virginia.

PART THREE – RECOMMENDATIONS

The Companies have read the Bureau's Recommendation and agree that these issues should be monitored closely as to not become violations in the future.

Conclusion

The Companies remain committed to working with the Bureau. To that extent, please do not hesitate to contact the undersigned with any questions or comments that you may have.

Respectfully yours,

Wendy Whitrock-Keller

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

September 19, 2019

VIA UPS 2nd DAY DELIVERY

Wendy Whitrock-Keller
Sentry Insurance
1800 North Point Drive
Stevens Point, WI 54481

RE: Market Conduct Examination
Dairyland Insurance Company, NAIC #21164
Peak Property and Casualty Corporation, NAIC #18139
Exam Period: January 1, 2017–December 31, 2017

Dear Ms. Whitrock-Keller:

The Bureau of Insurance (Bureau) has reviewed the July 1, 2019 response to the Preliminary Market Conduct Report (Report) of the above referenced companies. The Bureau has referenced only those items in which the Companies have 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

RATING AND UNDERWRITING

The Companies have responded that several of the violations did not impact the underwriting or rating, this is not an accurate statement. Each of the violations cited indicated the Companies were not using the rules and rates on file, and this was a failure to rate and underwrite the policy.

Automobile New Business Rating and Underwriting Review

(3) The violation for RPA008 remains in the Report. The Company did not file rules or rates for the Household Composition factors applicable to Named Non-

Owner policies. The Company applied the factors for a single vehicle in the household when the Named Non-Owner policy does not insure any vehicle

(4a) These violations remain in the Report. The Companies have not provided any additional information that would cause the Bureau to reconsider its initial findings.

(4b) The violation for RPA004 remains in the Report. This violation is due to the Company's failure to apply surcharge points for a documented conviction. The Company has not indicated which of the violations they disagree with.

The violation for RPA019 remains in the Report. The Company surcharged the policy nine points instead of eight points, which resulted in an overcharge of $48.19. The Company incorrectly surcharged the policy for an at-fault accident when no claim payments were made.

The violation for RPA024 remains in the Report. The Company responded that per the SVC Code, MVR Surcharge Information and VA Choice Point Mapping Documentation the Company should have surcharged for the accident listed on the MVR. On November 27, 2018 the Bureau requested a copy of the SVC Code, MVR Surcharge Information and VA Choice Point Mapping Documentation for further consideration. The Company has not provided the requested documentation.

Automobile Renewal Business Rating and Underwriting Review

(1) The Bureau cited 19 violations of § 38.2-305 A for the following policies: RPA026, RPA028, RPA029, RPA030, RPA032, RPA033, RPA034, RPA035, RPA037, RPA039, RPA040, RPA041, RPA042, RPA043, RPA044, RPA045, RPA046, RPA047, and RPA050. It is not clear which review sheet the Company is missing as all 19 violations are included in the technical report sent to the Company on April 24, 2019. In addition, the company responded to all 19.

(3) The violations for RPA029 and RPA031 remain in the Report. The Companies' policy files did not clearly indicate which vehicle each driver customarily operated. The Companies' application required the insured to assign a driver to every vehicle but did not allow the insured to identify which vehicle each driver customarily operated. This process was in violation of the statute when the policy insured more than one vehicle.

(4) The violation for RPA033, RPA040, RPA042, and RPA044 remain in the Report. The Companies did not file specific rules or rates for the appropriate Household Composition factors applied to Named Non-Owner policies. The Companies applied the factors filed for one vehicle in the household when Named Non-Owner policies do not insure any vehicles.

(5a) The violation for RPA042 remains in the Report. This violation is due to the Company's failure to apply the Paid in Full Discount.

(5b) The violation for RPA043 remains in the Report. The Company surcharged the policy eight points for two at-fault accidents. However, the policy file did not indicate any claim payments were made for the two accidents.

(5c) The Bureau cited a total of four violations: two violations for RPA031, one violation for RPA045, and one violation for RPA047.

(5d) The violation for RPA046 remains in the Report. The violation in question is due to the Company's failure to provide the revised policy for review. The Company responded that it has "consistently allowed customers to backdate cancellations so we do not penalize them." However, this violation pertains to the Company incorrectly calculating the premium for this policy. The Company has not responded to this violation. For further consideration, please provide evidence of the rates and factors that were used to rate this policy.

Motorcycle New Business Rating and Underwriting Review

(1) The Bureau cited 15 violations of § 38.2-305 A for the following policies: RMC001, RMC002, RMC003, RMC004, RMC005, RMC006, RMC007, RMC008, RMC009, RMC010, RMC011, RMC012, RMC013, RMC014, and RMC015.

(2) After further review, the violation for RMC016 has been withdrawn from the Report.

(3a) These violations remain in the Report. Without documentation, the Bureau is unable to verify that the Companies applied the appropriate discount and/or surcharge factors. For reconsideration, the Companies should provide documentation that supports the factors applied to the policies.

(3b) The violation for RMC011 remains in the Report. The Company should not surcharge for violations disclosed by an insured that are not supported by convictions on the Motor Vehicle Report (MVR). If a driver is actually convicted of a moving violation, it should appear on the MVR.

(3e) The violation for RMC017 remains in the Report. The Company reported that it used a credit score of 999 to rate the policy. This score corresponded to ten points in the Gold Program. Further, it is not clear how the Company determined a tier score of 31 with the following characteristics and points: base points (9), credit score (10), no AF accidents (8), no minor convictions (4), no major convictions (3), and no coverage lapse (2). For reconsideration, the Company should explain how it developed the Tier score of 31 instead of 36.

Motorcycle Renewal Business Rating and Underwriting Review

(a) The violations for RMC032, RMC033, and RMC035 remain in the Report. The policy files did not include the necessary documentation to support the Companies' application of the Operator Safety Course, Motorcycle Endorsement, and/or Motorcycle Driving Experience discounts and surcharges.

(b) The violation for RMC037 remains in the Report. This item contributed to an overcharge of $19.92 because the Company incorrectly surcharged the policy for an at-fault accident.

(d) The violation for RMC058 remains in the Report. The Company did not provide evidence to verify the Preferred Rider Score Points. On February 4, 2019, the

Bureau requested evidence that this insured had a lapse in coverage for more than 60 days. The Company has not provided the evidence requested.

(e) The violation for RMC045 remains in the Report. The Company has not provided any additional information for review. For reconsideration, the Company should state which of the examiners' rates are incorrect in review sheet R&URBMC1535665460 or specify which rates the Company used to calculate the Other than Collision coverage premium for all three vehicles.

(f) The violations for RMC034, RMC036, RMC038, and RMC040 remain in the Report. The Companies acknowledge that these violations were the result of a training issue; however, the Companies indicate that it only received three review sheets rather than four. The Companies responded twice to Review Sheet #s: R&URBMC-2134742697, R&URBMC-1360204454, R&URBMC-1304376722, and R&URBMC-1817854657.

Automobile Cancellation for Nonpayment of Premium

(1) The violation remains in the Report. The Company has misrepresented the appropriate time by including cancellation verbiage within an installment bill prior to the insured's missed payment.

(3) The violation remains in the Report. The IMb tracking number provided by the Company did not match the IMb tracking number decoded by the Bureau for the manual cancellation due to nonpayment of premiums.

Motorcycle Cancellation Requested by the Insured

(2b) After further review, the violations for TMC024 and TMC027 have been withdrawn from the Report. The Report has been renumbered to reflect this change.

Private Passenger Automobile Claims

Throughout the response the Companies have indicated that the number of violations does not rise to the level of a General Business Practice (GBP). The Companies have inferred that the Bureau did not sample a representative number of claim files from the total data population submitted. As stated in the Report, the Bureau uses the National Association of Insurance Commissioners (NAIC) guidelines in determining a GBP. The error tolerance is based upon a seven percent error ratio of the claims sampled. The Bureau does not apply the seven percent error ratio to each coverage, such as a seven percent error ratio associated with the collision claims sampled, or seven percent error ratio of medical expense benefits claims sampled. The Bureau applies the seven percent error ratio to the total number of files in the sample. In light of the Companies' position, the Bureau is willing to request a larger sample for each of the coverages. The Bureau will revisit the populations provided for the examination period under review and request the additional files; if this will aid in the Companies' confidence in the numbers. The Bureau will expand the sample and provide the Companies with a new sample list. The Companies would then copy and send the entire claim file for each of the new sampled claims to the Bureau for review. Please confirm that this is how Sentry would like the Bureau to proceed.

(1) The violation for CPA002 remains in the Report. The Company has acknowledged that the file is not adequately documented to support that the loss was less than the deductible.

After further review, the violation for CPA014 has been withdrawn from the Report.

The violation for CPA041 remains in the Report. The rental invoice provided was not for the named insured or the claim number associated with the claim being reviewed. For reconsideration, the Company should provide a copy of the rental invoice associated with the claim sampled.

After further review, the violation for CPA066 has been withdrawn from the Report.

(2a) The violation for CPA043 remains in the Report. The Company has acknowledged that the insured was not advised that the claim could be handled under the collision coverage on the policy.

The violation for CPA077 remains in the Report. The claim file is documented that the claim representative verified information concerning the lienholder. The Company's claim file was not documented that the insured was advised of the $500 deductible.

(2b) The Company referenced CPA077 in its response, the correct BOI reference number is CPA084.

The violation for CPA084 remains in the Report. The insured advised the Company he "had some pain." The Company did not advise the insured that Medical Expense Benefits coverage was available. The Company is required to inform the insured of all applicable coverages associated with the loss.

(2c) The violation for CPA037 remains in the Report. The Company did not advise the insured of the Transportation Expenses coverage available, the insured had to inquire about a rental. The Company discussed a rental after the insured asked "how the rental process goes" on July 18, 2017.

(2d) The violation for CPA014 remains in the Report. The Company's claim was not documented that the insured was advised of the rental benefits under UMPD.

The violation for CPA018 remains in the Report. The $800 check was not issued until the Bureau reviewed the claim file, as such the Company owes the six percent interest. If the Company is unable to locate the insured, the restitution must be reported to the Virginia Unclaimed Property Division (Escheatment).

The violation for CPA036 remains in the Report. The Company failed to advise the insured of rental benefits under UMPD. The Company responded on June 18, 2018 that "We have reached out to the insured on this claim to inquire if he incurred any out-of-pocket rental expenses arising from the loss on May 20, 2017." Please provide a copy of the letter or the claim file documentation of the conversation the Company had with the insured regarding rental benefits under UMPD.

The violation for CPA037 remains in the Report. The Company failed to advise the insured of rental benefits under UMPD, in addition, the Company incorrectly

advised the insured of a $200 UMPD deductible for a known uninsured vehicle/driver.

The violation for CPA049 remains in the Report. The Company was cited for failure to advise the insured of the rental benefits under UMPD. The Company's response to the Report does not address this.

The violation for CPA057 remains in the Report. The Company failed to advise the insured of rental benefits under UMPD. Insureds must be advised of all applicable coverages.

The violation for CPA070 remains in the Report. This is a UM claim where the driver was known. The Company was cited for failure to advise the insured of the rental benefits and medical benefits under the UM coverage. Please provide a copy of the letter or the file documentation of the conversation the Company had with the insured regarding availability of rental benefits and medical expense benefits under UMPD.

The cited Regulation requires the Company to advise the insured of the coverages applicable to the loss. Failure to fully disclose the coverages applicable to the loss could infer that every coverage on the policy applies to this loss, which is not the case and is misleading to the insured. If the file is not documented which coverages were discussed it is difficult to know if the Company advised of all of the applicable coverages.

(3) The violation for CPA070 remains in the Report. The claim file included three letters from the attorney, dated December 4, 2017, January 15, and May 22, 2018. The Company failed to respond within ten days to each of the letters, this represents three violations.

(4) After further review, the violation for CPA004 has been withdrawn from the Report.

(5) The violation for CPA067 remains in the Report. The Company was cited for failure to provide a written denial letter explaining why the damage to the windshield was not covered. The Company's response to the Report does not address this violation.

(6a) The violation for CPA018 remains in the Report. This is a UM claim where the driver was unknown. The UM deductible is $200. The Company deducted the insured's full $1,000 Collision deductible. The Company responded that the check for the deductible refund was issued to the insured on June 15, 2018 but returned on June 28, 2018 as undeliverable. The $800 check was not issued until the Bureau reviewed the claim file, as such the Company owes the six percent interest. If the Company is unable to locate the insured, the restitution must be reported to the Virginia Unclaimed Property Division (Escheatment).

(6b) The violation for CPA049 remains in the Report. A copy of this review sheet is attached.

The violation for CPA018 remains in the Report. The total loss occurred on March 6, 2017. The Company sent the total loss letter March 31, 2017. The Company should have paid for 25 days (March 6 through March 31, 2017) of rental. The Company paid five days of rental. The Company owes the insured an additional $585.71.

The violation for CPA049 remains in the Report. The CCC One valuation vehicle condition report reduced the value of the vehicle by $214 for major wear and tear for the interior seats, floors, heavy peeling and flaking of paint, and major wear on the tires. The Company is taking an additional reduction for items that were itemized and reduced in the CCC valuation. The Company allowed $43.60 for taxes when the minimum tax amount in Virginia is $75. Further, the Company failed to recognize the $200 deductible. This resulted in a total underpayment of $431.31.

The violation for CPA057 remains in the Report. The Company advised the Bureau that the damages were found to be less than the insured's deductible, so no claim was pursued. The estimate showed two days to repair. If the insured had the repairs completed, the insured would be entitled to a rental. The Company should contact the insured to determine if the insured incurred any rental expenses due to this covered loss. Provide any correspondence with the insured concerning rental/loss of use.

After further review, the violation for CPA059 has been withdrawn from Report.

The violation for CPA065 remains in the Report with the restitution reduced from $1,229.18 to $270.79. The claim file indicated the vehicle was ten plus years or older. The CCC One valuation includes numerous dents and dings and components broken and/or missing to the body trim on a fair condition. The Company evaluated this vehicle as fair, as such, the vehicle would have paint fading, scratches, and scuffed marks for its age. The Company cannot evaluate the vehicle as an average ten-year-old vehicle and then deduct for a scuff mark on the front bumper which would be considered part of the normal wear and tear.

The violation for CPA070 remains in the Report. The Bureau acknowledges the Company's willingness to make further payment.

The violation for CPA071 remains in the Report. The Company has not addressed the violation applicable to this section of the Report.

(6c) After further review the violation for CPA049 has been revised. The Company included the $12 for title and tags but paid an incorrect amount for taxes. The Company paid $43.69 in taxes, but the minimum tax is $75.

(6d) The violation for CPA030 remains in the Report. For reconsideration, provide a copy of the letter or the log notes documenting the conversation with the insured concerning reimbursement for his glasses.

(6e) The violation for CPA015 remains in the Report. The Company failed to pay the full Transportation Expense coverage limit at the time the claim was reviewed.

The violation for CPA028 remains in the Report. The Transportation Expenses coverage states that the rental will be limited to a reasonable time to repair or replace the vehicle. Ending the rental prior to paying the physical damage claim is not a reasonable time in which the insured can replace a vehicle. Further, the claim notes indicate the insured was told they would be allowed three days from the date the check was issued. The check was not mailed until May 1, 2017; however, the rental was terminated on April 27, 2017.

The violation for CPA036 remains in the Report. The Company was cited for failing to offer the insured an amount that was fair and reasonable for a rental vehicle. The estimate showed six days to repair the vehicle. The Company responded on June 18, 2018 that they would reach out to the insured to see if any out-of-pocket rental expenses were incurred. Please provide a copy of the letter or the file notes documenting the conversation with the insured regarding rental benefits under UMPD.

After further review, the violation for CPA037 has been withdrawn from the Report.

(6f) The violations for CPA054 and CPA071 remain in the Report. Copies of the review sheets are attached.

After further review, the violation for CPA015 has been withdrawn from the Report.

After further review, the violation for CPA053 has been withdrawn from the Report.

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

After further review, the violation for CPA069 has been withdrawn from the Report.

The violation for CPA075 remains in the Report. The CCC One valuation component condition shows “normal wear,” which would include various scratches and headliner sagging with $0 impact. The Company cannot deduct for prior damage when it is already included in the “normal wear” for a vehicle of this age.

The violation for CPA080 remains in the Report. The restitution has been reduced from $781.96 to $776.77. The CCC One valuation component conditions show “normal wear,” which would include minor scratches/chips. The photo of the rear bumper shows minimal scratches and no damage.

(10) The violation for CPA070 remains in the Report. The Company incorrectly advised the insured of a $200 deductible for UMPD when the uninsured driver/vehicle was known. The $200 deductible is waived when the uninsured driver/vehicle is known.

(11) After further review, the violation for CPA023 has been withdrawn from the Report.

After further review, the violation for CPA047 has been withdrawn from the Report.

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

The violation for CPA070 remains in the Report. The Company received a denial letter from GEICO but failed to follow up to determine if the driver was a permissive driver of the household or request a copy of the rental agreement to determine if the claimant had purchased liability insurance.

(12a) The violation for CPA036 remains in the Report. The Company was cited for an unreasonable delay in making payment to the insured. The Company has failed to address the violation applicable to this section of the Report.

The violation for CPA037 remains in the Report. The Company was cited for an unreasonable delay in making payment to the insured. The Company has failed to address the violation applicable to this section of the Report.

The violation for CPA049 remains in the Report. The Company was cited for an unreasonable delay in making payment to the insured. The Company has failed to address the violation applicable to this section of the Report.

The violation for CPA070 remains in the Report. The Company was cited for an unreasonable delay in making payment to the insured. The Company has failed to address the violation applicable to this section of the Report.

(12b) The violation for CPA029 remains in the Report. The first paragraph of the observation pertaining to the Company's failure to contact the claimant in a timely fashion was withdrawn on July 31, 2018. The Company has the claimant 100% at fault for the loss, but there is no documentation as to how they came to this conclusion. The insured merged into the claimant's lane which caused the impact. The insured was cited for improper lane change. A reasonable investigation would have found the insured 100% at fault for this loss.

(12c) The violation for CPA040 remains in the Report, and the restitution has been revised from $3,000 to $2,192.43. The Company owes the claimant ten days rental at $180.36 per day, $125 environmental fee, $208.33 vehicle license recovery fee, and $55.50 for mileage. This generated a total underpayment of $4,384.86.

Motorcycle Claims

(1a) The violation for CMC045 remains in the Report. The Company was cited for failure to document the claim file regarding the medical lien applied to the Bodily Injury settlement for wrongful death. The Company failed to provide any additional information for the Bureau to reconsider this violation.

(2) **The examiners reviewed 69 motorcycle claims during this examination, there are 21 files in this sample that included Transportation Expenses coverage on the policy and not one of these insureds made a claim for a temporary substitute vehicle. In addition, none of these files are documented to indicate the Company advised the insured that Transportation Expenses coverage was available.**

(2a) The violation for CMC033 remains in the Report. A copy of the review sheet is attached.

The violation for CMC002 remains in the Report. The Bureau acknowledges the Company's willingness to pay two days of rental.

The violation for CMC005 remains in the Report. The Company has failed to address the violation applicable to this section of the Report.

The violation for CMC013 remains in the Report. The Bureau acknowledges the Company's willingness to make further payment.

The violation for CMC014 remains in the Report. The claim file indicates that collision, UMPD, UMBI, and optional coverages were discussed. However, the claim file did not indicate Transportation Expenses coverage was discussed.

The violation for CMC033 remains in the Report. The claim file is not documented that Transportation Expenses coverage was discussed with the insured. This violation was not withdrawn.

There are no violations under this cite for CMC004.

The violation for CMC050 remains in the Report. The claim file is documented that the adjuster advised the insured of the $500 Collision deductible, the $200 UMPD deductible, optional equipment coverage, UMBI, and that the insured did not have medical payments coverage. However, the claim file did not indicate Transportation Expenses coverage was discussed.

The violation for CMC055 remains in the Report. The claim file is documented that the adjuster advised the insured of the $250 Collision deductible and the $5,000 limit for optional equipment. However, the claim file did not indicate Transportation Expenses coverage was discussed.

The violation for CMC057 remains in the Report. The claim file is documented that the adjuster advised the insured of the $500 Collision deductible and the $1,000 limit for optional equipment. However, the claim file did not indicate Transportation Expenses coverage was discussed.

(2b) The violation for CMC024 remains in the Report. It is not relevant where the accident occurred, this is a Virginia policy. The Company failed to advise the insured of the UMBI and UMPD coverages. The police report stated that the other vehicle suddenly swerved into the right lane and aggressively applied brakes. The insured collided with the other vehicle because the other vehicle made an unsafe lane change. The other vehicle left the scene of the accident and was not identified.

The violation for CMC033 remains in the Report. The Company failed to advise the insured (father) of the Uninsured Motorist (UM) coverage, including any rental benefits. The Company never made any attempt to contact the driver (son) to obtain a statement about the accident and inform him that UMPD could be applicable. This violation was not withdrawn.

After further review the violation for CMC039 has been withdrawn from the Report.

The violation for CMC045 remains in the Report. The Company failed to advise insured's wife that UMPD includes rental benefits. The claim file is not documented that the police concluded that the license plate/vehicle reported was not involved in the accident. For further reconsideration, provide a copy of the police report showing a phantom vehicle was not involved in this accident.

(2d) The violation for CMC003 remains in the Report. The claim file is not documented that the insured was advised of the helmet and wearing apparel coverage. The Company should document the claim file to indicate all of the applicable coverages have been discussed with the insured.

The violation for CMC014 remains in the Report. The claim file is not documented that the insured was advised of the helmet and wearing apparel coverage. The Company noted the $500 Collision deductible, $200 UMPD deductible, and the optional equipment coverage in the claim file. This violation was not withdrawn.

(4) After further review, the violation for CMC004 has been withdrawn from the Report.

(5) The violation for CMC045 remains in the Report. The examiner determined that there were four 45-day increments that the Company failed to send a 45-day letter. The loss was reported on July 30, 2017. The Company determined coverage on March 7, 2018. There were 220 days between the time the loss was reported and the time the Company determined coverage. The Company failed to advise the insured every 45 days of the reason for the ongoing investigation.

(6) After further review, the violation for CMC033 has been withdrawn from the Report.

(7a) The violation for CMC033 remains in the Report. This violation was not withdrawn. The Bureau acknowledges the Company's willingness to make the $300 restitution for underpayment of the deductible.

(7b) The violation for CMC015 remains in the Report. The insured indicated an unknown vehicle came out of the side road and made a left turn in front of him. The police report stated the insured laid the bike down but did not cite the insured for the loss. The policy does not require the insured to identify the phantom vehicle or the driver, only that they contact the police.

The violation for CMC024 remains in the Report. The Bureau acknowledges the Company's willingness to reopen the file and determine the benefits owed.

After further review, the violation for CMC039 has been withdrawn from the Report.

The violation for CMC045 remains in the Report. The total restitution has been revised to $2,200. The violation concerning the underpayment based on the CCC valuation has been withdrawn, and a new review sheet, ClaimVehMC1564149383 has been added under (1). This is a hit and run accident where the uninsured driver/vehicle was identified. The police identified the other vehicle through the license plate number. Whether the police can prosecute is not relevant. The witness states the claimant vehicle was off the roadway in the insured's lane. The police reports indicate another vehicle forced the insured into the telephone pole and this is classified as a hit and run felony. The Company owes the insured $200 as the uninsured vehicle was identified. Further, the file indicates the vehicle identified was in the area at the time of the accident.

(7d) After further review, the violation for CMC024 has been withdrawn and is now referenced under Item (7f).

The violation for CMC002 remains in the Report. The Bureau acknowledges the Company's willingness to pay two days of Transportation Expenses coverage.

The violation for CMC003 remains in the Report. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses as a result of the loss.

The violation for CMC005 remains in the Report. The Company's response addresses aftermarket parts and does not address the violation in question. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses as a result of the loss.

The violation for CMC013 remains in the Report. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses as a result of the loss.

The violation for CMC014 remains in the Report. The Bureau acknowledges the Company's willingness to reopen the claim and determine if there was helmet/safety equipment damage.

The violation for CMC033 remains in the Report. The Company has failed to address the violation in question. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses.

The violation for CMC050 remains in the Report. The Company has failed to address the violation in question. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses.

The violation for CMC055 remains in the Report. The Company's response fails to address the violation in question. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses.

The violation for CMC056 remains in the Report. The Company did not advise the insured that a Collision Damage Waiver (CDW) would not be reimbursed. The Company should visit the Bureau's website and review the Common Problems Identified by the Property and Casualty Market Conduct and Consumer Services Sections, pages 16 and 17, address handling of collision damage waivers and supplemental liability protection in rental claims. This violation was not withdrawn.

The violation for CMC057 remains in the Report. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses as a result of this loss.

(7e) After further review, the violation for CMC061 has been withdrawn from the Report.

The violation for CMC014 remains in the Report, and the restitution amount has been adjusted to reflect $3001.10 for all violations applicable to this claim. The violation concerning the optional equipment has been withdrawn. The Company was also cited for using a salvage estimate of 30% instead of getting the salvage quote from Requote. The Company utilized ProQuote in other claims reviewed by the Bureau for the salvage amount. The Company provided a Copart quote, obtained after the exam period.

After further review, the violation for CMC029 has been withdrawn from the Report.

The violation of CMC033 remains in the Report. The Bureau acknowledges the Company's willingness to pay the $300 plus six percent interest for the deductible; however, the Company should continue its review of this file as the Company was unable to provide the salvage estimate applicable at the time the loss payment was made.

After further review, the violation for CMC046 has been withdrawn from the Report.

After further review, the violation for CMC056 has been withdrawn from the Report.

(7f) The violation for CMC024 has been moved from item (7d) and is now in (7f) in the Report.

The violation for CMC002 remains in the Report. The Company agreed they incorrectly took depreciation for the helmet, the Bluetooth intercom, and the riding jacket. The Company owes the insured $76.08.

The violation for CMC005 remains in the Report and the restitution amount has been revised to reflect $863.74. The violation for the aftermarket parts has been withdrawn from the review sheet. The violation for not making a reasonable offer for the safety equipment remains in the Report. The insured submitted receipts for the safety equipment. The Company owes the insured $263.74 for his helmet and gloves.

The violation for CMC014 remains in the Report. The Bureau acknowledges the Company's willingness to reopen the claim and determine the amount owed for damage to the helmet/safety apparel. Please provide a copy of the letter or the file documentation of the conversation the Company had with the insured regarding helmet and safety apparel coverage.

After further review, the violation for CMC025 has been withdrawn from the Report.

The violation for CMC027 remains in the Report. The Company failed to offer the insured an amount that was fair and reasonable for the helmet and safety apparel coverage. The insured submitted a receipt in the amount of $1,288.67. The Company paid $611.92. The coverage states it will pay up $1,000. The Company owes the insured $388.08 plus six percent interest.

The violation for CMC029 remains in the Report. The Bureau acknowledges the Company's willingness to reopen the claim and determine the amount owed for damage to the helmet/safety apparel. Please provide a copy of the letter or

the file documentation of the conversation the Company had with the insured regarding helmet and safety apparel coverage.

The violation for CMC033 remains in the Report. The Company failed to advise the insured of Income Loss Benefits at $100 per week included in the policy. The Company should contact the insured to determine if loss of income was incurred as a result of this loss. Please provide a copy of the letter or conversation the Company had with the insured regarding the Income Loss coverage.

The violation for CMC045 remains in the Report. The Company failed to advise the insured of the helmet and safety apparel coverage. The Company should contact the insured to determine if there was a loss for any safety equipment. Please provide a copy of the letter or conversation the Company had with the insured regarding helmet and safety apparel coverage.

The violation for CMC046 remains in the Report. The Company failed to advise the insured of the Trip Interruption coverage. The accident occurred in Florida. The Company should contact the insured to determine if there were any out-of-pocket expenses that would be covered by his Trip Interruption coverage. Please provide a copy of the letter or conversation the Company had with the insured regarding trip interruption coverage.

After further review, the violation for CMC053 has been withdrawn from the Report.

(8a) The violation for CMC055 remains in the Report. The Company has failed to address the violation applicable to this section of the Report. The Company should provide a copy of all estimates to the insured.

(10a) The violation for CMC031 remains in the Report. A copy of the review sheet is attached.

(11) The violation for CMC019 remains in the Report. The Company was cited for failing to adopt and implement reasonable standards for the prompt investigation of this claim. The Company communicated with a “friend” on behalf of the claimant without investigating to determine if the claimant had given permission to the “friend” to discuss the accident.

The violation for CMC024 remains in the Report. This is a Virginia policy. It does not matter where the accident occurred. The Company failed to investigate this as a UMBI and UMPD loss. The accident was not the fault of the insured according to the police report. The Company decided to hold the insured 100% at fault when the police report shows the other vehicle suddenly swerved into the right lane and aggressively applied brakes and the insured collided with the other vehicle, which left the scene of the accident and was not identified.

The violation for CMC028 remains in the Report. The Bureau acknowledges the Company’s willingness to reopen the claim and further investigate the claim. Please provide a copy of the letter or the file documentation of the conversation the Company had with the insured regarding this investigation.

The violation for CMC033 remains in the Report. The Company failed to implement reasonable standards for the prompt instigation of the is claim. The

Company never made any attempt to contact the driver to obtain his statement about the accident and to investigate his description of the accident.

(12a) The violation for CMC024 remains in the Report. The Company was cited for failing to make a prompt, fair, and equitable settlement of this claim. The loss was reported on May 12, 2017. The initial estimate was completed on May 26, 2017. The supplement was completed on June 12, 2017. The Company paid the insured for the total loss on June 29, 2017.

The violation for CMC028 remains in the Report. The Bureau acknowledges the Company's willingness to reopen the claim and further investigate the claim. Please provide a copy of the letter or the file documentation of the conversation the Company had with the insured regarding this investigation.

The violation for CMC039 remains in the Report. The Company failed to make a prompt, fair, and equitable settlement of this claim. The loss occurred on July 12, 2017. The total loss payment was not made until July 13, 2018, after the claim was reviewed by Virginia Market Conduct examiners. The Company owes the insured the six percent interest on the total loss payment of amount of $3,370.68.

The violation for CMC045 remains in the Report. The Company failed to make a prompt, fair, and equitable settlement of this claim. This was a hit and run accident where the uninsured driver/vehicle was identified. The police identified the other vehicle through the license plate number. Whether the police can prosecute is not relevant. The witness states claimant vehicle was off the roadway in the insured's lane. The police report indicates another vehicle forced the insured into the telephone pole, and this is classified as a hit and run felony. The notes indicate there is a video showing the car in question in the area at or near the time of the accident.

General Statutory Notices

(1) The Bureau's response to the short form violation is provided in Item 2 below. It appears that the Companies switched their responses to Items 1 and 2.

(2) If the Companies use the short form notice to shorten the length of the telephone application process, the notice must comply with § 38.2-604 C of the Code of Virginia. Otherwise, the Companies' agents must read the entire long form notice to every applicant during every application process if the short form is not used.

PART TWO – CORRECTIVE ACTION PLAN

Rating and Underwriting Review

(4) Provide the estimated completion date for showing the effective time of coverage on the declarations page.

(5) Provide the estimated completion date and the steps taken by the Companies to ensure each driver's accident and conviction points are only assigned to the vehicle that driver customarily operates.

(6) The Companies duplicated their response to Item 5. The Companies should provide the SERFF Tracking Number or estimated completion date for filing a revision to the Household Composition rule or rate pages for Named Non-Owner policies.

Claims

(1) The Companies should provide the restitution spreadsheet showing payments made to the insured for all underpayments. The Bureau is unable to determine if any payment has been made by the Company.

(2) The Companies should include six percent (6%) in the amount paid to the insureds and claimants.

Statutory Notices Review

(1) Provide the estimated completion date for amending the long form Notice of Information Collection and Disclosure Practices.

(2) Provide the estimated completion date for amending the short form Notice of Information Collection and Disclosure Practices.

(3) Provide a copy of the amended AUD notice.

(4) Provide a copy of the amended Accident Point Surcharge notice for Dairyland Insurance Company and, the now available, Accident Point Surcharge notice for Peak Property and Casualty Insurance Company.

(5) Provide a copy of the amended Medical Expense Benefits notice.

(6) Provide a copy of the amended Uninsured Motorist Limits notice.

(7) Provide the estimated completion date for including the 60-Day Cancellation Warning notice on the application.

(8) Provide the estimated completion date for amending the Rental Reimbursement notice.

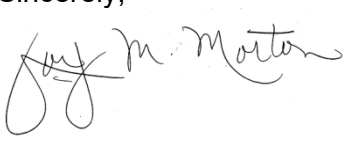
(9) Provide the estimated completion date for amending the Insurance Credit Score Disclosure notice.

We have made the changes noted above to the Market Conduct Examination Report. Attached with this letter is a revised version of the Report, technical reports and

Restitution spreadsheet, and any review sheets withdrawn, added or altered as a result of this review. The Companies' response to this letter is due in the Bureau's office by October 10, 2019.

Once we have received and reviewed the Companies' responses to these items, we will be in a position to make a settlement offer. We look forward to your response by October 10, 2019.

Sincerely,



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

JMM/pgh
Attachment

October 10, 2019

Sent Via Email and Overnight Delivery

Ms. Joy Morton, AMCM
Manager, Market Conduct Section
Property & Casualty Division
Bureau of Insurance
Tyler Building, 1300 E Main Street
Richmond, Virginia 23219
(804) 371-9540
joy.morton@scc.virginia.gov

RE: Responses to the Market Conduct Examination Report
Dairyland Insurance Company (NAIC #2164)
Peak Property and Casualty Corporation (NAIC # 18139)
Exam Period: January 1, 2017 – December 31, 2017

Dear Ms. Morton:

In response to the Bureau's letter dated September 19, 2019, on behalf of Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation please accept this letter and additional information for review and consideration. The Companies have referenced only those items in which we disagree with the Bureau's finding and have provided additional information for consideration.

PART ONE - THE EXAMINERS' OBSERVATIONS

Rating and Underwriting Review

Automobile Renewal Business Rating and Underwriting Review

(3) The violations for RPA029 and RPA031 remain in the Report. The Companies' policy files did not clearly indicate which vehicle each driver customarily operated. The Companies' application required the insured to assign a driver to every vehicle but did not allow the insured to identify which vehicle each driver customarily operated. This process was in violation of the statute when the policy insured more than one vehicle.

Company Response: The company's established policy and procedure is to ask drivers to choose the vehicle that they operate most frequently. Drivers are then assigned to the vehicle they operate most frequently, and where there are extra vehicles, they are assigned an excess vehicle factor. Please see attached screenshot from the quoting process, which asks a driver to pick which of two vehicles he

customarily operates. Also attached are the declarations pages for the policies identified. The declarations pages make clear which driver is assigned to which vehicle by vehicle number.

Please see documentation in portal labeled "Auto Rating-UW #3"

(5a) The violation for RPA042 remains in the Report. This violation is due to the Company's failure to apply the Paid in Full Discount.

Company Response: Please see the attached screenshot from the policy administration system. It appears that the paid in full discount was in fact applicable to this policy. If you need any additional information, please let us know.

Please see documentation in portal labeled "Auto Rating-UW #5a"

(5d) The violation for RPA046 remains in the Report. The violation in question is due to the Company's failure to provide the revised policy for review. The Company responded that it has "consistently allowed customers to backdate cancellations so we do not penalize them." However, this violation pertains to the Company incorrectly calculating the premium for this policy. The Company has not responded to this violation. For further consideration, please provide evidence of the rates and factors that were used to rate this policy.

Company Response: Please see the attached rating worksheet and let us know whether we can provide any additional information.

Please see documentation in portal labeled "Auto Rating-UW #5d"

Motorcycle New Business Rating and Underwriting Review

(3e) The violation for RMC017 remains in the Report. The Company reported that it used a credit score of 999 to rate the policy. This score corresponded to ten points in the Gold Program. Further, it is not clear how the Company determined a tier score of 31 with the following characteristics and points: base points (9), credit score (10), no AF accidents (8), no minor convictions (4), no major convictions (3), and no coverage lapse (2). For reconsideration, the Company should explain how it developed the Tier score of 31 instead of 36.

Company Response: Please see the attached rating worksheet and the following explanation of the calculation of the preferred rider score and let us know if additional information is needed.

Under the Gold Program, the preferred rider score is calculated for the assigned driver. The Preferred Rider Score has a base score of 9 points applied. From there points are earned, removed, or may not adjust the score to go up or down based on the following criteria.

- if prior insurance had no lapse or prior coverage was within 60 days of taking out a policy with us. The prior insurance points are retained based on what information is provided at inception for the life of the policy.
- The following other rating variables can vary at renewal:
  - points are applied/removed based on the number of at-fault accidents,
  - points are applied/removed based on the number of major violations
  - points are applied/removed based on the number of minor violations
  - A risk score is assigned based upon the insurance score returned and this assigned risk score has points applied to the Preferred Rider Score. Neutral - 0, No Hit -999 and Thin File -998 score receive a risk score of 3. Otherwise the score from 1 to 563 receives a risk score of 1, 564 to 620 receives a 2, 621 to 679 receives a 3, 680 to 739 receives a 4, 740 to 813 receives a 5 and 814 to 997 receive a 6.

For this policy the following points were applied based on the following:

Base score – 9 points
Prior Ins no lapse – 2 points
Risk Score 3 assigned – 5 points
No accidents - 8 points
No majors - 3 points
No minors - 4 points
(9+2+5+8+3+4 = 31 PRS)
Please see documentation in portal labeled "Cycle Rating-UW #3e"

Automobile Cancellation for Nonpayment of Premium

(3) The violation remains in the Report. The IMb tracking number provided by the Company did not match the IMb tracking number decoded by the Bureau for the manual cancellation due to nonpayment of premiums.

Company Response: Please see the attached documentation in portal labeled "Auto Cancellation #3"

Private Passenger Automobile Claims

(1) The violation for CPA041 remains in the Report. The rental invoice provided was not for the named insured or the claim number associated with the claim being reviewed. For reconsideration, the Company should provide a copy of the rental invoice associated with the claim sampled.

Company Response: Please see the attached rental invoice uploaded to portal labeled "PPA Claims #1"

(2d) The violation for CPA018 remains in the Report. The $800 check was not issued until the Bureau reviewed the claim file, as such the Company owes the six percent interest. If the Company is unable to locate the insured, the restitution must be reported to the Virginia Unclaimed Property Division (Escheatment).

Company Response: Please see copy of documentation showing interest check for $48 was issued uploaded to portal in a folder labeled "PPA Claims #2d".

The violation for CPA036 remains in the Report. The Company failed to advise the insured of rental benefits under UMPD. The Company responded on June 18, 2018 that "We have reached out to the insured on this claim to inquire if he incurred any out-of-pocket rental expenses arising from the loss on May 20, 2017." Please provide a copy of the letter or the claim file documentation of the conversation the Company had with the insured regarding rental benefits under UMPD.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see copy of documentation indicating the insured is not presenting a claim for rental benefits under UMPD uploaded to portal in a folder labeled "PPA Claims #2d".

(6a) The violation for CPA018 remains in the Report. This is a UM claim where the driver was unknown. The UM deductible is $200. The Company deducted the insured's full $1,000 Collision deductible. The Company responded that the check for the deductible refund was issued to the insured on June 15, 2018 but returned on June 28, 2018 as undeliverable. The $800 check was not issued until the Bureau reviewed the claim file, as such the Company owes the six percent interest. If the Company is unable to locate the insured, the restitution must be reported to the Virginia Unclaimed Property Division (Escheatment).

Company Response: Please see the documentation uploaded to portal labeled "PPA Claims #2d" for a copy of the documentation showing the interest payment made for CPA018.

(6b) The violation for CPA049 remains in the Report. A copy of this review sheet is attached. The CCC One valuation vehicle condition report reduced the value of the vehicle by $214 for major wear and tear for the interior seats, floors, heavy peeling and flaking of paint, and major wear on the tires. The Company is taking an additional reduction for items that were itemized and reduced in the CCC valuation. The Company allowed $43.60 for taxes when the minimum tax amount in Virginia is $75. Further, the Company failed to recognize the $200 deductible. This resulted in a total underpayment of $431.31.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. The base value was $1437 then a deduction of $600 for unrelated prior damage

was applied, making the ACV $837. The appropriate 5.22% tax and fees of $12 were applied making the settlement $892.69 if the company obtained the salvage, which is what the insured agreed upon. It appears no deductible was applied to the settlement, so the claim was overpaid by $200. Please see additional supporting documents uploaded to the portal labeled "PPA Claims #6b".

The violation for CPA018 remains in the Report. The total loss occurred on March 6, 2017. The Company sent the total loss letter March 31, 2017. The Company should have paid for 25 days (March 6 through March 31, 2017) of rental. The Company paid five days of rental. The Company owes the insured an additional $585.71.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe the remaining $620.85 should be removed from the restitution spreadsheet. Please see a copy of the rental invoice uploaded to the portal labeled "PPA Claims #6b".

The violation for CPA057 remains in the Report. The Company advised the Bureau that the damages were found to be less than the insured's deductible, so no claim was pursued. The estimate showed two days to repair. If the insured had the repairs completed, the insured would be entitled to a rental. The Company should contact the insured to determine if the insured incurred any rental expenses due to this covered loss. Provide any correspondence with the insured concerning rental/loss of use.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see copy of documentation indicating the insured is not presenting a claim for rental benefits under UMPD uploaded to the portal labeled "PPA Claims #6b".

The violation for CPA065 remains in the Report with the restitution reduced from $1,229.18 to $270.79. The claim file indicated the vehicle was ten plus years or older. The CCC One valuation includes numerous dents and dings and components broken and/or missing to the body trim on a fair condition. The Company evaluated this vehicle as fair, as such, the vehicle would have paint fading, scratches, and scuffed marks for its age. The Company cannot evaluate the vehicle as an average ten-year-old vehicle and then deduct for a scuff mark on the front bumper which would be considered part of the normal wear and tear.

Company Response: The company disagrees that any additional money is owed and believe the item should be restitution spreadsheet. The initial evaluation of the vehicle's value was $2,951, which is the base value of $2,960 minus a $9 adjustment for the major wear on the rear tires (3/32 tread on the tires when new tires have normal tread of 11/32) and was based upon "unknown" mileage, which assumes an average odometer on this year, make, and model of vehicle in this market to be 159,400 miles. Upon further investigation the loss vehicle was found to have 216,000 miles. This deducted $599 from the market actual cash value of the loss vehicle, making the evaluation to be $2,352. An estimate of $509.81 was written for unrelated

prior damage on the vehicle. The company applied a deduction for this prior damage of $260 to the vehicle's value. This made the market value of the vehicle $2,092. The insured elected to keep his vehicle, so we deducted an estimated value for the salvage of $260. The insured was owed $12 in fees, $86.82 in sales tax, and had a $200 deductible. This made the final evaluation $1,730.82

Please see the documentation uploaded to portal labeled "PPA Claims #6bd" for a copy of the check, CCC valuation, prior damage appraisal, unrelated prior damage inspection and file notes.

(6d) The violation for CPA030 remains in the Report. For reconsideration, provide a copy of the letter or the log notes documenting the conversation with the insured concerning reimbursement for his glasses.

Company Response: Please see the documentation uploaded to portal labeled "PPA Claims #6d" for a copy of the reimbursement of $71.58 for his glasses.

(6e) The violation for CPA028 remains in the Report. The Transportation Expenses coverage states that the rental will be limited to a reasonable time to repair or replace the vehicle. Ending the rental prior to paying the physical damage claim is not a reasonable time in which the insured can replace a vehicle. Further, the claim notes indicate the insured was told they would be allowed three days from the date the check was issued. The check was not mailed until May 1, 2017; however, the rental was terminated on April 27, 2017.

Company Response: The company disagrees that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see documentation uploaded to portal labeled "PPA Claims #6e".

The violation for CPA036 remains in the Report. The Company was cited for failing to offer the insured an amount that was fair and reasonable for a rental vehicle. The estimate showed six days to repair the vehicle. The Company responded on June 18, 2018 that they would reach out to the insured to see if any out-of-pocket rental expenses were incurred. Please provide a copy of the letter or the file notes documenting the conversation with the insured regarding rental benefits under UMPD.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see copy of documentation indicating the insured is not presenting a claim for rental benefits under UMPD uploaded to portal in a folder labeled "PPA Claims #6e".

(10) The violation for CPA070 remains in the Report. The Company incorrectly advised the insured of a $200 deductible for UMPD when the uninsured driver/vehicle was known. The $200 deductible is waived when the uninsured driver/vehicle is known.

Company Response: Please see documentation of return payment plus interest for deductible uploaded to portal labeled "PPA Claims #10".

(12c) The violation for CPA040 remains in the Report, and the restitution has been revised from $3,000 to $2,192.43. The Company owes the claimant ten days rental at $180.36 per day, $125 environmental fee, $208.33 vehicle license recovery fee, and $55.50 for mileage. This generated a total underpayment of $4,384.86.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe the additional $26.37-line item should be removed from the restitution spreadsheet. Please see documentation supporting payments made, loss of use file notes and loss of use invoice uploaded to portal in a folder labeled "PPA Claims #12c".

Motorcycle Claims

(1a) The violation for CMC045 remains in the Report. The Company was cited for failure to document the claim file regarding the medical lien applied to the Bodily Injury settlement for wrongful death. The Company failed to provide any additional information for the Bureau to reconsider this violation.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe the item should be removed from the restitution spreadsheet. All claims were settled with the insured's attorney.

(2a) The violation for CMC002 remains in the Report. The Bureau acknowledges the Company's willingness to pay two days of rental.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe the balance of $579.08 should be removed from the restitution spreadsheet. Please see the documentation uploaded to the portal labeled Cycle Claims 2a" for copies of rental payment.

The violation for CMC005 remains in the Report. The Company has failed to address the violation applicable to this section of the Report.

Company Response: The company agrees with the Bureau's findings regarding safety equipment for gloves and issued a check with interest. The Company disagrees that additional payments are owed and believe the balance of $862.56 should be removed from the restitution spreadsheet which include aftermarket parts which were included in the total loss evaluation. Please see the documentation uploaded to the portal labeled "Cycle Claims #2a" for file notes, CCC report, copy of Valuescope to include equipment submission.

The violation for CMC013 remains in the Report. The Bureau acknowledges the Company's willingness to make further payment.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see documentation confirming our insured is not pursuing a rental claim uploaded to portal labeled "Cycle Claims #2a"

(2b) The violation for CMC024 remains in the Report. It is not relevant where the accident occurred, this is a Virginia policy. The Company failed to advise the insured of the UMBI and UMPD coverages. The police report stated that the other vehicle suddenly swerved into the right lane and aggressively applied brakes. The insured collided with the other vehicle because the other vehicle made an unsafe lane change. The other vehicle left the scene of the accident and was not identified.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe the balance of $19,156.26 should be removed from the restitution spreadsheet. The company settled the UMBI claims with our insured on 5/23/2019 for $7,343.74 which included 6% interest owed. Please see documentation uploaded to portal labeled "Cycle Claims #2b"

The violation for CMC045 remains in the Report. The Company failed to advise insured's wife that UMPD includes rental benefits. The claim file is not documented that the police concluded that the license plate/vehicle reported was not involved in the accident. For further reconsideration, provide a copy of the police report showing a phantom vehicle was not involved in this accident.

Company Response: Please see the documentation uploaded to portal labeled "Cycle Claims #2b" for a copy of the police report.

(7a) The violation for CMC033 remains in the Report. This violation was not withdrawn. The Bureau acknowledges the Company's willingness to make the $300 restitution for underpayment of the deductible.

Company Response: Please see documentation of file notes with attempted contacts and file review for liability. We disagree that any additional money is owed for the total loss settlement. Documentation uploaded to portal labeled "Cycle Claims #7a".

(7b) The violation for CMC015 remains in the Report. The insured indicated an unknown vehicle came out of the side road and made a left turn in front of him. The police report stated the insured laid the bike down but did not cite the insured for the loss. The policy does not require the insured to identify the phantom vehicle or the driver, only that they contact the police.

Company Response: The Company reopened this file and completed further investigation into liability. After a full review, we confirmed our insured stated he was going 45/50 mph prior to the loss, in a 35-mph speed zone. Based on the contributory negligence laws, our insured is barred from making a UM claim. A denial was sent to our insured on 5/22 outlining our

decision in regard to his UMBI claim. The Company believes the restitution amount should be removed from the spreadsheet. Please see documentation of file notes with review, photos and copy of denial letter uploaded to portal labeled "Cycle Claims #7b".

The violation for CMC045 remains in the Report. The total restitution has been revised to $2,200. The violation concerning the underpayment based on the CCC valuation has been withdrawn, and a new review sheet, ClaimVehMC1564149383 has been added under (1). This is a hit and run accident where the uninsured driver/vehicle was identified. The police identified the other vehicle through the license plate number. Whether the police can prosecute is not relevant. The witness states the claimant vehicle was off the roadway in the insured's lane. The police reports indicate another vehicle forced the insured into the telephone pole and this is classified as a hit and run felony. The Company owes the insured $200 as the uninsured vehicle was identified. Further, the file indicates the vehicle identified was in the area at the time of the accident.

Company Response: The company disagrees that any additional money is owed and believe the item should be removed from the restitution spreadsheet. All claims were settled with the insured's attorney. The alleged phantom vehicle was not identified. The police concluded the license plate/vehicle reported was not involved and as a result the Company believes the $200 deductible should not be waived. Please see the documentation uploaded to portal labeled "Cycle Claims #7b" for a copy of the police report.

(7d) The violation for CMC003 remains in the Report. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses as a result of the loss.

Company Response: The company followed up with insured and have not received a response to our contact attempts for transportation expenses. The company believes this item should be removed from the restitution spreadsheet, in the event the insured presents a claim for transportation expenses the company will respond accordingly. Please see the documentation uploaded to the portal labeled "Cycle Claims #7d".

The violation for CMC005 remains in the Report. The Company's response addresses aftermarket parts and does not address the violation in question. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses as a result of the loss.

Company Response: The company followed up with insured and have not received a response to our contact attempts for transportation expenses. The company believes this item should be removed from the restitution spreadsheet, in the event the insured presents a claim for transportation expenses the company will respond accordingly. Please see the documentation uploaded to the portal labeled "Cycle Claims #7d".

The violation for CMC013 remains in the Report. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses as a result of the loss.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see copy of documentation indicating the insured is not pursuing a claim for rental expenses uploaded to portal labeled "Cycle Claims #7d".

The violation for CMC014 remains in the Report. The Bureau acknowledges the Company's willingness to reopen the claim and determine if there was helmet/safety equipment damage.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see copy of documentation indicating the insured is not pursuing a claim for helmet or safety equipment damages uploaded to portal labeled "Cycle Claims #7d".

The violation for CMC033 remains in the Report. The Company has failed to address the violation in question. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses.

Company Response: The company followed up with insured and have not received a response to our contact attempts for transportation expenses. The company believes this item should be removed from the restitution spreadsheet, in the event the insured presents a claim for transportation expenses the company will respond accordingly. Please see the documentation uploaded to the portal labeled "Cycle Claims #7d".

The violation for CMC050 remains in the Report. The Company has failed to address the violation in question. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses.

Company Response: Please see the documentation uploaded to the portal labeled "Cycle Claims #7d" for file note indicating the insured is not presenting a reimbursement claim under his policy for transportation expense.

The violation for CMC055 remains in the Report. The Company's response fails to address the violation in question. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses.

Company Response: The company followed up with insured and have not received a response to our contact attempts for transportation expenses. The company believes this item should

be removed from the restitution spreadsheet, in the event the insured presents a claim for transportation expenses the company will respond accordingly. Please see the documentation uploaded to the portal labeled "Cycle Claims #7d".

The violation for CMC057 remains in the Report. The Company failed to make a reasonable offer to the insured regarding the Transportation Expenses coverage that applied to the loss. The Company should contact the insured and determine if he incurred rental expenses as a result of this loss.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see copy of documentation indicating the insured is not pursuing a claim for transportation expenses uploaded to portal labeled "Cycle Claims #7d".

(7e) The violation of CMC033 remains in the Report. The Bureau acknowledges the Company's willingness to pay the $300 plus six percent interest for the deductible; however, the Company should continue its review of this file as the Company was unable to provide the salvage estimate applicable at the time the loss payment was made.

Company Response: Please see documentation of file notes with attempted contacts and file review for liability. We disagree that any additional money is owed for the total loss settlement. Documentation uploaded to portal labeled "Cycle Claims #7e".

(7f) The violation for CMC005 remains in the Report and the restitution amount has been revised to reflect $863.74. The violation for the aftermarket parts has been withdrawn from the review sheet. The violation for not making a reasonable offer for the safety equipment remains in the Report. The insured submitted receipts for the safety equipment. The Company owes the insured $263.74 for his helmet and gloves.

Company Response: The company agrees with the Bureau's findings regarding safety equipment for gloves and issued a check with interest. The Company disagrees that additional payments are owed and believe the balance of $862.56 should be removed from the restitution spreadsheet which include aftermarket parts which were included in the total loss evaluation. Please see the documentation uploaded to the portal labeled "Cycle Claims #7f" for file notes, CCC report, copy of Valuescope to include equipment submission.

The violation for CMC014 remains in the Report. The Bureau acknowledges the Company's willingness to reopen the claim and determine the amount owed for damage to the helmet/safety apparel. Please provide a copy of the letter or the file documentation of the conversation the Company had with the insured regarding helmet and safety apparel coverage.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution

spreadsheet. Please see copy of documentation indicating the insured is not pursuing a claim for helmet or safety equipment damages uploaded to portal labeled "Cycle Claims #7f".

The violation for CMC027 remains in the Report. The Company failed to offer the insured an amount that was fair and reasonable for the helmet and safety apparel coverage. The insured submitted a receipt in the amount of $1,288.67. The Company paid $611.92. The coverage states it will pay up $1,000. The Company owes the insured $388.08 plus six percent interest.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed. Payment of $531.72 was already issued on safety apparel and the policy language limits payment to $1,000. Therefore, only an additional $468.28 would be owed in safety apparel. In addition, $80 would be owed for the depreciation taken on the helmet. The $581.18 includes the 6% interest. Documentation uploaded to portal labeled "Cycle Claims #7f".

The violation for CMC029 remains in the Report. The Bureau acknowledges the Company's willingness to reopen the claim and determine the amount owed for damage to the helmet/safety apparel. Please provide a copy of the letter or the file documentation of the conversation the Company had with the insured regarding helmet and safety apparel coverage.

Company Response: The company is not disputing the finding; however, we disagree that any additional money is owed and believe this item should be removed from the restitution spreadsheet. Please see copy of documentation indicating the insured is not pursuing a claim for helmet or safety equipment damages uploaded to portal labeled "Cycle Claims #7f".

The violation for CMC046 remains in the Report. The Company failed to advise the insured of the Trip Interruption coverage. The accident occurred in Florida. The Company should contact the insured to determine if there were any out-of-pocket expenses that would be covered by his Trip Interruption coverage. Please provide a copy of the letter or conversation the Company had with the insured regarding trip interruption coverage.

Company Response: Although the company disagrees that it failed to advise insured of trip interruption or rental coverage as per the file handler's note of 08/27/17, the company did receive a partial invoice from the insured on 5/8/2019. However, the invoice was incomplete, and a detailed breakdown was requested, a check was issued for $115.85/includes 6% interest. Please see documentation uploaded to portal labeled "Cycle Claims 7f".

Part Two – CORRECTIVE ACTION PLAN
Rating and Underwriting Review

(4) Specify accurate information in the policy by showing the effective time of coverage in the policy. *Provide the estimated completion date for showing the effective time of coverage on the declarations page.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required

(5) Properly assign points under a Safe Driver Insurance Plan (SDIP) to the vehicle customarily driven by the operator incurring the points. *Provide the estimated completion date and the steps taken by the Companies to ensure each driver's accident and conviction points are only assigned to the vehicle that driver customarily operates.*

Company Response: The Company does not believe additional corrective action is necessary. The Companies' procedure is to ask drivers to choose the vehicle they primarily operate and assign surcharge points only to the vehicle operated by the driver. Any errors observed by the Bureau to the contrary were the result of manual processes in the legacy system. Surcharges in the new policy administration system are handled systematically and these human errors should not occur.

(6) File all rates and supplementary rate information prior to using the rates. *The Companies duplicated their response to Item 5. The Companies should provide the SERFF Tracking Number or estimated completion date for filing a revision to the Household Composition rule or rate pages for Named Non-Owner policies.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices and the SERFF Tracking number to the Bureau in advance of that date.

Claims Review

(1) Correct the errors that caused the underpayments and overpayments and send the amount of the underpayment to insureds and claimants. *The Companies should provide the restitution spreadsheet showing payments made to the insured for all underpayments. The Bureau is unable to determine if any payment has been made by the Company.*

Company Response: Revised restitution spreadsheet is attached.

(2) Include six percent (6%) simple interest in the amount paid to the insureds and claimants.

Company Response: Interest has been included where restitution payments were made.

Statutory Notices Review

(1) Amend the long form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 B of the Code of Virginia. *Provide the estimated completion date for amending the long form Notice of Information Collection and Disclosure Practices.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required.

(2) Amend the short form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 C of the Code of Virginia. *Provide the estimated completion date for amending the short form Notice of Information Collection and Disclosure Practices*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required.

(3) Have available the AUD notice to comply with § 38.2-610 A of the Code of Virginia. *Provide a copy of the amended AUD notice.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required.

(4) Have available the Accident Point Surcharge notice to comply with § 38.2-1905 A of the Code of Virginia.

Company Response: Documents have been uploaded to the portal in a folder labeled "Accident Point Surcharge notices"

(5) Amend the Medical Expense Benefits notice to comply with § 38.2-2202 A of the Code of Virginia. *Provide a copy of the amended Medical Expense Benefits notice.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required.

(6) Amend the Uninsured Motorist Limits notice to comply with § 38.2-2202 B of the Code of Virginia. *Provide a copy of the amended Uninsured Motorist Limits notice.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required.

(7) Develop a 60-day Cancellation Warning notice for the application to comply with § 38.2-2210 A of the Code of Virginia. *Provide the estimated completion date for including the 60-Day Cancellation Warning notice on the application.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required.

(8) Amend the rental reimbursement notice to comply with § 38.2-2230 of the Code of Virginia. *Provide the estimated completion date for amending the Rental Reimbursement notice.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required.

(9) Amend the Insurance Credit Score Disclosure notice to comply with § 38.2-2126 A 1 and 38.2-2234 A 1 of the Code of Virginia. *Provide the estimated completion date for amending the Insurance Credit Score Disclosure notice.*

Company Response: The Company can commit to implementing the requested change by the end of the second quarter 2020, and will provide draft forms, notices, etc. to the Bureau in advance of that date either through filing or directly if filing is not required.

Conclusion

The Companies remain committed to working with the Bureau. To that extent, please do not hesitate to contact the undersigned with any questions or comments that you may have.

Respectfully yours,

Wendy Whitrock-Keller

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

January 27, 2020

VIA E-MAIL DELIVERY

Wendy Whitrock-Keller
Sentry Insurance
1800 North Point Drive
Stevens Point, WI 54481

RE: Market Conduct Examination
Dairyland Insurance Company, NAIC #21164
Peak Property and Casualty Corporation, NAIC #18139
Exam Period: January 1, 2017 – December 31, 2017

Dear Ms. Whitrock-Keller:

The Bureau of Insurance (Bureau) has reviewed the October 10, 2019 response to the Preliminary Market Conduct Report (Report) of the above-referenced companies. The Bureau has referenced only those items in which the Companies have 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

Private Passenger Automobile New Business Rating

(3) The violations for RPA029 and RPA031 remain in the Report. The screen print provided by the Companies stated, "A vehicle can have more than one driver assigned but all vehicles must have at least one assigned driver." This statement forced the insured to assign drivers to a vehicle, but this did not confirm that the vehicle the insured was assigned to was the vehicle they customarily operate. The policy file did not record driver assignments and customary operators. The Companies may assign drivers to any vehicles per their filed rules; however, Companies may only apply a driver's accident and conviction surcharge points to the one vehicle that driver customarily operates pursuant to § 38.2-1905 C of the Code of Virginia.

(5a) The violation for RPA042 remains in the Report. The Company should have applied discount factors of BI – .82, PD – .87, UMBI/UIMBI – .57 and UMPD –.57 to this policy instead of BI – .87, PD – .92, UMBI/UIMBI – .83 and UMPD – .83.

(5d) After further review, the violation for RPA046 has been removed from the Report.

Motorcycle New Business Rating

(2e) The violation for RMC017 remains in the Report. The discrepancy is with the Household Insurance Score component of the Gold Program. The Gold Preferred Rider Rule did not indicate a Neutral, No Hit (999) or Thin File credit history received a risk score of three for five points. The filed rule only provided insurance score numerical values from zero to 814+. Per the filed rule, this policy had a score of 999, for a risk score of six, which corresponded to ten points. The Company referred to this item as (3e) in its response.

Automobile Cancellations for Nonpayment of Premium

(3) The violation for TPA019 remains in the Report. The information provided by the Company in response to the Report does not match the IMb tracking number decoded by the Bureau for the manual cancellation notice. Furthermore, the IMb information provided by the company does not match the decoded IMb tracking number listed at the bottom of the manual cancellation notice.

Motorcycle Company Initiated Cancellations

NOTICE MAILED PRIOR TO THE 60TH DAY OF COVERAGE

The violation of § 38.2-1906 D of the Code of Virginia for TMC006 has been withdrawn. A violation § 38.2-1318 C of the Code of Virginia has been added to the Report for TMC006. A revised review sheet is attached.

Private Passenger Automobile Claims

(1) After further review, the violation for CPA041 has been withdrawn from the Report.

(2d) The violation for CPA018 remains in the Report. The Company failed to advise the insured of the $200 Uninsured Motorist (UM) deductible.

The violation for CPA036 remains in the Report. The e-mail provided shows that the Company sent the request for information about the possibility that the insured rented a substitute vehicle on June 13, 2018; this was after the Company received the Bureau's violation for failure to inform.

(6a) The violation for CPA018 remains in the Report. The Company initially deducted the insured's entire $1,000 Collision Deductible.

(6b) The violation for CPA049 has been withdrawn from the Report. The Restitution spreadsheet has been revised.

The violation for CPA018 remains in the Report. The Enterprise invoice for the rental shows $96.91 paid by the insured that the Company has failed to reimburse the

insured. The Restitution spreadsheet has been revised to include $96.91 plus 6% interest for the rental.

After further review, the violation for CPA057 has been withdrawn from the Report and the underpayment amount was removed from the Restitution spreadsheet.

After further review the violation for CPA065 has been withdrawn from the Report.

(6c) The violation for CPA048 remains in the Report, and the restitution has been revised from $1,254.51 to $1,000. The Company responded in the Restitution spreadsheet that the $1,000 was paid after the auditors brought it to the Company's attention. Please include the check number and date for the $1,000 payment in the Restitution spreadsheet.

(6d) The violation for CPA030 remains in the Report. The restitution amount has been amended to $672. Please send a copy of the invoice for the sunglasses. Further the Company needs to send a check to the insured in the amount of $572 for the United Emergency Services invoice. The Company paid this provider on August 7, 2018 without a valid Assignment of Benefits.

(6e) The violation for CPA028 remains in the Report. The Company has not provided any additional information that would cause the Bureau to change its position. The claim notes indicate the insured was told they would be allowed three days from the date the check was issued. The check was not mailed until May 1, 2017; however, the rental was terminated on April 27, 2017. Further, the notes provided in response to the Report indicate the insured was advised that they were limited to $20 per day for rental. The Company is not allowed to apply a daily limit to rental coverage.

The violation for CPA036 remains in the Report. The e-mail from the insured indicates that he had not received the full estimated payment less the $200 deductible and the vehicle had not been repaired; therefore, he incurred no transportation expenses. The file shows a payment of $808.58 was made directly to Baugh Auto Body & Truck Repair. The Company should reimburse the insured $808.58 plus six percent. The Restitution spreadsheet has been updated to reflect the additional payment due the insured.

(6f) The underpayment for CPA053 has been removed from the Restitution spreadsheet.

(12c) The Bureau acknowledges the restitution made on CPA040.

Motorcycle Claims

(2a) The violation for CMC005 remains in the Report. The company has failed to address the violation applicable to this section of the report.

(2b) The violation for CMC024 remains in the Report. The Bureau acknowledges the payment of $7,343.74. The Company failed to address this violation in its response. The insured was stranded in California after the accident. The Company incorrectly

advised the insured that there was no coverage for hotel and meals. The insured had Trip Interruption coverage with a limit of $600. The Company should contact the insured to determine what out-of-pocket expenses he incurred due to the covered loss.

(6a) The restitution for CMC033 has been revised to $300 for the underpayment of the deductible.

(6b) After further review, CMC015 has been withdrawn from the Report.

The violation of CMC045 remains in the Report. The Company should provide the documents supporting what was paid to the insured by way of their attorney.

(6c) The violation for CMC066 remains in the Report. The Company submitted evidence of a towing summary. The Company did not upload any documentation to support the Company's position.

(6d) The Bureau acknowledges payment for two days of Transportation Expenses for CMC002.

The violation of CMC003 remains in the Report. The Restitution spreadsheet has been amended to delete the underpayment on this file.

After further review, the violations for CMC005, CMC013, CMC035, CMC050, and CMC055 have been withdrawn from the Report.

The violation for CMC057 remains in the Report. There was no documentation pertaining to CMC057 in the folder labeled "Cycle Claims #7d."

(6f) The violation for CMC005 remains in the Report. The Company has not provided any documentation that would cause the Bureau to reconsider its initial findings.

After further review, the violation for CMC014 has been withdrawn from the Report and the Restitution spreadsheet has been updated.

After further review, the violation for CMC016 has been withdrawn from the Report.

The violation for CMC017 remains in the Report. The Restitution spreadsheet has been amended to show $52.95.

After further review, the violations for CMC019, CMC020, and CMC021 have been withdrawn from the Report.

The violation for CMC023 remains in the Report. The Company has not provided any documentation that would cause the Bureau to reconsider its initial findings.

After further review, the violation for CMC025 has been withdrawn from the Report.

The violation for CMC026 remains in the Report. The Restitution spreadsheet has been amended to $250.

The violation for CMC027 remains in the Report. The restitution amount has been amended to $548.28.

After further review, the violation for CMC029 has been withdrawn from the Report and the Restitution spreadsheet has been updated.

The violation for CMC046 remains in the Report. The Company did not provide any additional documentation that would cause the Bureau to change its position. The documentation provided in the portal labeled "Cycle Claims 7F" did not include the invoice from the insured. Additionally, the Restitution spreadsheet does not show that a payment of $115.85 was made to the insured.

The violation for CMC056 remains in the Report. The Company indicated in the Restitution spreadsheet that a copy of the check was uploaded to the portal; however, the check copy was not included. Please include the check number in the Restitution spreadsheet.

Statutory Notices Review

(3) Please provide a copy of the Adverse Underwriting Decision notice the Companies previously stated was currently available for use.

(4) The Companies provided four documents as the Accident Point Surcharge notice. However, the four documents are Rating Classification Statements that must be filed with the Bureau's Rates and Forms Section; these documents should be provided with every policy. The Accident Point Surcharge notice should inform the individual insureds when the policy has been surcharged for an accident. The notice should include the date of the surcharged accident, the insured driver that caused the accident, and the right to appeal language required by the statute. Please provide an estimated completion date for having the Accident Point Surcharge notice available that complies with the requirements of § 38.2-1905 A of the Code of Virginia.

(5) Please provide a copy of the amended Medical Expense Benefits notice the Companies previously stated was currently available for use.

(6) Please provide a copy of the amended UM Limits notice the Companies previously stated was currently available for use.

PART TWO – CORRECTIVE ACTION PLAN

Rating and Underwriting Review

(3) The Companies should make the outstanding restitution shown in the revised Restitution spreadsheet.

(4) Declaration pages are not subject to filing requirements in Virginia. Please provide the corrected declaration pages with the Companies' response.

(5) For driver assignments, Companies may require that each vehicle has a unique driver; however, the Companies must ensure that the insureds are able to specify the vehicle each driver customarily operates and record that designation. There may be instances where two drivers customarily operate the same vehicle. To comply with § 38.2-1905 C of the Code of Virginia, a driver's accident and conviction surcharge points must be applied to the vehicle the at fault driver customarily operates.

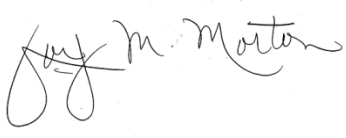
Claims

(1) The Companies should make the outstanding restitution shown in the revised Restitution spreadsheet.

We have made the changes noted above to the Market Conduct Examination Report. Attached with this letter is a revised version of the Report, technical reports, a revised Restitution spreadsheet, and any review sheets withdrawn, added, or altered as a result of this review. The Companies' response to this letter is due in the Bureau's office by February 17, 2020.

Once we have received and reviewed the Companies' response to these items, we will be able to make a settlement offer. We look forward to your response by February 17, 2020.

Sincerely,



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

JMM/pgh
Attachments

February 17, 2020

Sent Via Email and Overnight Delivery

Ms. Joy Morton, AMCM
Manager, Market Conduct Section
Property & Casualty Division
Bureau of Insurance
Tyler Building, 1300 E Main Street
Richmond, Virginia 23219
(804) 371-9540
joy.morton@scc.virginia.gov

RE: Responses to the Market Conduct Examination Report
Dairyland Insurance Company (NAIC #2164)
Peak Property and Casualty Corporation (NAIC # 18139)
Exam Period: January 1, 2017 – December 31, 2017

Dear Ms. Morton:

In response to the Bureau's letter dated January 27, 2020 on behalf of Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation please accept this letter and additional information for review and consideration. The Companies have referenced only those items in which we disagree with the Bureau's finding and have provided additional information for consideration or require additional clarification from the Bureau.

PART ONE - THE EXAMINERS' OBSERVATIONS

Rating and Underwriting Review

Automobile Cancellation for Nonpayment of Premium

(3) The violation for TPA019 remains in the Report. The information provided by the Company in response to the Report does not match the IMb tracking number decoded by the Bureau for the manual cancellation notice. Furthermore, the IMb information provided by the company does not match the decoded IMb tracking number listed at the bottom of the manual cancellation notice.

Company Response: The Company has uploaded the cancellation notice and corresponding IMb tracking documentation into the portal.

Private Passenger Automobile Claims

(2d) The violation for CPA036 remains in the Report. The e-mail provided shows that the Company sent the request for information about the possibility that the insured rented a substitute vehicle on June 13, 2018; this was after the Company received the Bureau's violation for failure to inform.

Company Response: A payment in the amount of $857.09, which included the 6% interest was made via check # [redacted] on January 29, 2020. The restitution spreadsheet has been updated accordingly.

(6b) The violation for CPA018 remains in the Report. The Enterprise invoice for the rental shows $96.91 paid by the insured that the Company has failed to reimburse the insured. The Restitution spreadsheet has been revised to include $96.91 plus 6% interest for the rental.

Company Response: A payment of $102.72 has been made via check # [redacted] on February 4, 2020. The restitution spreadsheet has been updated accordingly.

(6c) The violation for CPA048 remains in the Report, and the restitution has been revised from $1,254.51 to $1,000. The Company responded in the Restitution spreadsheet that the $1,000 was paid after the auditors brought it to the Company's attention. Please include the check number and date for the $1,000 payment in the Restitution spreadsheet.

Company Response: A payment in the amount of $1000.00 was made via check # [redacted] on October 31, 2017. The restitution spreadsheet has been updated accordingly.

(6d) The violation for CPA030 remains in the Report. The restitution amount has been amended to $672. Please send a copy of the invoice for the sunglasses. Further the Company needs to send a check to the insured in the amount of $572 for the United Emergency Services invoice. The Company paid this provider on August 7, 2018 without a valid Assignment of Benefits.

Company Response: The company has exhausted Medical Payments coverage of $4k (two vehicles, at $2k) on this policy. We paid the remaining limits of $67.53, plus 6% interest for $4.05 to the insured (what was left to go towards eyeglasses) on 10/9/2019 and we included copies of those checks. There is no invoice to provide as we simply exhausted the available limit of coverage. The $572.00 payment to UES appears appropriate as the bill dated 4/10/2017, indicates that the "Accept Assignment" box is checked, which supports an assignment of benefits being present.

(6e) The violation for CPA028 remains in the Report. The Company has not provided any additional information that would cause the Bureau to change its position. The claim notes indicate the insured was told they would be allowed three days from the date the check was issued. The check was not mailed until May 1, 2017; however, the rental was terminated on April 27, 2017. Further, the notes provided in response to the Report indicate the insured was advised that they were limited to $20 per day for rental. The Company is not allowed to apply a daily limit to rental coverage.

Company Response: A payment in the amount of $297.20, which includes 6% interest was issued on February 11, 2020, via check # [redacted] The restitution spreadsheet has been updated accordingly.

(10) The violation for CPA070 remains in the Report. The Company incorrectly advised the insured of a $200 deductible for UMPD when the uninsured driver/vehicle was known. The $200 deductible is waived when the uninsured driver/vehicle is known.

Company Response: A payment in the amount of $212.00 was made via check # [redacted] on July 29,2019. The restitution spreadsheet has been updated accordingly.

Further review of the file determined the insured, who would have standing to present LOU claims for the UMPD, was not represented by counsel. We have attempted to contact the insured via phone, text and mail to discuss the potential LOU claim without success to date.

(12c) The Bureau acknowledges the restitution made on CPA040.

Company Response: The Bureau acknowledged the restitution was made; however, the restitution spreadsheet still reflects a balance of $26.37 due. Please advise if any further action is required by the company.

Motorcycle Claims

(2a) The violation for CMC005 remains in the Report. The company has failed to address the violation applicable to this section of the report.

Company Response: An interest payment in the amount of $3.18 has been made via check# [redacted] on February 4, 2020. The restitution spreadsheet has been updated accordingly.

(2b) The violation for CMC024 remains in the Report. The Bureau acknowledges the payment of $7,343.74. The Company failed to address this violation in its response. The insured was stranded in California after the accident. The Company incorrectly advised the insured that there was no coverage for hotel and meals. The insured had Trip Interruption coverage with a limit of $600. The Company should contact the insured to determine what out-of-pocket expenses he incurred due to the covered loss.

Company Response: The company has contacted the insured and a payment in the amount of $525.08 has been made via check # [redacted], which included 1-night hotel stay in the amount of $165.56, a Delta flight cost of $329.80 and additional 6% in interest. The restitution spreadsheet has been updated accordingly.

(6b) The violation of CMC045 remains in the Report. The Company should provide the documents supporting what was paid to the insured by way of their attorney.

Company Response: The Company contacted the mother of our insured (insured is deceased) to whom the payment in the amount of $6,135.24 was made and confirmed that the appropriate funds were distributed to her via her attorney. Please see the supporting documents received from the insured's mother uploaded to the portal. The Company respectfully requests that following the Bureau's review of the supporting documents, you kindly confirm that no additional payment is owed, and the restitution spreadsheet will be updated to reflect no balance due.

(6c) The violation for CMC066 remains in the Report. The Company submitted evidence of a towing summary. The Company did not upload any documentation to support the Company's position.

Company Response: A thorough review of our file indicates all aspects related to any towing expenses were addressed appropriately and timely at the time of claim settlement. Please review the attached copy of check# [redacted] issued in the amount of $612.50, which addressed all towing related charges.

In addition, the company issued a check for $42.99, which includes interest via check [redacted] to address the prescription sunglasses that were damaged. The restitution spreadsheet has been updated accordingly.

(6d) The violation for CMC057 remains in the Report. There was no documentation pertaining to CMC057 in the folder labeled "Cycle Claims #7d."

Company Response: The Company contacted our insured on October 8, 2019 and confirmed that no transportation expense claim is being pursued. A copy of the file notes has been uploaded to the portal. The Company respectfully requests that following the Bureau's review of the supporting documents, you kindly confirm that no additional payment is owed, and the restitution spreadsheet will be updated to reflect no balance due.

The violation for CMC007 for failure to pay the claim in accordance to policy provisions under the insured's Transportation Expense Coverage. Also appears on the restitution spreadsheet with a total of $105.99 due.

Company Response: The Company contacted our insured on February 17, 2020 and confirmed that no transportation expense claim is being pursued. A copy of the file notes has been uploaded to the portal. The Company respectfully requests that following the Bureau's review of the supporting documents, you kindly confirm that no additional payment is owed, and the restitution spreadsheet will be updated to reflect no balance due.

(6f) The violation for CMC017 remains in the Report. The Restitution spreadsheet has been amended to show $52.95.

Company Response: An interest payment in the amount of $3.18 has been made via check # [redacted] on February 4, 2020. A payment in the amount of $52.95 via check # [redacted] was previously issued addressed the helmet and safety apparel coverage. The restitution spreadsheet has been updated accordingly.

The violation for CMC020 shows as withdrawn in the examiner's response letter dated January 27, 2020. However, the restitution spreadsheet shows a balance due of $741.99.

Company Response: The Bureau indicated that CMC020 was withdrawn; however, the restitution spreadsheet still reflects a balance of $741.99 due. Please advise if any further action is required by the company.

The violation for CMC023 indicates failed to pay the claim in accordance with the policy provisions where there was no dispute to the coverage or liability. The restitution spreadsheet shows a payment of $105.99 due.

Company Response: The Company has attempted to contact the insured via telephone to discuss the safety apparel coverage and sent a letter advising of the same. To date, there has been no response from our insured advising us of any loss related to this coverage. As our insured has not responded to these attempts, our file remains closed and no payments have been made.

The violation for CMC026 remains in the Report. The Restitution spreadsheet has been amended to $250.

Company Response: The Company made a payment in the amount of $265.00 previously, via check #[redacted] on May 13, 2019 which included the 6% interest and is reflected in the restitution spreadsheet. However, the restitution spreadsheet still reflects a balance of $794.99 due. Please advise if any further action is required by the company.

The violation for CMC046 remains in the Report. The Company did not provide any additional documentation that would cause the Bureau to change its position. The documentation provided in the portal labeled "Cycle Claims 7F" did not include the invoice from the insured. Additionally, the Restitution spreadsheet does not show that a payment of $115.85 was made to the insured.

Company Response: The Company made a payment in the amount of $115.85 made via check #[redacted] on October 9,2019. The restitution spreadsheet has been updated accordingly.

The violation for CMC056 remains in the Report. The Company indicated in the Restitution spreadsheet that a copy of the check was uploaded to the portal; however, the check copy was not included. Please include the check number in the Restitution spreadsheet.

Company Response: A copy of check#[redacted] in the amount of $79.50 on October 10, 2019 was uploaded into the portal. The restitution spreadsheet has been updated accordingly.

(7a) The Bureau's September 19th response letter, indicated "The violation for CMC033 remains in the Report. This violation was not withdrawn. The Bureau acknowledges the Company's willingness to make the $300 restitution for underpayment of the deductible."

Company Response: The Company respectfully disagrees that an additional $300 is owed. A review of the file indicates the insured was considered at fault due to traveling at an excessive speed, which the insured was also cited for by the police thus Uninsured Motorist coverage would not apply to this loss. The appropriate collision deductible in the amount of $500.00. A copy of the Uninsured Motorist coverage denial letter has been uploaded to the portal.

The Bureau's updated restitution spreadsheet includes a balance due for CMC006 in the amount of $10,599.99. The updated final report and violation summary sent on January 27, 2020 includes the following references to CMC006:

(6e) In four instances, the company failed to pay insured's Collision or Other Than Collision claim properly. (404640423)

(6f) In 12 instances, the company failed to pay the claim in accordance with the policy provisions where there was no dispute as to the coverage or liability. (10720802)

(11d) In one instance, the company failed to promptly process the insured's rental reimbursement under UMPD. (1549062629)

Company Response: The company requests further clarification. A balance of $10,599.99 is shown on the restitution spreadsheet, however there is no narrative present in the report outlining any additional actions or findings requested. In review of the file, the insured was at fault for this loss as he left a gas station parking lot, crossing a divided highway, pulling out in the path of an oncoming vehicle, that T-Boned the IV. We paid PD and Collision appropriately. There is no UM exposure to address as the insured was at fault for the loss. In addition, we spoke with the insured on February 11, 2020 and confirmed he did not buy a replacement motorcycle within six months and understands there is no replacement coverage available since no eligible bike was purchased to replace the bike involved in the loss.

The Bureau's updated restitution spreadsheet includes a balance due for CMC014 in the amount of $3,169.51. The updated final report and violation summary sent on January 27, 2020 includes the following references to CMC014:

(2a) Failed to inform insured of the transportation expenses coverage when the file indicated the coverage was applicable. (1348624384)

(2d) Failed to disclose to an insured all coverages or provisions of the insured policy that were pertinent. (123284764)

(6e) Failed to pay insureds collision or other than collision claim properly. (884564371)

Company Response: The company has confirmed that the insured did not incur transportation related expenses and a claim for safety apparel is not being presented as a result of this loss. In addition, a payment was issued in the amount of $300.00 via check #[redacted] on June 22, 2017 as reimbursement for the difference in deductible. Copies of supporting documents have been uploaded to the portal. It is unclear what the remaining balance on the restitution spreadsheet is related to, and therefore the Company respectfully requests clarification. Following the Bureau's review of the supporting documents,

kindly confirm that no additional payment is owed, and the restitution spreadsheet will be updated to reflect no balance due.

Statutory Notices Review

(3) Please provide a copy of the Adverse Underwriting Decision notice the Companies previously stated was currently available for use.

Company Response: The adverse underwriting decision notice has been uploaded into the portal.

(4) The Companies provided four documents as the Accident Point Surcharge notice. However, the four documents are Rating Classification Statements that must be filed with the Bureau's Rates and Forms Section; these documents should be provided with every policy. The Accident Point Surcharge notice should inform the individual insureds when the policy has been surcharged for an accident. The notice should include the date of the surcharged accident, the insured driver that caused the accident, and the right to appeal language required by the statute. Please provide an estimated completion date for having the Accident Point Surcharge notice available that complies with the requirements of § 38.2-1905 A of the Code of Virginia.

Company Response: The following message prints on Renewal Declarations Pages when a surcharge has been added:

The motor vehicle record for [Name] included the following [accident(s)/violation(s)] which were not listed on your policy prior:
- [Accident on [Date]]
- [[Violation] on [Date]]

These have been added to your policy. This addition may have caused the premium to increase.

You have the right to know the specific items of information that support the reasons given for this decision and the identity of the source of that information. You also have the right to see and obtain copies of documents relating to this decision.

If you ask us to correct, amend, or delete any information about you in our files and if we refuse to do so, you have the right to give us a concise statement of what you believe is the correct information. We will put your statement in our file so that anyone reviewing your file will see it.

If you would like additional information concerning this action, state law requires that you submit a written request within ninety (90) business days from the date this notice was mailed to you. Please send your request to:
[CS Name]
[Address]
[City, State Zip]
[Email]

(5) Please provide a copy of the amended Medical Expense Benefits notice the Companies previously stated was currently available for use.

Company Response: The medical expense benefits notices has been uploaded into the portal.

(6) Please provide a copy of the amended UM Limits notice the Companies previously stated was currently available for use

Company Response: The UM limits notice has been uploaded into the portal.

Part two – corrective action plan

Rating and Underwriting Review

(4) Declaration pages are not subject to filing requirements in Virginia. Please provide the corrected declaration pages with the Companies' response.

Company Response: The Company will work with the Bureau following the completion of the report to ensure that all corrective actions have been addressed. Additional documentation to support the completion of corrective actions will be provided at that time.

Claims

(1) The Companies should make the outstanding restitution shown in the revised Restitution spreadsheet.

Company Response: The restitution spreadsheet has been updated accordingly.

Conclusion

The Companies remain committed to working with the Bureau. To that extent, please do not hesitate to contact the undersigned with any questions or comments that you may have.

Respectfully yours,

Wendy Whitrock-Keller

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

March 23, 2020

VIA UPS 2nd DAY DELIVERY

Wendy Whitrock-Keller
Sentry Insurance
1800 North Point Drive
Stevens Point, WI 54481

RE: Market Conduct Examination
Dairyland Insurance Company, NAIC #21164
Peak Property and Casualty Insurance Corporation, NAIC #18139
Exam Period: January 1, 2017–December 31, 2017

Dear Ms. Whitrock-Keller:

The Bureau of Insurance (Bureau) has reviewed the February 17, 2020, response to the Revised Market Conduct Report (Report) of the above-referenced companies. The Bureau has referenced only those items in which the Companies have 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 Cancellation for Nonpayment of Premium

(3) Based upon the additional information provided by the Company the violation for TPA019 has been withdrawn from the Report. The Report has been renumbered to reflect this change.

Private Passenger Automobile Claims

(6d) The Company should make the $672. restitution cited for CPA030 to the insured. The Company paid the medical providers without a valid assignment of benefits (AOB). The Medical Expense Benefits (MEB) have not been exhausted for this claim, as the Company has failed to pay the injured insured. If the Company has paid the provider without a valid AOB the Company must make restitution in the amount paid to the provider.

(12c) The $26.37 entry in the Restitution Spreadsheet for CPA040 has been deleted.

Motorcycle Claims

(6a) The additional restitution for CMC033 has been removed from the restitution spreadsheet; however, the violation remains in the Report. The denial letter sent with the February 17, 2020 response as evidence of the insured being made aware that Uninsured Motorist (UM) coverage did not apply to the loss was sent on August 19, 2019. This is two years after the date of loss and more than a year after the on-site examination by the Bureau. The Company addressed this violation under item (7a) in its response.

(6b) The Bureau confirms there is no additional restitution due for CMC045.

(6d) Based upon additional information provided by the Company the violations for CMC007 and CMC057 have been withdrawn.

(6e) After further review the violation for CMC014 has been withdrawn from the Report. The Restitution Spreadsheet has been revised to reflect this change.

(6f) The Restitution Spreadsheet has been amended to show a $500 underpayment for CMC006. The Company has failed to pay the insured for the damaged helmet.

The violation for CMC020 remains in the Report. The transportation expenses violation on this file was indeed withdrawn. However, there is still an active underpayment review sheet for the helmet damage. The Restitution Spreadsheet has been amended to show $141.99.

The underpayment for CMC023 remains in the Report. The Restitution amount should be reported to the Treasurer of Virginia Unclaimed Property Division.

The Restitution Spreadsheet has been amended to show the underpayment for CMC026 as $250.

Statutory Notices

(3) The notices provided appear to be Credit Adverse Action notices and not Adverse Underwriting Decision (AUD) notices. Please refer to Administrative Letter 2015-7 for the prototype developed by the Bureau for an AUD notice.

(4) The document provided as the Accident Point Surcharge notice to satisfy the requirements of § 38.2-1905 A of the Code Virginia is not a compliant notice. The notice does not advise the insured of the right to appeal the decision to the Commissioner of Insurance.

****The Medical Expense Benefits Notice and the Uninsured Motorist Notice must be written in the precise language as shown in § 38.2-2202 of the Code of Virginia. For guidance in developing these notices please refer to page 20 of the Common Problems Found during Market Conduct Exams document found on the Bureau's website.****

(5) The document provided as the MEB notice is not a notice at all; this document is the MEB form filed and approved for use with automobile policies. The Company must have a **"notice"** to satisfy the requirements of § 38.2-2202 A of the Code of Virginia.

(6) The document provided as the UM Notice does not meet the requirements to satisfy § 38.2-2202 B of the Code of Virginia.

PART TWO – CORRECTIVE ACTION PLAN

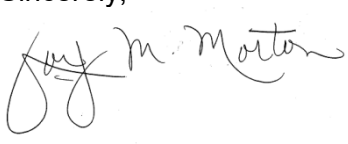
Rating and Underwriting

(4) The Company has indicated in its response that it "will work with the Bureau following completion of the Report to ensure corrective actions." The Report cannot be finalized until a complete Corrective Action Plan (CAP) has been submitted. Please provide the corrected Declarations page for review.

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, Restitution spreadsheet, and any review sheets withdrawn, added, or altered as a result of this review. The Companies' response to this letter is due in the Bureau's office by April 13, 2020.

Once we have received and reviewed the Companies' responses to these items, we will be in a position to make a settlement offer. We look forward to your response by April 13, 2020.

Sincerely,



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

JMM/pgh
Enclosures

April 13, 2020

Sent Via Email and Overnight Delivery

Ms. Joy Morton, AMCM
Manager, Market Conduct Section
Property & Casualty Division
Bureau of Insurance
Tyler Building, 1300 E Main Street
Richmond, Virginia 23219
(804) 371-9540
joy.morton@scc.virginia.gov

RE: Responses to the Market Conduct Examination Report
Dairyland Insurance Company (NAIC #2164)
Peak Property and Casualty Corporation (NAIC # 18139)
Exam Period: January 1, 2017 – December 31, 2017

Dear Ms. Morton:

In response to the Bureau's letter dated March 23, 2020 on behalf of Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation please accept this letter and additional information for review and consideration. The Companies have referenced only those items in which we disagree with the Bureau's finding and have provided additional information for consideration or require additional clarification from the Bureau.

PART ONE - THE EXAMINERS' OBSERVATIONS
Private Passenger Automobile Claims

(6d) The Company should make the $672. restitution cited for CPA030 to the insured. The Company paid the medical providers without a valid assignment of benefits (AOB). The Medical Expense Benefits (MEB) have not been exhausted for this claim, as the Company has failed to pay the injured insured. If the Company has paid the provider without a valid AOB the Company must make restitution in the amount paid to the provider.

Company Response: The Company believes the Bureau has mistakenly indicated $672, rather than $572 as previously outlined in the restitution spreadsheet. Additionally, the Company respectfully disagrees that it paid the medical provider without a valid assignment of benefits. Please see the bill dated 04/10/2017 where the "accept assignment" box was checked, which supports an assignment of benefits was present. The Company further believes that to pay the insured $572, after paying the provider pursuant to the assignment of benefits acknowledged in the April invoice would constitute an unjust enrichment to the insured given that the Company has paid the medical provider. The Company respectfully requests that following the Bureau's review of the supporting documents, you kindly confirm that no additional payment is owed, and the restitution spreadsheet will be updated to reflect no balance due.

Motorcycle Claims

(6f) The Restitution Spreadsheet has been amended to show a $500 underpayment for CMC006. The Company has failed to pay the insured for the damaged helmet.

Company Response: The Company contacted the insured via telephone on May 10, 2019 to discuss the safety apparel and verify if the helmet was damaged. The insured confirmed that there was no damage to the helmet and no additional claim for safety apparel was being pursued. A copy of the file note confirming no additional claim for safety apparel has been uploaded to the portal. The Company respectfully requests that following the Bureau's review of the supporting documents, you kindly confirm that no additional payment is owed, and the restitution spreadsheet will be updated to reflect no balance due.

The violation for CMC020 remains in the Report. The transportation expenses violation on this file was indeed withdrawn. However, there is still an active underpayment review sheet for the helmet damage. The Restitution Spreadsheet has been amended to show $141.99.

Company Response: The Company has attempted to contact the insured via telephone to discuss the safety apparel coverage and sent a letter to the insured at the insured's last known address advising of the same. To date, there has been no response from our insured advising us of any loss related to this coverage. As our insured has not responded to these attempts, and there is no indication that the insured wants to pursue a claim under this coverage, our file remains closed and no payments have been made. Further, the Company cannot ascertain the amount of a potential claim.

The underpayment for CMC023 remains in the Report. The Restitution amount should be reported to the Treasurer of Virginia Unclaimed Property Division.

Company Response: The Company has attempted to contact the insured via telephone to discuss the safety apparel coverage and sent a letter to the insured at the insured's last known address advising of the same. To date, there has been no response from our insured advising us of any loss related to this coverage. As our insured has not responded to these attempts, and there is no indication that the insured wants to pursue a claim under this coverage, our file remains closed and no payments have been made. Further, the Company cannot ascertain the amount of a potential claim.

The Bureau's updated restitution spreadsheet includes a balance due for CMC046 in the amount of $520.15.

Company Response: The Company made a payment in the amount of $115.85 made via check #[redacted] on October 9,2019. The restitution spreadsheet has been updated to reflect this payment and the Company has submitted copies of the rental invoice and restitution check, including interest in the secure portal. Following the Bureau's review of the supporting documents, kindly confirm that no additional payment is owed, and the restitution spreadsheet will be updated to reflect no balance due.

Statutory Notices Review

(3) The notices provided appear to be Credit Adverse Action notices and not Adverse Underwriting Decision (AUD) notices. Please refer to Administrative Letter 2015-7 for the prototype developed by the Bureau for an AUD notice.

Company Response: The Company has created AUD-VA-0420. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(4) The document provided as the Accident Point Surcharge notice to satisfy the requirements of § 38.2-1905 A of the Code Virginia is not a compliant notice. The notice does not advise the insured of the right to appeal the decision to the Commissioner of Insurance.

Company Response: The following message prints on the Declarations Page when an accident or violation is added:

> The motor vehicle record for [Name] included the following [accident(s)/violation(s)] which were not listed on your policy prior:
> • [Accident on [Date]]
> • [[Violation] on [Date]]
>
> These have been added to your policy. This addition may have caused the premium to increase.
>
> You have the right to know the specific items of information that support the reasons given for this decision and the identity of the source of that information. You also have the right to see and obtain copies of documents relating to this decision.
>
> If you ask us to correct, amend, or delete any information about you in our files and if we refuse to do so, you have the right to give us a concise statement of what you believe is the correct information. We will put your statement in our file so that anyone reviewing your file will see it.
>
> If you would like additional information concerning this action, state law requires that you submit a written request within ninety (90) business days from the date this notice was mailed to you. Please send your request to:
> [CS Name]
> [Address]
> [City, State Zip]
> [Email]

The following message also prints on the Declarations Page when an accident is added.

> You have the right to appeal the application of points or increase in premium as a result of a motor vehicle accident on [Date] to the Commissioner of Insurance within 60 days at:

[PO Box 1157
Richmond, VA 23218
1-800-552-7945
1-804-371-9741
www.scc.virginia.gov]

(5) The document provided as the MEB notice is not a notice at all; this document is the MEB form filed and approved for use with automobile policies. The Company must have a **"notice"** to satisfy the requirements of § 38.2-2202 A of the Code of Virginia.

Company Response: The current notice, PHN1-VA-1216, mirrors statute precisely aside from using "section" in one sentence rather than "§". It also includes a header, logo, and underwriting company. It is currently mailed at new business and renewal. We have updated the form to PHN1-VA-0420 which mirrors statute. Please advise if this is not sufficient. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(6) The document provided as the UM Notice does not meet the requirements to satisfy § 38.2-2202 B of the Code of Virginia.

Company Response: The current notice, PHN1-VA-1216, mirrors statute precisely aside from using "section" in one sentence rather than "§". It also includes a header, logo, and underwriting company. It is currently mailed at new business and renewal. We have updated the form to PHN1-VA-0420 which mirrors statute. Please advise if this is not sufficient. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

PART TWO – CORRECTIVE ACTION PLAN
Rating and Underwriting Review

(4) The Company has indicated in its response that it "will work with the Bureau following completion of the Report to ensure corrective actions." The Report cannot be finalized until a complete Corrective Action Plan (CAP) has been submitted. Please provide the corrected Declarations page for review.

Company Response: The Company delayed the implementation of any underwriting related corrective actions until the completion of the final report to ensure that all corrective actions were done appropriately and consistently. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly. As a result, the Company will provide a test proof of the corrected Declarations Page as soon as it is available.

Termination Review

(7) Obtain and retain valid proof of mailing the cancellation notice to the insured.

Company Response: The Company respectfully disagrees that it failed to provide proof of mailing on any sample. The Company believes that all outstanding criticisms were resolved and withdrawn by the Bureau and therefore requests removal of this item from the report. Please be advised that the Company is willing to provide proof of mailing again at the Bureau's request for any specific notice.

Additionally, in an effort to finalize the report and complete this examination, enclosed please find a complete Corrective Action Plan submitted on behalf of the Companies.

Conclusion

The Companies remain committed to working with the Bureau. To that extent, please do not hesitate to contact the undersigned with any questions or comments that you may have.

Respectfully yours,

Wendy Whitrock-Keller

Corrective Action Plan

On behalf of:

Dairyland Insurance Company
Peak Property and Casualty Insurance Corporation

Rating and Underwriting Review

(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 Response: The Companies have corrected the errors and where applicable refunds, or credits were issued.

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

Company Response: Where applicable the Companies included a six percent simple interest in the amount refunded and/or credited.

(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 Response: The Companies have provided the Bureau with the completed restitution spreadsheet.

(4) *Specify accurate information in the policy by showing the effective time of coverage in the policy.*

Company Response: The effective time will be added to the Declarations Page. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(5) *Properly represent the benefits, coverage, advantages, and conditions of the policy by indicating correct surcharges that are applied to the policy.*

Company Response: The Company has filed a comprehensive filing with the Bureau of Insurance to ensure that in the future, its rating and underwriting practices are accurately reflected in its filing.

(6) *Properly assign points under a SDIP to the vehicle customarily driven by the operator incurring the points.*

Company Response: The Company has filed a comprehensive filing with the Bureau of Insurance to ensure that in the future, its rating and underwriting practices are accurately reflected in its filing.

(7) *File all rates and supplementary rate information prior to using the rates.*

Company Response: The Company has filed a comprehensive filing with the Bureau of Insurance to ensure that in the future, its rating and underwriting practices are accurately reflected in its filing.

(8) *Use the rules and rates on file with the Bureau. Particular attention should be given to the use of filed discounts, points for accidents and convictions, symbols, tier eligibility, base and/or final rates, driver assignment, and credit score information.*

Company Response: The Company has filed a comprehensive filing with the Bureau of Insurance to ensure that in the future, its rating and underwriting practices are accurately reflected in its filing.

(9) *Provide the Credit Score Disclosure notice as required by §§ 38.2-2126 A and 38.2-2234 A of the Code of Virginia.*

Company Response: The current applications, VAA1101 & VAM1101, have been corrected to mirror the statutory language precisely; drafts included. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

Termination Review

(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 Response: The Companies have corrected the errors and where applicable refunds, or credits were issued.

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

Company Response: Where applicable the Companies included a six percent simple interest in the amount refunded and/or credited.

(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 that they have refunded or credited the overcharges listed in the file.*

Company Response: The Companies have provided the Bureau with the completed restitution spreadsheet.

(4) *Calculate return premium according to the filed rules and policy provisions.*

Company Response: The Company has filed a comprehensive filing with the Bureau of Insurance to ensure that in the future, its rating and underwriting practices are accurately reflected in its filing.

(5) *Obtain sufficient documentation from the insured verifying relocation to another state.*

Company Response: Effective immediately, our Processing department will only cancel and/or nonrenew for an out of state address if we are notified of the change by the named insured or his duly constituted attorney-in-fact.

(6) *Provide adequate days' notice of cancellation to the insured.*

Company Response: The Company will do so. Furthermore, the Company will be amending its Amendatory Endorsement and implementing it in July to enable it to backdate cancellations when a total loss has occurred, as the insured does not have an insurable interest in the vehicle as of the date of the total loss.

(7) *Obtain and retain valid proof of mailing the cancellation notice to the insured.*

Company Response: The Company respectfully disagrees that it failed to provide proof of mailing on any sample. The Company believes that all outstanding criticisms were resolved and withdrawn by the Bureau and therefore requests removal of this item from the report. Please be advised that the Company is willing to provide proof of mailing again at the Bureau's request for any specific notice.

(8) *Cancel policies only for the reasons permitted by statute.*

Company Response: Effective immediately, our Processing department will only cancel and/or nonrenew for an out of state address if we are notified of the change by the named insured or his duly constituted attorney-in-fact. If the Bureau believes that the Company was cancelling or non-renewing policies for any other reason not permitted by statute, please let us know.

(9) *Advise the insured of the right to review by the Commission of Insurance.*

Company Response: AUD-VA has been created which advises the insured of the right to review by the Commission of Insurance, included. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(10) *Obtain a written notice when the insured requests to cancel a policy as required by the provisions of the insurance policy.*

Company Response: The Company will require written notice in the short term. However, the Company intends to implement an Amendatory Endorsement in July 2020 that will require only notice from an insured rather than written notice.

(11) *Send the cancellation notice for a motor vehicle policy at least 45 days before the effective date of cancellation when it is mailed after the 59th day of coverage.*

Company Response: The Company will do so. The Company will be amending its Amendatory Endorsement and implementing it in July to enable it to backdate cancellations when a total loss has occurred, as the insured does not have an insurable interest in the vehicle as of the date of the total loss.

(12) *Send the cancellation notice for a motor vehicle policy for nonpayment of premium at least 15 days before the effective date of cancellation.*

Company Response: The Company will do so. The Company will be amending its Amendatory Endorsement and implementing it in July to enable it to backdate cancellations when a total loss has occurred, as the insured does not have an insurable interest in the vehicle as of the date of the total loss.

Claims Review

(1) *Correct the errors that caused the underpayments and overpayments and send the amount of the underpayment to insureds and claimants.*

Company Response: The Companies have corrected the errors and where applicable refunds, or credits were issued.

(2) *Include six percent (6%) simple interest in the amount paid to the insureds and claimants.*

Company Response: Where applicable the Companies included a six percent simple interest in the amount refunded and/or credited.

(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 Response: The Companies have provided the Bureau with the completed restitution spreadsheet.

(4) *Document claim files so that all events and dates pertinent to the claim can be reconstructed.*

Company Response: The importance of proper claim documentation has been reiterated to staff and the Companies will document claims files so that all events and dates pertinent to the claim can be reconstructed.

(5) *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, Transportation Expenses coverage, and MEB coverage.*

Company Response: The importance of proper claim file documentation has been reiterated to staff and the Companies will document the claim file that all applicable coverages have been discussed with the insured. Particular attention will be given to deductibles, rental benefits under UMPD, transportation expenses, and medical expenses.

(6) *Notify the insured, in writing, every 45 calendar days of the reason for the company's delay in completing the investigation of the claim.*

Company Response: The Companies will notify the insured, in writing, every 45 calendar days of the reason for the company's delay in completing the investigation of the claim.

(7) *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 Response: The companies will stress the importance of ensuring the payment of claims are fair and reasonable and in accordance with the claim investigation and all applicable policy provisions.

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

Company Response: The Companies will provide repair estimates prepared by or on behalf of the company to insureds and claimants.

(9) *Implement reasonable standards for the prompt investigation of claims.*

Company Response: The companies will continue to stress the importance of prompt and thorough investigation of claims.

(10) *Adopt and implement reasonable standards for the prompt, fair, and equitable settlement of a claim in which liability and/or coverage is reasonably clear.*

Company Response: The companies will continue to stress adherence to our standards of prompt, fair and equitable settlement of claims where liability and/or coverage is reasonably clear.

(11) *Conduct an internal audit of all total loss claims in the population during the audit period and reevaluate the CCC valuations to determine that all amounts owed were paid to the insured. The company should then prepare an excel spreadsheet indicating the payments made as a result of the internal audit. This spreadsheet should be in the same format as the Restitution Spreadsheet sent by the Bureau for the Claims Underpayments.*

Company Response: We appreciate your ongoing efforts, patience, and feedback on this corrective action item. The Companies take seriously our responsibility to, in good faith, effectuate prompt, fair and equitable settlements of claims. Therefore, the Companies maintain their position that the procedure for applying deductions for unrepaired prior damage (UPD), which was subject to the Bureau's examination, complied with Virginia law. However, in light of the Bureau's valuable feedback and in the interest of resolving this matter, the Companies subsequently changed the process on accounting for UPD. Effective September 2019, the Companies use a lower CCC condition rating to account for unrepaired prior damage rather than a separate estimate and deduction for UPD.

Notwithstanding the Companies' position that the previous procedure was proper, the Companies prepared a spreadsheet at the behest of the Bureau. As directed, the spreadsheet indicates the recalculated payments using the Companies' new CCC condition rating procedure. Please note that all total loss claims are included in the spreadsheet as required by the Bureau. However, every total loss claim does not include unrepaired prior damage, so only claims that included UPD were reevaluated. The remaining claims include "0" in the payment column of the spreadsheet.

The Companies have prepared the checks for the applicable claims. The Companies will start mailing the checks on April 17, 2020 to allow the Bureau time to review the spreadsheet.

(12) *Conduct an internal audit of all motorcycle claims and determine if the insured obtained a rental vehicle, and reimburse any amount owed under Transportation Expense coverage. The company should then prepare an excel spreadsheet indicating the payments made as a result of the internal audit. This spreadsheet should be in the same format as the Restitution Spreadsheet sent by the Bureau for the Claims Underpayments.*

Company Response: Based on the Department's findings and subsequent recommendation, the Company conducted a review of Cycle claims to determine if the insured had obtained a rental vehicle or had incurred other transportation expense that was not reimbursed under the policy's Transportation Expense coverage. The Company identified 191 claim files for the time period in which Transportation Expense coverage was on the policy, however no payment was made under the coverage. Of the 191 claims identified, successful follow-up contact was made with the insured on 110. In 108 of those claims, the insured confirmed that there was no loss/claim being made under the Transportation Expense coverage. There were 2 claims in which the insured did incur damages related to transportation expense and these customers were reimbursed a total of $751.85, to include the 6% interest. In the remaining 81 claims, our contact efforts were unsuccessful. The numerous and various contact methods included telephone, data-base searches, and U.S. Mail.

Forms Review

Use the rate classification statement filed and approved by the Bureau.

Company Response: The Companies will continue to use the rate classification statement filed and approved by the Bureau.

Policy Issuance Process Review

(1) Specify accurate information in the policy by including the effective time of coverage in the policy.

Company Response: The Declarations Page will be updated to include the effective time. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(2) Provide the insured the Important Information Regarding Your Insurance notice with all new automobile and motorcycle policies.

Company Response: The Companies will continue to provide the insured the important information regarding your insurance notice with all new policies. PHN2-VA-0316 is currently mailed at new business and renewal for all companies.

(3) Provide the Notice of Financial Information Collection and Disclosure Practices notice as required by the statute.

Company Response: The Company believes that the PHN5-0613, attached, complies with the requirements of both Va. Code. Ann. § 38.2-604(B) and Va. Code Ann. § 38.2-604.1, and it will trigger appropriately under both statutes. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(4) List only forms applicable to the policy on the declarations page.

Company Response: The Companies will list only forms applicable to the policy on the declaration page and will not include the application. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

Statutory Notices Review

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

Company Response: The Company believes that the PHN5-0613, attached, complies with the requirements of both Va. Code. Ann. § 38.2-604(B) and Va. Code Ann. § 38.2-604.1, and it will trigger appropriately under both statutes. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(2) Amend the Short Form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 C of the Code of Virginia.

Company Response: The Company will use only a long form notice. Accordingly, it will not be developing a short form notice.

(3) Have available for use the AUD notice to comply with § 38.2-610 A of the Code of Virginia.

Company Response: The Company has created AUD-VA. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(4) Have available the Accident Point Surcharge notice to comply with § 38.2-1905 A of the Code of Virginia.

Company Response: The following message prints on the Declarations Page when an accident or violation is added:

> The motor vehicle record for [Name] included the following [accident(s)/violation(s)] which were not listed on your policy prior:
> • [Accident on [Date]]
> • [[Violation] on [Date]]
>
> These have been added to your policy. This addition may have caused the premium to increase.
>
> You have the right to know the specific items of information that support the reasons given for this decision and the identity of the source of that information. You also have the right to see and obtain copies of documents relating to this decision.
>
> If you ask us to correct, amend, or delete any information about you in our files and if we refuse to do so, you have the right to give us a concise statement of what you believe is the correct information. We will put your statement in our file so that anyone reviewing your file will see it.
>
> If you would like additional information concerning this action, state law requires that you submit a written request within ninety (90) business days from the date this notice was mailed to you. Please send your request to:
> [CS Name]
> [Address]
> [City, State Zip]
> [Email]

In addition, the following message also prints on the Declarations Page when an accident is added:

> You have the right to appeal the application of points or increase in premium as a result of a motor vehicle accident on [Date] to the Commissioner of Insurance within 60 days at:
>
> [PO Box 1157
> Richmond, VA 23218
> 1-800-552-7945
> 1-804-371-9741
> www.scc.virginia.gov]

(5) Amend the MEB notice to comply with § 38.2-2202 A of the Code of Virginia.

Company Response: The current notice, PHN1-VA-1216, mirrors statute precisely aside from using “section” in one sentence rather than “§”. It also includes a header, logo, and underwriting company. It is currently mailed at new business and renewal. We have updated the form to PHN1-VA-0420 which mirrors statute. Please advise if this is not sufficient. A project addressing all the changes required by the Company’s Corrective Action Plan has been submitted. The Company is currently working with its information

technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(6) Amend the UM Limits notice to comply with § 38.2-2202 B of the Code of Virginia.

Company Response: The current notice, PHN1-VA-1216, mirrors statute precisely aside from using "section" in one sentence rather than "§". It also includes a header, logo, and underwriting company. It is currently mailed at new business and renewal. We have updated the form to PHN1-VA-0420 which mirrors statute. Please advise if this is not sufficient. A project addressing all the changes required by the Company's Corrective Action Plan has been submitted. The Company is currently working with its information technology resources to determine when the project can be implemented. However, the Company has activated its business continuity plan in response to COVID-19 and is prioritizing accordingly.

(7) Develop a 60-day Cancellation Warning notice for the application to comply with § 38.2-2210 A of the Code of Virginia.

Company Response: All current applications include the 60-day cancellation warning.

(8) Amend the Rental Reimbursement notice to comply with § 38.2-2230 of the Code of Virginia.

Company Response: The Companies will amend the rental reimbursement notice to comply with regulation. The following will print as an Important Message on the Declarations Page when comprehensive and collision coverage are present on the policy: "You have the option to purchase Transportation Expenses Coverage which includes rental reimbursement."

(9) Amend the Insurance Credit Score Disclosure notice to comply with the provisions of §§ 38.2-2126 A 1 and 38.2-2234 A 1 of the Code of Virginia.

Company Response: The Companies will amend the insurance credit score disclosure notice to comply with regulation. The applications – VAA1101 and VAM1101 - have been updated to precisely mirror the statutory language. Drafts are included.

Licensing and Appointment Review

Accept business only from agents and agencies who are properly licensed and appointed in the Commonwealth of Virginia.

Company Response: The Companies will only accept business from agents and agencies who are properly licensed and appointed in the Commonwealth of Virginia.

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

COMMONWEALTH OF VIRGINIA

P.O. BOX 1157
RICHMOND, VIRGINIA 23218

1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219

TELEPHONE: (804) 371-9741
www.scc.virginia.gov/boi

April 29, 2020

VIA E-MAIL

Liz Kilinski
Market Conduct Analyst
Sentry Insurance
1800 North Point Drive
Stevens Point, WI 54481

RE: Market Conduct Examination
Dairyland Insurance Company, NAIC #21164
Peak Property and Casualty Insurance Corporation, NAIC #18139
Exam Period: January 1, 2017–December 31, 2017

Dear Ms. Kilinski:

The Bureau of Insurance (Bureau) has reviewed the April 13, 2020 response to the Revised Market Conduct Report (Report) of the above-referenced companies. The Bureau has referenced only those items in which the Companies have 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

Private Passenger Automobile Claims

(6d) The violation for CPA030 remains in the Report. The restitution amount was changed to $672 to reflect the $100 payment made for the glasses. The bill provided does not constitute a valid Assignment of Benefits (AOB). Section 38.2-2201 D of the Code of Virginia sets forth specific requirements for a valid Assignment of Benefits (AOB). A valid AOB must be in writing, dated and the injured person (assignor) must sign the form; the form must have a statement that informs the injured person that they are not required to sign the form. The Company breached the terms of the policy by paying the medical provider directly without a valid AOB; thus, this would not be considered an unjust enrichment. The contract is between the insured and the Company not the medical provider and the insurer. The Company needs to issue a payment in

the amount of $572 to the insured. The Bureau requests the Company provide the invoice for the glasses for review, as well.

Motorcycle Claims

(6f) After further review, the violation for CMC006 has been withdrawn from the Report.

The underpayment for CMC020 remains in the Report. The Company should report the Restitution amount to the Treasurer of Virginia Unclaimed Property Division.

The underpayment for CMC023 remains in the Report. The Company should report the Restitution amount to the Treasurer of Virginia Unclaimed Property Division.

The Company should make the outstanding $520.15 restitution cited for CMC046. The Company paid $115.85 for rental. The $600 Trip Interruption coverage limit has not been exhausted.

Statutory Notices Review

The Bureau's Response has been provided in Part Two of this letter.

PART TWO – CORRECTIVE ACTION PLAN

Rating and Underwriting Review

(5) The Companies should revise their response to this item. The Companies' filing will not correct this issue of misrepresenting surcharges on the declarations page.

(6) The Companies should revise their response to this item. The Companies' filing will not correct this issue of assigning points to the vehicle the driver customarily operates.

Termination Review

(7) The Company indicates that all violations associated with obtaining and retaining proof of mailing the cancellation notice has been with withdrawn by the Bureau, which has been confirmed. Therefore, the corrective action plan for obtaining and retaining proof of mailing the cancellation notice has been removed from the Report.

Claims

(1) The restitution for CMC006 has been removed from the Restitution Spreadsheet.

(3) The Company should make the outstanding restitution as indicated on the revised Restituion Spreadsheet.

Statutory Notices

(2) The Companies are not required to use the short form notice. However, the Companies should be aware that its agents will be required to read the entire long form notice to all applicants for verbal telephone applications without a compliant short form notice.

(4) The Companies' notice provided on the declarations page should state "This addition has caused the premium to increase" instead of "may increase" since the premium increase is the trigger for the AUD and Accident Point Surcharge notices. The Companies must amend the Accident Point Surcharge notice to state the insured's appeal must be in writing.

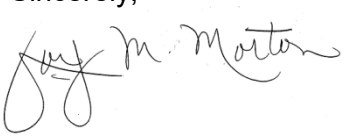
(5-6) The Bureau acknowledges that one of the Companies used PHN1-VA-1216 that complied with the statutes. However, the notice used by Dairyland Insurance Company during the examination period was not compliant. The Companies can use PHN1-VA-1216 or PHN1-VA-0420.

(8) The Company must provide the Rental Reimbursement notice when the policy has Collision **or** Other than Collision coverage.

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 and Restitution spreadsheet and any review sheets withdrawn, added or altered as a result of this review. The Companies' response to this letter is due in the Bureau's office by May 15, 2020.

Once we have received and reviewed the Companies' response to these items, we will be in a position to make a settlement offer. We look forward to your response by May 15, 2020.

Sincerely,



Joy M. Morton
Manager
Market Conduct Section
Property and Casualty Division
(804) 396-8380
joy.morton@scc.virginia.gov

JMM/pgh
Enclosures

Liz Kilinski
Market Conduct Analyst
Sentry Insurance
1800 North Point Dr
Stevens Point, WI 54481
715 346-6579
liz.kilinski@sentry.com

May 15, 2020

Ms. Joy Morton, AMCM
Manager, Market Conduct Section
Property & Casualty Division
Bureau of Insurance
Tyler Building, 1300 E Main Street
Richmond, Virginia 23219
(804) 371-9540
joy.morton@scc.virginia.gov

RE: Responses to the Revised Market Conduct Examination Report
Dairyland Insurance Company (NAIC #2164)
Peak Property and Casualty Corporation (NAIC # 18139)
Exam Period: January 1, 2017 – December 31, 2017

Dear Ms. Morton:

Dairyland Insurance Company and Peak Insurance Company appreciate the opportunity to review and respond to the revised draft report and your letter dated April 29, 2020. Also, thank you in advance for your time and consideration in reviewing the Companies' responses. Please accept this letter and the following enclosures to serve as our response. We have reviewed the revised report and respectfully submit the following for your consideration:

1. Draft report response and exhibits
2. Restitution spreadsheet

The information provided in the draft report response follows the format of your April 29th letter. Referenced exhibits are attached with supporting documentation.

We would like to thank you and your team for your considerations and assistance during the course of the exam and look forward to receiving the final report and the conclusion of this exam. Should you have questions or require any additional information, please do not hesitate to contact me.

Sincerely,

LKilinski

Liz Kilinski

PART ONE - THE EXAMINERS' OBSERVATIONS
Private Passenger Automobile Claims

(6d) The violation for CPA030 remains in the Report. The restitution amount was changed to $672 to reflect the $100 payment made for the glasses. The bill provided does not constitute a valid Assignment of Benefits (AOB). Section 38.2-2201 D of the Code of Virginia sets forth specific requirements for a valid Assignment of Benefits (AOB). A valid AOB must be in writing, dated and the injured person (assignor) must sign the form; the form must have a statement that informs the injured person that they are not required to sign the form. The Company breached the terms of the policy by paying the medical provider directly without a valid AOB; thus, this would not be considered an unjust enrichment. The contract is between the insured and the Company not the medical provider and the insurer. The Company needs to issue a payment in the amount of $572 to the insured. The Bureau requests the Company provide the invoice for the glasses for review, as well.

Company Response: A payment of $606.32, which included the 6% interest was made via check #[redacted] on May 8, 2020. The restitution spreadsheet has been updated accordingly. In addition, the insured did not respond to multiple contact attempts regarding the damage to his eyeglasses and therefore, no invoice was provided. As a result, a payment was made to exhaust the remaining medical payments coverage available to the insured and a check in the amount of $71.58 made via reference #[redacted] was issued on 10/09/2019. This included the remaining available medical payments coverage in the amount of $67.53 plus 6% interest of $4.05 for the total of $71.58.

Motorcycle Claims

(6f) After further review, the violation for CMC006 has been withdrawn from the Report.

Company Response: The Company appreciates the reconsideration of CMC006.

The underpayment for CMC020 remains in the Report. The Company should report the Restitution amount to the Treasurer of Virginia Unclaimed Property Division.

Company Response: A payment in the amount of $150.51 which included the 6% interest was made via check #[redacted] on May 8, 2020. The restitution spreadsheet has been updated accordingly.

The underpayment for CMC023 remains in the Report. The Company should report the Restitution amount to the Treasurer of Virginia Unclaimed Property Division.

Company Response: A payment in the amount of $105.99, which included the 6% interest was made via check #[redacted] on May 8, 2020. The restitution spreadsheet has been updated accordingly.

The Company should make the outstanding $520.15 restitution cited for CMC046. The Company paid $115.85 for rental. The $600 Trip Interruption coverage limit has not been exhausted.

Company Response: The Company contacted the insured via telephone on May 11, 2020 to explain the trip interruption coverage and verify if the insured incurred any additional expenses as a result of the accident. The insured confirmed that there was no additional out of pocket expenses and no additional claim for trip interruption is being pursued. A copy of the file notes confirming no additional claim for trip interruption has been uploaded to the portal.

The Company respectfully requests that following the Bureau's review of the supporting document, the Bureau kindly confirm no additional payment is owed, and the restitution spreadsheet will be updated to reflect no balance due.

PART TWO – CORRECTIVE ACTION PLAN
Rating and Underwriting Review

(5) The Companies should revise their response to this item. The Companies' filing will not correct this issue of misrepresenting surcharges on the declarations page.

Company Response: The Companies have reviewed the criticisms related to surcharges and believes each involved manual intervention by its operations associates. Accordingly, our operations associates have been coached about the importance of accurately verifying the surcharges applicable to each driver and policy and this issue will continue to be addressed in future additional training.

(6) The Companies should revise their response to this item. The Companies' filing will not correct this issue of assigning points to the vehicle the driver customarily operates.

Company Response: The Companies have taken steps to ensure points are properly assigned under a SDIP to the vehicle customarily driven by the operator incurring the points. Systems enhancements, changes to the Declarations Pages, and additional training, including reminding operations staff that when manually entering or altering accident or violation information, it is critical that accidents/violations be rated on the assigned vehicle, have taken place and are ongoing.

Termination Review

(7) The Company indicates that all violations associated with obtaining and retaining proof of mailing the cancellation notice has been with withdrawn by the Bureau, which has been confirmed. Therefore, the corrective action plan for obtaining and retaining proof of mailing the cancellation notice has been removed from the Report.

Company Response: Thank you.

Claims

(3) The Company should make the outstanding restitution as indicated on the revised Restitution Spreadsheet.

Company Response: The restitution spreadsheet has been updated accordingly.

Statutory Notices

(2) The Companies are not required to use the short form notice. However, the Companies should be aware that its agents will be required to read the entire long form notice to all applicants for verbal telephone applications without a compliant short form notice.

Company Response: Thank you for bringing this to the Company's attention. The Company will use the following short form notice on its agent portals:

> The Company may obtain personal information from persons other than the applicant(s) for coverage. This information, as well as personal or privileged information subsequently collected, may be disclosed to third parties without authorization in certain circumstances. You have the right to access and correct all personal information collected. A more detailed notice of information collection and disclosure practices is available upon request.

(4) The Companies' notice provided on the declarations page should state "This addition has caused the premium to increase" instead of "may increase" since the premium increase is the trigger for the AUD and Accident Point Surcharge notices. The Companies must amend the Accident Point Surcharge notice to state the insured's appeal must be in writing.

Company Response: The Company will incorporate this language in its Declarations Page message.

(5-6) The Bureau acknowledges that one of the Companies used PHN1-VA-1216 that complied with the statutes. However, the notice used by Dairyland Insurance Company during the examination period was not compliant. The Companies can use PHN1-VA-1216 or PHN1-VA-0420.

Company Response: Thank you. The Companies will continue to use PHN1-VA-1216 as the Bureau indicated above.

(8) The Company must provide the Rental Reimbursement notice when the policy has Collision or Other than Collision coverage.

Company Response: The Company will ensure that this notice is provided when either coverage is available.

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

COMMONWEALTH OF VIRGINIA

P.O. BOX 1157
RICHMOND, VIRGINIA 23218

1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219

TELEPHONE: (804) 371-9741
www.scc.virginia.gov/boi

May 20, 2020

VIA E-MAIL

Liz Kilinski
Market Conduct Analyst
Sentry Insurance
1800 North Point Drive
Stevens Point, WI 54481

RE: Market Conduct Examination
Dairyland Insurance Company, NAIC #21164
Peak Property and Casualty Insurance Corporation, NAIC #18139
Exam Period: January 1, 2017–December 31, 2017

Dear Ms. Kilinski:

The Bureau of Insurance (Bureau) has reviewed the May 15, 2020 response to the Revised Market Conduct Report (Report) of the above-referenced companies. The Bureau has referenced only those items in which the Companies have disagreed with the Bureau's findings, or items that have changed in the Report. This response follows the format of the Report.

PART TWO – CORRECTIVE ACTION PLAN

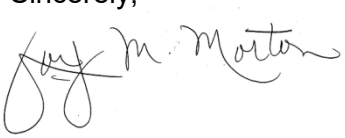
Statutory Notices

(4) The Company should provide the revised declarations page for review.

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 and Restitution spreadsheet and any review sheets withdrawn, added or altered as a result of this review. The Companies' response to this letter is due in the Bureau's office by May 15, 2020.

Once we have received and reviewed the Companies' response to these items, we will be in a position to make a settlement offer. We look forward to your response by May 15, 2020.

Sincerely,



Joy M. Morton
Manager
Market Conduct Section
Property and Casualty Division
(804) 396-8380
joy.morton@scc.virginia.gov

JMM/pgh
Enclosures

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

May 28, 2020

VIA E-MAIL DELIVERY

Liz Kilinski
Market Conduct Analyst
Sentry Insurance
1800 North Point Drive
Stevens Point, WI 54481

RE: Market Conduct Examination
Dairyland Insurance Company, NAIC #21164
Peak Property and Casualty Insurance Corporation, NAIC #18139
Exam Period: January 1, 2017 – December 31, 2017

Dear Ms. Kilinski:

The Bureau of Insurance (Bureau) has concluded its review of the companies' response of May 15, 2020. Based upon the Bureau's review of the companies' correspondence, we are now in a position to conclude this examination. Enclosed is the final Market Conduct Examination Report of Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation (Report).

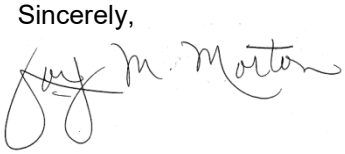
Based on the Bureau's review of the Report and the companies' responses, it appears that a number of Virginia insurance laws and regulations have been violated, specifically:

Sections 38.2-305 A, 38.2-305 B, 38.2-502 1, 38.2-510 A 3, 38.2-510 A 6, 38.2-604 1, 38.2-604 B, 38.2-604 C, 38.2-610 A, 38.2-1318 C, 38.2-1822 A, 38.2-1833, 38.2-1905 A, 38.2-1905 C, 38.2-1906 A, 38.2-1906 D, 38.2-2202 A, 38.2-2202 B, 38.2-2210 A, 38.2-2212 D, 38.2-2212 E, 38.2-2212 F, 38.2-2214, 38.2-2230, and 38.2-2234 A of the Code of Virginia; and 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-60 B, 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

JMM/pgh
Attachment

Sentry

Liz Kilinski
Market Conduct Analyst
Sentry Insurance
1800 North Point Dr
Stevens Point, WI 54481
715 346-6579
liz.kilinski@sentry.com

June 9, 2020

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-2020-00111

Dear Ms. Nichols:

This will acknowledge receipt of the Bureau of Insurance's letter dated June 4, 2020, concerning the above-referenced matter.

We wish to make a settlement offer on behalf of the insurance companies listed below for the alleged violations of §§ of the of the Code of Virginia and §§ 38.2-305 A, 38.2-305 B, 38.2-502 1, 38.2-510 A 3, 38.2-510 A 6, 38.2-604 1, 38.2-604 B, 38.2-604 C, 38.2-610 A, 38.2-1318 C, 38.2-1822 A, 38.2-1833, 38.2-1905 A, 38.2-1905 C, 38.2-1906 A, 38.2-1906 D, 38.2-2202 A, 38.2-2202 B, 38.2-2210 A, 38.2-2212 D, 38.2-2212 E, 38.2-2212 F, 38.2-2214, 38.2-2230, and 38.2-2234 A of the Code of Virginia; and 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-60 B, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D of the Virginia Administrative Code to indicate a general business practice.

1. We enclose with this letter a check payable to the Treasurer of Virginia in the amount of $78,000.
2. We agree to comply with the corrective action plan set forth in the companies' e-mails of July 1 and October 10, 2019 and April 13 and May 15, 2020.
3. We confirm that restitution was made to 83 consumers for $62,492.38 in accordance with the companies' responses of July 1 and October 10, 2019 and April 13 and May 15, 2020.
4. We further acknowledge the companies' 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,

Dairyland Insurance Company, NAIC #21164

Peak Property and Casualty Insurance Corporation, NAIC #18139

L Kilinski

(Signed)

Liz Kilinski

(Type or Print Name)

Market Conduct Analyst

(Title)

6/4/2020

(Date)

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

Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation have tendered to the Bureau of Insurance the settlement amount of $78,000 by their check numbered 05464366 and dated June 5, 2020, a copy of which is located in the Bureau's files.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 20, 2020

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v. CASE NO. INS-2020-00111

DAIRYLAND INSURANCE COMPANY,
and
PEAK PROPERTY AND CASUALTY INSURANCE CORPORATION,
Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance ("Bureau"), it is alleged that Dairyland Insurance Company and Peak Property and Casualty Insurance Corporation (collectively, the "Defendants"), duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia ("Virginia"), violated:

§ 38.2-305 A of the Code of Virginia ("Code") by failing to include the information required by the statute in the insurance policy;

§ 38.2-305 B of the Code by failing to provide the Important Information notice to policyholders;

§ 38.2-502 (1) of the Code by failing to properly represent the benefits, advantages, conditions or terms of an insurance policy;

§ 38.2-510 A 3 of the Code by failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

§ 38.2-510 A 6 of the Code by failing to make a prompt, fair and equitable settlement of a claim in which liability was reasonably clear;

§ 38.2-604.1 of the Code by failing to have a Financial Information Collection and Disclosure Practices notice that complies with the statute;

§ 38.2-604 C of the Code by failing to accurately provide the required notice of information collection and disclosure practices to insureds;

§ 38.2-610 A of the Code by failing to have an adverse underwriting decision notice that complies with the statute;

§ 38.2-1318 C of the Code by failing to provide the examiners convenient access to files, documents, and records of the Defendants that are relevant to the examination;

§ 38.2-1822 A of the Code by allowing an entity to act as an agent without first obtaining a license from the Commonwealth of Virginia;

§ 38.2-1833 of the Code by failing to appoint an agent within thirty (30) days of the date of the insurance application;

§ 38.2-1905 A of the Code by failing to have an Accident Surcharge Point notice in compliance with the statute;

§ 38.2-1905 C of the Code by failing to properly assign points under the Safe Driver Insurance Plan;

§ 38.2-1906 A of the Code by failing to file with the Commission all rate and supplemental rate information for use in Virginia on or before the date they become effective;

§ 38.2-1906 D of the Code by failing to use the rate and supplementary rate information on file with the Bureau;

§ 38.2-2202 A of the Code by failing to include the Medical Expense Benefits Coverage Options notice in the precise language of the statute;

§ 38.2-2202 B of the Code by failing to include the Uninsured Motorist Optional Limits notice in the precise language of the statute;

§ 38.2-2210 A of the Code by failing to have the 60-day Cancellation Warning notice on or attached to the application;

§§ 38.2-2212 D, 38.2-2212 E, and 38.2-2212 F of the Code by failing to properly terminate insurance policies;

§ 38.2-2214 of the Code by failing to use the Rate Classification Statement in the form approved by the Commission;

§ 38.2-2230 of the Code by failing to offer, in writing, the option of purchasing rental reimbursement coverage, or otherwise failing to have a compliant Rental Reimbursement Coverage notice;

§ 38.2-2234 A of the Code by failing to have a compliant Automobile Insurance Credit Disclosure Notice; as well as,

14 VAC 5-400-30 of the Commission's Rules Governing Unfair Claim Settlement Practices, 14 VAC 5-400-10 *et seq.* of the Virginia Administrative Code ("Rules"), by failing to properly document the claim file to sufficiently reconstruct events and/or dates that were pertinent to the claim;

14 VAC 5-400-40 A of the Rules by failing to fully disclose all pertinent benefits and coverages applicable to a claim;

14 VAC 5-400-60 B of the Rules by failing to notify the insured, in writing, every 45 days of the reason for the Defendants' delay in completing the investigation of a claim;

14 VAC 5-400-70 D of the Rules by failing to offer a fair and reasonable amount on a claim; and

14 VAC 5-400-80 D of the Rules by failing to provide claimants with a copy of the Defendants' prepared estimate as required by the Rules.

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 Defendants have been advised of the right to a hearing in this matter whereupon the Defendants, without admitting or denying any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have agreed to comply with the corrective action plan outlined in the Defendants' correspondence dated July 1, 2019, October 10, 2019, April 13, 2020, and May 15, 2020; have confirmed restitution was made to 83 consumers in the amount of Sixty-two Thousand Four Hundred Ninety-two Dollars and Thirty-eight Cents ($62,492.38); have tendered to the Treasurer of Virginia the sum of Seventy Eight Thousand Dollars ($78,000); and have waived the right to a hearing.

The Bureau has recommended that the Commission accept the offer of settlement of the Defendants 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 Defendants, and the recommendation of the Bureau, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

1. The offer of the Defendants 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.

A COPY of this order shall be sent electronically by the Clerk of the Commission to: Liz Kilinski, Market Conduct Analyst, Sentry Insurance, at liz.kilinski@sentry.com; 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.