

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

**In the Matter of Adopting the Report of Market)
Conduct Examination of)
Progressive Casualty Insurance Company;)
Progressive Classic Insurance Company;) Docket No.: 3292-MC
Progressive Northwestern Insurance Company;)
Progressive Northern Insurance Company and)
Progressive Halcyon Insurance Company.)**

ORDER

Pursuant to the authority conferred to the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified Commissioner of Insurance hereby adopts the Kansas Insurance Department's October 17, 2003 Report of Market Conduct Examination of Progressive Casualty Insurance Company; Progressive Classic Insurance Company; Progressive Northwestern Insurance Company; Progressive Northern Insurance Company and Progressive Halcyon Insurance Company (hereinafter collectively referred as "the Group", "Companies", "Progressive Insurance Group" or "Progressive") by incorporating the same which is attached herein as Attachment A.

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department completed a market conduct examination of the Progressive Insurance Group in January 2004.
3. On or about August 7, 2003, the examiner-in-charge transmitted to Progressive a verified written Report of Market Conduct Examination of the Progressive Insurance Group with a duly executed notice advising the same regarding its opportunity to prepare and submit to the Kansas Insurance Department a written

submission or rebuttal with respect to any and all matters contained in the report. Progressive was further advised that any written submission or rebuttal needed to be filed with the Kansas Insurance Department no later than thirty (30) days after receipt of the verified report.

4. Progressive responded with written rebuttals of the verified report on September 9, 2003.
5. The Kansas Commissioner of Insurance has since fully reviewed the said Kansas report which is attached herein as Attachment A.
6. With a specific focus on Progressive's underwriting, rating, claims handling and complaint/grievance management in its auto and specialty lines business, the market conduct examiners reviewed Progressive's business manuals pertinent to its underwriting, claims and rating practices and randomly selected samples from among the companies' underwriting and claims settlement files from January 1, 2001, through December 31, 2002. *See* Attachment A, "Summary of Review," pp.6-7.
7. In the companies' underwriting practices, the examination reveals that, among twenty-one (21) randomly selected new business automobile insurance policies, fifteen (15) of such policies were rated with a "driver point matrix factor" that was neither filed with nor approved by the Kansas Insurance Department. *See* Attachment A, p.11.
8. The examination also reveals that eighteen (18) out of twenty-five (25) randomly selected renewal policies were based upon a "driver point matrix factor" that was

never filed with or approved by the Kansas Insurance Department. *See* Attachment A, p. 11.

9. The examiners find that incorrect MP Territory Factors were applied in seven (7) out of twenty-one (21) randomly selected new policy samples and five (5) out of twenty-five (25) randomly selected renewal policy samples.
10. The examiners also find that all above-mentioned eighteen (18) randomly selected new auto policies and all twenty (20) renewal policies were based on incorrect UM/UIM territory factors.
11. The examination further reveals that, among fifty (50) randomly selected files, nine (9) renewal policies' original credit scores did not match the current Financial Responsibility (FR) Tier Code as Progressive has filed with the Kansas Insurance Department. Thus, Progressive migrated from the "D" structure Market Factors to the current "C" structure Market Factors without complying with its own rating rules filed with the Kansas Insurance Commissioner at the time the said policies were renewed.
12. The examiners found that Progressive did not apply the group's rating rule P16 and P17 as their designated coverages in certain markets. Instead, Progressive invariably applied these rules to all coverages and all markets.
13. In examining Progressive's rating practices, the examiners find that none of the twenty-five (25) randomly selected sub-standard auto new business accounts bear a signed statement by the insured indicating that he/she could not secure insurance in a standard market.

14. The examiners also find that Progressive applied a surcharge to their sub-standard and middle market business in the companies' rating practices. The said conduct does not comply with the companies' rating rules P16 and P17 filed with the Kansas Insurance Department.
15. In examining Progressive's termination practices, the examiners find six (6) errors in fifty (50) randomly selected underwriting samples. Those errors indicate that Progressive did not refund unearned premiums with appropriate and applicable notice of adverse underwriting decisions.
16. Progressive's generic statement regarding the "Low Down Payment" on the reverse side of the declaration page creates confusion where clarification is needed.
17. The examination of Progressive's Claim Settlement practice reveals that the companies did not secure a local market survey to determine the cash value of a vehicle that was deemed to be a total loss. Progressive derives the value of a total loss by relying solely on third party vendors. *See Attachment A, "Standard 6," p. 22.*

Applicable Law

18. K.S.A. 40-2,111 states:

As used in K.S.A. 40-2,111 through 40-2,113, and amendments thereto: (a) "Adverse underwriting decision" means: Any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:

- (1) A declination of insurance coverage;
- (2) a termination of insurance coverage;

(3) an offer to insure at higher than standard rates, with respect to life, health or disability insurance coverage; or

(4) the charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished, with respect to property or casualty insurance coverage.

(b) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance company or agent of requested insurance coverage.

...

(e) "Institutional source" means any natural person, corporation, association, partnership or governmental or other legal entity that provides information about an individual to an agent or insurance company, other than:

(1) An agent;

(2) the individual who is the subject of the information; or

(3) a natural person acting in a personal capacity rather than a business or professional capacity.

(f) "Insurance transaction" means any transaction involving insurance, but not including group insurance coverage, primarily for personal, family or household needs rather than business or professional needs.

...

(h) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation, nonrenewal or lapse of an insurance policy, in whole or in part, for any reason other than:

(1) The failure to pay a premium as required by the policy; or

(2) at the request or direction of the insured.

19. K.S.A. 40-2,112 states, in pertinent part:

(a) In the event of an adverse underwriting decision the insurance company . . . or agent responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in

writing or advise such persons that upon written request they may receive the specific reason or reasons in writing.

. . .

(d)(2) If coverage is not in effect and payment therefore is in the possession of the company. . . or the agent, the underwriting decision shall be made within 20 business days from receipt of the application by the agent unless the underwriting decision is dependent upon substantive information available only from an independent source. In such cases, the underwriting decision shall be made within 10 business days from receipt of the external information by the party that makes the decision. The refund shall accompany the notice of an adverse underwriting decision.

20. K.S.A. 40-2,120 states:

No policy of property or casualty insurance, other than accident and sickness, used primarily for business or professional needs that has been in effect for 90 days or more may be canceled except for one of the following reasons:

- (a) Nonpayment of premium;
- (b) the policy was issued because of a material misrepresentation;
- (c) any insured violated any of the material terms and conditions of the policy;
- (d) unfavorable underwriting factors, specific to the insured, exist that were not present at the inception of the policy;
- (e) a determination by the commissioner that continuation of coverage could place the insurer in a hazardous financial condition or in violation of the laws of this state; or
- (f) a determination by the commissioner that the insurer no longer has adequate reinsurance to meet the insurer's needs.

21. K.S.A. 40-2,121 states:

Any insurance company that denies renewal or substitution of similar coverage for the same exposures under any property or casualty insurance policy which is used primarily for business or professional needs shall give at least 60 days' written notice to the named insured at such person's last known address of the insurance company's

intention not to renew such policy. The company may satisfy this obligation by causing such notice to be given by a licensed agent.

22. K.S.A. 40-2,122 states:

Any insurance company doing business in this state shall provide to an insured a written explanation specifically detailing the reasons why such company canceled or denied renewal of an existing policy of insurance. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or denial of renewal of an existing policy of insurance, for any statement made by any of them in any written notice of cancellation or denial of renewal of an existing policy of insurance, for the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith, if such information was provided in good faith and without malice.

23. K.S.A. 40-2,125 states, in pertinent parts:

- (a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:
 - (1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonable should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder in which case the penalty shall be not more than \$2,000 for each and every act or violation;
 - ...
 - (2) (b) If any person fails to file any report or other information with the commissioner as required by statute or fails to respond to any proper inquiry of the commissioner, the commissioner after notice and opportunity for hearing may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner.

24. K.S.A. 2,126 states:

Except as otherwise provided by K.S.A. 40-447, 40-3110 and 44-512a, and amendments thereto, each insurance company, fraternal benefit society and any reciprocal or interinsurance exchange licensed to transact the business of insurance in this state which fails or refuses to pay any amount due under any contract of insurance within the time prescribed herein shall pay interest on the amount due. If payment is to be made to the claimant and the same is not paid within 30 calendar days after the amount of the payment is agreed to between the claimant and the insurer, interest at the rate of 18% per annum shall be payable from the date of such agreement. If payment is to be made to any other person for providing repair or other services to the claimant and the same is not paid within 30 calendar days following the date of completion of such services and receipt of the billing statement, interest at the rate of 18% per annum shall be payable on the amount agreed to between the claimant and the insurer from the date of receipt of the billing statement.

25. K.S.A. 40-2407 states, in pertinent parts:

(a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commission shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period.

26. K.S.A. 40-276 states:

As used in this act: "Policy of automobile liability insurance" means a policy insuring against the liability of the insured for the death, disability or damages of another and against loss or damage to the property of another, arising from the use of an automobile that is issued to cover the following types of automobiles owned by an individual or by husband and wife, including automobiles hired under a long term contract and written on a specified car basis:

- (a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;
- (b) Any other four-wheel motor vehicle with a load capacity of one thousand five hundred (1,500) pounds or less which is not used in the occupation, profession or business of the named insured, other than farming: *Provided*, That the term "policy of automobile liability insurance" shall not include policies of automobile liability insurance (1) issued through the Kansas automobile assigned risk plan, (2) insuring more than four automobiles, nor (3) insuring the automobile hazard of garages, automobile sales agencies, repair shops, service stations or public parking places.

27. K.S.A. 40-277

No insurance company shall issue a policy of automobile liability insurance in this state unless the cancellation condition of the policy or endorsement thereon includes the following limitations pertaining to cancellation by the insurance company:

After this policy has been in effect for 60 days, or if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel the insurance afforded under (here insert the appropriate coverage references) solely because of age or unless

- 1. The named insured fails to discharge when due any obligations in connection with the payment of premium for this policy or any installment thereof whether payable directly or under any premium finance plan; or
- 2. the insurance was obtained through fraudulent misrepresentation; or
- 3. the insured violates any of the terms and conditions of the policy; or
- 4. the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,
 - (a) has had such person's driver's license suspended or revoked during the policy period, or

(b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to such person's ability to operate a motor vehicle, or

(c) is or has been convicted during the 36 months immediately preceding the effective date of the policy or during the policy period, for:

(1) Any felony, or

(2) criminal negligence, resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or

(3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, or

(4) leaving the scene of an accident without stopping to report, or

(5) theft of a motor vehicle, or

(6) making false statements in an application for a driver's license, or

(7) a third moving violation, committed within a period of 18 months, of (i) any regulation limiting the speed of motor vehicles, (ii) any of the provisions in the motor vehicle laws of any state, the violation of which constitutes a misdemeanor or traffic infraction, or (iii) any ordinance traffic infraction, or ordinance which prohibits the same acts as a misdemeanor statute of the uniform act regulating traffic on highways, whether or not the violations were repetitious of the same offense or were different offenses.

28. K.S.A. 40-278 states:

When a policy of automobile liability insurance as defined in K.S.A. 40-276 is canceled, or nonrenewed other than for nonpayment of premium by an insurance company, such insurer shall notify the named insured of his possible eligibility for such coverage through the Kansas automobile insurance plan. Such notice shall accompany or be included in the notice of cancellation, or nonrenewal, given by the insurer and shall state that such notice of availability of the Kansas automobile insurance plan is given pursuant to the provisions of this act.

29. K.S.A. 40-953 provides, in pertinent parts:

Rates shall not be excessive, inadequate or unfairly discriminatory, nor shall an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a monopoly.

...

One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expenses factors or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, mass marketed plan or blanket policy.

30. K.S.A. 40-954 states, in pertinent parts:

...

(d) Rates may be modified for individual risks, upon written application of the insured, stating the insured's reasons therefore, filed with and not disapproved by the commissioner within 10 days after filings.

...

(g) Once it has been filed, use of any rating plan shall be mandatory and such plan shall be applied uniformly for eligible risks in a manner that is not unfairly discriminatory.

31. K.S.A. 40-955 states, in pertinent parts:

(a) Every insurer shall file with the commissioner. . . every manual of classifications, rules and rates every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings.

...

- (e) No insurer shall make or issue a contract or policy except in accordance with filings which have been filed or approved for such insurer as provided in this act.

32. K.S.A. 40-3110 states, in pertinent parts:

- (a) Except for benefits payable under any workmen's compensation law, . . . personal injury protection benefits due from an insurer or self-insurer under this act shall be primary and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued in compliance with this act. . . .
- (b) Personal injury protection benefits payable under this act shall be overdue if not paid within thirty (30) days after the insurer or self-insurer is furnished written notice of the fact of a covered loss and of the amount of same. . . . If such written notice is not furnished as to the entire claim, any partial amounts supported by written notice is overdue if not paid within thirty (30) days after such written notice is furnished. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within thirty (30) days after such written notice is so furnished. . . . All overdue payments shall bear simple interest at the rate of eighteen per-cent (18%) per annum.

33. K.A.R. 40-1-34 (eff. July 10, 1989) states:

40-1-34. Unfair claims settlement practices.

National association of insurance commissioners' unfair claims settlement practices model regulation, June 1976 edition, is hereby adopted by reference, subject to the following exceptions:

- (a) Section 1 is not adopted;
- (b) the first sentence of section 2 is not adopted;
- (c) section 8 is hereby amended by the addition of the following subsection:

"(g) An insurer shall not attempt to settle a loss with a first party claimant on the basis of a cash settlement which is less than the amount the insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured."
- (d) Subsection (h) of section 9 is hereby amended to read as follows:
"Insurers shall include consideration of applicable taxes, license fees, and

other fees incident to transfer of evidence of ownership in third party automobile total losses and shall have sufficient documentation relative to how the settlement was obtained in the claim file. A measure of damages shall be applied which will compensate third party claimants for the reasonable loss sustained as the proximate result of the insured's negligence."

34. The Unfair Claims Settlement Practices Model Regulation requires:

Section 4. File and Record Documentation

The insurer's claim files shall be subject to examination by the (Commissioner) or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

35. The Unfair Claims Settlement Practices Model Regulation requires:

Section 5. Misrepresentation of Policy Provisions

A. No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

36. The Unfair Claims Settlement Practices Model Regulation also requires:

Section 8. Standards for Prompt, Fair and Equitable Settlements
Applicable to All Insurers

(a) Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

(b) If a claim is denied for reasons other than those described in paragraph (a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.

(c) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five days from the date of the initial notification and every forty-five days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.

(d) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(e) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty days and to third party claimants sixty days before the date on which such time limit may expire.

(f) No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(g) An insurer shall not attempt to settle a loss with a first party claimant on the basis of a cash settlement which is less than the amount the insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.

37. The Unfair Claims Settlement Practices Model Regulation further requires:

Section 9. Standards for Prompt, Fair and Equitable Settlements
Applicable to Automobile Insurance

(a) When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(1) The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all

applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

(2) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by

(A) The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area.

(B) One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area.

(3) When a first party automobile total loss is settled on a basis which deviates from *the methods described in subsections (a)(1) and (a)(2) of this section*, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

(b) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

(c) Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

(d) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

(e) If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.

(f) When the amount claimed is reduced because of betterment or depreciation all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(f) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

38. K.A.R. 40-3-15 states:

Fire and casualty insurance contracts; cancellation at option of insurer; notice required.

(a) Each policy or contract, that is issued by fire or casualty insurers within the state of Kansas, and that provides for cancellation at the option of the insurer, shall contain a provision within the policy, or at the discretion of the commissioner, within an amending rider, that the insured will be notified in writing at least 30 days in advance of the effective date of cancellation.

(b) Each fire or casualty insurer that cancels a policy or insurance contract in the state of Kansas, shall provide written notice of cancellation to the insured. Each cancellation notice shall specify the cancellation date and shall state in clear language that the policy is being cancelled. The following statement or one that is substantially the same shall be used: ``You are hereby notified that your policy number _____ is cancelled effective _____.”

This regulation shall not apply to:

(1) Health, accident or hospitalization policies issued by casualty companies;

(2) crop-hail policies or contracts; or

(3) policies or contracts cancelled as a result of non-payment of premium.

39. K.A.R. 40-3-18 states:

Each company writing insurance on private passenger automobiles in Kansas shall include, in filings submitted to this department, procedures that:

- (a) Obtain from the insured information necessary to permit the company to rate the risk in accordance with applicable filings; and
- (b) advise the insured of the proper classification in accordance with the company's applicable rate filings approved by the commissioner.

40. K.A.R. 40-3-23 states:

Fire and casualty insurance except accident and health; binder forms required to be filed.

Binders or other temporary contracts of insurance are subject to K.S.A. 40- 216. These forms shall be filed with and approved by the commissioner in accordance with applicable statutory provisions.

41. K.A.R. 40-3-25 states, in pertinent parts:

Each company issuing a fire and casualty insurance policy in this state with a premium rate that results from the insured's inability to obtain coverage in the normal market, shall include a statement on the application or policy form, signed by the applicant or named insured, that contains the following statement or one with similar wording:

- (a) I am unable to obtain

_____ (state kind)
insurance at normal rates and hereby request the issuance of this policy at rates in excess of normal rates.

- (b) I have been unable to procure similar insurance at normal rates although my risk has been submitted to at least three other insurance companies authorized to transact insurance business in Kansas.

- (c) (in the case of automobile liability insurance) I understand that

liability limits sufficient to meet the financial responsibility requirements of the state may be available through the Kansas automobile insurance plan. (The foregoing statement is not applicable when the policy is issued through the Kansas automobile insurance plan.)

...

42. K.A.R. 40-3-28 states:

Fire and casualty insurance; automobile liability policies; limits of liability.

When an insurance company effects a unilateral reduction in the limits of liability contained in a policy of automobile liability insurance as defined in K.S.A. 40-276, the action shall be deemed a cancellation of the policy and shall be subject to the provisions of K.S.A. 40-276, 40-277, 40-278, 40-279, and 40-280.

Except as otherwise provided by K.S.A. 40-447, 40-3110 and 44-512a, and amendments thereto, each insurance company, fraternal benefit society and any reciprocal or interinsurance exchange licensed to transact the business of insurance in this state which fails or refuses to pay any amount due under any contract of insurance within the time prescribed herein shall pay interest on the amount due. If payment is to be made to the claimant and the same is not paid within 30 calendar days after the amount of the payment is agreed to between the claimant and the insurer, interest at the rate of 18% per annum shall be payable from the date of such agreement. If payment is to be made to any other person for providing repair or other services to the claimant and the same is not paid within 30 calendar days following the date of completion of such services and receipt of the billing statement, interest at the rate of 18% per annum shall be payable on the amount agreed to between the claimant and the insurer from the date of receipt of the billing statement.

Conclusion

Based upon the Findings of Fact and Applicable Law enumerated in paragraphs #1 through #42 above,

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER OF INSURANCE:

- a. The Kansas Insurance Department's October 17, 2003, Report of Market Conduct Examination of Progressive Casualty Insurance Company; Progressive Classic Insurance Company; Progressive Northwestern Insurance Company; Progressive Northern Insurance Company and Progressive Halcyon Insurance Company is herein adopted in its entirety.
- b. Progressive's utilization of non-filed and unapproved driver point matrix factors and the Territorial UM/UIM components in the groups' underwriting practices violate K.S.A. 40-955. Pursuant to K.S.A. 40-2,125, Progressive shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Eight Thousand Three Hundred and 00/100 Dollars (\$8,300.00) for violations of K.S.A. 40-955.
- c. Pursuant to K.S.A. 40-955, Progressive shall re-file the group's deviations for migrating from their "D" market structure to their current "C" market structure with the Kansas Insurance Department. Progressive has complied with this requirement on October 17, 2003.
- d. Progressive shall re-file the component for the Territorial Med-Pay factors regarding the group's underwriting practices with the Kansas

Insurance Department. Progressive has complied with this requirement on October 17, 2003.

- e. Within 30 days from this order, Progressive shall file a plan with the Kansas Insurance Department setting forth the group's restitution procedure assuring refunds to the policyholders who were charged with an incorrect premium rate as the result of Progressive's utilization of unfiled rating of vehicle surcharge factors.
- f. Progressive's deviation from the group's filed rate plan for the renewal classes violates K.S.A. 40-954. Pursuant to K.S.A. 40-2,125, the group shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Six Thousand 00/100 Dollars (\$6,000.00) for violations of K.S.A. 40-954.
- g. Pursuant to K.S.A. 40-955, Progressive is required to re-file the group's rating rules P16 and P17 with the Kansas Insurance Department. Progressive has complied with this requirement by re-filing the said rules on October 1, 2003. The re-filed rules have been approved by KID and became effective on December 1, 2003.
- h. Progressive's failure to include the signed statements in the group's new auto policies with a premium rate resulting from the insured inability to obtain coverage in the normal market violates K.A.R. 40-3-25. Pursuant to K.S.A. 40-2,125, Progressive shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day

from the date of this order, in the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) for violations of K.A.R. 40-3-25.

- i. Pursuant to K.A.R. 40-3-25, Progressive shall re-file an amended application for each of the individuals who cannot secure insurance coverage in a normal market within six month from the date of this order.
- j. Pursuant to K.A.R. 40-30-18, Progressive shall re-file Form 1585ks (06/01) to reflect the correct application of the rating of Rule P16 and P17 with the Kansas Insurance Department within 30 days from the date of this order.
- k. Progressive's withholding refunds of un-earned premium for 30 days until the related finalization of cancellation process violates K.S.A. 40-2,121. Pursuant to K.S.A. 40-2,125, Progressive shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Three Thousand and 00/100 Dollars (\$3,000.00) for violations of K.S.A. 40-276(a), K.S.A. 40-277, K.S.A. 40-278, K.S.A. 40-2,111, K.S.A. 40-2,112, K.S.A. 40-2,120, K.S.A. 2,121, K.S.A. 40-2,122, K.S.A. 60-206, K.A.R. 40-3-23, K.A.R. 40-3-28 and K.A.R. 40-3-15.
- l. Pursuant to K.S.A. 40-955, Progressive shall report to the Kansas Insurance Department regarding the group's internal operational procedure ensuring that the cancellation of an auto policy upon either the insured's request or for non-payment is in conformity with the group's

filed rating rules and the \$50 Cancellation Fee is appropriately applied.

Progressive has complied with this requirement.

- m. Progressive shall file a plan with the Kansas Insurance Department to set forth procedures ensuring the proper refund of any unearned premium with the notice of an adverse underwriting decision within 30 days from the date of this order.
- n. Progressive shall take action within 30 days from the date of this order to amend the group's generic statement regarding the "Low Down Payment on the reverse side of the declaration page to ensure clear understanding of those affected.
- o. Progressive's failure to secure a local market survey in determining the cash value of a vehicle that was deemed to be a total loss violate K.A.R. 40-1-34, Sec. 9(a).

IT IS SO ORDERED THIS 16th DAY OF JUNE 2004, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance
BY:

/s/ John W. Campbell
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order on this 16th day of June, 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Ms Stacey Gardiner, Compliance Analyst
Progressive Insurance Group
6085 Parkland Blvd
Mayfield Heights, OH 44124

_s/ John W. Campbell_____
John W. Campbell, General Counsel

NOTICE OF RIGHTS

Progressive Casualty Insurance Company; Progressive Classic Insurance Company; Progressive Northwestern Insurance Company; Progressive Northern Insurance Company and Progressive Halcyon Insurance Company (“Progressive”) are entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If Progressive desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Progressive Group requests a hearing, the Kansas Insurance Department will notify the companies of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. §77-613. In the event that Progressive files a petition for judicial review, pursuant to K.S.A. §77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Notice of Rights on this 16th day of June, 2004, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Ms Stacey Gardiner, Compliance Analyst
Progressive Insurance Group
6085 Parkland Blvd
Mayfield Heights, OH 44124

/s/ John W. Campell
John W. Campbell, General Counsel