BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS

In the Matter of	)	
Benchmark Insurance Company	)	Docket No. 3425-MC

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 June 30, 2003 Report of Market Conduct Examination of Benchmark Insurance Company (attached herein as Attachment A) by incorporating the same in its entirety with specific findings stated as follows:

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 (hereinafter "KID") completed a market conduct examination of the Benchmark Insurance Company (hereinafter "Benchmark" or "the Company") in June 2003.
3. On or about September 10, 2004, the examiner-in-charge provided Benchmark with a draft of the written Report of Market Conduct Examination with notice advising the company regarding its opportunity to prepare and submit to KID written comments, additions, or acceptance with respect to any and all matters contained in the report by October 15, 2004.
4. Benchmark responded with written comments regarding the draft report on October 11, 2004. (*See* Attachment B).

5. The Kansas Commissioner of Insurance has since fully reviewed said Kansas report.
6. Benchmark's Kansas Manual for Non-standard Automobile - New Business, ¶4, p.2, filed with the KID effective 12/1/02, states: "[a] policy is issued promptly based on the premium submitted and surcharges determined from the application and the motor vehicle record. If additional accidents and/or violations results from the MVR or other variables cause the premium to differ from the quoted premium, the policy term will be adjusted to the exact number of dates covered by the premium submitted." (*See,* Attachment A, pp. 17-18).
7. Benchmark calculates its non-standard automobile new business policy premiums as a percentage basis of 30-day rate for the risk insured, *i.e.* not calculated on a per day basis but rather on a ratio to the 30-day term. *(Id.)*
8. In 2 out of the 44 randomly selected files regarding cancellation for nonpayment of premium, Benchmark received premiums from its managing agent but cancelled for non-payment after premium payment checks written by the insured to the company were tendered but subsequently returned from the banks on the ground of non-sufficient funds.[1]

[1] Renewal payments were applied to NSFs in prior terms prior non-renewal: BFP 134424 and BFP 136750

9. In four incidents involving paid auto claims, Benchmark failed to respond to claim correspondence in a timely manner as required by the pertinent Kansas insurance regulations.[2]

10. In eleven incidents involving paid auto claims, Benchmark failed to properly handle claims in accordance with policy provisions and applicable Kansas insurance statutes, rules and regulations.[3]

Applicable Law

11. K.S.A. 40-2403 states:

> No person shall engage in this state in any trade practice which is defined in this act as, or determined pursuant to K.S.A. 40-2406 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

12. K.S.A. 40-2404 states, in pertinent part:

> The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
>
> . . .
>
> (1) *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

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[2] Paid Claims:
LFN0016394, LFN0014923, LFN0017455, LFN0017872, violations of K.A.R. 40-l-34(6)(c).

[3] Paid Claims:
BMK C01574, violation *of* K.A.R. 40-l-34(8)(e).
LFN 0017357, LFN 0017080, BMK C01146, LFN 0015651, LFN 0014856, violations of K.A.R. 40-1-3-4(9)(a)(1).
BMK C01670, violation of K.A.R. 40-1-34(9)(a)(2), (9)(j)(2).
LFN 0016646 and LFN 0014923, violations of K.A.R. 40-1-34(9)(a)(2)(A) & (B)
LFN 0017273, LFN 0017872, violations of K.S.A. 40-3110.

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

. . .

(10) *Failure to maintain complaint handling procedures.* Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last examination under K.S.A. 40-222, and amendments thereto, but no such records shall be required for complaints received prior to the effective date of this act. The record shall indicate the total number of complaints their classification byline of insurance, the nature of each complaint, the disposition of the complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" means any written communication primarily expressing a grievance related to the acts and practices set out in this section. K.S.A. 40-2404(10)

13. K.S.A. 40-2405 states:

The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by K.S.A. 40-2403.

14. K.S.A. 40-2406 states:

(a) Whenever the commissioner has reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, whether or not defined in K.S.A. 40-2404 and amendments thereto, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such person a statement of the charges in that respect and conduct a hearing thereon in accordance with the provision of the Kansas administrative procedure act.

(b) If, after such hearing, the commissioner determines that the person charged has engaged in any unfair method of competition or any unfair or deceptive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against such person or the company or companies represented by such person as an agent, broker or adjuster who is a participating party to the matters giving rise to the hearing.

As used in this subsection, “costs” shall include witness fees, mileage allowances. any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing

15. 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 reasonably 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;

16. 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.

. . .

(f) 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.

17. K.S.A. 40-3118 states, in pertinent part:

(a) No motor vehicle shall be registered or reregistered in this state unless the owner, at the time of registration, has in effect a policy of motor vehicle liability insurance covering such motor vehicle, as provided in this act . . . . As used in this section, the term “financial security” means such policy.

(b) Except as otherwise provided in K.S.A. 40-276, 40-276a and 40-277, and amendments thereto, and except for termination of insurance resulting from nonpayment of premium or upon the request for cancellation by the insured, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by cancellation or failure to renew by the insurer until at least 30 days after mailing a notice of termination, by certified or registered mail or United States post office certificate of mailing, to the named insured at the latest address filed with the insurer by or on behalf of the insured. Time of the effective date and hour of termination stated in the notice shall become the end of the policy period. Every such notice of termination sent to the insured for any cause whatsoever shall include on the face of the notice a statement that financial security for every motor vehicle covered by the policy is required to be maintained continuously throughout the registration period, that the operation of any such motor vehicle without maintaining continuous financial security therefore is a class B misdemeanor and shall be subject to a fine of not less than $300 and not more than $1,000 and that the registration for any such motor vehicle for which continuous financial security is not provided is subject to suspension and the driver's license of the owner thereof is subject to suspension.

18. K.S.A. 40-276a states, in pertinent part:

(a) Any insurance company that denies renewal of an automobile liability insurance policy in this state shall give at least 30 days written notice to the named insured, at his last known address, or cause such notice to be given by a licensed agent of its intention not to renew such policy. No insurance company shall deny the renewal of an automobile liability insurance policy except in one or more of the following circumstances or as permitted in subsection (b):

(1) When such insurance company is required or has been permitted by the commissioner of insurance, in writing, to reduce its premium volume in order to preserve the financial integrity of such insurer;

(2) when such insurance company ceases to transact such business in this state;

(3) when such insurance company is able to show competent medical evidence that the insured has a physical or mental disablement that impairs his ability to drive in a safe and reasonable manner;

(4) when unfavorable underwriting factors, pertinent to the risk, are existent, and of a substantial nature, which could not have reasonably been ascertained by the company at the initial issuance of the policy or the last renewal thereof;

(5) when the policy has been continuously in effect for a period of five years. Such five-year period shall begin at the first policy anniversary date following the effective date of the policy, except that if such policy is renewed or continued in force after the expiration of such period or any subsequent five-year period, the provisions of this subsection shall apply in any such subsequent period; or

(6) when any of the reasons specified as reasons for cancellation in K.S.A. 40-277 are existent, except that (A) when failure to renew is based upon termination of agency contract, obligation to renew will be satisfied if the insurer has manifested its willingness to renew, and (B) obligation to renew is terminated on the effective date of any other automobile liability insurance procured by the named insured with respect to any automobile designated in both policies.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal. Nothing in this section shall require an insurance company to renew an automobile liability insurance policy if such renewal would be contrary to restrictions of membership in the company which are contained in the articles of incorporation or the bylaws of such company.

19. 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 drivers 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.

20. 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.

21. 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.

22. K.A.R. 40-1-34 states:

> The national association of insurance commissioners' "unfair claims settlement practices model regulation,'' January 1981 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) In section 2, the phrase "Section 4(9) of the Act" is replaced with the phrase "K.S.A. 40-2404, and amendments thereto."
> (d) In section *3,* the phrase "Section 2 of the Unfair Trade Practice Act" is replaced with the phrase "K.S.A. 40-2404, and amendments thereto."
>
> (e) Section 8(d) is not adopted.
>
> (f) Section 8 is amended by the addition of the following subsection: "(e) 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."
>
> (g) Section 8 is further amended by the addition of the following subsection: "(f) If a claim is denied for reasons other than those described in section 8(a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer."
>
> (h) Section 8 is further amended by the addition of the following subsection: "(g) 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."
>
> (i) Section 8 is further amended by the addition of the following subsection: "(h) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney when the claimant's rights may be affected by a statute of limitations or a policy or a 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.
>
> (j) Section 8 is further amended by the addition of the following subsection: ''(i) 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."

(k) Section 9(a) is amended by deleting the phrase "first party."

(1) in section 9(a), subsection (1) is amended by replacing the word "insured'' with the word "claimant."

(m) In section 9(a). subsection (2) is not adopted by reference and is replaced with the following language: "The insurer may elect to pay 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 shall be determined by any source or method for determining statistically valid fair market value that meets both of the following criteria:"

"(A) The source or method's database, including nationally recognized automobile evaluation publications, shall provide values for at least eighty-five percent (85%) of all makes and models of private passenger vehicles for the last fifteen (15) model years taking into account the values for all major options for such vehicles; and''

"(B) the source, method, or publication shall provide fair market values for a comparable automobile based on current data available for the local market area as defined in subsection (j)(2)."

(n) In section 9(a), subsection (3) is not adopted by reference and is replaced with the following language:

''When an automobile total loss is settled on a basis which deviates from the methods and criteria described in subsections (a)(l) and (a)(2)(A) and (B) of this section, the deviation must be supported by documentation giving the particulars of the automobile condition and the basis for the deviation. Any deviations 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 claimant.''

(o) Section 9 is amended by the addition of the following subsection: ''(h) 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.''

(p) Section 9 is further amended by the addition of the following subsection: "(i) A claimant has the right of recourse if the claimant e insurer, within thirty (30) days after the receipt of the claim draft, that claimant is unable to purchase a comparable automobile for the amount of the claim draft. Upon receipt of this notice, the insurer shall reopen its claim file within five (5) business days, and one of the following actions shall apply:"

"(1) the insurer shall either pay the claimant the difference between the market value as determined by the insurer and the cost of the comparable vehicle of like kind and quality which the claimant has located, or negotiate and effect the purchase of this vehicle for the claimant; or"

"(2) the insurer may elect to offer a replacement in accordance with provisions of subsection 9(a)(l).''

(q) Section 9 is further amended by the addition of the following subsection: "(j) As used in this regulation, the following terms shall have the following meanings:"

"(1) comparable automobile means a vehicle of the same make, model, year, style and condition, including all major options of the claimant vehicle;"

"(2) local market area means the fifty (50) mile area surrounding the place where the claimant vehicle was principally garaged.''

23. The Unfair Claims Settlement practices Model Regulation states:

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.

24. The Unfair Claims Settlement Practices Model Regulation states:

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.

(b) No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(c) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

(d) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.

(e) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(f) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

25. The Unfair Claim Settlement Practice Model Regulation states:

Section 6. Failure to Acknowledge Pertinent Communications

(a) Every insurer, upon receiving notification of a claim shall, within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(b) Every insurer, upon receipt of any inquiry from the insurance department respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry.

(c) An appropriate reply shall he made within ten working days on all other pertinent communications from a claimant which

reasonably suggest that a response is expected.

(d) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within ten working days of notification of a claim shall constitute compliance with subsection (a) of this section.

26. The Unfair Claim Settlement Practice Model Regulation states:

Section 7. Standards for Prompt Investigation of Claims

Every insurer shall complete investigation of a claim within thirty days after notification of claim, unless such investigation cannot reasonably be completed within such time.

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

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

(a) Within fifteen 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) Where there is a reasonable basis supported by specific information available for review by the insurance regulatory authority that the first party claimant has fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of this subsection. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(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) Section 3(d) is not adopted.

(e) 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.

(f) If a claim is denied for reasons other than those described in section 8(a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.

(g) 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.

(h) 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 a 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.

(i) No insurer shall make statements which indicate 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.

28. 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 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 claimant, 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 he documented in the claim file.

(2) The insurer may elect to pay 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 shall be determined by any source or method for determining statistically valid fair market value that meets both of the following criteria:

(A) The source or methods database, including nationally recognized automobile evaluation publications, shall provide values for at least eighty-five percent (85%) of all makes and models of private passenger vehicles for the last fifteen (15) model years taking into account the values for all major options for such vehicles; and

(B) The source, method, or pub1ication shall provide fair market values for a comparable automobile based on current data available for the local market area as defined in subsection (j)(2).

(3) When an automobile total loss is settled on a basis which deviates from the methods and criteria described in subsection (a)(l) and (a)(2)(A) and (B) of this section, the deviation must be supported by documentation giving the particulars of the automobile condition and the basis for the deviation. Any deviations from such cost, including deductions 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 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.

(g) 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.

(h) 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.

(i) A claimant has the right of recourse if the claimant notifies the insurer, within thirty (30) days after the receipt of the claim draft, that claimant is unable to purchase a comparable automobile for the amount of the claim draft. Upon receipt of this notice, the insurer shall reopen its claim file within five (5) business days, and one of the following actions shall apply.

(1) the Insurer shall either pay the claimant the difference between the market value as determined by the insurer and the cost of the comparable vehicle of like kind and quality which the claimant has located, or negotiate and effect the purchase price of this vehicle for the claimant; or

(2) the insurer may elect to offer a replacement in accordance with provisions of subsection 9(a)(l).

(j) As used in this regulation the following terms shall have the following meanings:

(1) comparable automobile means a vehicle of the same make, model, year, style and condition, including all major options of the claimant vehicle;

(2) local market area means the fifty (50) mile area surrounding the place where the claimant vehicle was principally garaged.

Conclusion

Based upon the Findings of Fact and Applicable Law enumerated in paragraphs #1 through #28 above,

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

a. The Kansas Insurance Department's June 30, 2003, Report of Market Conduct Examination of Benchmark Insurance Company is herein adopted in its entirety.

b. Benchmark's utilization of non-filed and unapproved method of calculation for its non-standard automobile new business policy premiums on percentage basis of 30-day rate for the risk insured deviates from the company's prior rate filing with KID on per day basis calculation of the same. Thus, it is a violation of K.S.A. 40-955. Pursuant to K.S.A. 40-955,

Benchmark is herein directed to re-file its rating plan for its non-standard automobile new business reflecting its actual method of premium calculation no later than 30 days from the date of this order.

c. Benchmark's *ab initio* non-renewal of 2 policies without due notices after issuing proof of insurance to the policyholders for non-sufficient funds of premium payments constitute misrepresentations of the conditions or terms of the involving insurance policies. Thus, such practice is an unfair method of competition and deceptive act in violation of K.S.A. 40-2403, 40-2404, 40-276a, and K.S.A. 40-3118. Pursuant to K.S.A. 40-2,215, Benchmark 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 00/100 Dollars ($2,000.00) for violations of above- listed statutes.

d. Benchmark's failure to follow-up promptly upon receiving additional documentation during its claim settlement process violates K.S.A. 40-2404 and K.A.R. 40-1-34. Pursuant to K.S.A. 40-2,215. Benchmark 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 One Thousand 00/100 Dollars ($1,000.00) for violations of above-stated statutes and regulations.

e. Benchmark's failure to properly handle claims in accordance with policy provisions and applicable statutes, rules and regulations violates K.A.R 40-1-34, Sections 5, 8 and 9; K.S.A. 40-3110 and 40-2,126. Pursuant to K.S.A. 40-2,125, Benchmark 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 Seven Thousand 00/100 Dollars ($7,000.00) for violations of the above-stated statutes and regulations.

IT IS SO ORDERED THIS ___19th ___DAY OF __JANUARY__, 2006, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF 1NSAS.

_/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 _19th_ day of __January__, 2006, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

J. Franklin Hummer
Attorney at Law
P.O. Box 2014
Shawnee Mission, KS 66201-1014
Counsel for the Benchmark Insurance Company

_/s/ Hsingkan Chiang_____
Hsingkan Chiang, Staff Attorney

NOTICE OF RIGHTS

Benchmark Insurance Company ("Benchmark") is entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If Benchmark 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 Benchmark requests a hearing, the Kansas Insurance Department will notify the company 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 Benchmark 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 _19th_ day of __January__, 2006, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

J. Franklin Hummer
Attorney at Law
P.O. Box 2014
Shawnee Mission, KS 66201-1014
Counsel for the Benchmark Insurance Company

_/s/ Hsingkan Chiang_____
Hsingkan Chiang, Staff Attorney