

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

<b>In the Matter of the Kansas</b>	)	
<b>Nonresident License of PROGRESSIVE</b>	)	<b>Docket No. 4228-SO</b>
<b>NORTHWESTERN INSURANCE COMPANY</b>	)	
<b>and PROGRESSIVE DIRECT INSURANCE</b>	)	
<b>COMPANY</b>	)	

**SUMMARY ORDER  
(Pursuant to K.S.A. 2009 Supp. 40-4909 and K.S.A. 2009 Supp. 77-537)**

Pursuant to authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. 2009 Supp. 40-4909, the Commissioner hereby finds that Progressive Northwestern Insurance Company (NAIC #42919) and Progressive Direct Insurance Company (NAIC #16322) (collectively “Respondent” or “Progressive”) has failed to amend its forms filing for motorcycles to comply with the definition of relative contained in the Kansas Automobile Injury Reparations Act (“KAIRA”) at K.S.A. 40-3103(s) and, subject to the Respondent’s right to request a hearing pursuant to K.S.A. 40-955(f)(1)(C), orders that the definition of relative in Respondent’s forms filings become ineffective by way of Summary Order as provided by K.S.A. 2009 Supp. 77-537.

This Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made pursuant to K.S.A. 77-542 and K.S.A. 40-955(f)(1)(C).

**Findings of Fact**

The Commissioner has been shown the following facts:

1. On August 31, 2009, Progressive submitted motorcycle forms filings to KID, who inadvertently approved the filings on September 21, 2009. KID

and Progressive have communicated about various provisions in the filings and all changes, except those at issue in this proceeding, have been filed and approved.

2. Respondent revised the forms filings and as of July 9, 2010, Respondent defined relative as follows: “Relative means a person residing in the same household as you, and related to you by blood, marriage, or adoption, and includes a ward, stepchild, or foster child. Your children temporarily away from home will qualify as a relative if they intend to continue to reside in your household.”

3. There remains an outstanding issue about the definition of relative (General Definitions, Number 10). On July 22, 2010, KID sent a letter to Respondent alleging that Respondent’s definition of relative conflicted with the KAIRA definition found at K.S. A. 40-3103(s): “ ‘Relative residing in the same household’ means a relative of any degree by blood, marriage or adoption, who usually makes such person’s home in the same family unit, whether or not temporarily living elsewhere.” The statutory definition could, therefore, include some persons who would be excluded from the Respondent’s definition of relative.

4. In a letter dated July 22, 2010, KID offered the Respondent another opportunity to present facts or arguments if it disagreed with any of the facts or legal conclusions set forth in the letter and contained in this Order. KID has not

received any information or argument nor any other response to its letter to Respondent.

**Applicable Law**

8. K.S.A. 40-3103(s) in KAIRA provides:

(s) "Relative residing in the same household" means a relative of any degree by blood, marriage or adoption, who usually makes such person's home in the same family unit, whether or not temporarily living elsewhere.

9. K.S.A. 40-3107 in KAIRA provides:

Every policy of motor vehicle liability insurance issued by an insurer to an owner residing in this state shall . . . .

(f) include personal injury protection benefits to the named insured, relatives residing in the same household . . . .

(g) notwithstanding any omitted or inconsistent language, any contract of insurance which an insurer represents as or which purports to be a motor vehicle liability insurance policy meeting the requirements of this act shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act . . . .

10. K.S.A. 40-955(f)(1)(C) provides:

(C) If at any time after a filing becomes effective, the commissioner finds a filing does not comply with this act, the commissioner shall after a hearing held on not less than 10 days' written notice to every insurer and rating organization that

made this filing issue an order specifying in what respects the filing failed to comply with the act, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. Copies of the order shall be sent to such insurer or rating organization.

11. *Ohio Casualty Company v. State Farm Automobile Insurance Company*, 601 F.Supp. 345 (1984) (citing *DeWitt v. Young*, 229 Kan. 474 (1981), *Hillhouse v. Farmers Insurance Co.*, 226 Kan. 68 (1979) and *Simpson v. Farmers Insurance Co.*, 225 Kan. 508 (1979)) holds that Kansas law treats provisions which dilute KAIRA requirements of insurance coverage as unenforceable. The Court concluded that notwithstanding any inconsistent language in the policy, policies shall be construed to meet the mandatory requirements of KAIRA.

### **Conclusions of Law**

12. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

13. Based on the facts and circumstances set forth herein, Progressive has failed to revise its forms filings to provide for the definition of relative required by KAIRA.

### **Policy Reasons for Decision**

14. The Commissioner determines that it is in the public interest to protect consumers from companies that are not in compliance with statutory

requirements enacted to protect the public. Specifically, a company should not be able to define relative in a way that is more narrow than the definition provided in KAIRA.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF  
INSURANCE THAT:**

1. Subject to its right to request a hearing, Progressive's definition of relative in its forms filings will become ineffective and replaced with the applicable statutory definition upon this Order becoming effective as a final order.
2. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

**Notice of Right to Hearing or Appeal**

You are entitled to a hearing pursuant to K.S.A. 2009 Supp. 77-537, the Kansas Administrative Procedure Act and K.S.A. 40-955. If you desire a hearing, you 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 you request a hearing, the Kansas Insurance Department will notify you 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 you file 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.

**IT IS SO ORDERED THIS   28th   DAY OF OCTOBER, 2010, 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

Approved and Submitted by:

  /s/ John Wine    
John Wine  
Staff Attorney

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Summary Order was served by placing the same in the United States Mail, first class postage prepared, on this \_\_28th\_\_ day of October, 2010, addressed to the following:

Mary B. Sullivan  
Progressive Direct Insurance Company  
Progressive Northwestern Insurance Company  
6300 Wilson Mills Road, N72  
Mayfield Village, OH 44143

/s/ John Wine  
John Wine  
Staff Attorney