



Consent Order

1300 SW Arrowhead Rd., Topeka, KS 66604
785-296-3071 – <https://insurance.kansas.gov>

In the Matter of)
PROGRESSIVE DIRECT)
INSURANCE COMPANY,)
NAIC # 16322)

and)

PROGRESSIVE)
NORTHWESTERN)
INSURANCE COMPANY,)
NAIC # 42919)

Docket No. 96708

CONSENT AGREEMENT AND FINAL ORDER

Pursuant to K.S.A. 40-103, K.S.A. 40-2401 *et seq.*, K.S.A. 40-2,125 and in accordance with K.S.A. 77-501 *et seq.*, the Commissioner of Insurance has the general supervision, control and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity or suretyship in this state and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto. If any person has engaged in 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 such remedies as payment of monetary penalties, suspension or revocation of licenses or certificates, or issuing cease and desist order or such other affirmative action to carry out the purposes of the violated provision. The companies named above are currently licensed as insurance companies in the State of Kansas.

Now, in lieu of further civil administrative proceedings and to resolve this matter, the Commissioner and the agents listed below hereby agree to the following:

1. Progressive Direct Insurance Company and Progressive Northwestern Insurance Company (together “Progressive”) named above have been advised that, pursuant to K.S.A. 77-537 and K.S.A. 77-542, a company has a right to a hearing before the Commissioner may impose any sanctions or penalties; at a hearing, the company would be entitled to appear in person, to be represented by an attorney or other representative who is permitted to practice before the agency, to present its position, arguments or contentions in writing and to present evidence and examine witnesses appearing for and against it. Progressive hereby waives all such rights.
2. Progressive hereby waives any and all rights it may have under the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* to seek administrative or judicial review of this Consent Order.

3. Progressive consents to the jurisdiction of the Commissioner and the Kansas Insurance Department ("Department") to determine the issues set forth herein. Progressive expressly waives any prerequisites to jurisdiction that may exist.
4. Progressive neither admits nor denies the following statement of facts, but acknowledges that the Commissioner has sufficient evidence to introduce at an administrative hearing that the following facts occurred or are occurring:
 - A. Progressive Direct Insurance Company ("Progressive Direct") is domiciled in Ohio and has been authorized in Kansas since November 25, 1997.
 - B. Progressive Northwestern Insurance Company ("Progressive Northwestern") is domiciled in Ohio and has been authorized in Kansas since March 08, 1994.
 - C. In the first quarter of 2022, during routine complaint volume analysis, the Department's chief examiner identified that Progressive's complaint volumes had significantly increased during 2021. The severity of this increase warranted a more substantial review of the company.
 - D. Progressive explained that customer claim experiences may have suffered due to staffing issues resulting from the coronavirus pandemic.
 - E. On May 13, 2021, a claim was opened with Progressive Northwestern regarding damages done to a third party by one of Progressive Northwestern's insureds.
 - F. By May 18, 2021, Progressive Northwestern had made a liability determination and recorded that the third-party claimant was self-insured. The claim was then transferred to the subrogation department on May 20, 2021.
 - G. Progressive maintains that they could not process the claim until they receive a demand from the claimant; however, there is no record of Progressive communicating this requirement to the claimant. To this end, Progressive set a notification system to review in three months.
 - H. No further action was taken until August 18, 2021, when the company took note that they had not received a demand from the claimant and reset the notification system to review in a month.
 - I. On August 27, 2021, the claimant, via counsel, submitted a demand.
 - J. Despite receiving the demand on August 27, 2021, and claim review being set for September 18, no action was taken on this claim until October 6, 2021, when the claimant called for a status update.
 - K. This claim was not expedited until November 12, 2021 and settled the same day.
 - L. Throughout 2021, and continuing into 2022, Progressive Northwestern and Progressive Direct had other complaints regarding undue delays and failure to acknowledge communications within an appropriate time frame.
5. Progressive neither admits nor denies the following statutes were violated, but acknowledges the applicability of the same:


- K.S.A. 40-2404 – requiring insurers to engage in good faith settlement negotiations and effectuate prompt settlement once liability has become reasonably clear.
 - K.A.R. 40-1-34(4) – requiring insurers to maintain sufficient notes on communications such that those communications can be reconstructed.
 - K.A.R. 40-1-34(6)(c) – requiring insurers provide an appropriate reply be made within ten days on all pertinent communications which reasonably suggest that a response is expected.
 - K.A.R. 40-1-34(7) – requiring insurers to complete investigation of a claim within thirty days after notification of claim, unless such investigation cannot reasonably be completed within such time.
 - K.A.R. 40-1-36(6)(d) – requiring insurers to provide necessary claim forms, instructions, and reasonable assistance so that claimants can comply with insurer’s reasonable requirements.
6. Progressive agrees to take affirmative action as specified below:
- The Progressive agrees to implement procedures to ensure compliance with the statutes cited in Paragraph 5 above.
7. In addition, the Progressive agrees to pay the monetary penalty listed below. Payment is due within thirty (30) days after the effective date of this Consent Order.
- Progressive Northwestern Monetary penalty: \$5,000.00
8. Progressive has read and understands this Consent Order. Progressive further understands that it has the right to retain counsel of its choice and have counsel review this Consent Order.
9. Progressive agrees that if it fails to comply with the terms of this Consent Order, the Commissioner may take action to gain compliance with the Consent Order including issuing ancillary orders and suspending the company’s license until it has complied.
10. Progressive waives any and all causes of action, claims or rights, known and unknown, which it may have against the Commissioner, the Department, and any employees, agents, consultants, contractors or officials of the Department, in their individual and official capacities, as a result of any acts or omissions on the part of such persons or firms.
11. Progressive agrees to be served a copy of this fully executed Consent Order electronically or by regular U.S. Mail.

12. Progressive acknowledges that this Consent Order may be published on the website of Kansas Insurance Department. The company understands and acknowledges that this Consent Order is a public document pursuant to the Kansas Open Records Act, K.S.A. 45-215 *et seq.*

The undersigned stipulates and agrees to the above findings, facts, and conclusions of law and waives their rights to an administrative hearing and judicial review of the Commissioner's Order.



Progressive Northwestern Insurance Company
NAIC: 42919
6300 Wilson Mills Rd
Mayfield Village, OH 44143



Progressive Direct Insurance Company
NAIC: 16322
6300 Wilson Mills Rd
Mayfield Village, OH 44143

ORDER

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. Progressive shall enact the guidance included in the confidential management letter and pay a monetary penalty of \$5,000.00.

2. The monetary penalty of \$5,000.00 shall be paid in full within 30 days of the effective date of this Order. Failure to pay will result in the issuance of such further action or orders as the Commissioner deems necessary.

3. This Order shall take effect when signed by all parties and the Commissioner or the Commissioner's designee and filed of record with the Kansas Insurance Department.

IT IS SO ORDERED THIS 7th DAY OF November 2022, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT
COMMISSIONER OF INSURANCE


BY: Charles E. Thomas II
Charles E. Thomas II
Attorney

Certificate of Service

The undersigned hereby certifies that she served the above and foregoing Consent Agreement and Final Order on this 7th day of November 2022, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Progressive Northwestern Insurance Company
Progressive Direct Insurance Company
Attn: Mark Niehaus & Scott Ziegler
6300 Wilson Mills Rd
Mayfield Village, OH 44143

And was provided via electronic mail to: Financial_Reporting@Progressive.com


Toni Garrard
Senior Administrative Specialist