

**IN THE DEPARTMENT OF COMMERCE AND INSURANCE
STATE OF MISSOURI**

In Re:)
)
PERMANENT GENERAL ASSURANCE CORPORATION (NAIC #37648)) **Market Conduct Examination**
) **No. 1712-83-TGT**
) **NAIC MATS NO. MO-HICKSS1-89**
)
) **Market Conduct Investigation**
) **No. 291653**

ORDER OF THE DIRECTOR

NOW, on this 17th day of June, 2020, Director, Chlora Lindley-Myers, after consideration and review of the Stipulation of Settlement (hereinafter "Stipulation") entered into by the Division of Insurance Market Regulation (hereinafter "Division"), and Permanent General Assurance Corporation (NAIC #37648) (hereinafter "PGAC"), relating to the market conduct examination and investigation set out in the caption above, does hereby issue the following orders:

This order, issued pursuant to §§374.205.2(5), 374.280 and 374.046.15 RSMo 2016, is in the public interest.

IT IS THEREFORE ORDERED that PGAC and the Division having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that PGAC shall not engage in any of the violations of law and regulations set forth in the Stipulation, shall implement procedures to place it in full compliance with the requirements in the Stipulation and the statutes and regulations of the State of Missouri, and to maintain those corrective actions at all times, and shall fully comply with all terms of the Stipulation.

IT IS FURTHER ORDERED that PGAC shall pay, and the Department of Commerce and Insurance, State of Missouri, shall accept, the Voluntary Forfeiture of \$15,000 payable to the Missouri State School Fund in connection with the examination and investigation.

IT IS SO ORDERED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 17th day of June, 2020.




Chlora Lindley-Myers
Director

2. PGAC sold insurance benefits in the form of a Hospital Indemnity Program and Rental Reimbursement Program offered by Nation Motor Club, LLC, d/b/a Nation Safe Drivers (hereinafter "NSD"), who was not authorized to offer or sell insurance benefits in the State of Missouri in violation of §375.310.

3. PGAC utilized rates, rate factors, auto symbols, Star Levels, and a short rate cancellation factor that were not filed with the Department in violation of §379.470.

4. PGAC failed to file a rule explaining how the Primary Discount Matrix is applied in the calculation of premium in violation of §379.470.

5. PGAC utilized training materials that implied coverage could be issued for less than the minimum term of three months in violation of §303.175.

6. PGAC failed to maintain documentation of eligibility for its homeowners discount in violation of §374.205.2 (2) and 20 CSR 100-8.040.

7. PGAC failed to include the specific reason for cancellation in its cancellation notices in violation of §379.118.1 (3).

8. PGAC failed to comply with §303.190.2 (2) & (3) by including an exclusion in its policy for a person not legally licensed to operate a vehicle or who is operating a vehicle outside the scope of the limited or temporary license.

9. PGAC failed to adequately disclose all insurance coverages available to claimants that purchased potentially overlapping coverage from PGAC and NSD in violation of §375.1007.1, §375.1005 and 20 CSR 100-1.020 (1) (A) & (B).

10. PGAC denied claims in which the insured did not have a valid driver's license in violation of §303.190.2 (2) and §303.190.6 (1).

11. PGAC's policy language provided for denial or reduction of medical payments

coverage in situations where such denial or reduction were inconsistent with the holdings of *Kuda v. American Family Mutual Insurance Company*, 790 S.W.2d 464 (Mo. Banc 1990) and *American Standard Insurance Company of Wisconsin v. Bracht*, 103 S.W.3d 281 (Mo. App. S.D. 2003).

12. PGAC reduced payment for claims for uninsured motorists' coverage due to a setoff with payments issued under medical payments coverage.

13. PGAC adjudicated some total loss claims by applying multiple mileage factors within a single claim and by reducing advertised prices for comparable vehicles by 10% implicating the provisions of §375.1007 (4).

14. PGAC failed to acknowledge claims and provide claim forms in a timely manner inconsistent with 20 CSR 100-1.030 (1) & (2) and 20 CSR 100-1.050 (1) (A) & (C) and implicating the provisions of §375.1007 (2) & (3).

WHEREAS, the Division and PGAC have agreed to resolve the issues raised in the Market Conduct Examination and Market Conduct Investigation as follows:

A. **Scope of Agreement.** This Stipulation of Settlement and Voluntary Forfeiture (hereinafter, "Stipulation") embodies the entire agreement and understanding of the signatories with respect to the subject matter contained herein. The signatories hereby declare and represent that no promise, inducement or agreement not herein expressed has been made, and acknowledge that the terms and conditions of this agreement are contractual and not a mere recital.

B. **Remedial Action.** PGAC agrees to take remedial action bringing it into compliance with the statutes and regulations of Missouri and agrees to maintain those remedial actions at all times. Such remedial actions shall include, but are not limited to, the following:

1. PGAC represents that it is providing quotes to all eligible Missouri customers regardless of zip code, and will continue to remain in compliance with §375.936 (11) (c) and

§375.934.

2. PGAC represents that it has terminated its relationship with NSD in Missouri and agrees that it will not sell or assist in the sale of insurance products offered by an entity that is not licensed to engage in the business of insurance by the Department.

3. PGAC agrees to file with the Department all rates, rate factors and supporting material which it utilizes in determining premium, including, but not limited to, a rule explicitly detailing how the Primary Discount Matrix will be applied in calculation of premium.

4. PGAC agrees to re-file with the Department its forms eliminating non-compliant exclusionary language relating to unlicensed drivers or to drivers with a limited or temporary license. The filing shall be submitted through the System for Electronic Rate and Form Filing (“SERFF”) and include a statement that the filing is being submitted “as a result of a Missouri Market Conduct Examination.”

5. PGAC agrees to re-rate all policyholders from January 1, 2016 to the date of the Order adopting this Stipulation, for whom it applied unfiled rates or incorrectly filed rates and to refund to any policyholder that was overcharged the difference between the rate filed with the Department and the rate actually charged to the policyholder including interest at the annual adjusted prime rate of interest as determined by sections 374.191 and 32.065, not to exceed nine per cent (9%) interest per annum. A letter should be included with the refund indicating that as a result of a Missouri Market Conduct Examination, it was discovered that a refund is due to the policyholder.

6. PGAC has conducted a review of all policies that were impacted by the use of the incorrectly filed ISO physical damage factors. PGAC agrees to re-rate all these policies and provide a refund of the difference between the rate that would have been charged using the filed ISO auto symbols and the rate that was charged using the unfiled symbols including interest at the annual

adjusted prime rate of interest as determined by sections 374.191 and 32.065, not to exceed nine per cent (9%) interest per annum. A letter should be included with the refund indicating that as a result of a Missouri Market Conduct Examination, it was discovered that a refund is due to the policyholder.

7. PGAC agrees to refund the overcharge in Policy # xxxxx2335 that resulted from its use of the Primary Discount Matrix including interest at the annual adjusted prime rate of interest as determined by sections 374.191 and 32.065, not to exceed nine per cent (9%) interest per annum. A letter should be included with the refund indicating that as a result of a Missouri Market Conduct Examination, it was discovered that a refund is due to the policyholder.

8. PGAC agrees that it will modify its training materials to clearly reflect that policies in Missouri must have a three month or longer term.

9. PGAC agrees that it will maintain documentation of rates, rate factors, discounts, surcharges and other factors used to determine premium in conformity with the requirements of §374.205.2 (2) and 20 CSR 100-8.040.

10. PGAC agrees to include specific reasons for cancellation in its cancellation notices issued to Missouri insureds pursuant to §379.118.1.

11. PGAC agrees that it will review all claims that were processed at any time from January 1, 2016 through January 1, 2019 contained on the NSD claims list provided to PGAC to determine if the claimant also had a claim that would have been covered under its PGAC policy. For those claims identified, PGAC will seek to obtain appropriate claims documentation either from NSD or from the claimant and after obtaining such documentation will adjudicate the claim. PGAC further agrees that it will review its claims paid for policyholders that also have NSD coverage to determine if the claim may have also been covered under its NSD policy. For those claims identified

where NSD coverage might apply, PGAC will contact the insured and remind them of their NSD benefits.

12. PGAC agrees that it will re-adjudicate and pay claims up to the minimum limits for all liability and uninsured motorist claims denied between January 1, 2015 and July 1, 2016 where the claim denial was because the insured did not have a valid driver's license.

13. PGAC agrees that it will review all claims that were processed at any time from January 1, 2017 to the date of the Order adopting this Stipulation, to determine if uninsured motorist or bodily injury coverage was reduced due to a setoff with medical payment coverage payments. If uninsured motorist or bodily injury coverage was reduced, PGAC agrees to re-adjudicate the claim up to the statutorily required limits without imposing any setoff. A letter should be included with the refund indicating that as a result of a Missouri Market Conduct Examination, it was discovered that a refund is due to the policyholder.

14. PGAC agrees to modify its policy language regarding its medical payment coverage, uninsured motorist, and bodily injury coverage so that PGAC is paying up to its coverage limits and not reducing the payment based on payments made under other coverage (setoffs), and submit a filing for the Department's approval. The SERFF filing will include the statement that "the filing is being made as a result of a Missouri Market Conduct Examination."

15. PGAC agrees that it will review all variables that its total loss valuation vendor uses to determine the value of a total loss vehicle for equitable, fair, and consistent usage. The Company will report back to the Department with an explanation of all inputs describing how each input is fair, equitable, and consistent. If the Company or the Department find that any inputs are not fair, equitable, or consistent, PGAC will review all total loss claims from January 1, 2016 to the date of the Order adopting this Stipulation, for usage of those variables. For any claims that utilized an

unfair or inequitable factor, or if a factor was applied inconsistently, PGAC will re-adjudicate those claims and provide refunds to the owners that were underpaid including interest at the annual adjusted prime rate of interest as determined by sections 374.191 and 32.065, not to exceed nine per cent (9%) interest per annum. A letter should be included with the refund indicating that as a result of a Missouri Market Conduct Examination, it was discovered that a refund is due to the policyholder.

16. PGAC agrees that it will comply with the requirements of 20 CSR 100-1.030 and 20 CSR 100-1.050.

C. **Compliance.** PGAC agrees within 60 days of the entry of a final order to submit to the Department the required form filings as noted above. PGAC further agrees to file documentation with the Division, in a format acceptable to the Division, within 120 days of the entry of a final order of any remedial action taken to implement compliance with the terms of this Stipulation and to document the payment of any restitution required by this Stipulation. Such documentation is provided pursuant to §374.190 and §374.205.

D. **Fees.** PGAC agrees to pay any reasonable examination and investigation fees expended by the Division in conducting its review of the documentation provided by the Company pursuant to Paragraphs B and C of this Stipulation.

E. **Voluntary Forfeiture.** PGAC agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$15,000 such sum payable to the Missouri State School Fund, in accordance with §374.049.11 and §374.280.2.

F. **Other Penalties.** The Division agrees that it will not seek penalties against PGAC, other than those agreed to in this Stipulation, in connection with Market Conduct Examination #1712-83-TGT and Market Conduct Investigation #291653.

G. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by PGAC, this Stipulation being part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above referenced Market Conduct Examination and Market Conduct Investigation.

H. **Waivers.** PGAC, after being advised by legal counsel, does hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, and review or appeal by any trial or appellate court, which may have otherwise applied to the Market Conduct Examination #1712-83-TGT and the Market Conduct Investigation #291653.

I. **Changes.** No changes to this Stipulation shall be effective unless made in writing and agreed to by representatives of the Division and PGAC.

J. **Governing Law.** This Stipulation shall be governed and construed in accordance with the laws of the State of Missouri.

K. **Authority.** The signatories below represent, acknowledge and warrant that they are authorized to sign this Stipulation, on behalf of the Division and PGAC respectively.

L. **Counterparts.** This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document. Execution by facsimile or by electronically transmitted signature shall be fully and legally effective and binding.

M. **Effect of Stipulation.** This Stipulation shall not become effective until entry of a Final Order by the Director of the Department (hereinafter the "Director") approving this Stipulation.

N. **Request for an Order.** The signatories below request that the Director issue an Order approving this Stipulation and ordering the relief agreed to in the Stipulation, and consent to the issuance of such Order.

DATED: 4/2/2020

Counsel



Stewart Freilich
Chief Market Conduct Examiner and Senior

Division of Insurance Market Regulation



DATED: 3/25/2020

ANTHONY J. DESANTIS
[NAME and TITLE] *President + CEO*
Permanent General Assurance Corporation