

**REPORT OF MARKET CONDUCT EXAMINATION**

**PROGRESSIVE CASUALTY INSURANCE CO.  
PROGRESSIVE CLASSIC INSURANCE CO.  
PROGRESSIVE NORTHWESTERN INSURANCE CO.  
PROGRESSIVE NORTHERN INSURANCE CO.  
PROGRESSIVE HALCYON INSURANCE CO.**

**6300 WILSON MILLS RD., W33.**

**MAYFIELD VILLAGE, OH 44143-2182**

**AS OF**

**DECEMBER 31, 2002**

**BY**

**KANSAS INSURANCE DEPARTMENT**

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Honorable Sandy Praeger  
Insurance Commissioner  
Kansas Insurance Department  
420 SW Ninth Street  
Topeka, KS 66612

October 17, 2003

Dear Commissioner Praeger:

In accordance with your respective authorization, and pursuant to K.S.A. 40-222, a market conduct examination has been conducted on the business affairs of:

Progressive Casualty Insurance Co.  
Progressive Classic Insurance Co.  
Progressive Northwestern Insurance Co.  
Progressive Northern Insurance Co.  
Progressive Halcyon Insurance Co.

6300 Wilson Mills Rd., W33.

Mayfield Village, OH 44143-2182

The five companies are being examined as a group since they share administrative, underwriting and claim processes and are hereafter referred to as “the Progressive Companies”, “the Group” or “the Companies”, and the following report as such examination is respectfully submitted,

Lyle Behrens, CPCU, CIE, ARM  
Market Conduct Supervisor  
Examiner in Charge

## EXECUTIVE SUMMARY

The Kansas Insurance Department (“KID” or the “Department”) performed a market conduct examination of the Progressive Insurance Group. The examiners reviewed the Companies’ underwriting, claims, and rating manuals. The exam team reviewed underwriting, claim, and complaint files in the administrative offices in Mayfield Village, OH and the claim office in Overland Park, KS. A series of meetings were held with the Group’s staff that focused on their current operations. To supplement and verify the understanding of how the Companies do business, a series of samples were selected for review to verify their procedures and practices in claims, underwriting and rating.

The Companies passed most tests; and in terms of delivering good service to their insureds, the examiners were impressed with the overall positive and very professional performance by the Group’s staff and management to their policyholders. The exam team has made recommendations on several issues.

### LIST OF RECOMMENDATIONS

#### Complaint Handling

1. The Companies need to review their complaint handling/tracking procedures to ensure that the response is timely and within Department guidelines.

The Progressive Companies have changed their complaint handling process since the exam began. Complaints sent physically are scanned, indexed and added to an electronic workflow. Those complaints received via fax or email are indexed and added to an electronic workflow. By adding complaints to the workflow, each state’s specific complaint response requirements are now being monitored.

#### Underwriting

- 1a. Since the exam started, the Companies have re-filed their revised rating factors for the Driver Matrix and the Territorial UM/UIM component. They have not re-filed the component for the Territorial Med-Pay factors. This needs to be done per KSA 40-955.
- 1b. Within 30 days the Companies must file a plan with the Kansas Insurance Department showing how they plan to make restitution to those policyholders who were charged an incorrect premium as a result of using the un-filed rating or vehicle surcharge factors.
2. The Companies must file their deviations for migrating from their “D” market structure to their current “C” market structure. Per KSA 40-955.
3. The Companies must re-file their rating rules P16 and P17. Per KSA 40-955.
4. The Companies must re-file an amended application for those individuals that cannot secure insurance in a normal market. Per KAR 40-3-25.
5. The Companies must re-file Form 1585ks (06/01) to reflect the correct application of the rating of Rule P16 and Rule P17. KAR 40-3-18.

6. The Companies must ensure that the proper refund of any unearned premium accompany the notice of adverse underwriting decision when appropriate. Per KSA 40-2,112.
7. The Companies must take necessary steps to ensure that the cancellations of an auto policy for either the insured's request or for non-pay conform to their filed rating rules and the \$50 Cancellation Fee is applied appropriately. Per KSA 40-955.
8. The Companies must take necessary steps to ensure that all cancellation and non-renewal notices be sent with the appropriate amount of mail time to insure that the Companies are in compliance with Kansas cancellation and non renewal laws and regulations including KSA 60-206.
9. The generic statement of "Low Down Payment" on the back of the dec page is very confusing. It tends to mislead the consumer to think that the "Low Down Pay Surcharge" of 10% is applying to their policy. When in fact it only refers to a surcharge and in fact the increase could be 15% if the insured has opted for the "Bill Plan Surcharge". The wording that indicates there is a surcharge due to minimal down payment should be revised so it is not misleading to the policyholder.

## **CLAIMS**

1. While this is not a critical item and the Companies were within the tolerances set by the NAIC for Claim review, the exam team feels the claim files need to be properly documented to ensure that pertinent events and dates can be reconstructed. Per K.A.R. 40-1-34 (4).
2. The Group needs to review their claim handling procedures for settling a total automobile loss. This would include establishing a cost of a comparable automobile in the local market area if available or securing quotes from a qualified dealer(s) in the local market area per the requirements of K.A.R. 40-1-34 Sec. 9.

## **SCOPE OF REVIEW**

A targeted market conduct examination of the Group's underwriting, claims and complaints was completed to determine compliance with applicable statutes, regulations and bulletins of the state of Kansas. The examination was conducted according to the guidelines and procedures recommended in the NAIC Market Conduct Examiners Handbook.

This examination is a report by test rather than a report by exception. This means all standard tests are described and results indicated. The standards for passing or failing a specific test are spelled out in the NAIC Market Conduct Examiners Handbook.

The examination included, but was **not limited to the following:**

### **COMPANY OVERVIEW**

Certificates of Authority

### **COMPLAINT HANDLING**

Record Keeping

Timely Response

### **UNDERWRITING & RATING**

Proper Rating

Underwriting Acceptance/Termination

Use of Appropriate Forms

Promptness of Policy Issuance

Proper Maintenance of Underwriting Files

### **CLAIMS**

Claim Processing

Use of Outside Pricing Entities

Timeliness and Accuracy of Claim Payment

Proper Maintenance of Claim Files

## **SUMMARY OF REVIEW**

The market conduct examination focused on the five companies that the Group uses in Kansas to write their auto and specialty lines business. The testing and file review consisted of sampling from the Companies' underwriting and processing center in Mayfield Village, OH.

The claim processing for the Companies is handled out of their office in Overland Park, KS. The examination included a review of the Companies' underwriting and settled claim files from January 1, 2001 to December 31, 2002.

General topics were covered in Interrogatories submitted to the Companies for their written response. Subjects covered were Complaints, Underwriting and Claims. The response received adequately addressed the issues presented.

## **DESK EXAMINATION/ON-SITE EXAMINATION**

### **COMPANY OVERVIEW**

#### History

Progressive Corporation is a publicly held Company that markets auto and other recreational and specialty liability insurance products through its 31 property and casualty companies. This company, which is domiciled in Ohio, was formed in 1965 as a holding company.

Progressive Group started in 1937 as Progressive Mutual Insurance Company. Progressive Casualty Insurance Company, founded in 1956, is the lead company in the group.

Along with writing standard and preferred auto, the Progressive Companies also market non-standard car insurance in Kansas. Other products that are underwritten by the Group include boat and personal watercraft, motorcycles, snowmobiles and recreational vehicles.

### **Tests for Company Operations/Management**

#### **Standard 7**

Records are adequate, accessible, consistent and orderly and comply with state record retention requirements. KSA 40-222 a, b, c & g.

The Companies provided the exam team with the necessary records and documents in a timely fashion.

#### **Standard 8**

The company is licensed for the lines of business that are being written. KSA 40-216.

The Certificate of Authority was reviewed and found to be in order and the companies were complying with it.

#### **Standard 9**

The company cooperates on a timely basis with examiners performing the examinations. KSA 40-222 c & g.

The Companies were cooperative and provided the exam team with the items requested within the time frames established for this exam.

## **COMPLAINTS**

### **The Companies Complaint Procedures**

The Progressive Companies have centralized the receipt, recording, response, tracking and trend analysis of Department of Insurance (DOI) complaints. Centralization will ensure each complaint is delivered to the correct Group's contact, tracked in the complaint database and monitored to ensure the response is accurate and handled in a timely manner.

At receipt, all complaint data is logged in the complaint database. At time of entry, the due date for the response, in accordance with the state regulation or request is determined and entered. The physical complaint is routed to the appropriate party and their manager for response. The respondent, (Technical Specialists or Claims personnel) will compile the response and the supporting documentation.

All responses and supporting documentation are reviewed for completeness. All responses are entered into the complaint database. The Technical Specialist or claims personnel will then send the response and supporting documentation to the DOI. Once the documents are mailed, the database is updated and the file status changed to closed.

### **Tests for Complaint Handling**

#### **Standard 1**

All complaints are recorded in the required format on the company complaint register. KSA 40-2404 (10).

The Companies did provide a complaint register. Twenty-eight Department complaint files were pulled and reviewed by the examiners.

#### **Standard 2**

The company has adequate complaint handling procedures in place and communicates such procedures to policyholders. KAR 40-1-34 (5a) & (6).

The procedures written into the Group's policies are adequate and provide control of the complaint and timelines by one department and one assigned person. Generally, these procedures work quite well.

#### **Standard 3**

The company takes adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations, and contract language. KAR 40-1-34 (6).

There were delays in responding to the Department inquiries and in completing timely investigations. However, once the investigation of the complaint is completed, the insured is notified promptly with adequate documentation to support the decision, resolve the complaint or refer the complainant to the next step in the process.

#### **Standard 4**

The time frame within which the company responds to complaints is in accordance with applicable statutes, rules and regulations.

<u>Type</u>	<u>Sample</u>	<u>Occurrences</u>	<u>%Pass</u>
Complaints	28	9	68%

The Companies' Complaint Log did have the date the complaint was received. None of the 28 hard copy complaint files showed the date the Department letter was received in the mailroom but did show the date the company representative reviewed, the file. Therefore it was not possible to validate the date on the log with the actual received date at the company.

The examiner reviewed all 28 files and noted 9 occurrences for failing to respond to KID within the 15 working days as required by the Department. The number of working days exceeding the 15 working day requirement ranged from 3-25 days. The average response time for these 9 complaints was 24.8 working days or 9.8 working days beyond the required 15 days. Receipt dates at the company and KID were determined by allowing 3 working days mail time each way.

The Group is in the process of centralizing the complaint handling process. As part of this process, a letter was sent on August 11, 2003 to the Kansas Consumer Affairs Division requesting all complaints be sent to a specific physical address and/or a specific email address and/or a specific fax number. Complaints sent physically will be scanned, indexed and added to an electronic workflow. Those complaints received via fax or email will be indexed and added to an electronic workflow.

By adding complaints to the workflow, each state's specific complaint response requirements will be able to be monitored. Each associate's manager will be able to monitor their inventory of complaints and ensure the age of those complaints does not surpass the state requirement.

#### **Recommendations:**

1. The Companies needs to review their complaint handling/tracking procedures to ensure that the response is timely and within Department guidelines.

The Group has changed their complaint handling process since the exam began. Complaints sent physically are scanned, indexed and added to an electronic workflow. Those complaints received via fax or email are indexed and added to an electronic workflow. By adding complaints to the workflow, each state's specific complaint response requirements are now being monitored.

## **UNDERWRITING**

## **The Group's Underwriting Process**

The Group used five companies to write their products in Kansas. They offer a wide range of products –personal and commercial auto, motorcycle, boat, and recreational vehicle policies.

With the August 2002 auto rate filing, the companies merged the commission levels of Progressive Northern, Progressive Classic and Progressive Casualty into one level, and they are using it for maintaining their book of agency renewal business. Progressive Northwestern is used for agent produced new business, and Progressive Halcyon is used for the business that they market directly to the public.

The Progressive Companies market their products through Independent agents and also directly to the public through direct mail, radio, television and the Internet advertising.

During the exam period, the Progressive Companies underwrote insureds into five markets (tiers): Ultra Preferred, Preferred, Standard, Middle Market and Non-standard.

The Group uses Choice Point's Comprehensive Loss Underwriting Exchange (CLUE) reports and/or MVRs to verify accidents and violations. Agents can access this same information through POINT OF SALE (POS). POS allows the agent to order multiple consumer reports that confirm driver and vehicle information during the quoting process, prior to uploading the application to Progressive.

An agent can phone in endorsements or process them online at the Group's agent-dedicated Web site, 24 hours a day, 7 days a week.

The Progressive Companies have introduced the Stability Development Program, which recognizes customers who have demonstrated improvements in risk stability over time. Under this program, current customers may qualify for a better market at policy renewal if they have paid their insurance premiums on time, have not had any payments returned for non-sufficient funds, and have not had any chargeable violations for 24 months. Once the customer meets these criteria, The Group automatically re-evaluates their policy market. The evaluation includes ordering a financial responsibility score.

The Customer will be eligible for evaluation under the Stability Development Program once he has been continuously insured under a single Progressive policy for a minimum of two years. If the insured qualify for a better market at that time, the company will move him, and evaluate the policyholder again every two years thereafter. If the client does not qualify, the Group will keep him in their current market and re-evaluate at the next renewal. The customer will not be moved to a higher-priced market with this program.

## **Tests for Underwriting and Rating**

### **Standard 1: Rating Practices**

The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the company rating plan. KSA 40-955.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>% Pass</u>
New Business	50	23	54%
Renewal Business	50	29	42%

The Group failed Standard 1.

1. Auto New & Renewal Business Rating

- Driver Matrix Factor

From a sample of auto new business processed from 1/1/01 thru 12/31/2002, the exam team reviewed 21 new and 25 renewal policies that were issued with the 2001-10 rates.

From the population of 21 new business policies, there were 15 accounts that were rated with a “Driver Point Matrix Factor” that was not part of the rate factors approved by KID. From the population of 25 renewal policies there were 18 accounts that were rated with a “Driver Point Matrix Factor” that was not part of the rate factors approved by KID. The use of the unapproved factors was consistent through the five companies.

Since the Group used a rate factor that was un-filed with the Department at the time the policies were issue or renewed, the companies were not in compliance with:

KSA 40-955 - Same; rate filings; review and approval of certain lines; effective dates; exemptions from filing.

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, 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....

(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.

- UM Territory Factor

From the sample of 21 new and 25 renewal policies with the 2001-10 rates, 18 new business and 20 renewals were issued with the wrong UM Territory factor. The pages filed and approved with KID indicated a different variable for each of the Territories. The Progressive Companies used a factor of 1 for all policies.

Since the Group used a rate factor that was un-filed with the Department at the time the policies were issue or renewed, the Companies were not in compliance with:

KSA 40-955 - Same; rate filings; review and approval of certain lines; effective dates; exemptions from filing.

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, 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....

(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.

- MP Territory Factor

Out of the sample of 21 new policies with the 2001-10 rates, there were seven files with MP Coverage. All seven policies were issued with a MP Territory factor of 1. The filed rate pages indicate a rating factor equal to the BI percentage. None of the 7 policies used this numeric value.

The sample of 25 renewals from the same period had five contracts with MP. All five of these policies were issued with the wrong MP Territory Factor.

Since the Group used a rate factor that was un-filed with the Department at the time the policies were issued or renewed, the Companies were not in compliance with:

KSA 40-955 - Same; rate filings; review and approval of certain lines; effective dates; exemptions from filing.

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, 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....

(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.

- Financial Responsibility Tier Migration

There were 9 renewals where the credit score originally assigned to the account did not match the current Financial Responsibility (FR) Tier Code as filed with the Department.

The Companies migrated from the “D” structure Market Factors to the current “C” structure Market Factors. The “C” structure is a more finely segmented structure than ‘D’ (18 FR tiers compared to 5). To maintain some rate continuity for their renewal business that would have been assigned to another tier with a different rating factor, certain accounts were assigned tier that closely matched the current rating factor.

However this was a deviation to the new rating program that was filed with KID. The deviations needed to be filed as part of the overall rate change. There was no documentation provided to the exam team by the Progressive Companies to show that these variations to the filed plan were submitted and approved by KID as part of the migration from the “D” market structure to the current “C” market structure.

Since the Group was not following their rating rule as filed with the Department at the time the policies were renewed, the Companies were not in compliance with KSA 40-955 - Same; rate filings; review and approval of certain lines; effective dates; exemptions from filing.

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, 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....

(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.

Since the Group did not apply the rule consistently throughout it’s entire Kansas auto book, the Companies were out of compliance with KSA 40-954 - Rate making standards.

(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.

## 2. Rating Rule P16 & P17

The Group is out of compliance with their rating rule P16 and P17. The filing did not indicate that the surcharge applied only to specific coverages and specific billing plans for certain markets. It appeared to apply to all coverages and all markets. Since the Group was not following their rating rule as filed with the KID at the time the policies were issued or renewed, the Companies were not in compliance with:

KSA 40-955 - Same; rate filings; review and approval of certain lines; effective dates; exemptions from filing.

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, 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....

(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.

Since the Group did not apply Rule P16 and P17 consistently throughout its entire Kansas auto book, the Companies were out of compliance with:

KSA 40-954 - Rate making standards.

(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.

### **Standard 2: Rating Practices**

Disclosures to insureds concerning rates and coverage are accurate and timely. KSA 40-955 & KAR 40-3-25.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>% Pass</u>
New Bsns. Sub-Std. Auto	25	25	0%

The Group failed Standard 2.

Of the 45 new business auto applications reviewed in the sample, the distribution of accounts in the Group's five markets was as follows:

- Non-Standard (NS) - 11 New Business
- Middle Market (MM) - 14 New Business
- Standard (ST) - 9 New Business
- Preferred (PR) - 6 New Business
- Ultra (UL) – 5 New Business

There were no statements signed by the applicants for those accounts that could not secure insurance in a normal market. The Group is not in compliance with:

KAR 40-3-25 Same, writing of risks declines in normal market; requirements:

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 \_\_\_\_\_ 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.

**Standard 3: Rating Practices**

Credits and deviations are consistently applied on a non-discriminatory basis. KSA 40-953 & KSA 40-954.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
New Business	50	5	90%
Renewal Business	50	4	92%

The Group passed Standard 3

For certain rating plans, the Companies applied a surcharge to their Sub-Standard and Middle Market business. The Progressive Companies were out of compliance with their rating rule P16 and P17. Since the Group was not following their rating rule as filed with KID at the time the policies were issue or renewed, the Companies were not in compliance with:

KSA 40-955 - Same; rate filings; review and approval of certain lines; effective dates; exemptions from filing.

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, 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....

(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.

Since the Group did not apply the rule consistently throughout its entire Kansas auto book, the Companies were also out of compliance with:

KSA 40-954 - Rate making standards.

(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.

**Standard 4: Rating Practices**

Schedule rating or individual risk premium modification plans, where permitted, are based on objective criteria with usage supported by appropriate documentation. KAR 40-3-32(d), KAR 40-3-12, KSA 40-953 & KSA 40-954.

This standard was not specifically tested for. However in our sample, there were no policies with either a limiting coverage endorsement, schedule rating or individual risk premium modification plan. This standard was met 100%.

**Standard 5: Underwriting Practices**

The company underwriting practices are not unfairly discriminatory. The company adheres to applicable statutes, rules and regulations and company guidelines in the selection of risks. KSA 40-953, KSA 40-954, KSA 40-955 & KAR 40-3-44.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
New Business	50	0	100%
Declines	50	0	100%

The Group passed Standard 5.

**Standard 6: Underwriting Practices**

All forms and endorsements forming a part of the contract are listed on the declaration page and should be filed with the Department of Insurance. KSA 40- 216 & KAR 40-3-18.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
New Business	50	0	100%
Renewal Business	50	0	100%

The forms listed on the dec page have been filed with KID. Form 1585ks (06/01) Kansas Rating Information, contains rating information regarding the Group’s auto program in Kansas. It contained inaccurate information concerning the Low Down Pay and Bill Plan surcharges.

Per KAR 40-3-18 - Fire and casualty insurance; private passenger automobiles; rating information.

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

- (b). advise the insured of the proper classification in accordance with the company's applicable rate filings approved by the commissioner.

**Standard 7: Underwriting Practices**

Underwriting, rating and classification are based on adequate information developed at or near inception of the coverage rather than near expiration, or following a claim. KSA 40-953.

This standard was not specifically tested for. In the sample tested, there were no policies with either a limiting coverage endorsement, schedule rating or individual risk premium modification plan. This standard was met 100%.

**Standard 8: Underwriting Practices**

File documentation adequately supports decisions made. KSA 40-953 & KSA 40-955.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
New Business	50	0	100%
Renewal Business	50	0	100%
Cancellations & NR for Underwriting	50	1	98%

The Group passed Standard 8.

**Standard 9: Underwriting Practices**

Policies and endorsements are issued or renewed accurately, timely and completely. KSA 40-216, KSA 40-953 & KSA 40-955.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
New Business	50	0	100%
Renewal Business	50	1	98%

The Group Passed Standard 9.

**Standard 10: Underwriting Practices**

Company verifies that VIN number submitted with application is valid and that the correct symbol is utilized. KSA 40-953 & KSA 40-954.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
New Business	50	0	100%
Renewal Business	50	0	100%

The Group passed Standard 10.

**Standard 11: Rejections/Declinations**

Rejections and declinations are not unfairly discriminatory. KSA 40-954 (c) & KAR 40-3-40.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Declinations	50	0	100%

The Group passed Standard 11.

**Standard 12: Termination Practices**

Cancellation/non-renewal notices comply with policy provisions and state laws, including the amount of advance notice provided to the insured and other parties to the contract. KSA 40-276(a), KSA 40-277, KSA 40-278, KSA 40-2,111, KSA 40-2,112, KSA 40-2,120, KSA 40-2,121, KSA 40-2,122, KSA 60-206, KAR 40-3-23, KAR 40-3-28 & KAR 40-3-15.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Cancellations/Declines for underwriting	50	39	22%
Cancellations Insured's request	50	27	38%

Thee Group failed Standard 12.

1. In a review of the 50 underwriting samples, six violations were found concerning:

K.S.A. 40-2,112. Adverse underwriting decisions; furnishing reasons

(d) (1) If coverage is in effect, such refund shall accompany the notice of the adverse underwriting decision, ...

2. The Progressive Companies were not in compliance with the various Kansas Statutes and regulations regarding the subject of required mail time for cancellations and non-renewals:

-Thirty (30) days notice

K.S.A. 40-276a. Automobile insurance; denial of renewal; conditions and exceptions

Any insurance company that denies renewal of an automobile liability insurance policy in this state shall give at least thirty (30) days written notice to the named insured, ...

K.S.A. 40-3118. Financial security requirement; termination

Except as otherwise provided in K.S.A. 40-276, K.S.A. 40-276a and K.S.A. 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.

K.A.R. 40-3-15. 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 the cancellation.

-A ten (10) day notice for non-pay cancellations per contract language

Thirty-nine policies that were either cancelled or non-renewed for underwriting reasons and 27 contracts that were cancelled for non-payment of premium failed KID's tests. These items did not meet the time standards because the Company did not allow enough mailing time per:

K.S.A. 60-206. Time, computation and extension. The following provisions shall govern the computation and extension of time:

(e) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon such party and the notice or paper is served upon such party by mail, three days shall be added to the prescribed period.

**Standard 13: Termination Practices**

Unearned premiums are correctly calculated and returned to appropriate party in a timely manner and in accordance with applicable statutes, rules and regulations. KSA 40-2,112 (d)(1).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Cancellation/Decline	50	4	92%

Progressive Group passed Standard 13.

Four files were cancelled insured's request. There was no documentation provided to support the waiving of the \$50 Cancellation Fee. This is not in compliance with:

KSA 40-955 - Rate filings;

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, 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....

(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.

And KSA 40-954. – Rate Making Standards.

In determining whether rates are not excessive or inadequate or not unfairly discriminatory:

(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.

**Standard 14: Terminations**

Rescissions are not made for non-material misrepresentation.

This standard was not specifically tested for. In the regular file review, there were no rescissions taken in the 50 dailies reviewed.

## **Recommendations**

- 1a. Since the exam started, the Companies have re-filed their revised rating factors for the Driver Matrix and the Territorial UM/UIM component. They have not re-filed the component for the Territorial Med-Pay factors. This needs to be done per KSA 40-955.
- 1b. Within 30 days the Companies must file a plan with the Kansas Insurance Department showing how they plan to make restitution to those policyholders who were charged an incorrect premium as a result of using the un-filed rating or vehicle surcharge factors.
2. The Companies must file their deviations for migrating from their "D" market structure to their current "C" market structure. Per KSA 40-955.
3. The Companies must re-file their rating rules P16 and P17. Per KSA 40-955.
4. The Companies must re-file an amended application for those individuals that cannot secure insurance in a normal market. Per KAR 40-3-25.
5. The Companies must re-file Form 1585ks (06/01) to reflect the correct application of the rating of Rule P16 and Rule P17. Per KAR 40-3-18.
6. The Companies must ensure that the proper refund of any unearned premium accompany the notice of adverse underwriting decision when appropriate. Per KSA 40-2,112.
7. The Companies must take necessary steps to ensure that the cancellations of an auto policy for either the insured's request or for non-pay conform to their filed rating rules and the \$50 Cancellation Fee is applied appropriately. Per KSA 40-955.
8. The Companies must take necessary steps to ensure that all cancellation and non-renewal notices be sent with the appropriate amount of mail time to insure that the Companies are in compliance with Kansas cancellation and non renewal laws and regulations including KSA 60-206.
9. The generic statement of "Low Down Payment" on the back of the dec page is very confusing. It tends to mislead the consumer to think that the "Low Down Pay Surcharge" of 10% is applying to their policy. When in fact it only refers to a surcharge and in fact the increase could be 15% if the insured has opted for the "Bill Plan Surcharge". The wording that indicates there is a surcharge due to minimal down payment should be revised so it is not misleading to the policyholder.

## **CLAIMS**

### **The Group's claim processing procedures**

When a customer calls to report a claim, they use a "1-800" number, which routes the call to one of three Central Loss Reporting Units (CLRU) located in Cleveland, OH, Austin, TX and Tampa, FL. From there, the claim is assigned to a claims branch according to the location of

the exposure. The CLRU will take the new loss and upon completion of the call will let the customer know that they will be contacted within a specific time frame.

The file is assigned to an Immediate Response Unit within the claims department and handles Casualty, IR, PIP/Medpay, Fire and Theft. A team leader reviews the file and assigns it to an appropriate claims representative, who is responsible for the investigation, negotiation and settlement/denial of the claim.

Medical Claim Representatives are assigned to handle the PIP/Medical portion of a claim to ensure efficient handling of this portion of the claim. This specialist ensures Personal Injury Protection claims are consistently handled in accordance with all state and local regulations.

**Tests for Claims** (See APPENDIX I for the wording of the appropriate statute or regulation)

**Standard 1**

The initial contact by the company with the claimant is within the required time frame. K.A.R. 40-1-34 6a & d.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	0	100%
Paid Auto	100	0	100%

The Companies passed Standard 1.

**Standard 2**

Timely investigations are conducted. K.A.R. 40-1-34 7 & 8c.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	0	100%
Paid Auto	100	2	98%

The Companies passed Standard 2.

**Standard 3**

Claims are resolved in a timely manner. K.A.R. 40-1-34 8a & 8c.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	0	100%
Paid Auto	100	0	100%

The Companies passed Standard 3.

**Standard 4**

The company responds to claim correspondence in a timely manner. K.A.R. 40-1-34 6a & 6d.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
-------------	---------------	---------------	--------------

Denied Auto	101	0	100%
Paid Auto	100	1	99%
Claim Complaints	37	1	97%

The Companies passed Standard 4.

**Standard 5**

Claim files are adequately documented. K.A.R.40-1-34 4, 6a & K.A.R. 40-1-34 8b.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	1	99%
Paid Auto	100	5	95%

The Companies passed Standard 5.

**Standard 6**

Claims are properly handled in accordance with policy provisions and applicable statutes, rules and regulations. K.A.R. 40 –1-34 5a, 8, & 9, K.S.A. 40-3110, K.S.A. 40-2,126.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	2	98%
Paid Auto	100	26	74%
Claim Complaints	37	2	95%

The Companies passed Standard 6 portion regarding Denied Claims and Complaints.

The Companies failed Standard 6 portion regarding Paid Claims.

For claims files where the car was determined to be a total loss, the adjuster based his evaluation of the value of the automobile solely on NADA electronic program. This is a violation of KAR 40-1-34 (9)(a)(2) which requires that the company do a local market survey to determine the cash value of the vehicle.

**Standard 7**

Company uses the reservation of rights and excess of loss letters, when appropriate.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	0	100%
Paid Auto	100	0	100%

The Companies passed Standard 7.

**Standard 8**

Deductible reimbursement to insureds upon subrogation recovery is made in a timely and accurate manner. K.A.R. 40-1-34 9d.

This standard was not specifically tested for. In the normal review of the 100 paid auto claims, any subrogation activity would have been reviewed and the examiner would have noted it. There were no issues with the files that were reviewed.

**Standard 9**

Company claim forms are appropriate for the type of product.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	0	100%
Paid Auto	100	0	100%

The Companies passed Standard 9.

**Standard 10**

Claim files are reserved in accordance with the company's established procedures.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	0	100%
Paid Auto	100	0	100%

The Companies passed Standard 10.

**Standard 11**

Denied and closed-without-payment claims are handled in accordance with policy provisions and state law. K.A.R. 40- 1-34 8a, 8b & 8c.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	0	100%
Paid Auto	100	0	100%

The Companies passed Standard 11.

**Standard 12**

Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy. K.S.A. 40-2404 9f & 9g.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	101	0	100%
Paid Auto	100	0	100%

The Companies passed Standard 12.

**Recommendations:**

1. While this is not a critical item and the Group was within the tolerances set by the NAIC for Claim review, the exam team feels the claim files need to be properly documented to ensure that pertinent events and dates can be reconstructed. Per K.A.R. 40-1-34 (4).
2. The Group needs to review their claim handling procedures for settling a total automobile loss. This would include establishing a cost of a comparable automobile in the local market area if available or securing quotes from a qualified dealer(s) in the local market area per the requirements of K.A.R. 40-1-34 Sec. 9.

**GENERAL COMMENTS**

**Complaint Handling**

1. The Companies need to review their complaint handling/tracking procedures to ensure that the response is timely and within Department guidelines.  
  
The Progressive Companies Have changed their complaint handling process since the exam began. Complaints sent physically are scanned, indexed and added to an electronic workflow. Those complaints received via fax or email are indexed and added to an electronic workflow. By adding complaints to the workflow, each state's specific complaint response requirements are now being monitored.

**Underwriting**

- 1a. Since the exam started, the Companies have re-filed their revised rating factors for the Driver Matrix and the Territorial UM/UIM component. They have not re-filed the component for the Territorial Med-Pay factors. This needs to be done per KSA 40-955.
- 1b. Within 30 days the Companies must file a plan with the Kansas Insurance Department showing how they plan to make restitution to those policyholders who were charged an incorrect premium as a result of using the un-filed rating or vehicle surcharge factors.
2. The Companies must file their deviations for migrating from their "D" market structure to their current "C" market structure. Per KSA 40-955.
3. The Companies must re-file their rating rules P16 and P17. Per KSA 40-955.
4. The Companies must re-file an amended application for those individuals that cannot secure insurance in a normal market. Per KAR 40-3-25.
5. The Companies must re-file Form 1585ks (06/01) to reflect the correct application of the rating of Rule P16 and Rule P17. Per KAR 40-3-18.

6. The Companies must ensure that the proper refund of any unearned premium accompany the notice of adverse underwriting decision when appropriate. Per KSA 40-2,112.
7. The Companies must take necessary steps to ensure that the cancellations of an auto policy for either the insured's request or for non-pay conform to their filed rating rules and the \$50 Cancellation Fee is applied appropriately. Per KSA 40-955.
8. The Companies must take necessary steps to ensure that all cancellation and non-renewal notices be sent with the appropriate amount of mail time to insure that the Companies are in compliance with Kansas cancellation and non renewal laws and regulations including KSA 60-206.
9. The generic statement of "Low Down Payment" on the back of the dec page is very confusing. It tends to mislead the consumer to think that the "Low Down Pay Surcharge" of 10% is applying to their policy. When in fact it only refers to a surcharge and in fact the increase could be 15% if the insured has opted for the "Bill Plan Surcharge". The wording that indicates there is a surcharge due to minimal down payment should be revised so it is not misleading to the policyholder.

## **Claims**

1. While this is not a critical item and the Group was within the tolerances set by the NAIC for Claim review, the exam team feels the claim files need to be properly documented to ensure that pertinent events and dates can be reconstructed. Per K.A.R. 40-1-34 (4).
2. The Group needs to review their claim handling procedures for settling a total automobile loss. This would include establishing a cost of a comparable automobile in the local market area if available or securing quotes from a qualified dealer(s) in the local market area per the requirements of K.A.R. 40-1-34 Sec. 9.

## **CONCLUSION**

I would like to acknowledge the cooperation and courtesy extended to the examination team by the Stacey Gardiner of the Compliance Department and the staff of Progressive Insurance Group.

The following examiners of the Office of the Commissioner of Insurance in the State of Kansas participated in the review:

### **Market Conduct Division**

Lyle Behrens  
Supervisor

Michael Grover  
Market Conduct Examiner

Mary Lou Maritt  
Market Conduct Examiner

Respectfully submitted,

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Lyle Behrens, CPCU, CIE, ARM

## APPENDIX I

A. K.A.R. 40-1-34 - Unfair claims practices provides for the following guidelines to be met in the processing and investigation and settlement/denial of a claim:

- Definitions, Sec. 3
- File and Record Documentation, Sec. 4
- Misrepresentation of Policy Provisions, Sec. 5
- Failure to Acknowledge Pertinent communication, Sec. 6
- Standards for Prompt Investigation of Claims, Sec. 7
- Standards for Prompt, Fair and Equitable Settlements Applicable to all Insurers, Sec. 8
- Standards for Fair and Equitable Settlements Applicable To Auto Insurance, Sec. 9
  
- Kansas Automobile Injury Reparations Act (Payment of Benefits). K.S.A. 40-3110
- Unfair methods of competition or unfair and deceptive acts or practices. KSA 40-2404
- Interest Due On Insurance Settlements. KSA 40-2,126

### 1. K.A.R. 40-1-34 Sec. 3. Definitions

The definitions of "person" and of "insurance policy or insurance contract" contained in section 2 of the Unfair Trade Practice Act shall apply to this regulation and, in addition, where used in this regulation:

- (a) "Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim;
  
- (b) "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant;
  
- (c) "First party claimant" means an individual, corporation, association, or partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract;
  
- (d) "Insurer" means a person licensed to issue or who issues any insurance policy or insurance contract in this State.
  
- (e) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.
  
- (f) "Notification of claim" mean any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

(g) "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer; and

(h) "Worker's Compensation" includes, but is not limited to, Longshoremen's and Harbor Worker's Compensation.

## 2. K.A.R. 40-1-34 Sec. 4 - File and Record Documentation

The insurer's claim files shall be subject to examination by the (Commissioner) or by his/her 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.

## 3. K.A.R. 40-1-34 Sec. 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.

## 4. K.A.R. 40-1-34 Sec. 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 be 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.

5. K.A.R. 40-1-34 Sec. 7 - Failure to Acknowledge Pertinent Communications

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.

6. K.A.R. 40-1-34 Sec. 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.

7. K.A.R. 40-1-34 Sec. 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 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. KSA 40-3110 Payment of PIP benefits

(a) Except for benefits payable under any workmen's compensation law, which shall be credited against the personal injury protection benefits provided by subsection (f) of K.S.A. 40-3107, 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. An insurer or self-insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the insurer's policy of motor vehicle liability insurance affords the coverage required by this act. No claim for personal injury protection benefits may be made after two (2) years from the date of the injury.

(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, except that disability benefits payable under this act shall be paid not less than every two (2) weeks after such notice. 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: Provided, That no such payment shall be deemed overdue where the insurer or self-insurer has reasonable proof to establish that it is not responsible for the payment, notwithstanding that written notice has been furnished. For the purpose of calculating the extent to which any personal injury protection benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery. All overdue payments shall bear simple interest at the rate of eighteen percent (18%) per annum.

C. KSA 40-2404. Unfair methods of competition or unfair and deceptive acts or practices; disclosure of nonpublic personal information; rules and regulations. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(9) *Unfair claim settlement practices.* It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are: (A) Committed flagrantly and in conscious disregard of such provisions, or (B) committed with such frequency as to indicate a general business practice.

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) attempting to settle a claim for less than the amount to which a reasonable person would have believed that such person was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

D. KSA 40-2,126. Interest Due On Insurance Settlements,

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.