

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

PROGRESSIVE MAX INSURANCE COMPANY

Administrative Proceeding No. 22-IC-02425

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ADOPTING
REPORT OF MARKET CONDUCT COMPLIANCE EXAMINATION
AND DIRECTING CORRECTIVE ACTION AND ASSESSING A PENALTY

NOW COMES, Allan L. McVey, Insurance Commissioner of the State of West Virginia (hereinafter, “Commissioner”), who, after consideration of the *Report of Market Conduct Compliance Examination* (hereinafter, the “*Examination Report*”) of Progressive Max Insurance Company (hereinafter, “Progressive”) for the examination period ending October 31, 2022, made the following findings of fact and conclusions of law and order.

FINDINGS OF FACT

1. The market conduct examination was a targeted examination focusing on standards contained in the *Market Regulation Handbook*. The examination was conducted in accordance with W. Va. Code §33-2-9(c) by examiners duly appointed by the Commissioner and covered the period of January 1, 2020 through October 31, 2022.

2. On or about April 20, 2023, the examiner filed with the Commissioner, pursuant to W. Va. Code §33-2-9, the *Examination Report*.

3. A true copy of the *Examination Report* was provided to Progressive and Progressive was notified, pursuant to W.Va. Code §33-2-9(j)(2), that it could file a submission or rebuttal to

the *Examination Report* with the Commissioner. Progressive acknowledged the findings and had no objections.

4. As set forth in the *Examination Report*, the examination focused on the methods used by Progressive to manage its operations for each of the areas examined, including whether and how Progressive complies with West Virginia's statutory and regulatory law.

5. The exam discovered one (1) area where Progressive was non-compliant with West Virginia law.

6. The Commissioner reviewed the *Examination Report* and considered Progressive's submissions prior to issuing these findings of fact, conclusions of law and order.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the subject matter and the parties to this proceeding.

2. This proceeding is conducted pursuant to and in accordance with W. Va. Code §33-2-9.

3. The Commissioner is charged with the responsibility of verifying Progressive's continued compliance with West Virginia law.

4. Progressive was compliant or predominantly compliant in thirteen (13) of fourteen (14) standards tested. Progressive was non-compliant in one (1) standard tested.

5. As detailed in the *Examination Report*, Progressive failed to comply with provisions of West Virginia law as follows:

- Standard G9 – Progressive did not give claimants the option of contacting the Insurance Commissioner’s Office in eight (8) denied claims in accordance with W. Va. Code R §114-14-6.17.

6. The Commissioner has determined that Progressive should be assessed a penalty for violating the aforementioned standard.

ORDER

Pursuant to W.Va. Code §§ 33-2-9(j)(3)(A) and 33-3-11, following the review of the *Examination Report*, the examination work papers, and Progressive’s response thereto, it is **ORDERED** as follows:

1. The referenced and attached *Examination Report* is hereby **ADOPTED** and **APPROVED** and by this reference, incorporated herein and made a part hereof;

2. Progressive shall endeavor to comply with the recommendations contained in the *Examination Report*;

3. Progressive shall continue to monitor its compliance with applicable West Virginia law.

4. Progressive shall specifically cure the violations and deficiencies identified in the *Examination Report* so as to bring itself into compliance and conformity with West Virginia law, as set forth hereinabove, to the extent such has not already been completed and/or accomplished;

5. Progressive shall file a Corrective Action Plan (CAP), subject to the approval of the Commissioner, which said CAP shall detail Progressive’s changes to its procedures and/or internal policies to ensure compliance with West Virginia law and shall further incorporate all

recommendations of the Commissioner's examiners and address all violations specifically cited in the *Examination Report*;


6. The CAP shall be submitted to the Commissioner for his approval within 30 days of the date this order is entered;

7. Progressive shall make reasonable changes to the CAP if and as directed by the Commissioner within 30 days of its receipt of the Commissioner's changes to, or disapproval of, the CAP;

8. Progressive shall, within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP; and

9. Progressive shall pay an administrative penalty in the amount of Two Thousand Dollars (\$2,000.00) for its non-compliance with West Virginia law as set forth hereinabove, the assessment of which penalty is in lieu of any other regulatory penalty and shall be remitted within 30 calendar days of the date this order is entered. If aggrieved by this penalty, Progressive may request a hearing pursuant to W.Va. Code §33-2-13 within 30 calendar days of the date this Order is entered.

Entered this 16th day of June, 2023.



Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

Report of Market Conduct Compliance Examination

As of October 31, 2022



**Progressive Max Insurance Company
6300 Wilson Mills Road
Cleveland, OH 44143**

**NAIC COMPANY CODE: 24279
Examination Number: 22-IC-02425**

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April 20, 2023

The Honorable Allan L. McVey, CPCU, ARM, AAI, AAM, AIS
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25305

Dear Commissioner McVey:

Pursuant to your instructions and in accordance with West Virginia Code § 33-2-9, a Market Conduct examination has been made for the period of 01/01/2020 through 10/31/2022 on

**Progressive Max Insurance Company
6300 Wilson Mills Road
Cleveland, OH 44143**

hereinafter referred to as the "Company". The following report of the findings of this examination is herewith respectfully submitted.

PURPOSE AND SCOPE OF THE EXAMINATION

Market conduct examiners with the West Virginia Offices of the Insurance Commissioner (WVOIC) reviewed certain business practices of Progressive Max Insurance Company. The period covered by the examination was January 1, 2020 through October 31, 2022. W. Va. Code §33-2-9 empowers the Commissioner to examine any entity engaged in the business of insurance. The findings in this report, including all work products developed in producing it, are the sole property of the WVOIC.

“Company” as used herein refers to Progressive Max Insurance Company. “WVOIC” as used herein refers to the West Virginia Offices of the Insurance Commissioner. “W.Va. Code R.” as used herein refers to the West Virginia Code of State Rules. “W.Va. Code” as used herein refers to the West Virginia Code Annotated.

The purpose of this targeted examination was due to a recent observation of increased frequency of consumer complaints and to determine the Company’s compliance with West Virginia insurance laws. The conclusions and findings of this examination are public record.

The basic business areas that were reviewed and tested under this examination were:

- Claims Practices
- Complaint Handling

EXECUTIVE SUMMARY

The examination began January 24, 2023 and concluded on April 6, 2023.

A total of fourteen (14) standards were reviewed for compliance during this examination. Of those fourteen (14) standards, the Company was compliant or predominantly compliant in thirteen (13) and non-compliant in one (1) standard (G9).

The market examination revealed the following violations of the W. Va. Code or Regulations:

B4 – The Company did not respond timely to the WVOI on two (2) complaints as required under W. Va. Code R § 114-14-5.2 & 5.3.

G1 – On two (2) claims the company failed to contact the claimant within the required 15 (fifteen) working days (or mandated emergency order timeframe) from the date of the loss notice as required by W. Va. Code R. § 114-14-5.1.

G2 – On two (2) claims the Company did not send notices of necessary delay in investigating claims as required by W. Va. Code R. § 114-14-6.7.

G3 - The Company did not send a denial notification within ten (10) working days of completing its investigation on one (1) denied claim as required by W. Va. Code R. § 114-14-6.3.

G5 – One claim file did not retain a copy of the claim denial letter as required in accordance with W. Va. Code R. §§ 114-14-3.

G9 – On eight (8) denied claims the Company failed to give claimants the option of contacting the Commissioner’s Office, providing claimants with its mailing address, telephone number, and web site address on eight (8) files as required by W. Va. Code R. § 114-14-6.17.

HISTORY AND PROFILE

Progressive Max Insurance Company is a wholly-owned subsidiary of Progressive Direct Holding, Inc., whose parent is The Progressive Corporation, an insurance holding company which consists of 84 companies, of which, 47 are insurance companies. The Company was incorporated under the laws of the state of Ohio in March of 1937 and is currently licensed in all states except California, Florida, Louisiana, Maine, Massachusetts, Michigan, Tennessee and Texas. The company writes Inland Marine, Other Liability, Other Private Passenger Auto Liability, Private Passenger Auto No-Fault and Private passenger Auto Physical Damage lines of business.

The Company’s West Virginia direct written premium reported for 2022 was \$ 68,489,221 with a market share of 5.166% specific to its private passenger auto line of business.

METHODOLOGY

The examination was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners (“NAIC”) and West Virginia’s applicable statutes and regulations. This is a report by test of Company compliance with selected Standards contained in the National Association of Insurance Commissioners’ (NAIC) *2022 Market Regulation Handbook* (“Handbook”) and Standards approved by the West Virginia Offices of the Insurance Commissioner (“WVOIC”) which are based on applicable West Virginia statutes and administrative rules, as referenced herein. Testing is based on guidelines contained in the Handbook. All tests applied are included in this report.

The examiners used the NAIC standards of 7% error ratio on claims tests (93% compliance rate) and 10% error ratio on all other tests (90% compliance rate) to determine whether an apparent pattern or practice of being compliant, predominantly compliant, or non-compliant existed for any given test. The examiner reviewed a sampled population

of twenty-five (25) paid claim files and thirty-five (35) denied/closed without payment (CWOP) claim files for compliance.

Tests designed to measure the level of compliance with West Virginia statutes, rules and regulations were applied to the files. Each area of the examination has specific elements that were tested and are listed below. The examiners may not have discovered every unacceptable or non-compliant activity in which the Company is engaged. The failure to identify, comment on, or criticize specific practices does not constitute an acceptance of the practices by the West Virginia Offices of the Insurance Commissioner or its' designee. A compliance table follows containing results of each area of review with the compliance percentage for the Company and final examination results.

STANDARDS & REVIEW ELEMENTS

A7. RECORDS: Records are adequate, accessible, consistent and orderly and comply with state record retention and provided timely. (NAIC Market Regulation Handbook Chapter 20, § A Standard 7)

- Are the records adequate and accessible? [W. Va. § 33-11-4 and W. Va. Code R. §§ 114-14-3 & 15-4]

A9. RECORDS: The Company cooperates on a timely basis with the examiners performing the examination. (NAIC Market Regulation Handbook Chapter 20, § A Standard 9)

- Did the Company provide records and cooperate with examiners on a timely basis? [W. Va. § 33-2-9 and W. Va. Code R. § 114-15-1 et seq.]

B1. COMPLAINTS: All complaints are recorded in the required format on a company complaint register, has compliant procedures in place and responds in a timely manner to complaints. (NAIC Market Regulation Handbook Chapter 20, § B Standards 1)

- Is the Company recording in a regulated complaint register all complaints from both the consumer and the Commissioner's Office? [W. Va. Code § 33-11-4(10)]

B2. COMPLAINTS: The regulated entity has adequate complaint handling procedures in place and communicates such procedures to policyholders. (NAIC Market Regulation Handbook Chapter 20, § B Standards 2)

- Does the Company have complaint procedures in place, and are they sufficient to satisfactorily handle complaints including tracking responses? [W. Va. §33-11-4(10) and W. Va. Code R. §114-14-5.2]

B3. COMPLAINTS: The Company takes adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules, and regulations, and contract language. (NAIC Market Regulation Handbook Chapter 20, § B Standards 3)

- Does the Company take adequate steps to address and resolve the complaint as required by W. Va. §33-11-4(10) and W. Va. Code R. § 114-14-5.2?

B4. COMPLAINTS: The timeframe within which the regulated entity responds to complaints is in accordance with applicable statutes, rules, and regulations. (NAIC Market Regulation Handbook Chapter 20, § B Standards 4)

- Is the Company responding to complaints in a timely manner, as required by W. Va. §33-11-4(10) and W. Va. Code R §§ 114-14-5.2 & 5.3?

G1. CLAIMS: Initial contact by the Company with the claimant is within the required timeframe. (NAIC Market Regulation Handbook Chapter 20, § G Standard 1)

- Was the claimant contacted within 15 working days (or mandated emergency order timeframe) from the date of the loss notice required by W.Va. Code § 33-11-4(9)(b) and W. Va. Code R. § 114-14-5.1?

G2. CLAIMS: Timely investigations are made. (NAIC Market Regulation Handbook Chapter 20, § G Standard 2)

- Did the investigation commence within fifteen (15) working days of any claim filed as required by W. Va. Code § 33-11-4(9)(c) and W. Va. Code R. § 114-14-6.2.a?
- Did the Company promptly conduct and diligently pursue a thorough, fair and objective investigation and not unreasonably delay resolution by persisting in seeking information not reasonably required for or material to the resolution of the claim dispute as required by W. Va. Code R. §114-14-6.1?
- Is the investigation continuing more than 30 calendar days? If so, was a notice of necessary delay sent within 15 working days after the 30 calendar days AND if the investigation continued, were subsequent notices of necessary delay sent with 45 calendar days as required by W. Va. Code R. § 114-14-6.7?

G3. CLAIMS: Claims are resolved in a timely manner. (NAIC Market Regulation Handbook Chapter 20, § G Standard 3)

- Did the Company affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed as required by W. Va. Code § 33-11-4(9)(e)?

- Did the Company deny the claim or make a written offer within ten (10) working days of completing its investigation as required by W. Va. Code R. § 114-14-6.3?
- Did the Company pay any amount agreed upon within (15) working days as required by W. Va. Code R. §114-14-6.11?

G4. CLAIMS: The regulated entity responds to claim correspondence in a timely manner. (NAIC Market Regulation Handbook Chapter 20, § G Standard 4)

- Did the Company reply within fifteen (15) working days to pertinent communications from a claimant which reasonably suggests that a response is needed as required by W. Va. Code § 33-11-4(9)(b) and W. Va. Code R. § 114-14-5.3?

G5. CLAIMS: Claim files are adequately documented. (NAIC Market Regulation Handbook Chapter 20, § G Standard 5)

- Do the files 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 as required by W. Va. Code R. §§ 114-14-3, 114-15-4.2a & 114-15-4.4?
- Are the communications properly dated?

G6. CLAIMS: Claims are properly handled according with policy provisions and applicable statutes, rules and regulations. (NAIC Market Regulation Handbook Chapter 20, § G Standard 6)

- Did the Company attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear as required by W. Va. Code § 33-11-4(9)(f) and W. Va. Code R. §§ 114-14-6.4 & 6.10?
- Was coverage checked for proper application of deductible or appropriate exclusionary language as required by W. Va. Code § 33-11-4(9)(a)?
- Is the claimant who is neither an attorney or represented by an attorney given written notice of that statute of limitation as required by W. Va. Code R. § 114-14-6.12?
- Does the Company ensure where liability and damages are reasonably clear, that no person recommends that third-party claimants make claim under their own policies solely to avoid paying claims under an insurer's insurance policy or insurance contract as required by W. Va. Code § 33-11-4(9)(m) and W. Va. Code R. § 114-14-6.13?
- Does the Company ensure they do not require a claimant to travel unreasonably as required by W. Va. Code R. § 114-14-6.14?
- Does the Company ensure that claim proceeds are not used to pay premiums under another policy unless the insured consents as required by W. Va. Code R. § 114-14-6.16?

- Does the Company ensure, if it furnishes to the claimant the names of one or more conveniently located motor vehicle repair shop that will perform the repairs, that it doesn't require the claimant to use a particular repair shop or location to obtain the repairs as required by W. Va. Code R. § 114-14-6.18?
- Did the Company adopt and communicate to all its claims agents written standards for prompt investigation and processing of claims in accordance with W. Va. Code R. § 114-14-8 (effective 4/24/2006)?

G9. DENIED/CWOP CLAIMS: Claims are handled in accordance with policy provisions and state law. (NAIC Market Regulation Handbook Chapter 20, § G Standard 9)

- Did the Company attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear as required by W. Va. Code § 33-11-4(9)(f) and W. Va. Code R. §§ 114-14-6.4 & 6.10?
- Is the denial based upon specific policy provisions or exclusions, if so, is the reason included in the denial as required by W. Va. Code § 114-14-6.5?
- Is the claimant provided with a reasonable basis for the denial when required by statute or regulation as required by W. Va. Code § 33-11-4(9)(n)?
- Does the company refuse to pay claims without conducting a reasonable investigation based upon all available information as required by W. Va. Code § 33-11-4(9)(d) and W. Va. Code R. § 114-14-6.3?
- Does the Company provide the claimant not represented by an attorney a written notice that the claimant's rights may be affected by a statute of limitations to third-party claimants not less than sixty (60) days before the time limit expires as required by W. Va. Code R. § 114-14-6.12?
- Does the company refrain from recommending that a third-party claimant make claim under their own policies to avoid paying claims under an insurer's insurance policy or insurance contract as required by W. Va. Code R. § 114-14-6.13?
- Is the claimant given the option of contacting the Commissioner's Office and provided with its mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17?

G10. CLAIMS: Cancelled checks and drafts reflect appropriate claim handling practices. Payments are handled correctly. (NAIC Market Regulation Handbook Chapter 20, § G Standard 10)

- Do the checks include the correct payee and are they for the correct amount?
- Do payment checks indicate the payment is "final" when such is not the case?
- Do checks or drafts purport to release the insurer from total liability when such is not the case?

COMPLIANCE TABLE

<u>Review Section</u>	<u># Pass</u>	<u># Fail</u>	<u>Minimum Standard Compliance %</u>	<u>Compliance Result %</u>	<u>Examination Result</u>		
					<u>Compliant</u>	<u>Predominantly Compliant</u>	<u>Non-Compliant</u>
A7	N/A	N/A	N/A	N/A			
A9	N/A	N/A	N/A	N/A	X		
B1	66	0	90	100	X		
B2	66	0	90	100	X		
B3	66	0	90	100	X		
B4	64	2	90	97			
G1	58	2	93	97		X	
G2	58	2	93	97		X	
G3	59	1	93	98		X	
G4	60	0	93	100		X	
G5	59	1	93	98	X		
G6	50	0	93	100		X	
G9	27	8	93	77	X		
G10	25	0	93	100	X		X

OBSERVATIONS

- A7** – Records were adequate, accessible, consistent and orderly and comply with state record retention and provided.
- A9** – Company's representatives were cooperative and responded timely to the examiner's request for preliminary claims data.
- B1** – The Company maintains an electronic log of complaints in accordance with the requirements of the Insurance Commissioner. The Company's complaint log included eighteen (18) direct complaints and seventy (70) complaints received by the WCOIC.
- B2** – The Company has complaint procedures in place and appear sufficient to satisfactorily handle complaints including tracking responses.
- B3** – The Company took adequate steps to address and resolve complaints.

B4 – As this targeted examination was called due in part to an increased frequency of consumer complaints, examiners reviewed the entire population of complaints consisting of forty-one (41) first party and twenty-five (25) third party complaints. The examiners did not observe any unfair or deceptive patterns or practices in the course of their review. Although the Company adequately documented complaints, the examiner identified two (2) complaints where the Company did not respond to the WVOIC within the fifteen (15) working days as required under W. Va. Code R § 114-14-5.2 & 5.3.

G1 – On two claims, one (1) paid and one (1) closed without pay, the company failed to contact the claimant within the required 15 (fifteen) working days (or mandated emergency order timeframe) from the date of the loss notice.

G2 – On two (2) claims, one (1) denied and one (1) closed without pay, the company did not issue a notice of necessary delay letter as required by W. Va. Code R. § 114-14-6.7.

G3 – On one (1) denied claim the company did not send a denial within ten (10) working days of completing its investigation as required by W. Va. Code R. § 114-14-6.3 *Duty after investigation*. The claim file indicates the claimant attorney was informed of the pending coverage investigation, but a denial letter was never issued once the investigation concluded.

G4 - The company responded to all claimants within fifteen (15) working days as required by W. Va. Code § 33-11-4(9)(b) and W. Va. Code R. § 114-14-5.3.

G5 – On one (1) denied claim, the denial letter was not retained in the claim file as required by W. Va. Code R. § 114-14-3 (*File and Record Documentation*). The claim file notes indicated that the claims adjuster left a voice message for the claimant advising them of the claim denial and mailed them a denial letter as well. In response to the examiner's inquiry, the company was unable to locate the letter.

G6 - The Company complied with policy provisions applicable statutes, rules and regulations under this standard.

G9 – On eight (8) denied claims that required a denial letter, the company failed to give claimants the option of contacting the Insurance Commissioner's Office, providing claimants with the appropriate mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17.

G10 – All claim file payments were handled appropriately.

RECOMMENDATIONS

- B4** – The Company should ensure that all WVOIC complaint requests are responded to with the required fifteen (15) days in accordance with W. Va. Code R § 114-14-5.2 & 5.3.
- G2** - The Company should ensure the issuance of claim delay letters are done timely in accordance with W. Va. Code R. § 114-14-6.7.
- G3**- The Company should ensure that either a denial or a written offer is made on a claim within ten (10) working days of completing its investigation in accordance with W. Va. Code R. § 114-14-6.3.
- G4** – The Company should ensure a timely reply to pertinent communications from a claimant, which reasonably suggest that a response is needed in accordance with W. Va. Code R. § 114-14-5.3.
- G5** – The Company should ensure that claim files are adequately documented in accordance with W. Va. Code R. § 114-14-3.
- G9** – The Company should ensure that claimants are given the option of contacting the Insurance Commissioner's Office, providing claimants with the appropriate mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17.

EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT

The examiner would like to acknowledge the cooperation and assistance extended by the Company during the examination.

In addition to the undersigned, Jeremy White, APIR, also participated in this examination.



Letha G. Tate, AIE, ALMI, AIRC, MCM
Examiner-in-Charge

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES USED IN EXAMINATION

State of West Virginia

County of Kanawha

I, Letha G. Tate, being duly sworn, states as follows:

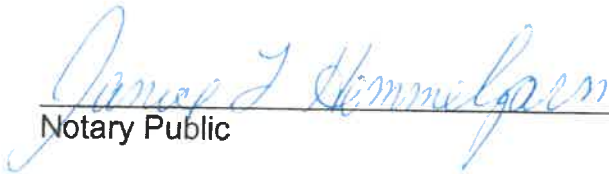
1. I have the authority to represent West Virginia in the examination of Progressive Max Insurance Company.
2. I have reviewed the examination work papers and examination report, and the examination of Progressive Max Insurance Company was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.



Letha G. Tate, AIE, ALMI, AIRC, MCM

Subscribed and sworn before me by Letha G. Tate on this 20 day of April 2023.



Notary Public

My commission expires: March 23, 2024

