

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

IN THE MATTER OF:)	
)	
PROGRESSIVE CASUALTY INSURANCE COMPANY, NAIC # 24260;)	
)	
NATIONAL CONTINENTAL INSURANCE COMPANY, NAIC # 10243;)	
)	
PROGRESSIVE NORTHERN INSURANCE COMPANY, NAIC # 38628;)	Docket No. 14-064-I
)	
PROGRESSIVE DIRECT INSURANCE COMPANY, NAIC # 16322;)	
)	
PROGRESSIVE SPECIALTY INSURANCE COMPANY, NAIC # 32786;)	
)	
UNITED FINANCIAL CASUALTY COMPANY, NAIC # 11770)	

STIPULATION AND CONSENT ORDER

The Insurance Division of the Vermont Department of Financial Regulation (“Department”) and Progressive Casualty Insurance Company, National Continental Insurance Company, Progressive Northern Insurance Company, Progressive Direct Insurance Company, Progressive Specialty Insurance Company, and United Financial Casualty Company (“Respondents”), stipulate and agree:

1. Pursuant to the authority contained in 8 V.S.A. §§ 11, 12, 13, 15, and Chapters 101, 129, and 131, the Commissioner of the Department (“Commissioner”) is charged with enforcing the insurance laws of the State of Vermont.
2. Pursuant to the authority contained in 8 V.S.A. § 4726, the Commissioner may investigate any person engaged in the business of insurance in Vermont in order to determine

whether that person has violated 8 V.S.A. § 4723 by engaging in any unfair method of competition or in any unfair or deceptive act or practice, may suspend or revoke the license of any insurer, and/or may impose an administrative penalty for any violation of Title 8, Chapter 129.

3. Respondents acknowledge and admit the jurisdiction of the Commissioner over the subject matter of the Stipulation and Consent Order set forth herein.

4. Respondents sell insurance and are licensed to do so in Vermont. Respondents are located at 6300 Wilson Mills Road, Mayfield Village, Ohio, 44143.

5. The Department, pursuant to its statutory authority, commenced an investigation of Respondents' claims practices regarding the adjustment of claims where comparative negligence allocations were assigned to claimants in order to determine Respondents' level of compliance with Vermont law.

6. Pursuant to 8 V.S.A. § 4724(9)(C), failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies constitutes unfair or deceptive acts or practices in the business of insurance in violation of 8 V.S.A. § 4723 and enforceable under 8 V.S.A. § 4726. Without making any determination as to whether Respondent *adopted* reasonable standards, the Department identified instances where Respondent did not document the implementation of reasonable standards. While it is possible that Respondent implemented its reasonable standards but failed to document the implementation, the Department, without evidence to the contrary, has concluded that Respondent violated 8 V.S.A. § 4724(9)(C) based on Respondent's failure to *implement* reasonable standards for the prompt investigation of claims arising under insurance policies.

7. As a result of its investigation the Department identified violations of 8 V.S.A. § 4724(9)(D), refusing to pay claims without conducting a reasonable investigation based upon all available information in that certain files lacked sufficient documentation to determine what investigative steps had been taken, which violations constitute unfair or deceptive acts or practices in the business of insurance in violation of 8 V.S.A. § 4723 and enforceable under 8 V.S.A. § 4726.

8. As a result of its investigation the Department concludes that Respondents violated 8 V.S.A. § 4724(17) in that Respondents failed to show through documentation how their internal standards had been applied by their representatives making the comparative negligence allocation, which violations constitute unfair or deceptive acts or practices in the business of insurance in violation of 8 V.S.A. § 4723 and enforceable under 8 V.S.A. § 4726.

9. As a result of its investigation the Department identified violations of Regulation I-99-01, Section 4(A)(3), not maintaining claim records in such a manner so as to show clearly the inception, handling and disposition of each claim.

10. Finally, as a result of its investigation the Department concludes that an unlicensed adjuster conducted one of Respondents' comparative negligence allocation investigations in violation of 8 V.S.A § 4793(a).

11. Respondents have been made aware that the Department may proceed with an administrative action against them for the violations set forth herein, and seek appropriate relief pursuant to the Department's statutory authority.

12. Respondents wish to resolve this matter without a hearing by entering into this Stipulation and Consent Order with the Department on the terms and conditions set forth herein, but do not admit the existence of violations as set forth in this agreement.

13. Respondents waive their right to a hearing before the Commissioner or the Commissioner's designee, and all other procedures otherwise available under Vermont law, the rules of the Department, the provisions of Chapter 25 of Title 3 regarding contested cases, or any right they may have to judicial review by any court by way of suit, appeal, or extraordinary remedy with respect to the terms of the Stipulation and Consent Order set forth herein.

14. Respondents acknowledge their understanding of all terms, conditions, undertakings and obligations contained in this Stipulation and Consent Order.

15. Respondents acknowledge that the Stipulation and Consent Order constitutes a valid order duly rendered by the Commissioner and agree to be fully bound by it. Respondents acknowledge that noncompliance with any of the terms of this Stipulation and Consent Order shall constitute a violation of a lawful order of the Commissioner and shall be a separate violation of the laws of the State of Vermont and shall subject Respondents to administrative action or sanctions as the Commissioner deems appropriate. Respondents further acknowledge that the Commissioner retains jurisdiction over this matter for the purpose of enforcing this Stipulation and Consent Order.

16. The Department retains any rights it has to respond to and address any consumer complaint that may be made with regard to Respondents and a transaction in insurance, as defined in 8 V.S.A. § 3301, including the right to pursue any remedy authorized by law in response to such a consumer complaint.

17. Nothing herein shall be construed as a waiver of any private right of action any person may have.

THE DEPARTMENT AND RESPONDENT FURTHER STIPULATE AND AGREE:

18. Respondents shall pay an administrative penalty in the amount of \$50,000.00 within ten (10) days of the execution of this Stipulation and Consent Order.

19. Respondents shall properly document how the procedures its adjusters are to use when making comparative determinations have been implemented. These procedures shall include guidelines and training materials which instructs adjusters to take certain steps before making a determination of comparative negligence. These steps may include, where appropriate:

a. Taking recorded statements from the insured driver, the claimant, and any witness.

b. Requesting and analyzing the police report and documenting the claim file in the event the adjuster disagrees with the conclusion reached by the investigating officer, which documentation should include the reason(s) for said disagreement.

c. Conducting or causing to be conducted a scene investigation which should include photographic evidence and a diagram of the scene.

d. Conducting or causing to be conducted a vehicle inspection which should include photographic evidence.

e. Conducting or causing to be conducted an accident reconstruction to identify the cause(s) of the collision and any contributing factors, including, but not limited to, the role of the driver(s), vehicle(s), roadway, and environment.

f. Documenting the claim file when an insured, claimant, and/or any witness has refused to give a recorded statement, and the reasons given for such refusal.

g. Documenting the claim file when an insured, claimant, and/or any witness cannot be located, as well as a description of what steps were taken to locate the insured, the claimant, and/or any witness.

h. Contacting the investigating officer in the most expedient way possible.

i. The Department acknowledges that certain steps may not be appropriate in certain situations. Respondents agree that in the event an adjuster deems any step inappropriate, the adjuster shall document in the claim file why the step was inappropriate if it is not evident from the context of the claim file.

20. All documentation referenced in Paragraph Nineteen (19) shall comply with Department Regulation 99-1 relating to Record Retention.

21. Respondents will deliver shared liability training periodically to file owners and adjusters who handle Vermont claims. Respondent will maintain records of the training and participants in the training.

22. Respondents shall implement appropriate controls, which shall be reviewed on a periodic basis, to ensure the process for making comparative negligence determinations is working as intended and make any necessary corrections to that process. Such controls may be amended from time to time in order to accomplish their intended purpose. Examples of such controls include:

- a. Internal or external audits;
- b. Checklists;
- c. Intervention by a supervisor or manager;
- d. Regular management reports;
- e. Periodic sampling;
- f. Employee evaluations; and/or
- g. Training or retraining.

23. The Department may conduct a follow-up examination within twelve (12) to twenty-four (24) months after the date of the execution of this Stipulation and Consent Order. The examination may focus on Respondent's level of compliance with 8 V.S.A. § 4723, 8 V.S.A. § 4724, 8 V.S.A. § 4793(a), and Department Regulation 99-1, as well as any other issue deemed appropriate at that time by the Department. The follow-up examination may cover the period from the date of the execution of this Stipulation and Consent Order through the date of the examination. Respondents shall reimburse the Department for all costs and expenses associated with the follow up examination pursuant to 8 V.S.A. § 18. Nothing in this paragraph or Order shall be construed to limit the Department's ability to examine Respondents prior to twelve months or subsequent to twenty-four months from the date of the signing of this Order.

24. Respondents shall comply with all applicable Vermont Laws, Regulations, and Bulletins including but not limited to, 8 V.S.A. § 4723, 8 V.S.A. § 4724, 8 V.S.A. § 4793(a), and Department Regulation 99-1.

25. Respondents hereby waive their statutory right to notice and a hearing before the Commissioner of the Department, or her designated appointee.

26. Respondents acknowledge and agree that this Stipulation and Consent Order is entered into freely and voluntarily, and that except as set forth herein, no promise was made to induce the Respondents to enter into it. Respondents acknowledge that they understand all terms and obligations contained in this order. Respondents acknowledge that they have consulted with their attorney in this matter and that they have reviewed this Stipulation and Consent Order and understand all terms and obligations contained herein.

27. Respondents consent to the entry of this Order and agree to be fully bound by its terms and conditions. Respondents acknowledge that noncompliance with any of the terms of

this Order may constitute a separate violation of the insurance laws of the State of Vermont and may subject them to sanctions. In the event the Department alleges a violation of the terms of this Stipulation and Consent Order, conducts any follow-up examination, and/or finds any separate violation than those outlined in this Stipulation and Consent Order, Respondents specifically do not waive their right to an administrative hearing but instead retain that right as well as all other remedies available to Respondents.

28. The terms set forth in this Stipulation and Consent Order represents the complete agreement between the parties as to its subject matter.

29. The undersigned representative of Respondents affirms that he or she has taken all necessary steps to obtain the authority to bind Respondents to the obligations stated herein and has the authority to bind Respondents to the obligations stated herein.

- PROGRESSIVE CASUALTY INSURANCE COMPANY**
- NATIONAL CONTINENTAL INSURANCE COMPANY**
- PROGRESSIVE NORTHERN INSURANCE COMPANY**
- PROGRESSIVE DIRECT INSURANCE COMPANY**
- PROGRESSIVE SPECIALTY INSURANCE COMPANY**
- UNITED FINANCIAL CASUALTY COMPANY**

By Their Duly Authorized Agent:

	<u>August 14, 2015</u>
(Insert Name and Title)	Date
<u>Gregory E. Schwartz Assistant General Counsel</u>	

STATE OF OHIO
COUNTY OF CUYAHOGA

On this 14th day of August, 2015 Gregory Schwartz personally appeared before me and pursuant to a sworn oath subscribed to this Stipulation and Consent Order and represented that

Gregory Schwartz has full authority to execute, deliver and legally bind Respondent to this Stipulation and Consent Order.

Margaret A. Rose
NOTARY PUBLIC

My Commission Expires: **Margaret A. Rose**
Notary Public - State of Ohio
My Commission Expires October 23, 2016
Recorded in Lake County

ACCEPTED BY:

Kaj Samsom
Kaj Samsom, Deputy Commissioner,
Insurance Division, Vermont Department
of Financial Regulation

Date 8/27/15

CONSENT ORDER

1. The stipulated facts, terms and provisions of the Stipulation are incorporated by reference herein.
2. Jurisdiction in this matter is established pursuant to Chapters 101, 129, and 131 of Title 8 of Vermont law.
3. Pursuant to the Stipulation, Respondents consent to the entry of this Consent Order.
4. Respondents shall comply with all agreements, stipulations, and undertakings as recited above.
5. Nothing contained in this Order shall restrain or limit the Department in responding and addressing any consumer complaint about Respondents filed with the Department or shall preclude the Department from pursuing any other violation of law.

Entered at Montpelier, Vermont, this 27th day of August, 2015.

Susan L. Donegan, Acting Commissioner
SUSAN L. DONEGAN, Commissioner
Vermont Department of Financial Regulation