



THE TREASURER OF THE STATE OF FLORIDA  
DEPARTMENT OF INSURANCE

TOM GALLAGHER

FILED

MAY 9 2002

Treasurer and  
Insurance Commissioner  
Docketed by: 00

RECEIVED

IN THE MATTER OF:

MAY 10 2002

CASE NOS. 40664-01-CO  
40672-01-CO  
41693-01-CO

PROGRESSIVE EXPRESS INSURANCE  
COMPANY, PROGRESSIVE  
SOUTHEASTERN INSURANCE  
COMPANY AND PROGRESSIVE  
CONSUMERS INSURANCE COMPANY  
Division of Insurer Services

CONSENT ORDER

THIS CAUSE came on for consideration as the result of an agreement between PROGRESSIVE EXPRESS INSURANCE COMPANY, PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY and PROGRESSIVE CONSUMERS INSURANCE COMPANY (hereinafter "PROGRESSIVE COMPANIES") and the FLORIDA DEPARTMENT OF INSURANCE (hereinafter "DEPARTMENT"). Following a complete review of the entire record, and upon consideration thereof, and being otherwise fully advised in the premises, the Treasurer and Insurance Commissioner, as head of the FLORIDA DEPARTMENT OF INSURANCE, hereby finds as follows:

1. The Treasurer and Insurance Commissioner, as head of the DEPARTMENT, has jurisdiction over the subject matter of, and parties to, this proceeding.
2. PROGRESSIVE COMPANIES are domestic property and casualty insurers authorized to transact insurance business in Florida and are subject to the jurisdiction and regulation of the DEPARTMENT, pursuant to the Florida Insurance

Code. PROGRESSIVE COMPANIES are subsidiaries of the Progressive Corporation, an insurance holding company formed in 1965.

3. The DEPARTMENT conducted property and casualty market conduct examinations of PROGRESSIVE COMPANIES covering the period of January 1996 through July 2000, pursuant to Section 624.3161, Florida Statutes. As a result of such examinations, the DEPARTMENT alleged that PROGRESSIVE COMPANIES had engaged in an underwriting practice which resulted in significant numbers of policyholders paying, on a continuing basis, higher premiums than were appropriate. Specifically, PROGRESSIVE COMPANIES were not automatically reviewing the underwriting of its policyholders in a way that would reveal that these policyholders, based upon changes in their credit status, were entitled to a lower rate.

4. PROGRESSIVE COMPANIES utilize a five tier rating system. One of the criteria which determines placement in a specific tier is the policyholder's credit history. PROGRESSIVE COMPANIES do not annually review a policyholder's credit history to determine whether improvements in their credit history would have resulted in that policyholder qualifying for entry into a lower-rated tier, with a correspondingly lower premium, unless requested by the policyholder or their agent. The DEPARTMENT has received documents from PROGRESSIVE COMPANIES that establishes that policyholders of these companies would have qualified for approximately \$5.5 million of lower premiums had PROGRESSIVE COMPANIES annually re-evaluated their credit underwriting status.

5. It is the DEPARTMENT's position that the PROGRESSIVE COMPANIES should refund said monies to their qualifying policyholders.

6. By the end of 2002, PROGRESSIVE COMPANIES will not be writing new business and will be in "run-off" status.

7. PROGRESSIVE COMPANIES represent to the DEPARTMENT that Progressive Corporation, the parent of PROGRESSIVE COMPANIES, has introduced an insurance program through Progressive Auto Pro, in which all new direct business will be written. PROGRESSIVE COMPANIES represent to the DEPARTMENT that Progressive Corporation will also introduce a new insurance program through Progressive American Insurance Company in which all new business written through independent agents will be placed. This program is subject to approval by the DEPARTMENT. The Progressive Auto Pro Insurance Company and Progressive American Insurance Company programs are represented by PROGRESSIVE COMPANIES to be structured so that policyholders have their credit status reviewed periodically as part of the re-underwriting process. PROGRESSIVE COMPANIES represent that Progressive Auto Pro and Progressive American Insurance Company shall perform such periodic reviews no less than every two years. Under the Auto Pro and the Progressive American Insurance Company programs, if a policyholder under this program qualifies for a lower rating tier based upon improvements in their credit status, they shall be reassigned to a lower rating tier. However, in no event shall the policyholder be moved to a higher rating tier, if his or her credit status has deteriorated in the past year. The DEPARTMENT acknowledges that this methodology, insofar as it is described in this paragraph seven, does not violate the Florida Insurance Code.

8. In an effort to amicably resolve this matter, and without any admission of liability or wrongdoing by the PROGRESSIVE COMPANIES, the parties agree and the DEPARTMENT finds as follows:

a. Progressive Express Insurance Company and Progressive Southeastern Insurance Company shall promptly refund approximately \$5.0 million to existing policyholders who would have qualified for a lower rating tier had the two companies reviewed their credit and certain underwriting status as part of a re-underwriting process. Said refunds shall be made in the form of a credit at the time of the first renewal that occurs sixty (60) days after the date this Order is entered. Progressive Consumers Insurance Company shall promptly refund 1.7% of each existing policyholders' next renewal premium, an amount estimated to be approximately \$500,000.

b. PROGRESSIVE COMPANIES shall make available the Progressive Auto Pro Insurance Company program referenced above to its existing direct policyholders and shall make available the Progressive American Insurance Company program referenced above to their existing policyholders obtained through independent agents as soon as the program is filed and approved. Additionally, PROGRESSIVE COMPANIES shall provide written notification to its policyholders that they may apply to the Progressive Auto Pro Insurance Company, if a direct policy, or Progressive American Insurance Company, if an independent agent policy, for a potentially lower rate. PROGRESSIVE COMPANIES shall obtain prior approval of the language and content of this written notification from the DEPARTMENT.

- c. PROGRESSIVE COMPANIES shall pay an administrative penalty of \$250,000 to the DEPARTMENT within thirty days (30) of the execution of this Consent Order.

9. The Consent Order is intended by the parties to resolve all pending issues related to the PROGRESSIVE COMPANIES' 2000 property and casualty market conduct examinations with respect to all credit related underwriting issues existing between the parties.

10. The DEPARTMENT and PROGRESSIVE COMPANIES expressly waive a hearing in this matter, and the making of Findings of Fact and Conclusions of Law by the DEPARTMENT and all further and other proceedings herein to which the parties may be entitled by law or rules of the DEPARTMENT. PROGRESSIVE COMPANIES hereby knowingly and voluntarily waive all rights to challenge or to contest this Order, in any forum now available to it, including the right to any administrative proceeding, circuit or federal court action, or any appeal.

10. PROGRESSIVE COMPANIES agree that the failure to adhere to one or more of the terms and conditions of this Order shall constitute a violation of a lawful order of the DEPARTMENT, and shall subject PROGRESSIVE COMPANIES to such administrative action as the Treasurer and Insurance Commissioner may deem appropriate.

11. Each party to this action shall bear its own costs and attorney's fees.

THEREFORE, the agreement between PROGRESSIVE COMPANIES and the DEPARTMENT, the terms and conditions that are set forth above, is approved.

FURTHER, all terms and conditions above are hereby ORDERED.

DONE AND ORDERED this 9<sup>th</sup> day of <sup>May</sup>~~April~~, 2002.



Kevin M. McCarty  
Deputy Treasurer and  
Insurance Commissioner

By execution hereof PROGRESSIVE EXPRESS INSURANCE COMPANY consents to entry of this Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents he/she has the authority to bind PROGRESSIVE EXPRESS INSURANCE COMPANY to the terms and conditions of this Consent Order.

By: \_\_\_\_\_

Print Name: Dane A. Shralow

Title: Secretary

Date: April 23, 2002

Corporate Seal

By execution hereof PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY consents to entry of this Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents he/she has the authority to bind PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY to the terms and conditions of this Consent Order.

By: \_\_\_\_\_

Print Name: Dane A. Shrallow

Title: Secretary

Date: April 23, 2002

Corporate Seal



By execution hereof PROGRESSIVE CONSUMERS INSURANCE COMPANY consents to entry of this Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents he/she has the authority to bind PROGRESSIVE CONSUMERS INSURANCE COMPANY to the terms and conditions of this Consent Order.

By: \_\_\_\_\_

Print Name: Dane A. Shrallow

Title: Secretary

Date: April 23, 2002

Corporate Seal

**COPIES FURNISHED TO:**

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