

**IN THE DEPARTMENT OF INSURANCE, FINANCIAL  
INSTITUTIONS AND PROFESSIONAL REGISTRATION  
STATE OF MISSOURI**

<b>In Re:</b>	)	
	)	
<b>ACCIDENT FUND GENERAL INSURANCE COMPANY (NAIC #12304)</b>	)	<b>Market Conduct Exam No. 1401-01-TGT</b>
	)	
<b>ACCIDENT FUND NATIONAL INSURANCE COMPANY (NAIC #12305)</b>	)	<b>Market Conduct Exam No. 1401-02-TGT</b>
	)	
<b>ACCIDENT FUND INSURANCE COMPANY OF AMERICA (NAIC #10166)</b>	)	<b>Market Conduct Exam No. 1403-07-TGT</b>
	)	
<b>UNITED WISCONSIN INSURANCE COMPANY (NAIC #29157)</b>	)	<b>Market Conduct Investigation No. 13113-29157-PC</b>

**ORDER OF THE DIRECTOR**

NOW, on this 10<sup>th</sup> day of September, 2018, Director, Chlora Lindley-Myers, after consideration and review of the market conduct examination reports of Accident Fund General Insurance Company (NAIC #12304) (hereinafter “AFG”), report number 1401-01-TGT, Accident Fund National Insurance Company (NAIC #12305) (hereinafter “AFN”), report number 1401-02-TGT, and Accident Fund Insurance Company of America (NAIC #10166) (hereinafter “AFICA”), report number 1403-07-TGT, prepared and submitted by the Division of Insurance Market Regulation (hereinafter “Division”) pursuant to §374.205.3(3)(a)<sup>1</sup>, and review of the market conduct investigation of United Wisconsin Insurance Company (NAIC #29157) (hereinafter “UWIC”), investigation number 13113-29157-PC, conducted by the Division pursuant to §374.190, and of the Stipulation of Settlement and Voluntary Forfeiture (hereinafter “Stipulation”), entered into by the Division, AFG, AFN, AFICA, and UWIC, does hereby adopt such reports as filed. After consideration and review of the Stipulation, report, relevant work papers, and any written submissions or rebuttals, the findings and conclusions of such reports are deemed to be the Director’s findings and conclusions accompanying this order pursuant to §374.205.3(4). Director does hereby issue the following orders:

This order, issued pursuant to §374.205.3(4), §374.280 RSMo, and §374.046.15. RSMo, is in the public interest.

**IT IS THEREFORE ORDERED** that AFG, AFN, AFICA, UWIC, and the Division

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<sup>1</sup> All references, unless otherwise noted, are to Missouri Revised Statutes 2016 as amended.

having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

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

**IT IS FURTHER ORDERED** that AFG shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$5,000.00 payable to the Missouri State School Fund.

**IT IS FURTHER ORDERED** that AFN shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$5,000.00 payable to the Missouri State School Fund.

**IT IS FURTHER ORDERED** that AFICA shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$5,000.00 payable to the Missouri State School Fund.

**IT IS FURTHER ORDERED** that UWIC shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$5,000.00 payable to the Missouri State School Fund.

**IT IS SO ORDERED.**

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this <sup>10<sup>th</sup></sup> day of September, 2018.



*Chlora Lindley-Myers*  
Chlora Lindley-Myers  
Director

**IN THE DEPARTMENT OF INSURANCE, FINANCIAL  
INSTITUTIONS AND PROFESSIONAL REGISTRATION  
STATE OF MISSOURI**

<b>In Re:</b>	)	
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<b>ACCIDENT FUND GENERAL INSURANCE COMPANY (NAIC #12304)</b>	)	<b>Market Conduct Exam No. 1401-01-TGT</b>
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<b>ACCIDENT FUND INSURANCE COMPANY OF AMERICA (NAIC #10166)</b>	)	<b>Market Conduct Exam No. 1403-07-TGT</b>
	)	
<b>UNITED WISCONSIN INSURANCE COMPANY (NAIC #29157)</b>	)	<b>Market Conduct Investigation No. 13113-29157-PC</b>

**STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter “the Division”), and Accident Fund General Insurance Company (NAIC #12304) (hereinafter “AFG”), Accident Fund National Insurance Company (NAIC #12305) (hereinafter “AFN”), Accident Fund Insurance Company of America (NAIC #10166) (hereinafter “AFICA”), and United Wisconsin Insurance Company (NAIC #29157) (hereinafter “UWIC”), as follows:

**WHEREAS**, the Division is a unit of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter, “the Department”), an agency of the State of Missouri, created and established for administering and enforcing all laws in relation to insurance companies doing business in the State in Missouri;

**WHEREAS**, AFG, AFN, AFICA, and UWIC have been granted certificates of authority to transact the business of insurance in the State of Missouri;

**WHEREAS**, the Division conducted Market Conduct Examinations of AFG, AFN, and AFICA and prepared report numbers 1401-01-TGT, 1401-02-TGT, and 1403-07-TGT, and a Market Conduct Investigation of UWIC and prepared investigation findings 13113-29157-PC;

**WHEREAS**, based on the Market Conduct Examination of AFG, the Division alleges:

1. In three instances, AFG failed to include officer’s payroll in the final audit in

violation of §287.955.3<sup>1</sup>.

2. In three instances, AFG failed to complete and bill the audit and return premiums within 120 days of policy expiration/cancellation in violation of §287.955.1, §287.310.10 and 20 CSR 500-6.500 (2) (A).

3. In seven instances, AFG failed to apply the Second Injury Fund (“SIF”) rate to the correct premium in violation of §287.715 and §287.310.9.

4. In four instances, AFG failed to correctly calculate the Administrative Surcharge (“AS”) in violation of §287.716.2 and §287.310.9.

5. In five instances, AFG failed to collect the AS at the same time as premium in violation of §287.717.1.

6. AFG issued both participating and non-participating policies in violation of §287.932.1 and 20 CSR 500-6.100 (8).

7. In two instances, AFG utilized unfiled deductible credit percentages in violation of §287.947.1 and 20 CSR 500-6.950 (7).

8. In seven instances, AFG failed to maintain evidence in the file justifying the reduction in the Schedule Modification Credit in violation of §287.950.2 and 20 CSR 500-4.100 (7) (D).

9. In four instances, AFG failed to apply 10% of the officer’s payroll in Class Code 8810 in violation of §287.955.3.

10. In 12 instances, AFG attached an incorrect premium discount rate endorsement to policies in violation of §287.955.1, §287.310.1 and 20 CSR 500-6.100 (1).

11. In eight instances, AFG failed to send a notice to the insured stating that the Schedule Modification Credit Factor had been reduced for the renewal policy period in violation of §379.888.3 and 20 CSR 500-4.100 (7) (D) 2.

12. In three instances, AFG failed to attach an endorsement to the policy excluding a member of an LLC from workers compensation coverage in violation of §287.037.

13. In one instance, AFG failed to maintain the application and NCCI Missouri Contractors Classification Adjustment Program Credit Worksheet in violation of §287.937.2, §287.955 and 20 CSR 100-8.040 (3) (A).

14. In three instances, AFG utilized a Terrorism rate not on file with the Department in

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<sup>1</sup> All references, unless otherwise noted, are to Missouri Revised Statutes 2016, as amended.

violation of §287.947.1 and 20 CSR 500-6.950 (7).

15. In seven instances, AFG failed to file the 1.25 rate applied to payroll for insured that failed to cooperate with the final audit process in violation of §287.947.1 and 20 CSR 500-6.950 (7).

16. In one instance, AFG failed to apply the correct officer payroll limit at audit in violation of §287.955.3.

17. In one instance, AFG failed to verify at audit information reported to the NCCI on a credit worksheet was accurate in violation of §287.955.3.

18. In 10 instances, AFG failed to send notification to the insured on an approved form that they might be eligible for a premium adjustment credit in violation of §287.955.3.

19. In 31 instances, AFG waived the final audit and failed to base final premium on actual payroll in violation of §287.955.2.

20. In two instances, AFG moved an insured to an affiliated insurer which move was not justified by claims experience or other schedule rating factors and resulted in a premium increase in violation of §379.889 and 20 CSR 500-4.100 (7) (C).

21. In one instance, AFG excluded an officer from workers compensation coverage in violation of §287.955.3.

22. In one instance, AFG sent an automated “notice of credit” when an outstanding premium balance was actually due implicating the provisions of §375.936 (6) (a).

23. In one instance, AFG failed to attach the Missouri Contracting Classification Premium Endorsement to the policy in violation of §287.955.3.

24. In one instance, AFG utilized a waiver of the right to recover rate that was not on file with the Department in violation of §287.947.1 and 20 CSR 500-6.950 (7).

25. In one instance, AFG added a higher rated classification code at audit then permitted by the NCCI manual in violation of §287.955.1.

**WHEREAS**, based on the Market Conduct Examination of AFN, the Division alleges:

1. In three instances, AFN failed to include officers’ payroll in violation of §287.020.1 and §287.955.3.

2. In two instances, AFN failed to attach the exclusion endorsement for members of an LLC in violation of §287.037.

3. In 39 instances, AFN failed to apply the Second Injury Fund rate to correct premium

in violation of §287.715.1 and §287.310.9.

4. AFN issued both participating and non-participating policies in violation of §287.932.1 and 20 CSR 500-6.100 (8).

5. In two instances, AFN failed to retain an NCCI MOCCPAP Credit Letter in the underwriting file in violation of §287.937.2 and 20 CSR 100-8.040 (3) (A).

6. In 28 instances, AFN changed schedule rating credits/debits at renewal without documenting the basis for the changes in violation of §287.950.2 and 20 CSR 500-4.100 (7) (D).

7. In three instances, AFN failed to apply 10% of officer payroll to Class Code 8810 in violation of §287.955.3.

8. In one instances, AFN failed to apply the correct experience modification factor to premium in violation of §287.955.1.

9. In 13 instances, AFN failed to send notice on the approved form that the policyholder was eligible for a MOCCPAP premium adjustment credit in violation of §287.955.3.

10. In one instance, AFN applied MOCCPAP credit from a prior policy in violation of §287.955.3.

11. In 33 instances, AFN waived final audits and failed to base final premiums on actual payroll in violation of §287.955.3.

12. In three instances, AFN moved an insured to an affiliated insurer resulting in premium increases that were not justified by claims experience or other schedule rating factors in violation of §379.889 and 20 CSR 500-4.100 (7) C.

13. In six instances, AFN failed to collect the Administrative Surcharge at the same time as premium in violation of §287.717.1.

14. In four instances, AFN failed to apply the correct deductible credit rate to policy premium in violation of §287.955.3.

15. In 33 instances, AFN failed to complete and bill audits and return premiums within 120 days of policy expiration or cancellation in violation of §287.955.1, §287.310.10 and 20 CSR 500-6.500 (2) (A).

**WHEREAS**, based on the Market Conduct Examination of AFICA, the Division alleges:

1. In 30 instances, AFICA failed to apply the Second Injury Fund rate to correct premium in violation of §287.715 and §287.310.9.

2. AFICA issued both participating and non-participating policies in violation of

§287.932.1 and 20 CSR 500-6.100 (8).

3. In eight instances, AFICA failed to apply 10% of the officers' payroll in Class Code 8810 in violation of §287.955.3.

4. In one instance, AFICA failed to adhere to the NCCI's experience rating factor in violation of §287.955.1.

5. In nine instances, AFICA changed schedule rating credits/debits at renewal without documenting the changes in violation of §287.950.2 and 20 CSR 500-4.100 (7) (D).

6. In nine instances, AFICA failed to send notice to the insured of changes to scheduled rating in violation of §379.888.3 and 20 CSR 500-4.100 (7) (D) 2.

7. In eight instances, AFICA failed to include the proper payroll amount for members of an LLC in violation of §287.955.3.

8. In 25 instances, AFICA waived the final audit and failed to base the final premiums on actual payroll in violation of §287.955.2.

9. In 13 instances, AFICA failed to maintain a copy of the MOCCPAP form 24-1 to support its delivery in violation of §287.955.3, §287.310.10 and 20 CSR 100-8.040 (3) (A).

10. In 49 instances, AFICA failed to complete the audit within 120 days of policy expiration/cancellation in violation of §287.955.1, §287.310.10 and 20 CSR 500-6.500 (2) (A).

11. In one instance, a file did not contain a copy of the NCCI experience modification factor in violation of §287.937.2 and 20 CSR 100-8.040 (3) (A).

12. In four instances, AFICA utilized unfiled deductible credit percentages in violation of §287.947.1 and 20 CSR 500-6.950 (7).

13. In six instances, AFICA failed to collect the Administrative Surcharge at the same time as premium in violation of §287.717.1.

14. In one instance, AFICA failed to calculate the Administrative Surcharge correctly in violation of §287.310.9 and §287.716.2.

15. In one instance, AFICA failed to include officers' payroll in violation of §287.020.1 and §287.955.3.

16. In three instances, AFICA used an unfiled rate to calculate final premium in violation of §287.947.1 and 20 CSR 500-6.950 (7).

17. In one instance, AFICA attached a waiver of subrogation to a construction risk policy in violation of §287.150.6.

18. In two instances, AFICA failed to follow the NCCI Basic Manual for changes/corrections to Class Codes in violation of §287.955.1.

19. In 100 instances, AFICA sent an automated “notice of credit”, when, in fact, an outstanding premium balance was still due in violation of §374.936 (6) (a) and §374.934.

**WHEREAS**, based on the Market Conduct Investigation of UWIC, the Division alleges that:

1. In one instance, UWIC calculated the Second Injury Fund surcharge by total premium reduced by the portion of the premium resulting from the deductible credit in violation of §287.715.1 and §287.310.9.

2. In one instance, UWIC did not collect Administrative Surcharge premium in violation of §287.716, §287.717 and §287.310.9.

3. In six (6) instances, UWIC offered both participating and non-participating plans to policyholders in violation of §287.932.1 and 20 CSR 500-6.100 (8).

4. In two (2) instances, a waiver of subrogation was applied to Missouri employers in construction lines in violation of §287.150.6.

**WHEREAS**, the Division, AFG, AFN, AFICA, and UWIC have agreed to resolve the issues raised in the Market Conduct Examinations and the Market Conduct Investigation through a voluntary settlement as follows:

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

**B. Remedial Action.** AFG, AFN, AFICA, and UWIC agree to take remedial action bringing each into compliance with the statutes and regulations of Missouri and agree to maintain those remedial actions at all times, to reasonably assure that the alleged errors noted in the above-referenced market conduct examinations do not recur. Such remedial actions shall include, but not be limited to, the following:

1. AFG, AFN, and AFICA agree that audits on workers compensation insurance policies with Missouri premium or exposure will be completed, billed and premiums returned within 120 days of policy expiration or cancellation unless a) a delay is caused by the



policyholder's failure to respond to reasonable audit requests provided that the requests are timely and adequately documented or b) a delay is caused by the mutual agreement of the policyholder and the Company, provided that the mutual agreement is adequately documented by the Company.

2. AFG, AFN, AFICA, and UWIC agree that they will not offer both participating and non-participating policies of workers' compensation insurance written in Missouri with Missouri as the primary risk state and will not switch policyholders between participating and non-participating plans.

3. AFG, AFN, and AFICA agree that they will not reduce schedule modification credits or increase schedule modification debits unless there is supporting evidence in the file justifying the reduction or the increase.

4. AFG, AFN, and AFICA agree that they will not increase premium for an insured by moving that insured to an affiliated insurer where the increase in premium is not justified by claims experience or other schedule rating factors.

5. AFG, AFN, and AFICA agree that they will not utilize unfiled rates in workers compensation insurance policies.

6. AFG, AFN, and AFICA agree to ensure that their procedures for determining final premium on workers compensation insurance policies with Missouri premium or exposure comply with NCCI Rule 02-MO-2013.

7. AFG agrees, that to the extent it has not already done so, it will remediate policyholders for any premium overcharges noted in Market Conduct Examination Report 1401-01-TGT together with interest at the rate prescribed in §374.191. A letter must be included with the payment, indicating that "as a result of a Missouri Market Conduct examination," it was found that a refund was due to the insured.

8. AFN agrees, that to the extent it has not already done so, it will remediate policyholders for any premium overcharges noted in Market Conduct Examination Report 1401-02-TGT together with interest at the rate prescribed in §374.191. A letter must be included with the payment, indicating that "as a result of a Missouri Market Conduct examination," it was found that a refund was due to the insured.

9. AFICA agrees, that to the extent it has not already done so, it will remediate policyholders for any premium overcharges noted in Market Conduct Examination Report 1403-07-TGT together with interest at the rate prescribed in §374.191. A letter must be included with

payment, indicating that “as a result of a Missouri Market Conduct examination,” it was found that a refund was due to the insured.

10. If it has not already done so, UWIC agrees to reimburse the Administrative Surcharge Fund for the underpayment to the fund on policy no. xxxxxx6313 with any applicable interest and penalties.

11. AFICA and UWIC agree to cease the practice of issuing a waiver of subrogation on policies that include a class code for construction contractors and further agree to include Missouri on the schedule of excluded states on its approved form when there is a construction code on the policy and there is Missouri premium or exposure.

12. AFG, AFN, AFICA, and UWIC agree to pay a total of \$582,630 in remediation and interest to the policyholders listed on the “Dividend Plan Remediation Chart”, which chart is part of the examination workpapers for Market Conduct Examinations #1401-01-TGT, #1401-02-TGT, and #1403-07-TGT and part of the investigation workpapers for Market Conduct Investigation #13113-29157-PC. A letter shall accompany the payment that includes language indicating that as a result of a Missouri Market Conduct Examination or Investigation, it was determined that an additional payment amount was owed to the policyholder.

C. **Compliance.** AFG, AFN, AFICA, and UWIC agree to file documentation with the Division within 120 days of the entry of a final order of all remedial action taken to implement compliance with the terms of this stipulation and to document the payment of any restitution required by this Stipulation. Such documentation is provided pursuant to §374.190 and §374.205.

D. **Voluntary Forfeiture.** AFG agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$5,000, such sum payable to the Missouri State School Fund in accordance with §374.049.11 and §374.280.2. AFN agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$5,000, such sum payable to the Missouri State School Fund in accordance with §374.049.11 and §374.280.2. AFICA agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$5,000, such sum payable to the Missouri State School Fund in accordance with §374.049.11 and §374.280.2. UWIC agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$5,000, such sum payable to the Missouri State School Fund in accordance with §374.049.11 and §374.280.2.

E. **Other Penalties.** The Division agrees that it will not seek penalties against AFG, AFN, AFICA, or UWIC other than those agreed to in this Stipulation, for the conduct found in

Market Conduct Examinations #1401-01-TGT, #1401-02-TGT, and #1403-07-TGT and Market Conduct Investigation #13113-29157-PC.

F. **Examination Fees.** AFG, AFN, AFICA, and UWIC agree to pay any reasonable examination or investigation fees expended by the Division in conducting its review of the documentation provided by the Companies pursuant to Paragraph C of this Stipulation.

G. **Waivers.** AFG, AFN, AFICA, and UWIC, after being advised by legal counsel, do hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, and review or appeal by any trial or appellate court, which may have otherwise applied to the above referenced Market Conduct Examinations and Market Conduct Investigation.

H. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by AFG, AFN, AFICA, or UWIC, this Stipulation being part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above referenced market conduct examinations and investigation.

I. **Changes.** No changes to this Stipulation shall be effective unless made in writing and agreed to representatives of the Division and AFG, AFN, AFICA, and UWIC.


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

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

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

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


DATED: 9/5/2018

  
\_\_\_\_\_  
Angela L. Nelson  
Director, Division of Insurance  
Market Regulation


DATED: 9/5/2018

  
Stewart Freilich  
Senior Regulatory Affairs Counsel  
Division of Insurance Market Regulation


DATED: 8/29/18

  
Kevin M. Zielke  
Senior Vice President and General Counsel  
Accident Fund General Insurance Company


DATED: 8/29/18

  
Kevin M. Zielke  
Senior Vice President and General Counsel  
Accident Fund National Insurance Company

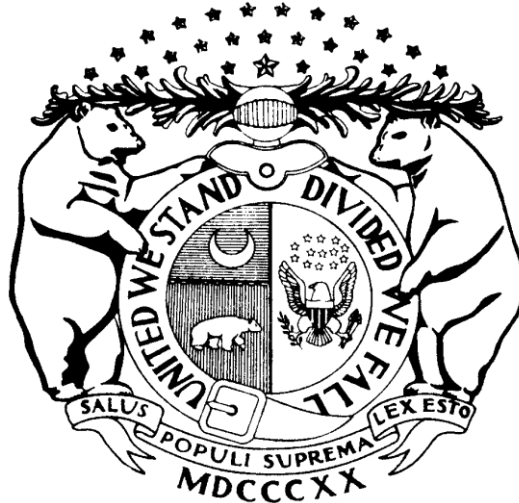
DATED: 8/29/18

  
Kevin M. Zielke  
Senior Vice President and General Counsel  
Accident Fund Insurance Company of America

DATED: 8/29/18

  
Kevin M. Zielke  
Senior Vice President and General Counsel  
United Wisconsin Insurance Company

**STATE OF MISSOURI**  
**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS**  
**AND**  
**PROFESSIONAL REGISTRATION**



**FINAL MARKET CONDUCT EXAMINATION REPORT**  
**of the Property and Casualty Business of**

**Accident Fund Insurance Company of America**  
**NAIC Group #0572**  
**NAIC #10166**

**MISSOURI EXAMINATION # 1403-07-TGT**

**NAIC EXAM TRACKING SYSTEM # 271897**

**September 5, 2018**

**Accident Fund Insurance Company**  
**200 North Grand Avenue**  
**Lansing, MI 48933**

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## **FOREWORD**

This is a targeted market conduct examination report of Accident Fund Insurance Company of America (NAIC Code #10166). This examination was conducted at the Missouri Department of Insurance, Financial Institutions and Professional Registration's Kansas City office at 615 East 13<sup>th</sup> Street, Room 506, Kansas City, Missouri 64106.

This examination report is generally a report by exception. However, failure to comment on specific practices, procedures, products or files does not constitute approval thereof by the DIFP.

During this examination, the examiners cited errors made by the Company. Statutory citations were as of the examination period unless otherwise noted.

Where used in this report:

- "CNR" refers to Cancelled or Non-Renewed;
- "Company" and "Co." refers to Accident Fund Insurance Company of America;
- "Coop" refers to Cooperative;
- "Crit" refers to Criticism;
- "CSR" refers to the Missouri Code of State Regulations;
- "Cx" refers to Cancelled;
- "DIFP" refers to the Missouri Department of Insurance, Financial Institutions and Professional Registration;
- "Director" refers to the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration;
- "Eff. Date" refers to Effective Date;
- "Est" refers to Estimated;
- "Exh" refers to Exhibit;
- "Exp" refers to Expiration;
- "Incr" refers to Increased;
- "Insd" refers to Insured;
- "Int" refers to Interest;
- "LLC" refers to Limited Liability Company;
- "Mult" refers to Multiple;
- "NAIC" refers to the National Association of Insurance Commissioners;
- "NCCI" refers to the National Council on Compensation Insurance;
- "O/C" refers to Overcharge;
- "O/Pay" refers to Overpayment;
- "PD/NP" refers to Paid/Not Paid;
- "Prem" refers to Premium;
- "RSMo" refers to the Revised Statutes of Missouri;
- "SIF" refers to Second Injury Fund;
- "Surv" refers to Survey;
- "U/C" refers to Undercharge; and
- "U/Pay" refers to Underpayment.

## **SCOPE OF EXAMINATION**

The DIFP has authority to conduct this examination pursuant to, but not limited to, §§374.110, 374.190, 374.205, 375.445, 375.938, and 375.1009, RSMo.

The purpose of this examination was to determine if the Company complied with Missouri statutes and DIFP regulations and to consider whether the Company's operations were consistent with the public interest. The primary period covered by this review was January 1, 2010 through December 31, 2012 unless otherwise noted. Errors found to be outside of this time period but discovered during the course of the examination may also be included in the report.

The examination included a review of the following line of business and areas of the Company operations:

Workers' Compensation Underwriting, Rating, and Policyholder Services.

The examination was conducted in accordance with the standards in the NAIC's *Market Regulation Handbook*. As such, the examiners utilized the benchmark error rate guidelines from the *Market Regulation Handbook* when conducting reviews that applied a general business practice standard. The NAIC benchmark error rate for claims practices is seven percent (7%) and trade practices is ten percent (10%). *Note: Most Workers' Compensation laws do not apply a general business practice standard. No error rates were utilized in these reviews unless the violation(s) were applicable to Missouri's Unfair Trade Practices Act.*

In performing this examination, the examiners only reviewed a sample of the Company's practices, procedures, products and files. Therefore, some noncompliant practices, procedures, products and files may not have been found. As such, this report may not fully reflect all of the practices and procedures of the Company.

Policies with multiple violations may be listed in more than one section of the report. However, overpayment or underpayment amounts for the same policy are only listed once in the report to avoid duplication. In addition, premium overcharge amounts of \$5 or less are not tracked by the Missouri DIFP for insured reimbursement purposes.



## **COMPANY PROFILE**

The following company profile was provided to the examiners by the Company:

Accident Fund (“the Company”) provides workers’ compensation insurance primarily for companies located in Michigan and several other Midwestern and Southeastern states. The Company was licensed in and wrote business in 50 states and the District of Columbia as of September 30, 2013 respectively.

Due to the restrictive pricing environment of some states, the Company created two rating subsidiaries, Accident Fund General Insurance Company (“General”) and Accident Fund National Insurance Company (“National”) in 2005. The creation of General and National allows for greater underwriting flexibility and provided our agents and Business Development Consultants additional options when writing insurance policies. General and National are each licensed in 49 states and the District of Columbia as of September 30, 2013 respectively. Collectively, these companies are referred to as Accident Fund Companies (“Companies”). Policyholders for Accident Fund, General and National are primarily small and medium-size businesses with average annual policyholder premium of approximately \$12,500. General’s rates are generally 25% higher than the Accident Fund Insurance Company of America’s and National’s rates are 25% lower. However, it isn’t necessarily consistent from state to state and this can vary based on the competitive environment, schedule rating rules/ranges, and compliance considerations.

## **EXECUTIVE SUMMARY**

The DIFP conducted a targeted market conduct examination of Accident Fund Insurance Company of America. The examiners found the following principal areas of concern:

### **Active Policies**

- The examiners found 18 instances where the Company failed to apply the Second Injury Fund (SIF) rate to the correct premium.
- The examiners found 57 instances where the Company failed to issue participating policies. Missouri law prohibits companies from offering both participating and non-participating policies.
- The examiners found six instances where the Company failed to apply 10% of the officers' payroll in Class Code 8810.
- The examiners found one instance where the Company failed to adhere to the NCCI's Experience Rating Factor that was provided.
- The examiners found seven instances where the Company changed Scheduled Rating credits/debits at renewal without documenting the changes.
- The examiners found seven instances where the Company failed to send the insured notice of changes to the Scheduled Rating.
- The examiners found seven instances where the Company failed to include the proper payroll amount for members of an LLC.
- The examiners found 16 instances where the Company waived the final audit and failed to base the final premiums on actual payroll.
- The examiners found seven instances where the Company failed to maintain a copy of the MOCCPAP form 24-1 to document its delivery.
- The examiners found 38 instances where the Company failed to complete the audit within 120 days of the policy expiration/cancellation.

### **CNR Policies**

- The examiners found five instances where the Company failed to apply the Second Injury Fund (SIF) rate to the correct premium.
- The examiners found 23 instances where the Company failed to issue participating policies. Missouri law prohibits companies from offering both participating and non-participating policies.
- The examiners found two instances where the Company failed to apply 10% of the officers' payroll in Class Code 8810.
- The examiners found two instances where the Company changed Scheduled Rating credits/debits at renewal without documenting the changes.
- The examiners found two instances where the Company failed to send notice to the insured of changes to the Scheduled Rating.
- The examiners found one instance where the Company failed to include the proper payroll amount for members of an LLC.

- The examiners found nine instances where the Company waived the final audit and failed to base the final premiums on actual payroll.
- The examiners found six instances where the Company failed to maintain a copy of the MOCCPAP form 24-1 to document its delivery.
- The examiners found one instance where the file did not contain a copy of the NCCI experience modification factor.
- The examiners found 11 instances where the Company failed to complete the audit within 120 days of the policy expiration/cancellation.

#### Small Deductible Policies

- The examiners found seven instances where the Company failed to apply the Second Injury Fund (SIF) rate to the correct premium.
- The examiners found five instances where the Company failed to issue participating policies. Missouri law prohibits companies from offering both participating and non-participating policies.
- The examiners found four instances where the Company utilized unfiled deductible credit percentages.
- The examiners found six instances where the Company failed to collect the Administrative Surcharge at the same time as premium.
- The examiners found one instance where the Company failed to calculate the Administrative Surcharge correctly.
- The examiners found one instance where the Company failed to include the officers' payroll.

#### Dividend Policies

- The examiners found three instances where the Company failed to issue participating policies. Missouri law prohibits companies from offering both participating and non-participating policies.

#### Construction Policies with Waivers of Subrogation

- The examiners found three instances where the Company used an unfiled rate to calculate the final premium.
- The examiners found one instance where the Company attached a waiver of subrogation form to a construction policy.

#### Policies Where Class Code was Changed at Audit

- The examiners found two instances where the Company failed to follow the NCCI Basic Manual for changes/corrections to Class Codes.

### Credit Notice Sent With Outstanding Balance

- The examiners found 100 instances where the Company sent an automated “notice of credit”, when, in fact, an outstanding premium balance was still due. This notice informed the insureds of a premium credit, when, in actuality, an outstanding balance was still owed.

## **EXAMINATION FINDINGS**

### **I. UNDERWRITING AND RATING PRACTICES**

This section of the report provides a review of the Company's underwriting and rating practices. These practices included the use of policy forms, adherence to underwriting guidelines, assessment of premium and procedures to decline or terminate coverage. The examiners reviewed how the Company handled new and renewal policies to ensure that the Company adhered to its own underwriting guidelines and filed rates, and to Missouri statutes and regulations.

A policy/underwriting file is reviewed in accordance with 20 CSR 100-8.040 and the NAIC *Market Regulation Handbook*. Error rates are established when testing for compliance with laws that apply a general business practice standard (e.g., §§375.930 – 375.948 and 375.445 RSMo.) and compared with the NAIC benchmark error rate of ten percent (10%). Error rates in excess of the NAIC benchmark error rate are presumed to indicate a general business practice contrary to the law. As most Workers' Compensation laws do not apply a general business practice standard, no error rates were contemplated in these reviews unless the violation(s) discovered fell within the scope of Missouri's Unfair Trade Practices Act.

The examiners requested the Company's underwriting and rating manuals for its Workers' Compensation business. This included all rates, guidelines, and rules that were in effect at any point during the examination period to ensure that the examiners could properly rate each policy reviewed. The examiners also reviewed the Company's procedures, rules, and forms filed by or on behalf of the Company with the DIFP. The examiners reviewed all Missouri files from a listing furnished by the Company. Finally, the examiners requested a written description of significant underwriting and rating changes that occurred during the examination period.

An underwriting or rating error can include, but is not limited to, any miscalculation of the premium based on the information in the file, an improper acceptance or rejection of an application, the misapplication of the Company's underwriting guidelines or incomplete file information preventing the examiners from readily ascertaining the Company's rating and underwriting practices.

The following list summarizes the number of files reviewed for each type of policy review:

<u>Name of Review</u>	<u>Type of Sample</u>	<u>Population Size</u>	<u># of Files Reviewed</u>
Active Policies	Random	3,444	60
CNR Policies	Random	820	55
Small Deductible Policies	Census	7	7
Dividend Policies	Random	84	15
Construction Policies w/ Waiver of Sub	Census	4	4
Policies Where the Class Code was Changed at Audit	Census	33	33
Policies Which Shifted Between Companies	Census	3	3
Credit Notice Sent With Outstanding Balance Policies	Census	100	100

Total: 277 policy files.

## A. Forms and Filings

The examiners reviewed the Company's policy and contract forms to determine its compliance with filing, approval, and content requirements to ensure that the contract language was not ambiguous or misleading and is adequate to protect those insured.

The examiners discovered no issues or concerns.

## B. Workers' Compensation Policies:

The examiners reviewed applications for coverages that were issued or modified by the Company to determine the accuracy of rating and adherence to prescribed and acceptable underwriting criteria. The examiners also requested and reviewed policy files as described in the previous section.

The following are the results of the reviews:

### Active Policies

1. The examiners found 18 instances where the Company failed to apply the Second Injury Fund (SIF) rate to the correct premium.

#	Crit #	Policy #	Eff. Date	Premium O/C or U/C	SIF O/Pay or U/Pay
1	35	XXX5973	03/15/11		
2	40	XXX4791	01/20/10		
3	42	XXX7180	02/14/10		
4	43	XXX4673	02/04/10		
5	45	XXX6486	10/15/11		
6	47	XXX7774	03/01/10		
7	48	XXX1357	06/27/11		
8	49	XXX1926	06/14/11		
9	50	XXX5253	4/19/2011	\$1,967 O/C	\$57 O/Pay
10	59	XXX7682	08/22/10		
11	66	XXX8432	05/12/10		
12	67	XX0842	05/12/11	\$1,301 U/C	\$38 U/Pay

#	Crit #	Policy #	Eff. Date	Premium O/C or U/C	SIF O/Pay or U/Pay
13	68	XXX1926	06/14/11		
14	69	XXX5306	6/5/2010	\$267 U/C	\$8 U/Pay
15	70	XXX5306	07/04/11		
16	84	XXX2759	01/29/10		
17	86	XXX2473	01/21/11		
18	89	XXX6456	01/27/11		

Reference: §§287.715.1 and 287.310.9 RSMo.

- The examiners found 57 instances where the Company failed to issue participating policies. There were 60 policies reviewed. Three were issued participating policies and 57 were issued non-participating policies. Missouri law prohibits companies from offering both participating and non-participating policies.

#	Crit #	Pol #	Eff. Date	Non-Participating	Participating
1	63	XX1619	12/1/2011	Y	
2	63	XX1132	6/2/2011	Y	
3	63	XXX2652	6/10/2011	Y	
4	63	XXX4286	9/6/2011	Y	
5	63	XXX9790	7/1/2011	Y	
6	63	XXX0109	7/19/2011	Y	
7	63	XXX0318	8/26/2010	Y	
8	63	XXX1175	10/2/2011	Y	
9	63	XXX4329	2/7/2011	Y	
10	63	XXX4435	2/1/2011	Y	
11	63	XXX4673	2/4/2010	Y	
12	63	XXX5973	3/15/2011	Y	
13	63	XXX6458	3/28/2011	Y	
14	63	XXX6629	5/14/2011	Y	
15	63	XXX7632	5/3/2011	Y	
16	63	XXX8432	5/12/2010	Y	
17	63	XXX8432	5/12/2011	Y	
18	63	XXX1598	9/10/2010	Y	
19	63	XXX2183	9/10/2011	Y	
20	63	XXX2213	9/15/2010	Y	



#	Crit #	Pol #	Eff. Date	Non-Participating	Participating
21	63	XXX2213	9/15/2011	Y	
22	63	XXX3826	10/1/2011	Y	
23	63	XXX4791	1/20/2010	Y	
24	63	XXX6456	1/27/2011	Y	
25	63	XXX6959	2/24/2010	Y	
26	63	XXX7180	2/14/2010	Y	
27	63	XXX7496	3/7/2011	Y	
28	63	XXX8982	4/9/2010	Y	
29	63	XXX9208	4/15/2010	Y	
30	63	XXX9240	3/28/2010	Y	
31	63	XXX1357	6/27/2010	Y	
32	63	XXX1357	6/27/2011	Y	
33	63	XXX1672	7/1/2010	Y	
34	63	XXX1775	7/1/2010	Y	
35	63	XXX2632	8/5/2011	Y	
36	63	XXX4235	10/10/2010	Y	
37	63	XXX6323	12/28/2011	Y	
38	63	XXX6660	1/1/2010	Y	
39	63	XXX0459	5/1/2010	Y	
40	63	XXX2485	7/12/2010	Y	
41	63	XXX3587	7/23/2010	Y	
42	63	XXX6828	10/24/2011	Y	
43	63	XXX5253	4/19/2011	Y	
44	63	XXX8779	1/1/2011	Y	
45	63	XXX5306	7/4/2011	Y	
46	63	XXX6374	6/5/2010	Y	
47	63	XXX7345	8/1/2010	Y	
48	63	XXX7682	8/22/2010	Y	
49	63	XXX8287	8/31/2010	Y	
50	63	XXX8729	9/15/2010	Y	
51	63	XXX2473	1/21/2011	Y	
52	63	XXX2759	1/29/2010	Y	
53	63	XXX2799	2/10/2011	Y	
54	63	XXX4489	3/25/2010	Y	
55	63	XXX4497	3/29/2010	Y	
56	63	XXX4831	4/1/2011	Y	
57	63	XXX9926	7/1/2010	Y	
58	63	XXX7563	5/1/2010		Y
59	63	XXX7774	3/1/2010		Y
60	63	XXX1926	6/14/2011		Y

Reference: §287.932.1 RSMo. and 20 CSR 500-6.100(8).

- The examiners found six instances where the Company failed to apply 10% of the officers' payroll in Class Code 8810.

#	Crit #	Policy #	Eff. Date	Premium O/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay
1	35	XXX5973	03/15/11	\$26.00	\$7.53	\$33.53	\$1.00
2	42	XXX7180	02/14/10	\$28.00	\$10.83	\$38.83	\$1.00
3	43	XXX4673	02/04/10	\$69.00	\$26.87	\$95.87	\$2.00
4	59	XXX7682	08/22/10	\$55.00	\$19.11	\$74.11	\$2.00
5	85	XXX4489	03/25/10	\$9.00	\$3.52	\$12.52	
6	86	XXX2473	01/21/11	\$47.00	\$14.88	\$61.88	\$1.00

Reference: §287.955.3 RSMo. and NCCI Basic Manual Rule 2.E.

- The examiners found one instance where the Company failed to adhere to the NCCI's Experience Rating Factor that was provided. The experience factor of .96 was no longer applicable as the premium eligibility requirements were not met.

#	Crit #	Policy #	Eff. Date
1	70	XXX5306	07/04/11

Reference: §287.955.1 RSMo.

- The examiners found seven instances where the Company changed Scheduled Rating credits/debits at renewal without documenting the changes.

#	Crit #	Policy #	Eff. Date	Premium U/C	Premium O/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF U/Pay	SIF O/Pay
1	45	XXX6486	10/15/11		\$85.00	\$20.44	\$105.44		\$3.00
2	47	XXX7774	03/01/10		\$2,556.00	\$988.96	\$3,544.96		\$74.00
3	48	XXX1357	06/27/11		\$1,984.00	\$533.78	\$2,517.78		\$58.00
4	49	XXX1926	06/14/11		\$737.00	\$200.65	\$937.65		\$22.00
5	50	XXX5253	04/19/11		\$1,967.00	\$562.67	\$2,529.67		\$57.00
6	51	XXX6323	12/18/11		\$1,618.00	\$365.88	\$1,983.88		\$47.00
7	70	XXX5306	07/04/11	\$811.00				\$23.00	

Reference: §287.950.2 RSMo. and 20 CSR 500-4.100(7)(D).

6. The examiners found seven instances where the Company failed to send notice to the insured of changes to the Scheduled Rating.

#	Crit #	Policy #	Eff. Date
1	45	XXX6486	10/15/11
2	47	XXX7774	03/01/10
3	48	XXX1357	06/27/11
4	49	XXX1926	06/14/11
5	50	XXX5253	04/19/11
6	68	XXX1926	06/14/11
7	70	XXX5306	07/04/11

Reference: §379.888.3 RSMo. and 20 CSR 500-4.100(7)(D)2.

7. The examiners found seven instances where the Company failed to include the proper payroll amount for members of an LLC.

#	Crit #	Policy #	Eff. Date	Premium U/C	SIF U/Pay
1	40	XXX4791	01/20/10	\$324.00	\$9.00
2	66	XXX8432	05/12/10	\$1,084.00	\$32.00
3	67	XXX8432	05/12/11	\$1,301.00	\$38.00
4	69	XXX6374	06/05/10	\$257.00	\$8.00
5	70	XXX5306	07/04/11		
6	84	XXX2759	01/29/10	\$357.00	\$10.00
7	89	XXX6456	01/27/11	\$85.00	\$3.00

Reference: §287.955.3 RSMo. and NCCI Basic Manual Rule 2.

8. The examiners found 16 instances where the Company waived the final audit and failed to base the final premiums on actual payroll.

#	Crit #	Policy #	Eff. Date
1	62	XXX0318	08/26/10
2	62	XXX1175	10/02/11
3	62	XXX4329	02/07/11
4	62	XXX8432	05/12/11
5	62	XXX2183	09/10/11
6	62	XXX2213	09/15/11
7	62	XXX8982	04/09/10
8	62	XXX9240	03/28/10
9	62	XXX2632	08/05/11
10	62	XXX4235	10/10/10
11	62	XXX2485	07/12/10
12	62	XXX6828	10/24/11
13	62	XXX8779	01/01/11
14	62	XXX5306	07/04/11
15	62	XXX8729	09/15/10
16	62	XXX4497	03/29/10

Reference: §287.955.3 RSMo. and NCCI Basic Manual Rule 3.A.13.

9. The examiners found seven instances where the Company failed to maintain a copy of the MOCCPAP form 24-1 to support its delivery.

#	Crit #	Policy #	Eff. Date
1	64	XXX4673	02/04/10
2	64	XXX7632	05/03/11
3	64	XXX4791	01/20/10

#	Crit #	Policy #	Eff. Date
4	64	XXX1775	07/01/10
5	64	XXX6374	06/05/10
6	64	XXX7345	08/01/10
7	64	XXX2473	01/21/11

Reference: §§ 287.955.3, 287.937.2 RSMo. and 20 CSR 100-8.040(3)(A).

10. The examiners found 38 instances where the Company failed to complete the audit within 120 days of the policy expiration/cancellation.

#	Crit #	Policy #	eff. Date	Days to Audit
1	135	XXX9617	1/19/2011	173
2	135	XXX0419	3/1/2011	153
3	135	XXX0698	3/15/2010	140
4	135	XXX1173	4/1/2010	202
5	135	XXX1934	5/10/2010	141
6	135	XXX3836	2/1/2011	139
7	135	XXX6739	3/31/2010	159
8	135	XXX8779	6/30/2010	131
9	135	XXX9592	6/16/2010	137
10	135	XXX5018	1/1/2010	131
11	135	XXX5018	1/1/2011	121
12	135	XXX1397	6/30/2011	151
13	135	XXX9566	4/1/2010	150
14	135	XXX0351	4/20/2011	179
15	135	XXX2480	6/15/2010	133
16	135	XXX2820	7/1/2010	145
17	135	XXX7660	1/19/2011	123
18	135	XXX2363	4/1/2010	206
19	135	XXX5814	7/1/2011	121
20	135	XXX0199	11/1/2010	121
21	135	XXX2541	1/22/2011	129
22	135	XXX4138	3/15/2010	145
23	135	XXX5331	1/15/2011	151

#	Crit #	Policy #	eff. Date	Days to Audit
24	135	XXX5621	5/1/2010	176
25	135	XXX8927	8/26/2010	178
26	135	XXX0377	10/1/2010	176
27	135	XXX2864	1/23/2011	148
28	135	XXX6209	6/1/2010	145
29	135	XXX6771	6/30/2010	151
30	135	XXX7594	8/10/2010	208
31	135	XXX7617	8/1/2010	203
32	135	XXX9223	8/15/2010	203
33	135	XXX0775	1/1/2011	121
34	135	XXX1955	1/18/2010	121
35	135	XXX3102	1/1/2010	135
36	135	XXX3398	3/31/2010	159
37	135	XXX3399	3/31/2010	131
38	135	XXX5122	7/1/2010	283

Reference: §§287.955.1, 287.310.10 RSMo., 20 CSR 500-6.500(2)(A) and NCCI Basic Manual WC 24 06 04 A – Missouri Amendatory Endorsement Section G.

**CNR Policies**

11. The examiners found five instances where the Company failed to apply the Second Injury Fund (SIF) rate to the correct premium.

#	Crit #	Policy #	Eff. Date
1	113	XXX8011	05/11/10
2	114	XXX0368	08/01/10
3	115	XXX0376	04/19/10
4	116	XXX7038	02/10/10
5	131	XXX6352	05/25/2011

Reference: §§287.715.1 and 287.310.9 RSMo.

12. The examiners found 23 instances where the Company failed to issue participating policies to the following non-participating policies. Missouri law prohibits companies from offering both participating and non-participating policies.

#	Crit #	Policy #	Eff. Date
1	133	XXX1285	04/09/10
2	133	XXX3024	07/01/11
3	133	XXX7788	03/21/11
4	133	XXX8323	04/18/10
5	133	XXX8323	04/18/11
6	133	XXX9725	07/01/10
7	133	XXX9823	07/12/10
8	133	XXX0368	08/01/10
9	133	XXX2075	08/01/10
10	133	XXX8374	09/07/10
11	133	XXX9737	10/20/11
12	133	XXX9841	10/24/10
13	133	XXX1808	01/01/11
14	133	XXX2271	01/01/11
15	133	XXX3465	03/01/11
16	133	XXX3900	03/15/10
17	133	XXX6115	05/16/10
18	133	XXX6352	05/25/11
19	133	XXX7091	06/20/10
20	133	XXX7303	01/01/10
21	133	XXX7540	07/01/10
22	133	XXX7872	07/13/10
23	133	XXX8042	07/01/10

Reference: §287.932.1 RSMo. and 20 CSR 500-6.100(8).

- The examiners found two instances where the Company failed to apply 10% of the officers' payroll in Class Code 8810.

#	Crit #	Policy #	Eff. Date	Premium O/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay
1	113	XXX8011	05/11/10	\$34.00	\$13.43	\$47.43	\$1.00
2	115	XXX0376	04/19/10	\$19.00	\$7.61	\$26.61	\$1.00

Reference: §287.955.3 RSMo. and NCCI Basic Manual Rule 2.E.

14. The examiners found two instances where the Company changed Scheduled Rating credits/debits at renewal without documenting the changes.

#	Crit #	Policy #	Eff. Date	Premium O/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay
1	114	XXX0368	08/01/10	\$6,202.00	\$2,324.71	\$8,526.71	\$181.00
2	131	XXXXXXXXXX0201	05/25/11	\$265.00	\$94.04	\$359.04	\$7.00

Reference: §287.950.2 RSMo. and 20 CSR 500-4.100(7)(D).

15. The examiners found two instances where the Company failed to send notice to the insured of changes to the Scheduled Rating.

#	Crit #	Policy #	Eff. Date
1	114	XXX0368	08/01/10
2	131	XXX6352	05/25/11

Reference: §379.888.3 RSMo. and 20 CSR 500-4.100(7)(D)2

16. The examiners found one instance where the Company failed to include the proper payroll amount for members of an LLC.

#	Crit #	Policy #	Eff. Date	Premium O/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay
1	116	XXX7038	02/10/10	\$465.00	\$194.02	\$659.02	\$14.00



Reference: §287.955.3 RSMo. and NCCI Basic Manual Rule 2.

17. The examiners found nine instances where the company waived the final audit and failed to base the final premiums on actual payroll.

#	Crit #	Policy #	Eff. Date
1	134	XXX3024	07/01/11
2	134	XXX8323	04/18/10
3	134	XXX8323	04/18/11
4	134	XXX9823	07/12/10
5	134	XXX9841	10/24/10
6	134	XXX3465	03/01/11
7	134	XXX7872	07/13/10
8	134	XXX8399	08/01/10
9	134	XXX5303	04/21/10

Reference: §287.955.3 RSMo. and NCCI Basic Manual Rule 3.A.13.

18. The examiners found six instances where the Company failed to maintain a copy of the MOCCPAP form 24-1 to support its delivery.

#	Crit #	Policy #	Eff. Date
1	132	XXX1808	01/01/11
2	132	XXX3465	3/01/11
3	132	XXX7091	06/20/10
4	132	XXX7303	01/01/10
5	132	XXX7540	07/01/10
6	132	XXX7872	07/13/10

Reference: §§ 287.955.3, 287.937.2 RSMo. and 20 CSR 100-8.040(3)(A).

19. The examiners found one instance where the file did not contain a copy of the NCCI experience modification factor.

#	Crit #	Policy #	Eff. Date
1	113	XXX8011	05/11/10

Reference: §287.937.2 RSMo. and 20 CSR 100-8.040(3)(A).

20. The examiners found 11 instances where the Company failed to complete the audit within 120 days of the policy expiration/cancellation.

#	Crit #	Policy #	Eff. Date	Days to Audit
1	135	XXX7303	1/1/2010	151
2	135	XXX2006	5/12/2010	160
3	135	XXX2117	12/10/2010	142
4	135	XXX3094	1/1/2011	168
5	135	XXX6786	3/2/2011	136
6	135	XXX9586	3/12/2011	203
7	135	XXX5079	3/1/2010	174
8	135	XXX9785	11/1/2010	181
9	135	XXX4341	3/22/2010	141
10	135	XXX7303	1/1/2010	151
11	135	XXX6558	7/1/2010	157

Reference: §§287.955.1, 287.310.10 RSMo., 20 CSR 500-6.500(2)(A) and NCCI Basic Manual WC 24 06 04 A – Missouri Amendatory Endorsement Section G.

**Small Deductible Policies**

21. The examiners found seven instances where the Company failed to apply the Second Injury Fund (SIF) rate to the correct premium.

#	Crit #	Policy #	Eff. Date	Premium O/C or U/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay or U/Pay
1	22	XXX5381	07/01/11				
2	23	XXX7617	08/01/11	\$1,759.00 O/C	\$592.10	\$2,351.10	\$1.00 O/Pay

#	Crit #	Policy #	Eff. Date	Premium O/C or U/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay or U/Pay
3	24	XXXXXX2824	01/26/10				
4	25	XXX2676	06/26/11				
5	26	XXX8340	09/01/10				
6	27	XXXXXX3818	10/31/11				
7	44	XXX6122	02/01/11	\$2.00 U/C			\$2.00 U/Pay

Reference: §§287.715.1 and 287.310.9 RSMo.

22. The examiners found five instances where the Company failed to issue participating dividend plan policies. Two participating policies were discovered in this review. Missouri law prohibits a company from issuing both participating and non-participating policies.

#	Crit #	Policy #	Eff. Date	Non-Participating	Participating
1	8	XXX2676	06/26/11	Y	
2	8	XXX7617	08/01/11	Y	
3	8	XXX8340	09/01/10	Y	
4	8	XXX6122	02/01/11	Y	
5	8	XXXXXX3818	10/31/11	Y	
6	8	XXX5381	7/1/11		Y
7	8	XXXXXX2824	1/26/10		Y

Reference: §287.932.1 RSMo. and 20 CSR 500-6.100(8).

23. The examiners found four instances where the Company utilized unfiled deductible credit percentages.

#	Crit #	Policy #	Eff. Date	Premium O/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay
1	22	XXX5381	07/01/11	\$674.00	\$176.35	\$850.35	\$7.00

#	Crit #	Policy #	Eff. Date	Premium O/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay
2	24	XXXXXX2824	01/26/10	\$62.00	\$24.20	\$86.20	\$1.00
3	25	XXX2676	06/26/11	\$1,254.00	\$329.65	\$1,583.65	\$3.00
4	26	XXX8340	09/01/10				

Reference: §287.947.1 RSMo. and 20 CSR 500-6.950(7).

24. The examiners found six instances where the Company failed to collect the Administrative Surcharge at the same time as the premium.

#	Crit #	Policy #	Eff. Date
1	22	XXX5381	07/01/11
2	23	XXX7617	08/01/11
3	25	XXX2676	06/26/11
4	26	XXX8340	09/01/10
5	24	XXXXXX2824	01/26/10
6	44	XXX6122	02/01/11

Reference: §287.717.1 RSMo.

25. The examiners found one instance where the Company failed to calculate the Administrative Surcharge correctly.

#	Crit #	Policy #	Eff. Date	Premium U/C	SIF U/Pay	Admin O/Pay
1	27	XXXXXX3818	10/31/11	\$326.00	\$442.00	\$116.00

Reference: §§287.310.9 and 287.716.2 RSMo.

26. The examiners found one instance where the Company failed to include the officers' payroll.

#	Crit #	Policy #	Eff. Date	Premium U/C	SIF U/Pay
1	26	XXX8340	09/01/10	\$616.00	\$19.00

Reference: §§287.020.1 and 287.955.3 RSMo. and NCCI Basic Manual Rule 2-E-1.

**Dividend Policies**

27. The examiners found three instances where the Company failed to issue participating dividend plan policies. Twelve participating policies were discovered in this review. Missouri law prohibits a company from issuing both participating and non-participating policies.

#	Crit #	Policy #	Eff. Date	Non-Participating	Participating
1	90	XXX3920	01/29/10	Y	
2	90	XXX1023	04/01/10	Y	
3	90	XXX1023	04/01/11	Y	
4	90	XXX1329	4/15/2011		Y
5	90	XXX2678	6/10/2010		Y
6	90	XXX2753	6/17/2011		Y
7	90	XXX3392	7/18/2010		Y
8	90	XXX5292	2/23/2011		Y
9	90	XXX7563	9/1/2011		Y
10	90	XXX9107	4/18/2011		Y
11	90	XXX0890	8/1/2011		Y
12	90	XXX1926	6/14/2010		Y
13	90	XXX6486	10/15/2011		Y
14	90	XXX9166	1/1/2011		Y
15	90	XXX9330	1/1/2010		Y

Reference: §287.932.1 RSMo. and 20 CSR 500-6.100(8).

**Construction Policies with Waivers of Subrogation**

28. The examiners found three instances where the Company used an unfiled rate to calculate the final premium.

#	Crit #	Policy #	Eff. Date	Premium O/C	Est Int on Crit Date	Total Due Insd on Crit Date	SIF O/Pay
1	37	XXX2629	01/15/10	\$58.00	\$22.87	\$80.87	\$2.00
2	38	XXX6844	08/01/11				
3	39	XXX0607	03/06/10	\$88.00	\$33.61	\$121.61	\$3.00

Reference: §287.947.1 RSMo. and 20 CSR 500-6.950(7).

29. The examiners found one instance where the Company attached a waiver of subrogation to a construction risk policy.

#	Crit #	Policy #	Eff. Date
1	38	XXX6844	08/01/11

Reference: §287.150.6 RSMo. and Basic Manual 2001 Rule 3.A.22.

**Policies Where Class Code Was Changed at Audit**

30. The examiners found two instances where the Company failed to follow the NCCI Basic Manual for changes/corrections to Class Codes.

#	Crit #	Policy #	Eff. Date	Premium U/C	SIF U/Pay
1	88	XXX7751	01/26/10	\$1,696.00	\$50.00
2	104	XXX2603	01/01/10	\$7,563.00	\$221.00

Reference: §287.955.1 RSMo and NCCI Basic Manual Rule 1.F.

**Policies That Shifted Between Companies**

31. The examiners found no issues or concerns for this review.

### Credit Notice Sent With Outstanding Balance

32. The examiners found 100 instances where the Company sent an automated “notice of credit” when, in fact, an outstanding premium balance was still due. This notice informed the insureds of a premium credit, when, in actuality, an outstanding balance was still owed. As a result, some insureds were reported to collections. The Company was aware of the problem with the automated system since 2003.

#	Crit #	Policy #	Eff. Date
1	112	XXX3290	01/01/05
2	112	XXX4007	02/01/05
3	112	XXX7725	03/16/04
4	112	XXX8435	05/23/06
5	112	XXX1759	06/01/09
6	112	XXX0246	11/24/10
7	112	XXX9061	09/25/08
8	112	XXX0391	03/01/03
9	112	XXX5686	05/10/10
10	112	XXX4710	04/01/10
11	112	XXX1008	08/01/06
12	112	XXX2700	06/13/06
13	112	XXX8251	03/15/06
14	112	XXX0726	09/01/06
15	112	XXX8719	05/25/05
16	112	XXX0718	07/22/09
17	112	XXX0020	03/05/05
18	112	XXX6121	05/13/10
19	112	XXX5274	09/08/06
20	112	XXX0715	03/12/06
21	112	XXX4750	10/16/08
22	112	XXX3581	07/24/08
23	112	XXX5771	01/01/04
24	112	XXX5323	11/08/04
25	112	XXX3362	08/01/09
26	112	XXX3165	06/14/09

<b>#</b>	<b>Crit #</b>	<b>Policy #</b>	<b>Eff. Date</b>
27	112	XXX0020	06/05/04
28	112	XXX5144	02/25/08
29	112	XXX5606	11/26/06
30	112	XXX8995	04/05/07
31	112	XXX9585	03/30/07
32	112	XXX2820	06/30/08
33	112	XXX3079	10/02/05
34	112	XXX6445	09/22/07
35	112	XXX2559	01/25/10
36	112	XXX1086	04/01/03
37	112	XXX0694	03/18/04
38	112	XXX9822	10/14/09
39	112	XXX4370	02/14/05
40	112	XXX2755	01/30/11
41	112	XXX8176	04/06/04
42	112	XXX1407	04/15/03
43	112	XXX7738	03/03/10
44	112	XXX0813	06/05/07
45	112	XXX1473	11/13/08
46	112	XXX7197	02/18/06
47	112	XXX6018	03/23/09
48	112	XXX5675	03/04/10
49	112	XXX3876	03/08/10
50	112	XXX9040	08/19/10
51	112	XXX4915	10/23/06
52	112	XXX5412	09/10/10
53	112	XXX0642	03/03/10
54	112	XXX0156	04/09/08
55	112	XXX3567	07/26/04
56	112	XXX9717	05/01/06
57	112	XXX7021	02/04/06
58	112	XXX7937	08/26/09



<b>#</b>	<b>Crit #</b>	<b>Policy #</b>	<b>Eff. Date</b>
59	112	XXX3654	10/25/05
60	112	XXX7921	02/26/09
61	112	XXX5396	08/30/10
62	112	XXX4605	05/15/08
63	112	XXX4959	10/02/05
64	112	XXX6318	05/26/10
65	112	XXX1294	10/01/07
66	112	XXX5796	01/02/08
67	112	XXX3614	07/23/08
68	112	XXX1740	11/01/04
69	112	XXX8032	03/10/07
70	112	XXX5842	01/10/06
71	112	XXX0642	03/03/09
72	112	XXX0213	02/17/03
73	112	XXX2661	06/09/03
74	112	XXX3539	09/05/06
75	112	XXX2996	10/03/06
76	112	XXX8176	04/06/05
77	112	XXX4370	02/14/06
78	112	XXX6873	04/05/05
79	112	XXX8956	06/01/10
80	112	XXX1460	06/30/06
81	112	XXX2937	09/30/05
82	112	XXX3953	09/21/06
83	112	XXX2761	06/16/06
84	112	XXX8755	12/12/02
85	112	XXX3459	10/17/08
86	112	XXX1686	10/22/06
87	112	XXX8032	03/10/08
88	112	XXX0670	07/22/08
89	112	XXX7937	08/26/10
90	112	XXX0584	05/31/07

<b>#</b>	<b>Crit #</b>	<b>Policy #</b>	<b>Eff. Date</b>
91	112	XXX1294	10/01/07
92	112	XXX0494	02/01/09
93	112	XXX6018	03/23/10
94	112	XXX0182	02/26/03
95	112	XXX5827	03/09/06
96	112	XXX4355	01/25/06
97	112	XXX6318	05/26/11
98	112	XXX9409	06/13/05
99	112	XXX1248	10/01/05
100	112	XXX1020	09/21/05

Reference: §§375.936(6)(a) and 374.934 RSMo.

## **II. CRITICISMS AND FORMAL REQUESTS TIME STUDY**

This study is based upon the time required by the Company to provide the examiners with the requested material or to respond to criticisms. Missouri law requires companies to respond to criticisms and formal requests within 10 calendar days. Please note that in the event an extension was requested by the Company and granted by the examiners, the response was deemed timely if it was received within the time frame granted by the examiners. If the response was not received within that time period, the response was not considered timely.

### **A. Criticism Time Study**

<b>Calendar Days</b>	<b>Number of Criticisms</b>	<b>Percentage</b>
Received within the time limit including any extensions:	58	100.0%
Received outside time limit including any extensions:	0	0.0%
No response:	0	0.0%
Total:	58	100.0%

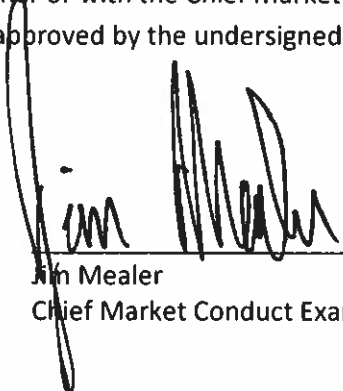
### **B. Formal Request Time Study**

<b>Calendar Days</b>	<b>Number of Formal Requests</b>	<b>Percentage</b>
Received within the time limit including any extensions:	27	100.0%
Received outside time limit including any extensions:	0	0.0%
No response:	0	0.0%
Total:	27	100.0%

Reference: §374.205.2(2) RSMo and 20 CSR 100-8.040(6).

**EXAMINATION REPORT SUBMISSION**

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Accident Fund Insurance Company of America (NAIC #10166), Examination Number 1403-07-TGT. This examination was conducted by Scott B. Pendleton, Dale Hobart, Dennis Foley, Jon Meyer, Teresa Koerkenmeier, Darren Jordan, and Shelly Herzing. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated October 4, 2017. Any changes from the text of the Market Conduct Examiner's Draft Report reflected in this Final Report were made by the Chief Market Conduct Examiner or with the Chief Market Conduct Examiner's approval. This Final Report has been reviewed and approved by the undersigned.

  
\_\_\_\_\_  
Jim Mealer  
Chief Market Conduct Examiner

9/5/2019  
\_\_\_\_\_  
Date