



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

P.O. Box 690, Jefferson City, Mo. 65102-0690

TO: Affirmative Insurance Company  
4450 Sojourn Dr., Suite 500  
Addison, TX 75001-5094

RE: Affirmative Insurance Co. (NAIC #42609)  
Missouri Market Conduct Examination #0806-11-TGT

**STIPULATION OF SETTLEMENT  
AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereinafter referred to as "Director," and Affirmative Insurance Company, (hereafter referred to as "Affirmative"), as follows:

WHEREAS, John M. Huff is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereafter referred to as "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; and

WHEREAS, Affirmative has been granted a certificate of authority to transact the business of insurance in the State of Missouri; and

WHEREAS, the Department conducted a Market Conduct Examination of Affirmative and prepared report number 0806-11-TGT; and

WHEREAS, the report of the Market Conduct Examination revealed that:

1. The wording of one of Affirmative's Person Auto policies was inconsistent with Missouri law, thereby violating §408.020 RSMo, and 20 CSR 500-2.100. The Company has since corrected the filing.

2. In some instances, Affirmative failed to provide a Missouri Sales Tax Affidavit to claimants as required by §§144.027 and 301.227, RSMo.

3. In some instances, Affirmative failed to follow its own claims' handling procedures and guidelines, thus failing to adopt and implement reasonable standards for the settlement of claims and effectuate the prompt, fair and equitable settlements of certain claims, in violation of §375.1007(3) and (4), RSMo, and 20 CSR 100-1.050.

4. In some instances, Affirmative used the medical payments on automobile claims as a set off on uninsured motorist bodily injury claims and subrogated medical payment recoveries, in violation of §408.020, RSMo, 20 CSR 500-2.100, and *Travelers Indemnity Co. v. Chumbley*, 394 S.W.2d 418 (Mo.App. 1965).

5. Affirmative failed to send a written denial letter to the insured explaining the reason for the denial, in violation of §375.1007(2), RSMo, and 20 CSR 100-1.050.

WHEREAS, Affirmative hereby agrees to take remedial action bringing it into compliance with the statutes and regulations of Missouri and agrees to maintain those corrective actions at all times, to reasonably assure that the errors noted in the above-referenced market conduct examination reports do not recur.

WHEREAS, Affirmative is of the position that this Stipulation of Settlement and Voluntary Forfeiture is a compromise of disputed factual and legal allegations, and that payment of a forfeiture is merely to resolve the disputes and avoid litigation; and

WHEREAS, Affirmative, after being advised by legal counsel, does hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, which may have otherwise applied to the above referenced Market Conduct Examination; and

WHEREAS, Affirmative hereby agrees to the imposition of the ORDER of the Director and as a result of Market Conduct Examination #0806-11-TGT further agrees, voluntarily and knowingly to surrender and forfeit the sum of \$9,735.80.

NOW, THEREFORE, in lieu of the institution by the Director of any action for the SUSPENSION or REVOCATION of the Certificate(s) of Authority of Affirmative to transact the business of insurance in the State of Missouri or the imposition of other sanctions, Affirmative does hereby voluntarily and knowingly waive all rights to any hearing, does consent to the ORDER of the Director and does surrender and forfeit the sum of \$9,735.80, such sum payable to the Missouri State School Fund, in accordance with §374.280, RSMo.

DATED: 9/21/09

  
President  
Affirmative Insurance Company



IT IS FURTHER ORDERED that Affirmative shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$9,735.80, 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 26<sup>th</sup> day of October, 2009.

  
John M. Huff  
Director

# AFFIRMATIVE<sup>®</sup>

INSURANCE COMPANY

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Joseph G. Fisher  
Executive Vice President and General Counsel  
joseph.fisher@affirmativeinsurance.com  
(630) 560-7080

July 21, 2009

Via Electronic Mail & Overnight Mail

Carolyn H. Kerr  
Senior Counsel  
Market Conduct Section  
301 West High Street Room 530  
P.O. Box 690  
Jefferson City, Missouri 65102-0690

RECEIVED  
JUL 22 2009  
DEPT OF INSURANCE  
FINANCIAL INSTITUTIONS &  
PROFESSIONAL REGISTRATION

Re: Market Conduct Examination - Affirmative Insurance Company

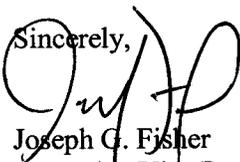
Dear Ms. Kerr:

In accordance with your letter, attached is Affirmative's response to the draft market conduct report which we received June 22, 2009 and a position statement regarding the sales tax affidavit for owner-retained total loss vehicles.

As indicated in the position statement accompanying our response, we disagree with the Examiner's position that a sales tax affidavit is required for owner-retained total loss vehicles. We do not believe a statutory mandate exists for sending such letters on owner-retained total losses, nor do we believe that the noted conduct violates the March 1, 2005 Order and Stipulation of Settlement. Notwithstanding our position, however, if the Department prefers that sales tax letters be sent on owner-retained total loss claims, we will voluntarily commence sending such letters for all total loss claims.

We look forward to discussing the issues raised in our rebuttal.

If you have any questions, please contact me at (630) 560-7080, or Bill Huff, Vice President Regulatory Affairs at (972) 728-3450

Sincerely,  


Joseph G. Fisher  
Executive Vice President and General Counsel

encl

cc:  
Win Nickens  
Gary Meyer  
Kevin R. Callahan, President, Affirmative Insurance Company  
Bill Huff, VP, Regulatory Affairs

Missouri Market Conduct Examination Report  
Affirmative Insurance Company  
Examination Number 0806-11-TGT

AFFIRMATIVE INSURANCE COMPANY'S  
RESPONSE TO THE MISSOURI DRAFT EXAMINATION REPORT

**Executive Summary**

**Page 3**

In addition to the states listed, the Company holds a Certificate of Authority in Kentucky, Louisiana and Washington. The Company's Louisiana Certificate was effective December 24, 2008 so it was not identified in the "Brief History - AIC" given to the Examiners early in the Examination. However, the Company's Kentucky and Washington Certificates are on the list and were effective September 21, 1989 and October 3, 2005, respectively.

**Page 5**

Please see the position statement that accompanies this response explaining the Company's position with respect to the Examiner's interpretation of Section 144.027 RSMo and the Missouri sales tax affidavit requirements. Section 144.027, by its plain language, does not appear to require a sales tax affidavit be provided in claims where the owner retains the total loss vehicle rather than surrendering the vehicle to the Company. The Company respectfully requests that the Executive Summary be revised to reflect the Company's position and to reflect that there is no violation of the Order and Stipulation of Settlement which Affirmative entered into with the Missouri Department of Insurance for Market Conduct Examination Number 0313-33-PAC effective March 1, 2005 (the "2005 Order") or Section 144.027 RSMo.

**Section I, Forms and Filings**

**Page 10**

The Company has completed a filing to correct the noted policy language. Personal Auto Policy TMO-2501 (12/05) had previously been reviewed and approved by the Missouri Department of Insurance. However, upon receipt of this notification, the Company acknowledged that there was a problem with the wording in the Company's policy and immediately adjusted its interpretation of the policy to reflect the correct wording.

Further, the Company filed an amendment to the policy language to correct this wording problem on April 17, 2009. That filing, SERFF AFIN-126118717, was marked "Closed-Reviewed" by the Missouri Department of Insurance on May 19, 2009.

The new form of the Company's Personal Auto Policy TMO (6/09) was effective on June 1, 2009.

The Company respectfully requests that page 4 of the Executive Summary be revised to reflect the Company's compliance with the Examiner's request.

## Section II, Claims Practices

### Page 14, A.1. Comprehensive

Claim Numbers: MOC78575300701, MOC78310220701, MOC79110660702

The Company concurs with the Examiner's findings. These claimants have been reimbursed in the aggregate amount of \$1,077.32.

Claim Number: MOB78833160601

Company reiterates its position on this claim file that Section 144.027 RSMo does not apply to owner-retained total loss claims and requests that this error be deleted.

Claim Number: MOB80238890701

The Company concurs with the Examiner's findings.

### Page 15, A.2. Collision

Claims Numbers: MOB79105490701, MOC75544119701, MOB78610990601, MOC79243550701, MOB80521711701, MOB78437290601

The Company reiterates its position on these six claim files that Section 144.027 RSMo does not apply to owner-retained total loss claims and requests that these six errors be deleted. The Company also repeats its request that the language regarding the 2005 Order be revised to reflect that there is no violation with respect to these claims.

Claim Numbers: MOB81104702701 (Hayes), MOB77756632701 (Wilkerson)

The Company concurs with the Examiner's findings. Copies of the checks for underpayment were provided to the Examiners. Hayes was refunded \$155.75, and Wilkerson was refunded \$1026.88 for a total underpayment of \$1182.63, rather than "\$1392.62 plus interest" indicated in the Examination Report.

### Page 16, A.3. Total Losses

Claim Numbers: MOB79709870701, MOB79755230701, MOB78651570701, MOB79435860701, MOB78499400701, MOB78149600701, MOB76585142701, MOB78263050601, MOB78707800701, MOB79108990701, MOB79062490701, MOB78947980601, MOB78019531701, MOB78051681701, MOB79287990701, MOB78670530601, MOB80271620701, MOC79738010702, MOC79484900701, MOC79292170701, MOC78731330701, MOC78526810601, MOC10255901701, MOC80529890701

The Company reiterates its position on these twenty-four claim files that Section 144.027 RSMo does not apply to owner-retained total loss claims and requests that these twenty-four errors be deleted. The Company also repeats its request that the language regarding the 2005 Order be revised to reflect that there is no violation with respect to these claims.

Claim Number: MOB78051681701

The Company concurs with the Examiner's findings.

### Page 17, A.3. Total Losses

Claim Number: MOB78670530601

The following claim chronology should be noted:

12/16/06 Date of Loss  
12/21/06 Loss reported by insured  
12/22/06 Insured contacted; advised that insured's and unscheduled driver's statements were needed, but insured unable to give statement at that time  
12/28/06 Insured statement obtained  
01/09/07 Appraisal received; vehicle a total loss  
01/09/07 Advised insured that driver must give statement

01/15/07 Status to insured requesting driver to call and give statement  
01/22/07 Status to insured requesting driver to call and give statement  
02/05/07 Statement obtained from driver; claim moved to Total Loss Unit  
02/07/07 Total Loss Offer extended and accepted  
02/09/07 Title received; owner-retained settlement issued.

The Company agrees that the claims file could have been sent to the Company's Total Loss Unit earlier in the claims handling process. Nonetheless, payment on this file could not have been made until the driver's statement was obtained and the claim was validated for payment. This particular case involved an uncooperative and unscheduled driver. But for this lack of cooperation, the loss likely would have been closed sooner.

Claim Numbers: MOB79709870701, MOB79755230701, MOB78769950701, MOB79435860701, MOB79662490701, MOB78947980601

The Company disagrees with the Examiner's findings and reiterates its response provided when the Criticism was first presented, set forth as follows:

The Company's normal procedure upon first report by an insured is for our Loss Report Technician to inform the insured of all available policy coverages. In those cases where the initial report was filed by a third party claimant or their carrier, the available policy coverages would be reviewed with the insured by the assigned liability adjuster during their initial contact with the policyholder.

If the insured had presented any verbal or written demand for payment of their Physical Damage claim, a written "no collision coverage" letter would have been mailed to the insured. In none of the files cited is there any evidence that the policyholder was pursuing a claim for same or was unaware of the fact that no collision coverage existed.

Company requests that these six errors be deleted and that the comment related to this criticism on page 6 of the Executive Summary be removed.

Claim Numbers: MOB80412890701 MOB80374100701 MOB80316150701 MOB80319030701  
MOB80237761701 MOB80162590701 MOB79952180701 MOB79918780701  
MOB78898090701 MOB37966553701 MOB74232779701 MOB77431601701  
MOB78198021701 MOB79547370701 MOB79387831701 MOB79630831701  
MOB79575570702 MOC80288730701 MOC79970741701 MOC79840520702  
MOB79123140701 MOB78990360701 MOB79053170701 MOC80111760701  
MOC79553570701 MOC78980470701 MOC78926640701 MOC78433751702  
MOC78362800701 MOC10213522701 MOB79826790701 MOB79819330701  
MOB79790840701 MOC80879270701 MOC81146410701

The Company confirms that these 35 claim files have been refunded in an aggregate amount of \$5830.04.

Page 18, A.4. Medical Payments

Claim Number: MOB79052060701

The Company concurs with the Examiner's findings.

Claim Number: MOB78525890701

The Company concurs with the Examiner's findings.

Please note that the Examiners reviewed every Med Pay file available from the exam period. There were only 18 files to review. The Company believes that 2 errors out of 18 files is not a statistically

significant measure and should not be the basis for the conclusion that the Company is not within DIFP Guidelines. The Company believes that "N/A" is a more appropriate response to the "Within DIFP Guidelines" field, and requests that the Examination Report be modified accordingly.

Page 19, A.5. Subrogation Payments

Claim Number: MOB77898120701

The Company disagrees with the Examiner's findings and reiterates its response provided when the Criticism was first presented, set forth as follows:

The Company had already accepted the claim on March 20, 2007, fourteen days after the initial loss report, and the claim was paid in its entirety on March 28, within the first 45 days.

20 CSR 100-1.050 speaks to acceptance or denial of a claim and does not provide a requirement to keep the insured periodically advised of the progress of the insurer's subrogation recovery efforts on the claim after the claim has been accepted and the insured paid. Therefore, the Company disagrees with the Examiner's findings that a letter would have been required in this situation.

The Company requests that this error be deleted and that the comment related to this criticism on page 6 of the Executive Summary be removed.

Page 19, A.6. Uninsured Motorists Payments

Claim Number: MOB77579560601

The Company concurs with the Examiner's findings.

Claim Numbers: MOB78198021701, MOB79233270701, MOB78684130701, MOB79070700701, MOB79245680701, MOC77983461701, MOC77156640601, MOB78141790701, MOB79387530702

The Company concurs with the Examiner's findings. These 9 errors were the result of one adjuster who was not aware that there were two forms of the Company's denial letter. The labeling of these two letters has been revised in the Index used. Although the version of the letter used cited Illinois, state-specific regulatory language, the Company notes that all language required by Missouri statutes and regulations was contained in the letters that were sent.

Claim Number: MOB79502860701

The Company concurs with the Examiner's findings. As referenced above, please see SERFF Missouri filing AFIN-126118717 for the approval of the revised policy language.

**AFFIRMATIVE INSURANCE COMPANY'S  
POSITION STATEMENT REGARDING SALES TAX AFFIDAVITS FOR  
OWNER-RETAINED TOTAL LOSS VEHICLES**

**SUMMARY**

In the draft report of the Missouri Market Conduct Examination of Affirmative Insurance Company ("AIC"), the Examiner asserts that AIC violated Section 144.037, RSMo, by failing to provide Missouri sales tax affidavits for total loss claims where the insured decided to retain the total loss vehicle, rather than surrender the vehicle to Affirmative for salvage ("owner-retained total losses"). The report further asserts that these actions also violated the Order and Stipulation of Settlement which Affirmative entered into effective March 1, 2005 (the "2005 Order").<sup>1</sup>

Affirmative respectfully disputes that its handling of these owner-retained total losses violated Section 144.037 or the 2005 Order. The plain language of Section 144.037 makes that provision applicable only to total losses where the insured *replaces* the total loss vehicle. Where the insured elects to retain the total loss vehicle rather than surrender the vehicle for salvage, Affirmative has no evidence that the vehicle will be replaced and thus, under the statute, it does not appear a sales tax affidavit is appropriate. Accordingly, our practice has been to provide sales tax affidavits only when the insured tenders their vehicle to Affirmative for salvage. Moreover, the 2005 Order is silent on the issue of providing sales tax affidavits for owner-retained total losses. Accordingly, Affirmative strongly believes no violations of the statute or the 2005 order occurred.

Notwithstanding our position that no violation occurred, should the Department prefer that sales tax affidavits be provided for all owner-retained total losses, AIC will agree to voluntarily commence sending Missouri sales tax affidavits in all total loss situations. However, such voluntary action is made only for the purpose of resolving these issues with the Department and does not constitute our agreement that a violation of the statute or the 2005 order occurred,

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<sup>1</sup> For example, on page 5 of the draft of the Examination Report are two paragraphs stating as follows:

"On March 5, 2005, the President of Affirmative Insurance Company signed a Stipulation of Settlement with the Missouri Department of Insurance for Market Conduct Examination number 0313-33-PAC, agreeing to discontinue the violation of Section 144.027, RSMo, in future business practices. Current Missouri Market Conduct Examination number 0806-11-TGT has revealed that Affirmative Insurance Company has continued to violate the above mentioned statute, and regulation in violation of the Order and Stipulation of Settlement."

During the examination, the examiners found 32 errors while reviewing the Total Loss Paid Claims. There were 24 claims that did not provide a copy of the Missouri Sales Tax Affidavit. This violation has been continued from the last exam. On March 1, 2005, the President of Affirmative Insurance Company signed a Stipulation of Settlement with the Missouri Department of Insurance for Market Conduct Examination number 0313-33-PAC, agreeing to discontinue the violation of section 144.027, RSMo, in future business practices. Current Missouri market Conduct Examination number 0806-11-TGT has revealed that Affirmative Insurance Company has continued to violate the above mentioned statute, and regulation in violation of the Order and Stipulation of Settlement."

and such voluntary action is without waiver of AIC's rights to contest an assertion by the Department that a violation has in fact occurred.

## ANALYSIS

### I. SECTION 144.027 DOES NOT ON ITS FACE APPLY TO OWNER-RETAINED TOTAL LOSSES.

Section 144.027 states, in pertinent part, as follows:

Insurance proceeds; purchase price credits

1. When a motor vehicle, trailer, boat or outboard motor for which all sales or use tax has been paid **is replaced due to theft or a casualty loss in excess of the value of the unit**, the director shall permit the amount of the insurance proceeds plus any owner's deductible obligation, as certified by the insurance company, to be a credit against the purchase price of another motor vehicle, trailer, boat or outboard motor which is purchased or is contracted to purchase within one hundred eighty days of the date of payment by the insurance company as a replacement motor vehicle, trailer, boat or outboard motor. As used in this section, the term "boat" includes all motorboats and vessels, as the terms "motorboat" "vessel" are defined in section 306.010, RSMo. (emphasis supplied)

By this plain language, owner-retained total losses do not fit within the statutory language of Section 144.027. In these cases, the total loss vehicle is *retained* by the owner, and no evidence of *replacement* by the owner is available to Affirmative, a prerequisite for a sales tax affidavit under the statute. AIC fully complies with Section 144.027 in all situations in which this statute clearly applies, i.e., where the insured surrenders the totaled vehicle for salvage, thereby indicating their intention to replace the vehicle. In fact, the report does not identify any total loss claims, other than owner-retained total losses, where AIC failed to provide a sales tax affidavit. Thus, the facts demonstrate that AIC complied with a reasonable and fair reading of the statute. In fact, AIC believed that providing a sales tax affidavit in owner-retained total loss situations was itself a violation of the statute.

Indeed, providing a sales tax affidavit for owner-retained total losses may actually create an opportunity for fraud, with the State as the victim. When an insured retains their total loss vehicle, a fair assumption is that the insured intends to continue operating the vehicle. In such an event, if a sales tax affidavit were provided, the insured would be able to purchase a new vehicle – which is not a replacement vehicle – and use the letter to potentially fraudulently obtain a tax credit on the newly-purchased vehicle. Affirmative understands that some insureds may wish to retain the vehicle only to later sell the vehicle and then replace it. If such a transaction were completed within the 180 days provided by the statute, and the insured provided AIC evidence of such a transaction, AIC could then issue a sales tax affidavit as the "replaced" requirement of the statute would then be met.

## II. THE 2005 ORDER IS SILENT ON THIS ISSUE

The 2005 Order contains no specific language relating to Section 144.027 or any alleged failure to provide Missouri sales tax affidavits for owner-retained total losses. The only potentially relevant sections of the 2005 Order state as follows:

4. In some instances, the companies mishandled physical damage claims closed with and without payment, in that the Companies used sales tax affidavits containing missing or inaccurate information, thereby violating sections 376.936 (5), RSMo and 20 CSR 300-2.200 (3) (B); and
5. In some instances, the companies did not retain copies of salvage titles and sales tax affidavits in its files, and used sales tax affidavits containing missing or inaccurate information with respect to physical damage claims closed with or without payment, thereby violating sections 376.936 (5) and 374.205, RSMo, and 20 CSR 300-2.200 (3) (B).

These specifically-enumerated sections, which are the only references to total loss claims, are followed by a general “Whereas” clause:

“Whereas, the Companies hereby agree to take remedial action bringing the Companies into compliance with the statutes and regulations of the State of Missouri and agree to maintain those corrective action at all times;”

None of these provisions relate to owner-retained total loss claims or whether or not AIC violated Section 144.027 by failing to provide Missouri sales tax affidavits for owner-retained total loss claims. Because the 2005 Order is silent on this issue, and Section 144.027 appears to contain no requirement to provide sales tax affidavits for owner-retained total losses, AIC strongly disagrees with the contention that it violated the 2005 Order as alleged by the Examiner.

## CONCLUSION

In summary, AIC respectfully disagrees with the Examiner’s interpretation of Section 144.027 RSMo requiring AIC to provide a Missouri sales tax affidavit for owner-retained total losses. This requirement is not found in the statutory language, which on its face applies only to situations where the insured replaces the vehicle, i.e., where the insured has surrendered the total loss vehicle to the insurer for salvage. Based on this statutory language, and the absence of any direct reference to RS MO 144.027 in the 2005 Order, particularly in the context of owner-retained total loss vehicles, AIC also disagrees with the Examiner’s contention that it violated the 2005 Order.

Nonetheless, if the Department prefers that sales tax affidavits be provided for owner-retained total losses, AIC will agree to voluntarily commence sending such affidavits in all total loss situations, including owner-retained total losses. Given the issues noted herein with the statute and the 2005 Order, it is AIC’s position that no fine or other penalty is appropriate or justified with respect to this issue.

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



**FINAL MARKET CONDUCT EXAMINATION REPORT**

**Affirmative Insurance Company**  
**NAIC # 42609**

**EXAMINATION NUMBER 0806-11-TGT**

**September 11, 2009**

**Home Office**  
**4450 Sojourn Drive, Suite 500**  
**Addison, Texas 75001**

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## **PURPOSE AND 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. In addition, §447.572, RSMo, grants authority to the DIFP to determine compliance with the Uniform Disposition of Unclaimed Property Act.

The purpose of this examination is to determine if the Company complied with Missouri statutes and DIFP regulations and to consider whether the Company's operations are consistent with the public interest. The primary period covered by this review is January 1, 2007, through December 31, 2007, unless otherwise noted. However, examiners include all discovered errors in this report.

This report focuses on the general business practices of Affirmative Insurance Company. The DIFP has adopted the NAIC published error tolerance rate guidelines. Examiners apply a ten percent (10%) error tolerance criterion to underwriting and rating practices and a seven percent (7%) tolerance criterion to claims handling practices. Error rates greater than the tolerance suggest a general business practice.

The examination included, but was not limited to, a review of the following lines of business: Consumer Complaints and Claims Practices. The examination was a review of the Company's operations for Complaints and Claims.

Examiners requested the Company make refunds on claim underpayments during the examination if any were found.

## **EXECUTIVE SUMMARY**

### **COMPANY PROFILE**

#### **History**

**The following profiles were provided to the examiners by the Company.**

#### **Affirmative Insurance Company**

Affirmative Insurance Company (AIC) was incorporated under the laws of Ohio on June 10, 1983, and began business on July 17, 1983.

All outstanding shares of AIC are owned by Affirmative Insurance Group, Inc., which is a wholly owned subsidiary of Affirmative Insurance Holdings, Inc. AIC was acquired from The Shelby Insurance Company effective December 31, 2003. The Shelby Insurance Company was acquired effective June 30, 1997, by the Vesta Fire Insurance Corporation, a wholly-owned subsidiary of Vesta Insurance Group, Inc. The Shelby Insurance Company had been acquired from Anthem Inc. where it had been a member of the Anthem Casualty Insurance Group, Inc. since December 31, 1991.

AIC re-domesticated to Illinois, following the acquisition of the company by Vesta Fire Insurance Corporation.

The company is licensed in AL, AZ, AR, CA, CT, FL, GA, ID, IL, IN, IA, KS, KY, LA, MS, MO, NE, NV, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, and WI. Credit is allowed for reinsurance as a licensed reinsurer in New York and Michigan.

The ultimate parent of AIC, Affirmative Insurance Holdings, Inc. (Affirmative), was incorporated in 1998 and completed an initial public offering of its common stock in July 2004. Affirmative is a distributor and producer of non-standard personal

automobile insurance for individual consumers in targeted geographic markets. Insurance subsidiaries include five insurance companies licensed to write policies in 40 states, four underwriting agencies and six retail agencies serving 13 states through 230 owned retail stores and 35 franchised retail store locations. AIC is the lead insurance company and reinsures 100% of the non-standard automobile business written directly by affiliate companies Insura Property and Casualty Insurance Company, Affirmative Insurance Company of Michigan and USAgencies Casualty Insurance Company.

### **Examination Findings**

The examination process generally began with the review of complaints, and other non-file materials. The examiners reviewed these products of Affirmative Insurance Company and found one violation with complaints or other non-filed materials.

During the exam, the examiners determined that the wording in the Company's Personal Auto Policy TMO-2501 (12/05) was incorrect. The Company must re-file a corrected policy form in response to the examiners' finding which allowed Medical Payments setoff in Missouri.

During the exam, the examiners found five errors while reviewing the Comprehensive Paid claims. There were three claims that the Company did not follow their salvage agreement that resulted in underpayments to the vehicle owners. One claim did not provide a copy of the Missouri Sales Tax Affidavit. One claim did not complete the investigation within 30 days.

During the examination, the examiners found eight errors while reviewing the Collision Paid claims. There were six claims in which the company did not provide a copy of the Missouri Sales Tax Affidavit to the claimant.

There were two claims in which the Company did not follow their salvage value agreement that resulted in underpayments.

During the examination, the examiners found 32 errors while reviewing the Total Loss Paid claims. There were 24 claims in which the Company did not provide a copy of the Missouri Sales Tax Affidavit to the claimant.

There was one claim that the Company did not follow their salvage agreement, which resulted in an underpayment and one claim that the Company did not attempt to adopt and implement reason standards for settlement of claim and did not attempt in good faith to effectuate a fair and equitable settlement.

The examiners reviewed an extra sample of 172 Total Loss Paid Claims that were owner retained. There were 35 claim files that didn't follow the Company's "Salvage Agreement". This resulted in refunds to the insured's of \$5,830.04.

There were six other claims that the Company failed to provide a copy of the denial letter stating "No Collision Coverage."

During the examination, the examiners found two errors while reviewing the Medical Payment Coverage claims. There was one claim that the Company included Medical Payments in the subrogation recovery and was one claim that the Company allowed the Medical Payments to offset the Uninsured Motorist Bodily Injury settlement.

During the examination the examiners found one error while reviewing the Subrogation Paid claims. The Company did not provide a 45 day letter stating why claim was still open.

During the examination, the examiners found 11 errors while reviewing the Uninsured Motorist Bodily Injury (UMBI) Paid claims. There was one claim that the Company did not provide a denial letter of coverage stating "No Medical Payment Coverage." Nine claims that the Company used the incorrect denial letter for Missouri residents and one claim that the Company allowed Medical Payments to offset the UMBI settlement.

During the examination, the examiners found one error while reviewing the complaints. The Company failed to respond to the initial inquiry regarding the complaint within 20 days.

## FOREWORD

This is a targeted market conduct exam which shows the practices and procedures of selected lines of business of Affirmative Insurance Company being reviewed. The examination was conducted at the office of the Department of Insurance, Financial Institutions and Professional Regulation in Jefferson City, Missouri.

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

The examiners reviewed only a sample of the Company's practices, procedures, products and files during this exam. Therefore, some noncompliant practices, procedures, products, and files may not have been discovered. As such, this report may not fully reflect all of the practices and procedures of the Company. During this examination, the examiners may cite potential violations made by the Company. Statutory citations reference those in effect as of the examination period unless otherwise noted.

The final examination report documents consist of this examination report, the Company's response, and the administrative action based on the findings by the Director of the DIFP.

Wherever used in the report:

“Company” refers to Affirmative Insurance Company;

“DIFP” or “Department” refers to the Missouri Department of Insurance, Financial Institutions, and Professional Registration;

“NAIC” refers to the National Association of Insurance Commissioners;

“RSMo” refers to the Revised Statutes of Missouri;

“Director” refers to the Director of DIFP, and

“CSR” refers to the Missouri Code of State Regulations.

**SECTION I**  
**FORMS AND FILINGS**

During the examination, the examiners determined that the Personal Auto Policy TMO-2501 (12/05) was misfiled. The policy stated in Part II, "Medical Payments Coverage, under the section Limit of Liability," (B) any amount otherwise payable for expenses under this Part II shall be reduced by any amounts paid or payable for the same expenses under Parts I, III, IV, V, or VI. Also Part III, Uninsured Motorist Bodily Injury Coverage limit of liability (F) stated "Any payment under this Part III will reduce any amount that person is entitled to recover for the same damages under Part I, II, IV, V, or VI."

The Company's Personal Auto Policy has filed language that is in conflict with Missouri law. The Company indicated to the examiners that the Personal Auto Policy will be corrected and refiled.

Ref: § 408.020 RSMo, and 20 CSR 500-2.100.

**SECTION II**  
**CLAIMS PRACTICES**

## **CLAIMS PRACTICES**

This section of the report is designed to provide a review of the Company's claims handling practices. Examiners reviewed how the Company handled claims to determine the efficiency of handling, accuracy of payment, adherence to contract provisions, and compliance with Missouri statutes and regulations.

The examiners requested a listing of claims paid and claims closed without payment during the examination period for the line of business under review. Claim files were systematically selected. The review consisted of Missouri claims selected from a listing furnished by the Company with a date of closing from January 1, 2007, through December 31, 2007.

A claim is a demand for payment by an insured or third party claimant under a coverage against the insured which is:

1. paid by the insurer
  - a) as full recompense; or
  - b) as partial recompense;
2. closed without payment by reason of
  - a) no relevant coverage;
  - b) recompense by other legal means; or
  - c) no liability.

The error criterion used to develop confidence levels for the claims review was seven percent (7%) as established by the NAIC.

The examiners reviewed the claim files for efficiency. In determining efficiency, examiners looked at the duration of time the Company used to acknowledge the receipt of the claim, the time for investigation of the claim, and the time to make payment or provide a written denial. Missouri regulations define a reasonable duration of time for claim handling as acknowledgment of the claim within 10 working

days, completion of the investigation of the claim within 30 calendar days, and payment or denial of the claim within 15 working days after the investigation is completed.

Missouri statutes require the Company to disclose to first-party claimants all pertinent benefits, coverage or other provisions of an insurance policy under which a claim is presented. Claim denials must be given to the claimant in writing, and the Company must maintain a copy in its claim files.

The Company's claim files are maintained in an electronic format.

## **CLAIMS**

### **A. 1 Personal Auto Paid Claims**

#### **Comprehensive**

Field Size:	340
Sample Size:	100
Type of Sample:	Systematic
No. of Errors:	5
Found Error Ratio:	5%
Within DIFP Guidelines:	Yes

#### **Summary**

The following claim files indicate that the vehicles were total losses. The Company failed to follow their salvage agreement that determined the salvage deductions used. This resulted in total underpayments to the claimants of \$1,077.32, plus interest.

**Claim Numbers:** MOC78575300701, MOC78310220701, and MOC79110660702.

Ref: §375.1007(4) RSMo, and Affirmative Salvage Value Claims Guidelines provided to the Market Conduct Examiners.

The following claim file was determined to be a total loss and did not have a copy of a Missouri Sales Tax Affidavit in the file.

**Claim Number:** MOB78833160601.

Ref: §144.027 RSMo, and DIFP Bulletin 90-4.

The following claim file took more than 30 days to investigate.

**Claim Number:** MOB80238890701.

Ref: 20 CSR 100-1.040, (as amended, 20 CSR 100-1.050(4) eff. 7/30/08).

## **A. 2 Personal Auto Paid Claims**

### **Collision**

Field Size:	799
Sample Size:	100
Type of Sample:	Systematic
No. of Errors:	8
Found Error Ratio:	8%
Within DIFP Guidelines:	No

### **Summary**

The following auto collision paid claims were owner retained total loss vehicles. The Company failed to provide a Missouri Sales Tax Affidavit to the claimants as required by Missouri law.

**Claim Numbers:** MOB79105490701, MOC75544119701, MOB78610990601, MOC79243550701, MOB80521711701, and MOB78437290601

Ref: §144.027, RSMo.

The claim indicated the auto was a total loss. The Company deducted a higher salvage value from the settlement than what was provided on the Salvage Agreement provided to the examiners. This caused an underpayment to the claimants in the total amount of \$1,392.63 plus interest.

**Claim Number:** MOB81104702701, MOB77756632701

Ref: §375.1007 (4) RSMo, and Affirmative Salvage Value Claims Guidelines.

### **A. 3 Personal Auto Paid Claims**

#### **Total Losses**

Field Size:	601
Sample Size:	272
Type of Sample:	Systematic
No. of Errors:	67
Found Error Ratio:	25%
Within DIFP Guidelines:	No

#### **Summary**

The following total loss claim files indicated that the vehicles were owner retained and that the Company did not provide a Missouri Sales Tax Affidavit to the claimants.

**Claim Numbers:** MOB79709870701, MOB79755230701, MOB78651570701, MOB79435860701, MOB78499400701, MOB78149600701, MOB76585142701, MOB78263050601, MOB78707800701, MOB79108990701, MOB79062490701, MOB78947980601, MOB78019531701, MOB78051681701, MOB79287990701, MOB78670530601, MOB80271620701, MOC79738010702, MOC79484900701, MOC79292170701, MOC78731330701, MOC78526810601, MOC10255901701, MOB80529890701

Ref: §§301.227 and 144.027 RSMo.

The following total loss claim the Company exceeded the existing salvage agreement that was provided to the examiners. This resulted in a refund to the claimant for \$54.11 plus interest.

**Claim Number:** MOB78051681701.

Ref: 20 CSR 300-2.200(3)(B) (as amended, 20 CSR 100-8.040(3)(B)3., eff. 7/30/08)

The following total loss claim indicated the Company failed to adopt and implement reasonable standards for settlement and did not attempt in good faith to effectuate fair and equitable settlement.

**Claim Number:** MOB78670530601.

Ref: §375.1007(3) and (4) RSMo.

The following total loss claims did not contain a written denial letter to the insured stating "no collision coverage."

**Claim Numbers:** MOB79709870701, MOB79755230701, MOB78769950701, MOB79435860701, MOB79662490701, MOB78947980601.

Ref: §375.1007(3), RSMo, and 20 CSR 100-1.050.

The following 35 insured retained total loss paid claims from the additional sample review the Company failed to follow their "Salvage Agreement". This resulted in refunds with interest to the insured's in the amount of \$5,830.04.

**Claim Numbers:** MOB80412890701, MOB80374100701, MOB80316150701, MOB80319030701, MOB80237761701, MOB80162590701, MOB79952180701, MOB79918780701, MOB78898090701, MOB37966553701, MOB74232779701, MOB77431601701, MOB78198021701, MOB79547370701, MOB79387831701, MOB79630831701, MOB79575570702, MOC80288730701, MOC79970741701, MOC79840520702, MOB79123140701, MOB78990360701, MOB79053170701, MOC80111760701, MOC79553570701, MOC78980470701, MOC78926640701, MOC78433751702, MOC78362800701, MOC10213522701, MOB79826790701, MOB79819330701, MOB79790840701, MOC80879270701, MOC81146410701.

Ref: §375.1007 (4) RSMo.

## **A. 4 Personal Auto Paid Claims**

### **Medical Payments**

Field Size:	18
Sample Size:	18
Type of Sample:	Census
No. of Errors:	2
Found Error Ratio:	11%
Within DIFP Guidelines:	No

### **Summary**

The Company received a \$1,833.00 subrogation recovery on following claim file. This is in conflict with Missouri law. The Company is not allowed to subrogate Medical payment recoveries in Missouri. The Company returned to the claimant a check in the amount of \$2,072.89. This amount included interest.

**Claim Number:** MOB79052060701.

Ref: §408.020 RSMo, and Travelers Indemnity Co. vs. Chumbley, 394 S.W.2d 418 (Mo. App. 1965).

The Company used the medical payments as a set off on the UM/BI settlement. This is not permitted by law in the state of Missouri. This caused an underpayment to the claimants and their retained counsel in the total amount of \$8,137.14 including interest.

**Claim Number:** MOB78525890701.

Ref: §408.020 RSMo, and 20 CSR 500-2.100.

## **A. 5 Personal Auto Paid Claims**

### **Subrogation Payments**

Field Size:	55
Sample Size:	55
Type of Sample:	Census
No. of Errors:	1
Found Error Ratio:	2%
Within DIFP Guidelines:	Yes

### **Summary**

The following claim file was open for more than 45 days after the initial contact notification and 45 days thereafter. (March 28, 2007 thru February 26, 2008). The file did not contain a copy of a letter of explanation to the claimant as why the file remains open.

**Claim Number:** MOB77898120701.

Ref: 20 CSR 100-1.050(1)(C).

## **A. 6 Personal Auto Paid Claims**

### **Uninsured Motorists Payments**

Field Size:	66
Sample Size:	66
Type of Sample:	Census
No. of Errors:	11
Found Error Ratio:	17%
Within DIFP Guidelines:	No

### **Summary**

The Company did not send a written denial letter to the insured stating "No Med Payment Coverage" after the adjuster had spoken to the insured advised insured of their coverage available.

**Claim Number:** MOB77579560601.

Ref: §375.1007(2), RSMo, and 20 CSR 100-1.050.

The Company used the State of Illinois letterhead on denial medical payment letters mailed to Missouri insured's resulting in documentation errors.

**Claim Numbers:** MOB78198021701, MOB79233270701, MOB78684130701, MOB79070700701, MOB79245680701, MOC77983461701, MOC77156640601 MOB78141790701, and MOB79387530702

Ref: 20 CSR 300-2.200(3)(B) (as amended 20 CSR 100-8.040(3)(B)3., eff. 7/30/08)

The Company reduced the \$5,000.00 UMBI settlement by the \$1,000.00 Medical Payment coverage payment. Medical Payment setoff is not allowed in of Missouri. The Company issued payment to the claimant and his retained attorney in the amount of \$1,122.70, including interest.

The Company was using their personal auto policy guidelines that were on file with DIFP. This filing was found to be incorrect and the Company will be asked to re file their personal automobile policy with DIFP.

**Claim Number:** MOB79502860701.

Ref: §408.020 RSMo, and 20 CSR 500-2.100. See also, Travelers Indemnity Co. vs. Chumbley, 394 S. W. 2d 418 (Mo. App. 1965).

### **B. 1 Personal Auto Non- Paid Claims**

#### **Combined Lines of Auto Non- Paid**

Field Size:	626
Sample Size:	50
Type of Sample:	Systematic
No. of Errors:	0
Found Error Ratio:	0%
Within DIFP Guidelines:	Yes

#### **Summary**

The examiners noted no errors in this review.

**SECTION III**  
**CONSUMER COMPLAINTS**

## **CONSUMER COMPLAINTS**

This section of the report is designed to provide a review of the Company's complaint handling practices. Examiners reviewed how the Company handled complaints to ensure it was performing according to its own guidelines and Missouri statutes and regulations.

The examiners verified the registry, which contained a total of 92 complaints. They reviewed all 92 combined complaints that went through DIFP and the ones that did not come through the Department. The review consisted of a review of the nature of each complaint, the disposition of the complaint, and the time taken to process the complaint as required by §375.936(3), RSMo, and 20 CSR 300-2.200(3)(D)(as amended 20 CSR 100-8.040.) The examiners found one issue were the Company failed to respond to the Department's initial inquiry within 20 days as required by Missouri regulation.

**Complaint Number:** 06J002737.

Ref: §375.936(3), RSMo, and 20 CSR 100-4.100.

**SECTION IV**

**FORMAL REQUESTS AND CRITICISMS TIME STUDY**

## FORMAL REQUESTS AND CRITICISMS 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.

### A. Criticism Time Study

<u>Calendar Days</u>	<u>Number of Criticisms</u>	<u>Percentage</u>
0 to 10	40	100%
10 to 50	0	0%
<u>No Response</u>	<u>0</u>	<u>0%</u>
Total	40	100%

### B. Formal Request Time Study

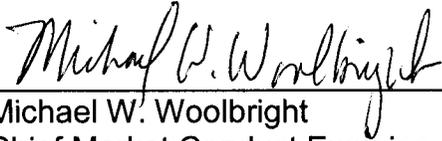
<u>Calendar Days</u>	<u>Number of Requests</u>	<u>Percentage</u>
0 to 10	47	100%
11 to 30	0	0%
<u>30 to 99</u>	<u>0</u>	<u>0%</u>
Total	47	100%

**SECTION V**

**EXAMINATION REPORT SUBMISSION**

## EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Affirmative Insurance Company (NAIC #42609), Examination Number 0806-11-TGT. This examination was conducted by Gary T. Meyer, Gerald Michitsch, and Darren Jordan. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated June 11, 2009. 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.

  
Michael W. Woolbright  
Chief Market Conduct Examiner

9-15-09  
Date