

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

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

In re:)
)
Mendota Insurance Company (NAIC #33650)) Examination No. 0812-27-TGT
)

CURATIVE ORDER OF THE DIRECTOR

NOW, on this 29th day of JANUARY, 2010, Director John M. Huff (hereafter referred to as the "Director"), after consideration and review of the market conduct examination report of Mendota Insurance Company (NAIC #33650) (hereafter referred to as the "Company"), report number 0812-27-TGT, prepared and submitted by the Division of Insurance Market Regulation pursuant to §374.205.3(3)(a), RSMo, does hereby adopt such report as filed. After consideration and review of such report, relevant workpapers, and any written submissions or rebuttals, the findings and conclusions of such report are deemed to be the Director's findings and conclusions accompanying this order pursuant to §374.205.3(4), RSMo.

This order, issued pursuant to §374.205.3, RSMo and §374.046.15. RSMo (Cum. Supp. 2008), is in the public interest.

IT IS THEREFORE ORDERED that the Company shall CURE the violations of law, regulations or prior orders revealed in such report and shall take remedial action to bring the Company into compliance with the statutes and regulations of the State of Missouri and to maintain those corrective actions at all times, including, but not limited to, taking the following actions:

1. The Company shall take all needed steps to assure that promptly processes and accurately pays all claims, specifically its Private Passenger Automobile Collision, Total Loss, and Subrogation claims, as required by §§144.027, 375.1007(4), and 408.020, RSMo.

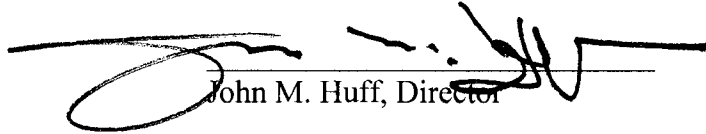
2. The Company shall take all needed steps to assure that the sales tax credit affidavit used by the Company and provided to its claimants are accurate, provided to claimants, and copies properly maintained by the Company, as required by §144.027, RSMo, and 20 CSR 100-8.040(3)(B)3.

3. The Company shall ensure that its books, records, documents, and other business records are in an order such that the insurer's claims practices can be readily ascertained by the Department as required by 20 CSR 100-8.040.

So Adopted, Found, Concluded and Ordered.

1.29.10

Date



John M. Huff, Director

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



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

Mendota Insurance Company
NAIC # 33650

MISSOURI EXAMINATION # 0812-27-TGT

NAIC EXAM TRACKING SYSTEM # MO268-M98

January 23, 2010

Home Office
2805 Dodd Rd. Suite 300
Eagan, Minnesota 55121

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FOREWORD

This is a targeted market conduct examination report of the Mendota Insurance Company, (NAIC Code # 33650). This examination was conducted at the office of the Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP).

This 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.

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

When used in this report:

- “Company” refers to Mendota Insurance Company;
- “CSR” refers to the Missouri Code of State Regulation;
- “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;
- “NAIC” refers to the National Association of Insurance Commissioners;
- “RSMo” refers to the Revised Statutes of Missouri.

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 are consistent with the public interest. The primary period covered by this review is January 1, 2008, through December 31, 2008, unless otherwise noted. Errors outside of this time period discovered during the course of the examination, however, may also be included in the report.

The examination was a targeted examination involving the following business functions and lines of business: Company Complaints, Personal Auto Underwriting, Personal Auto Terminations, and Personal Auto Paid and Non-Paid Claims.

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 for other trade practices is ten percent (10%). Error rates exceeding these benchmarks are presumed to indicate a general business practice. The benchmark error rates were not utilized, however, for reviews not applying the general business practice standard.

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 discovered. As such, this report may not fully reflect all of the practices and procedures of the Company. As indicated previously, failure to identify or criticize improper or noncompliant business practices in this state or other jurisdictions does not constitute acceptance of such practices.

COMPANY PROFILE

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

Mendota Insurance Company (the Company) was incorporated in the State of Minnesota on May 1, 1989 and commenced operations on June 1, 1989. Mendakota Insurance Company (Mendakota) is a wholly owned subsidiary of the Company. The Company is a wholly owned subsidiary of MIC Holdings, Inc. (The Parent). The Parent is a wholly owned subsidiary of Kingsway America Inc. (KAI), an insurance holding company and ultimately a wholly owned subsidiary of Kingsway Financial Services Inc. (KFSI), a publicly-owned holding company based in Mississauga, Ontario, Canada.

On April 1, 2007, KAI acquired 100% of the issued and outstanding shares of the parent. In connection with the acquisition, the company discontinued its participation in an underwriting pool with its former affiliates, Northland Insurance Company (Northland), American Equity Insurance Company, and their wholly-owned subsidiaries Northland Casualty Company, Northfield Insurance Company, and American Equity Specialty Insurance Company, retroactive to January 1, 2007.

The Company is licensed in 41 states and the District of Columbia and Mendakota is licensed in 20 states and each provides property and casualty insurance primarily consisting of private passenger auto and physical damage.

EXECUTIVE SUMMARY

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

- The examiners found violations in the private passenger paid claims.

The examiners requested that the Company make refunds concerning underwriting premium overcharges and claim underpayments found for amounts greater than \$5.00 during the examination if any were found.

Various non-compliant practices were identified, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to the Missouri insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

EXAMINATION FINDINGS

I. UNDERWRITING AND RATING PRACTICES

This section of the report is designed to provide 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. Examiners reviewed how the Company handled new and renewal policies to ensure that the Company underwrote and rated risks according to their own underwriting guidelines, filed rates, and Missouri statutes and regulations.

Because of the time and cost involved in reviewing each policy/underwriting file, the examiners utilize sampling techniques in conducting compliance testing. A policy/underwriting file is determined 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) 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. Errors indicating a failure to comply with laws that do not apply the general business practice standard are separately noted as errors and are not included in the error rates.

The examiners requested the Company's underwriting and rating manuals for the line of business under review. This included all rates, guidelines, and rules that were in effect on the first day of the examination period and at any point during that 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 systematically selected the policies for review from a listing furnished by the Company.

The examiners also requested a written description of significant underwriting and rating changes that occurred during the examination period for underwriting files that were maintained in an electronic format.

An 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, incomplete file information preventing the examiners from readily ascertaining the company's rating and underwriting practices, and any other activity indicating a failure to comply with Missouri statutes and regulations.

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 is not ambiguous or misleading and is adequate to protect those insured.

B. Underwriting and Rating

The examiners reviewed applications for coverage that were issued, modified, or declined by the Company to determine the accuracy of rating and adherence to prescribed and acceptable underwriting criteria.

1. Personal Auto Underwriting (New and Renewal)

Field Size:	18,540
Sample Size:	100
Type of Sample:	Random
Number of Errors:	0
Error Ratio:	0%

The examiners discovered no general business practice issues in this review.

C. Personal Lines Terminations

The examiners reviewed policies that the carrier terminated at or before the scheduled expiration date of the policies and policies that were rescinded by the Company after the effective date of the policy.

1. Personal Auto Terminations

Field Size:	100
Sample Size:	100
Type of Sample:	Census
Number of Errors:	0
Error Ratio:	0%

The examiners discovered no general business practice issues in this review.

2. Personal Auto Non- Renewals

Field Size:	106
Sample Size:	106
Type of Sample:	Census
Number of Errors:	0
Error Ratio:	0%

The examiners discovered no general business practice issues in this review.

D. Practices Not in the Best Interest of Consumers

The examiners also looked for items that were not in the best interest of consumers. Not only could these practices be harmful to the insured, they may expose the company to potential liability.

The examiners discovered no general business practice issues in this review.

II. 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 timeliness of handling, accuracy of payment, adherence to contract provisions, and compliance with Missouri statutes and regulations.

To minimize the duration of the examination, while still achieving an accurate evaluation of claim practices, the examiners reviewed a statistical sampling of the claims processed. The examiners requested a listing of claims paid and claims closed without payment during the examination period for the line of business under review. The review consisted of Missouri claims selected from a listing furnished by the Company with a date of closing from January 1, 2008, through December 31, 2008.

A claim file is determined 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., §§375.1000 – 375.1018 and §375.445) and compared with the NAIC benchmark error rate of seven percent (7%). Error rates in excess of the NAIC benchmark error rate[s] are presumed to indicate a general business practice contrary to the law. Errors indicating a failure to comply with laws that do not apply the general business practice standard are separately noted as errors and are not included in the error rates.

A claim error includes, but is not limited to, any of the following:

- An unreasonable delay in the acknowledgement of a claim,
- An unreasonable delay in the investigation of a claim,
- An unreasonable delay in the payment or denial of a claim,
- A failure to calculate claim benefits correctly; and
- A failure to comply with Missouri law regarding claim settlement practices.

The examiners reviewed the claim files for timeliness. In determining timeliness, 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 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.

A. Claims Time Studies

To test for compliance with timeliness standards, the examiners reviewed claim records and calculated the amount of time taken by the Company for claims processing. They reviewed the Company's claims processing practices relating to (1) the acknowledgement of receipt of notification of claims; (2) the investigation of claims; and (3) the payment of claims or the providing of an explanation for the denial of claims.

DIFP regulations require companies to abide by the following parameters for claims processing:

- Acknowledgement of the notification of a claim must be made within 10 working days;
- Completion of the investigation of a claim must be made within 30 calendar days after notification of the claim. If more time is needed, the Company must notify the claimant and send follow-up letters every 45 days; and
- Payment or denial of a claim must be made within 15 working days after investigation of the claim is complete.

The examiners discovered no issues or concerns.

B. Unfair Settlement and General Handling Practices

In addition to the Claim Time Studies, examiners reviewed the Company's claim handling processes to determine compliance with contract provisions and adherence to unfair claims statutes and regulations. Whenever a claim file reflected that the company failed to meet these standards, the examiners cited the Company for noncompliance.

1. Private Passenger Auto Comprehensive Paid Claims

Field Size:	146
Sample Size:	146
Type of Sample:	Census
Errors:	0
Error Ratio:	0%

The examiners discovered no issues or concerns relating to the Company's general business practices.

2. Private Passenger Auto Collision Paid Claims

Field Size:	100
Sample Size:	100
Type of Sample:	Census
Errors:	4
Error Ratio:	4 %

The Company did not deduct the insured's \$500.00 deductible before issuing the payment for repairs. The claim was overpaid by the Company in the amount of \$500.00.

Claim Number: 2595719

Reference: §375.1007(4) RSMo.

The Company did not deduct the \$168.49 salvage value as the owner had retained the vehicle. This caused an overpayment of the claim in the amount of \$168.49.

Claim Number: 2551162

Reference: §375.1007(4) RSMo.

The claim file did not contain a copy of the denial letter regarding unrelated damage to the vehicle that was a result of wear and tear. The denial of claim was by phone only.

Claim Number: 2546853

Reference: §375.1007(4) RSMo, 20 CSR 100-1.050, and 20 CSR 300-2.200 (as amended 20 CSR 100-8.040, eff. 7/30/08).

The claim file did not contain a denial letter regarding the custom paint replacement on the insured's vehicle. The denial of the claim was by phone only.

Claim Number: 2546276

Reference: §375.1007(4) RSMo, 20 CSR 100-1.050, and 20 CSR 300-2.200 (as amended 20 CSR 100-8.040, eff. 7/30/08).

3. Private Passenger Auto Total Loss Paid Claims

Field Size: 119
Sample Size: 119
Type of Sample: Census
Errors: 12
Error Ratio: 10%

The Company failed to deduct the salvage value from the total loss settlement causing a \$750.00 overpayment on the claim.

Claim Number: 2573449

Reference: §§375.1007(4) RSMo, and 144.027.027, RSMo, and 20 CSR 100-1.050.

The Company failed to maintain copies of Missouri Sales Tax Affidavits in the claim that were provided to the claimants.

Claim Numbers:

2591826 2598864 2590141
2575806 2553863 2575877
2589549 2597997 2556420
2592886 2590772

Reference: §144.027, RSMo, and 20 CSR 300-2.200(3)(B)(3) (as amended 20 CSR 100-8.040, eff. 7/30/08).

4. Private Passenger Auto Medical Payment Paid Claims

Field Size: 50
Sample Size: 50
Type of Sample: Census
Errors: 0
Error Ratio: 0%

The examiners discovered no issues or concerns relating to the Company's general business practices.

5. Private Passenger Auto Subrogation Paid Claims

Field Size:	33
Sample Size:	33
Type of Sample:	Census
Errors:	1
Error Ratio:	3%

The Company recovered 85% of the insured's \$500 deductible. The Company failed to pay the \$425.00 back to the insured. The Company has now paid the \$425.00 plus \$4.44 interest back to the insured.

Claim Number: 2595494

Reference: §§375.1007(4) and 408.020, RSMo, and 20 CSR 100-1.050(C) and (H).

6. Private Passenger Auto Uninsured Motorist Bodily Injury Paid Claims

Field Size:	5
Sample Size:	5
Type of Sample:	Census
Errors:	0
Error Ratio:	0%

The examiners discovered no issues or concerns relating to the Company's general business practices.

7. Private Passenger Auto Non-Paid Comprehensive Claims

Field Size:	38
Sample Size:	38
Type of Sample:	Census
Errors:	0
Error Ratio:	0%

The examiners discovered no issues or concerns relating to the Company's general business practices.

8. Private Passenger Auto Non-Paid Collision Claims

Field Size:	131
Sample Size:	131
Type of Sample:	Census
Errors:	0
Error Ratio:	0%

The examiners discovered no issues or concerns relating to the Company's general business practices.

9. Private Passenger Non-Paid Medical Payment Claims

Field Size:	44
Sample Size:	44
Type of Sample:	Census
Errors:	0
Error Ratio:	0%

The examiners discovered no issues or concerns relating to the Company's general business practices.

10. Private Passenger Auto Non-Paid Uninsured /Underinsured Motorists

Field Size:	26
Sample Size:	26
Type of Sample:	Census
Errors:	0
Error Ratio:	0%

The examiners discovered no issues or concerns relating to the Company's general business practices.

C. Practices Not in the Best Interest of Consumers

The examiners also looked for items that were not in the best interest of consumers. Not only could these practices be harmful to the insured, they may expose the company to potential claims.

The examiners discovered no general business practice issues in this review.

III. 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.

Section 375.936(3), RSMo, requires companies to maintain a registry of all written complaints received for the last three years. The registry must include all Missouri complaints, including those sent to the DIFP and those sent directly to the company.

The examiners verified the Company's complaint registry, dated January 1, 2006, through December 31, 2008. The registry contained a total of 26 complaints. They reviewed all 39 complaints that went through DIFP and ones that went directly to the Company.

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).

The examiners discovered no issues or concerns.

IV. 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

<u>Calendar Days</u>	<u>Number of Criticisms</u>	<u>Percentage</u>
Received w/in time-limit, incl. any extensions	22	100%
Received outside time-limit, incl. any extensions	0	0 %
<u>No Response</u>	<u>0</u>	<u>0 %</u>
Total	22	100%

Reference: §374.205.2(2), RSMo, and 20 CSR 300-2.200, (as amended 20 CSR 100-8.040, eff. 7/30/08).

B. Formal Request Time Study

<u>Calendar Days</u>	<u>Number of Requests</u>	<u>Percentage</u>
Received w/in time-limit, incl. any extensions	25	100%
Received outside time-limit, incl. any extensions	0	0%
<u>No Response</u>	<u>0</u>	<u>0%</u>
Total	25	100%

Reference: §374.205.2(2), RSMo, and 20 CSR 300-2.200, (as amended 20 CSR 100-8.040, eff. 7/30/08).

EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Mendota Insurance Company, Examination Number (0812-27-TGT). This examination was conducted by Gary T. Meyer, EIC, Gerald Michitsch, and Darren Jordan. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated November 30, 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.

Jim Mealer
Chief Market Conduct Examiner

Date



January 13, 2010

Ms. Carolyn H. Kerr
Senior Counsel
Market Conduct Section
Missouri Department of Insurance
301 West High, Room 530
Jefferson City, MO 65101

RECEIVED
JAN 13 2010
F. STEPHENS

RE: Company response to draft report of Mendota Insurance Company (NAIC #33650)

Dear Ms. Kerr:

We are writing in response to your letter dated December 16, 2009 concerning the Market Conduct Examination report dated November 30, 2009 for Mendota Insurance Company.

We have reviewed the findings in the report and would like to point out the following information with respect to these findings. The following input is provided in the order the findings appear in the Market Conduct Examination Report to facilitate your review.

II. CLAIMS PRACTICES

B. 2. PPA Collision Paid Claims (Page 11)

Company Response: These were isolated oversights on the part of the claim handler. Regarding all violations stated, the Company has reminded claim handlers to comply with all Missouri regulations.

B. 3. PPA Total Loss Paid Claims (Page 12)

Company Response: The sales tax affidavit prints with the settlement letter that is sent. The company has reminded the claim handlers to comply with this regulation by retaining a copy of the affidavit in the claim file.

B. 5. PPA Subrogation Paid Claims (Page 13)

Company Response: This was an isolated oversight on the part of the claim handler. The payment of \$429.44 has been sent to the insured. The company has reminded the claim handler to comply with this regulation.

We appreciate the professionalism and manner in which this exam was conducted. Please feel free to contact me at 1-847-700-8585 if you would like to discuss our response.

Sincerely,

Jim Stephens
Manager, Compliance Shared Services
Kingsway America, Inc.

The Kingsway America Group of Companies

