



DEPARTMENT OF COMMERCE & INSURANCE

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

In Re:)
)
NATIONAL INDEMNITY) **Market Conduct Examination No. 352804**
COMPANY (NAIC # 20087))

ORDER OF THE DIRECTOR

NOW, on this 21st day of May, 2024, Director, Chlora Lindley-Myers, after consideration and review of the market conduct examination report of National Indemnity Company (hereinafter “National Indemnity”), examination report number #352804, prepared and submitted by the Division of Insurance Market Regulation (hereinafter “Division”) pursuant to §374.205.3(3)(a)¹, does hereby adopt such report as filed. After consideration and review of the Stipulation of Settlement and Voluntary Forfeiture (“Stipulation”), relating to the market conduct examination #352804, the examination report, relevant work papers, 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). The Director does hereby issue the following orders:

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

IT IS THEREFORE ORDERED that National Indemnity and the Division having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

¹ All references, unless otherwise noted, are to Revised Statutes of Missouri 2016.

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

IT IS FURTHER ORDERED that National Indemnity shall pay, and the Department of Commerce and Insurance, State of Missouri, shall accept, the Voluntary Forfeiture of \$14,000.00, 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 21st day of May, 2024.



Chlora Lindley Myers

Chlora Lindley-Myers
Director

**IN THE DEPARTMENT OF COMMERCE AND INSURANCE
STATE OF MISSOURI**

In Re:)
)
NATIONAL INDEMNITY) **Market Conduct Examination No. 352804**
COMPANY (NAIC # 20087))

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter the “Division”), and National Indemnity Company (NAIC #20087) (hereinafter “National Indemnity”), as follows:

WHEREAS, the Division is a unit of the Missouri Department of Commerce and Insurance (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 of Missouri;

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

WHEREAS, the Division conducted a market conduct examination of National Indemnity, Examination No. 352804; and

WHEREAS, based on the market conduct examination of National Indemnity the Division alleges that:

1. In seven instances, National Indemnity did not follow filed underwriting rules, rates or classifications in violation of §379.470¹, §379.889 and 20 CSR 500-4.100 (1) and (6).
2. In five instances, National Indemnity did not use filed rates by failing to apply ABS and airbag discounts in violation of §379.470, §379.889 and 20 CSR 500-4.100 (1) and (6).

¹ All statutory references, unless otherwise noted, are to the 2016 Revised Statutes of Missouri, as amended.

3. In seven instances, National Indemnity did not follow its filed rules and rating plan by using outdated MVR's in violation of §379.470 and 20 CSR 500-4.100 (1) and (6).

4. National Indemnity did not follow its filed rules and rates by allocating coverage at 75% for collision and 25% for other than collision in violation of §379.470, §379.889 and 20 CSR 500-4.100 (1) and (6).

5. In 13 instances, National Indemnity omitted to clearly disclose at renewal the relationship between the Stated Value of a vehicle and the premium charged for the coverage in violation of §375.936 (6) (a) and §375.934.

6. In five instances, National Indemnity allowed an amendment excluding drivers who were not members of the insured's household in violation of §303.190.2 (3).

7. In one instance, National Indemnity incorrectly provided coverage for Specifically Described Autos when the insured requested coverage for all vehicles owned, operated or under lease implicating the provisions of §375.936 (6) (a).

8. In two instances, National Indemnity did not provide a clear and specific nonrenewal reason in its nonrenewal letter in violation of §379.883 (3).

9. In three instances, National Indemnity did not send a 45 day letter to the insured setting forth the reasons additional time was needed to complete its investigation in violation of §375.1007 (3), §375.1005 and 20 CSR 100-1.050 (1) (C).

10. In two instances, National Indemnity did not provide a reply within 10 working days to a communication from an insurance carrier regarding a subrogation demand implicating the provisions of §375.1007 (2) and violating 20 CSR 100-1.030 (1) (B).

11. In one instance, National Indemnity did not retain a copy of a salvage title in violation of §374.205.2 (2) and 20 CSR 100-8.040 (3) (B).

12. In one instance, National Indemnity did not document prior salvage history in violation of §374.205.2 (2) and 20 CSR 100-8.040 (3) (B).

13. In two instances, National Indemnity did not date stamp two subrogation demand letters in violation of 20 CSR 100-8.040 (3) (B) 2.

14. In five instances, National Indemnity did not pay the sales tax on total loss claims in violation of §375.1007 (4).

15. In one instance, National Indemnity did not disclose and explain subrogation rights in violation of §375.1007 (1) and 20 CSR 100-1.020 (1) (A).

16. In one instance, National Indemnity did not document the basis for betterment or depreciation in violation of §375.1007 (3) and 20 CSR 100-1.050 (2) (E).

17. In three instances, National Indemnity did not reimbursement total loss claimants for a salvage processing fee in violation of §375.1007 (4).

18. In one instance, National Indemnity issued a payment in error for a vehicle that was not covered by the policy in violation of §375.1007 (3).

19. In one instance, National Indemnity incorrectly calculated the actual cash value of a vehicle in violation of §375.1007 (4).

20. In one instance, National Indemnity incorrectly calculated the sales tax owed on a vehicle in violation of §375.1007 (4).

WHEREAS, the Division and National Indemnity have agreed to resolve the issues raised in the market conduct examination 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.** National Indemnity agrees to take remedial action bringing it into compliance with the statutes and regulations of Missouri and agrees to maintain those remedial actions at all times. Such remedial actions shall include the following:

1. National Indemnity agrees that it will apply the anti-lock brake discount to all vehicles that include anti-lock brakes and the airbag discount to all vehicles that include airbags.

2. National Indemnity agrees to review all commercial auto policies from January 1, 2021 to the date of the Order approving this Stipulation to determine if any policyholders should have qualified for an anti-lock brake discount. If a policyholder should have qualified for an anti-lock brake discount, National Indemnity will refund the difference between the premium charged without the discount and the premium that would have been charged if the discount had been applied. Interest, calculated pursuant to section 374.191, will be included with the refund. A letter will be included indicating that as a result of a Missouri Market Conduct Examination it was discovered that a premium refund was owed to the insured.

3. National Indemnity agrees to review all commercial auto policies from January 1, 2021 to the date of the Order approving this Stipulation to determine if any policyholders should have qualified for an airbag discount. If a policyholder should have qualified for an airbag discount, National Indemnity will refund the difference between the premium charged without the discount and the premium that would have been charged if the discount had been applied. Interest, calculated pursuant to section 374.191, will be included with the refund. A letter will be included indicating that as a result of a Missouri Market Conduct Examination it was discovered that a premium refund was owed to the insured.

4. National Indemnity agrees to consistently apply its existing rates and rules in underwriting commercial auto policies in Missouri.

5. National Indemnity agrees to implement and apply consistent criteria for ordering MVR's for renewal policies such that similarly situated insureds are treated in a like manner.

6. National Indemnity agrees to revise its written notices to commercial insureds at renewal to clearly delineate to the insured that a reduction in the Stated Value amount of the vehicle due to depreciation or other factors may result in a reduction of premium. National Indemnity further agrees to submit the revised written notice to the Division for review and approval prior to use.

7. National Indemnity agrees not to add any provision to its policies excluding drivers who are not members of the insured's household.

8. National Indemnity agrees to maintain its claim files so as to clearly show the inception, handling and disposition of each claim.

9. National Indemnity agrees that it will pay all automobile total loss claims, including payment for all sales taxes relating to such claims, according to the terms of its policy provisions.

10. National Indemnity agrees to disclose all pertinent benefits, coverages and other policy provisions to its insured claimants.

11. National Indemnity agrees to promptly provide a reasonable and accurate explanation, in writing, for all claim denials.

12. National Indemnity agrees to reimburse all claimants for premium overcharges or claim underpayments identified in the exam report which have not already been reimbursed. Payment of interest, pursuant to §374.191 will be included. A letter will be included indicating that as a result of a Missouri Market Conduct Examination it was discovered either that a premium refund was owed or additional payments were owed on the claim.

13. National Indemnity has provided the Division with an attestation affirming that it has not contested in connection with a claim any warranty, representation or condition contained in any application for commercial auto insurance coverage not containing a signature of the applicant since January 1, 2017. National Indemnity agrees that it will not contest in connection with a claim any warranty, representation or condition contained in the application for a commercial auto policy not containing a signature of the applicant.

C. **Compliance.** National Indemnity agrees to file documentation pursuant to section 374.205 with the Division, in a format acceptable to the Division, within 90 days of the entry of an Order approving this Stipulation, of any remedial action taken to implement compliance with the terms of this Stipulation, including documentation of any refund or claim payments made to insureds.

D. **Voluntary Forfeiture.** National Indemnity agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$14,000, such sum payable to the Missouri State School Fund, in accordance with §§374.049.11 and 374.280.2.

E. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by National Indemnity, this Stipulation being part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above referenced market conduct examination.

F. **Waivers.** National Indemnity, after being advised by legal counsel, does hereby voluntarily and knowingly waive any and all rights to 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 market conduct examination no.352804 .

G. **Amendments.** No amendments to this Stipulation shall be effective unless made in writing and agreed to by authorized representatives of the Division and National Indemnity.

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

I. **Authority.** The signatories below represent, acknowledge and warrant that they are authorized to sign this Stipulation, on behalf of the Division and National Indemnity, respectively.

J. **Counterparts.** This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document. Execution by facsimile or by electronically transmitted signature shall be fully and legally effective and binding.

K. **Effect of Stipulation.** This Stipulation shall not become effective until entry of an Order by the Director of the Department (hereinafter “Director”) approving this Stipulation.

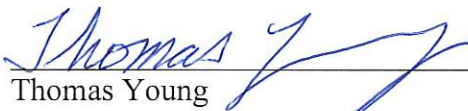
L. **Request for an Order.** The signatories below request that the Director issue an Order approving this Stipulation and ordering the relief agreed to in the Stipulation, and consent to the issuance of such Order.

DATED: April 24, 2024

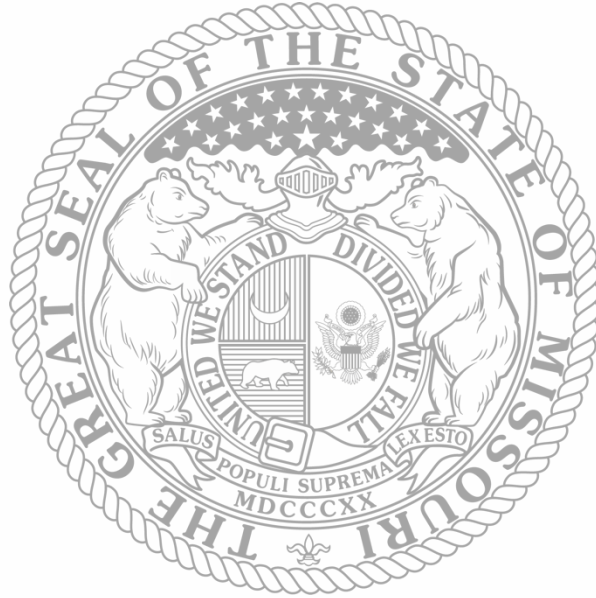


Teresa Kroll
Chief Market Conduct Examiner
Division of Insurance Market Regulation

DATED: April 24, 2024



Thomas Young
Senior Vice President
National Indemnity Company



**MARKET CONDUCT EXAMINATION REPORT
Property and Casualty of**

**National Indemnity Company
NAIC # 20087**

MISSOURI SBS EXAMINATION # 352804

NAIC MATS #MO-HICKSS1-134

November 16, 2023

**Home Office
1314 Douglas Street, Suite 1400
Omaha, NE 68102-1944**

**STATE OF MISSOURI
DEPARTMENT OF COMMERCE & INSURANCE**

JEFFERSON CITY, MISSOURI

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November 16, 2023

Honorable Chlora Lindley-Myers, Director
Missouri Department of Commerce and Insurance
301 West High Street, Room 530
Jefferson City, Missouri 65101

Director Lindley-Myers:

In accordance with your market conduct examination warrant, a targeted market conduct examination has been conducted of the specified lines of business and business practices of

National Indemnity Company (NAIC #20087)

hereinafter referred to as NICO or as the Company. This examination was conducted as a desk examination at the offices of the Missouri Department of Commerce and Insurance (DCI).

FOREWORD

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

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

When used in this report:

- “ABS” refers to the Anti-lock Braking Systems of vehicles
- “Company” refers to the National Indemnity Company
- “CSR” refers to the Missouri Code of State Regulation
- “DCI” refers to the Missouri Department of Commerce and Insurance
- “Director” refers to the Director of the Missouri Department of Commerce and Insurance
- “NAIC” refers to the National Association of Insurance Commissioners
- “RSMo” refers to the Revised Statutes of Missouri

SCOPE OF EXAMINATION

The DCI has authority to conduct this examination pursuant to, but not limited to, §§ 374.110, 374.190, 374.205, 375.938, and 375.1009, RSMo, and conducted in accordance with § 374.205.

The purpose of this examination was to determine if the Company complied with Missouri statutes and DCI regulations. The primary period covered by this review is January 1, 2017 through December 31, 2019, unless otherwise noted. Errors found outside of this time-period may also be included in the report.

The examination was a targeted examination involving the following line of business and business functions: Commercial Automobile (Underwriting and Rating, Claims and Operations and Management).

The examination was conducted in accordance with the standards in the 2020 *NAIC's Market Regulation Handbook*. As such, the examiners utilized the benchmark error rate guidelines from the NAIC 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 it is ten percent (10%). Error rates exceeding these benchmarks are presumed to indicate a general business practice. The benchmark error rates were not utilized for reviews not applying the general business practice standard.

In performing this examination, the examiners reviewed only 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.

COMPANY PROFILE

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

National Indemnity Company (NICO) is a Nebraska domiciled property & casualty insurance company. NICO is a wholly owned subsidiary of Berkshire Hathaway Inc. (BHI). NICO's principal business is reinsurance, both open market and affiliate treaties, but NICO also provides commercial automobile insurance (including physical damage and other related auto insurance coverages) in most jurisdictions of the United States.

EXECUTIVE SUMMARY

The DCI conducted a targeted market conduct examination of National Indemnity Company. The examiners found the following areas of concern:

OPERATIONS AND MANAGEMENT

- The Company did not update the stated value of vehicles on policies that caused them to charge a premium not commensurate with the value of the vehicle. The company supplied nine policy history illustrations with stated value coverage that serve as examples that the Company's procedures do not require verification of the value of the vehicle at policy inception or require an update at the time of renewal. Reference: § 379.889, RSMo

UNDERWRITING AND RATING

ACTIVE POLICIES

- In five instances, the Company failed to use filed rates to properly classify and rate a vehicle by failing to apply air bag and ABS discounts. Reference: §§ 379.321, 379.889 RSMo, and 20 CSR 500-4.100(1) and (6)
- The Company failed to identify and properly rate a driver for an at fault loss and assess proper points to the driver resulting in an undercharge. Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)
- The Company rated one driver twice instead of rating another existing driver resulting in an undercharge. Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)
- The Company failed to use filed rules and rating plan when it did not apply the proper points in calculating the Driver Rating Factor for a listed driver resulting in an undercharge. Reference: §§ 379.470, 379.889, RSMo, and 20 CSR 500-4.100(1) and (6)
- The Company failed to follow the filed rules and rating plan regarding trip charges and applied a discretionary rate resulting in an overcharge. Reference: §§ 379.470, 379.889, RSMo, and 20 CSR 500-4.100(1) and (6)
- In two instances, the Company allowed an amendment excluding drivers who were not members of the insureds household. Reference: § 303.190.2(3), RSMo
- In seven instances, the Company failed to follow their filed rules and rating plan by using outdated MVRs and not applying current and correct inputs for rates in effect. Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)
- The Company failed to use and charge rates in accordance with its filed rating plan after discovering an error in their rating software that produced a “not-for-hire” classification error. Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)
- In the rating sample of 86 policies with physical damage coverages, the Company failed to follow its filed rules and rates. The Company allocated the premium by coverage at 75% to collision and 25% to other than collision instead of the filed 50% to collision and 50% to other than collision rate. Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)
- In five instances, the Company failed to provide and maintain the completed application, which bears the insured’s signature on the application as part of the underwriting file. Reference: § 374.205, RSMo, and 20 CSR 100-8.040(3)(A) 1. A
- The Company failed to properly apply their filed rating plan by using a factor of 1 for the “Named Insured & Unit Count Factors” when the Commercial Auto Manual indicates the correct factor should have been 1.15 resulting in a premium undercharge. Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)
- The Company failed to issue a policy accurately and in accordance with the application. The issued policy misrepresented facts, benefits, advantages, conditions by providing coverage for specific autos instead of all autos as the applicant requested. Reference: § 375.936(6)(a), RSMo
- The Company charged rates not commensurate with the value of the vehicles as evidenced in total loss claims. In 13 claim files, the stated value of the vehicles were excessively overvalued or undervalued compared to the actual cash value determination at the time of the claim. The difference in actual cash value paid at the time of the claim compared to the

stated value which premium was based upon appears to show that the premium charged was excessive or inadequate. Reference: § 379.889, RSMo

NON-ACTIVE POLICIES

- In two files, the Company did not provide a clear and specific nonrenewal reason that was stated in the nonrenewal letters. Reference § 379.883(3), RSMo
- In three instances, the Company allowed an amendment excluding drivers who were not a member of the insureds household. Reference: § 303.190.2(3), RSMo

PAID CLAIMS

- In three instances, the Company did not send a letter at 45 days to the insured setting forth the reasons additional time was needed for investigation. Reference: § 375.1007(3), RSMo, and 20 CSR 100-1.050(1)(C)
- In one claim, the Company failed to maintain the claim file so as to show clearly the inception, handling, and disposition of each claim by not retaining a copy of the salvage title for the insured vehicle and therefore failed to show the final disposition of the salvage handling. Reference: § 374.205, RSMo, and 20 CSR 100-8.040(3)(B)
- In five instances, the Company failed to effectuate a fair and equitable settlement of a claim in which liability had become reasonably clear by failing to pay the sales tax on a total loss claim settlement resulting in underpayments. Reference: § 375.1007(4), RSMo
- In one claim, the Company failed to disclose all pertinent benefits, coverages, or other provisions of an insurance policy by failing to disclose and explain the subrogation rights of the policy. Reference: § 375.1007(1), RSMo, and 20 CSR 100-1.020(1)(A)
- In one claim, the Company failed to apply or document in the claim file the basis of the deduction applied to the total loss settlement. Reference: § 375.1007(3), RSMo, and 20 CSR 100-1.050(2)(E)
- In three instances, the Company failed to effectuate a fair and equitable settlement of a claim by failing to include an \$11 salvage processing fee and by taking ownership of the salvage title, which resulted in underpayments. Reference: § 375.1007(4), RSMo
- In one claim, the Company failed to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies by issuing payment in error for a vehicle that should not have been covered under the policy, resulting in an overpayment. Reference: § 375.1007(3), RSMo
- In one claim, the Company failed to effectuate prompt, fair and equitable settlement of a claim in which liability had become reasonably clear by incorrectly calculating the actual cash value of the insured vehicle at settlement resulting in an overpayment. Reference: § 375.1007(4), RSMo
- In one claim, the Company failed to maintain the claim file so as to show clearly the inception, handling, and disposition by not explaining why the claim file did not document the prior salvage history for the insured vehicle or explain why a title based settlement deduction was not considered. Reference: § 374.205, RSMo, and 20 CSR 100-8.040(3)(B)
- In one claim, the Company failed to effectuate prompt, fair and equitable settlement of a claim by incorrectly calculating the sales tax owed for the insured vehicle at settlement resulting in an underpayment. Reference: § 375.1007(4), RSMo
- In thirteen claims files, the Company failed to adopt and implement reasonable standards for settlements of claims arising under its policies. Insureds were paid the actual cash value

of vehicles even though premium charged was significantly higher based on an inaccurate stated value of the vehicle. The Company's processes do not adequately pursue updated stated value amounts from the insured so that total loss claim payments at ACV are more aligned with the stated value. Reference: §§ 375.1007(3), 379.889, RSMo

NON-PAID CLAIMS

- In two instances, the Company failed to provide a reply within ten (10) working days to a communication received from a claimant insurance carrier regarding a subrogation demand. Reference: § 375.1007(2), RSMo, and 20 CSR 100-1.030(1)(B)
- In one claim, the Company failed to date-stamp two subrogation demand letters from a claimant carrier, in a legible form in ink or some other permanent manner upon receipt of the subrogation demand letter. Reference: § 374.205, RSMo, and 20 CSR 100-8.040(3)(B)2

EXAMINATION FINDINGS

I. OPERATIONS/MANAGEMENT

The operations/management portion of the examination provides a review of what the Company is and how it operates. The examiners used operations and management examination standards taken from Chapter 20 General Examinations Standards of the NAIC Market Regulation Handbook to determine the Company's compliance with Missouri laws.

A. NAIC Market Regulation Handbook Chapter 20 Standard 7: Records are adequate, accessible, consistent and orderly and comply with state record retention requirements.

The examiners did not separately test for this area of review. Rather, the examiners reviewed the same files from the samples in the Underwriting and Rating section and Claims section of the report to determine if compliance with state record retention requirements were met.

No areas of concern were noted.

B. NAIC Market Regulation Handbook Chapter 20 Standard 11: The regulated entity has developed and implemented written policies, standards and procedures for the management of insurance information.

The examiners did not separately test for this area of review. Rather, the examiners reviewed the same files from the samples in the Underwriting and Rating section and Claims section of the report to determine if the Company developed and applied policies, standards, procedures, and guidelines in accordance with Missouri law.

1. Procedures and Standards for Active Policies

The examiners found the following errors in this review:

Finding 1: The Company did not update the stated value of vehicles on policies that caused them to charge a premium not commensurate with the value of the vehicle. The company supplied nine (9) policy history illustrations with stated value coverage that serve as examples that the Company’s procedures do not require verification of the value of the vehicle at policy inception or require an update at the time of renewal. See Appendix

Reference: § 379.889, RSMo

II. UNDERWRITING AND RATING

The underwriting and rating portion of the examination provides a review of the Company’s compliance with Missouri statutes and regulations regarding underwriting and rating practices such as the use of policy forms, adherence to underwriting guidelines, assessment of premium, and procedures used to decline or terminate coverage beginning on January 1, 2017 and ending on December 31, 2019.

The examiners used underwriting and rating examination standards taken from Chapter 20 General Examinations Standards and Chapter 21 Conducting the Property and Casualty Examinations of the NAIC Market Regulation Handbook to determine the Company’s compliance with Missouri laws.

A. NAIC Market Regulation Handbook Chapter 20 Standard 1: The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the regulated entity’s rating plan.

To test for this standard, examiners requested and reviewed random samples of 86 of 466 active policies and 100 of 253 non-active policies from the data supplied by the Company to determine if the premiums charged agreed with the Company’s rate filings.

1. Rates for Active Policies

Field Size	466
Sample Size	86
Type of Sample	Random
Number of Files in Error	86*

*Policies with more than one error were only counted once.

The examiners found the following errors in this review:

Finding 1: In five instances, the Company failed to use filed rates to properly classify and rate a vehicle by failing to apply ABS and airbag discounts resulting in an overcharges of \$160.66, \$546.93, \$543.92, \$79 and \$68. See Appendix

Reference: §§ 379.321, 379.889, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 2: The Company failed to identify and properly rate a driver for an at fault loss and assess proper points to the driver resulting in an undercharge. See Appendix
Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 3: The Company rated one driver twice instead of rating another existing driver resulting in an undercharge. See Appendix

Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 4: In two instances, the Company failed to use its filed rules and rating plan when it did not apply the proper points in calculating the Driver Rating Factor for a listed driver resulting in an undercharge. See Appendix

Reference: §§ 379.470, 379.889, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 5: The Company failed to follow the filed rules and rating plan regarding trip charges and applied a discretionary rate resulting in a \$150 overcharge. See Appendix

Reference: §§ 379.470, 379.889, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 6: In seven instances, the Company failed to follow their filed rules and rating plan by using outdated MVRs and not applying current and correct inputs for rates in effect. See Appendix

Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 7: The Company failed to use and charge rates in accordance with its filed rating plan after discovering an error in their rating software that produced a “not-for-hire” classification in error. The Company allowed a one-time computer error to result in not following the filed rating plan and undercharged the insured by \$5,964. See Appendix

Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 8: In the rating sample of 86 policies with physical damage coverages, the Company failed to follow its filed rules and rates. The premium allocated by coverage was 75% to collision and 25% to other than collision instead of the filed 50% to collision and 50% to other than collision rate. See Appendix

Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 9: The Company failed to properly apply their filed rating plan by using a factor of 1 for the “Named Insured & Unit Count Factors” when the Commercial Auto Manual indicates the correct factor should have been 1.15 resulting in a premium undercharge of \$263. See Appendix

Reference: § 379.470, RSMo, and 20 CSR 500-4.100(1) and (6)

Finding 10: The Company charged rates not commensurate with the value of the vehicles as evidenced in total loss claims. In 13 claim files, the stated value of the vehicles were excessively overvalued or undervalued compared to the actual cash value determination at the time of the claim. The difference in actual cash value paid at the time of the claim compared to the stated value which premium was based upon appears to show that the premium charged was excessive or inadequate. See Appendix

Reference: § 379.889 RSMo

2. Rates for Non-Active Policies

No areas of concern were noted.

B. NAIC Market Regulation Handbook Chapter 20 Standard 4: The regulated entity's underwriting practices are not unfairly discriminatory. The regulated entity adheres to applicable statutes, rules and regulations and regulated entity guidelines in the selection of risks.

To test for this standard, examiners requested and reviewed random samples of 86 of 466 active policies and 100 of 253 non-active policies from the data supplied by the Company to determine if the premiums charged agreed with the Company's rate filings.

1. Underwriting Practices for Active Policies

Field Size	466
Sample Size	86
Type of Sample	Random
Number of Files in Error	2

The examiners found the following errors in this review:

Finding 1: In two instances, the Company allowed an amendment excluding drivers who were not members of the insureds household. See Appendix

Reference: § 303.190.2(3), RSMo

2. Underwriting Practices for Non-Active Policies

Field Size	253
Sample Size	100
Type of Sample	Random
Number of Files in Error	3

The examiners found the following errors in this review:

Finding 1: In three instances, the Company allowed an amendment excluding drivers who were not a member of the insureds household. See Appendix

Reference: § 303.190.2(3), RSMo

C. NAIC Market Regulation Handbook Chapter 20 Standard 6: Policies, contracts, riders, amendments and endorsements are issued or renewed accurately, timely and completely.

To test for this standard, examiners requested and reviewed random samples of 86 of 466 active policies and 100 of 253 non-active policies from the data supplied by the Company to determine if the premiums charged agreed with the Company's rate filings.

1. Application and Enrollment Forms and File Documentation for Active Policies

Field Size	466
Sample Size	86
Type of Sample	Random
Number of Files in Error	1

The examiners found the following error in this review:

Finding 1: The Company failed to issue a policy accurately according to the application completed and misrepresented facts, benefits, advantages, conditions, or terms of the policy by providing coverage for Specifically Described Autos (Coverage Symbol 7) when the insured requested coverage for all vehicles owned, operated or under lease to the applicant that would have been provided by Coverage Symbol 1. See Appendix

Reference: § 375.936(6)(a), RSMo

2. Application and Enrollment Forms and File Documentation for Non-Active Policies

No areas of concern were noted.

D. NAIC Market Regulation Handbook Chapter 20 Standard 8: Cancellation/nonrenewal, discontinuance and declination notices comply with policy and contract provisions, state laws and the regulated entity's guidelines.

To test for this standard, examiners requested and reviewed random samples of 86 of 466 active policies and 100 of 253 non-active policies from the data supplied by the Company to determine if the premiums charged agreed with the Company's rate filings.

1. Cancellation/nonrenewal discontinuance notices for Active Policies

No areas of concern were noted.

2. Cancellation/nonrenewal discontinuance notices for Non-Active Policies

Field Size	466
Sample Size	86
Type of Sample	Random
Number of Files in Error	2

The examiners found the following errors in this review:

Finding 1: In two instances, the Company did not provide a clear and specific nonrenewal reason in the nonrenewal letter.

Reference: § 379.883(3), RSMo

E. NAIC Market Regulation Handbook Chapter 21 Standard 18: Applications or enrollment forms are properly, accurately and fully completed, including any required signatures, and file documentation adequately supports decisions made.

To test for this standard, examiners requested and reviewed random samples of 86 of 466 active policies and 100 of 253 non-active policies from the data supplied by the Company to determine if the premiums charged agreed with the Company’s rate filings.

1. Applications and Forms for Active Policies

Field Size	466
Sample Size	86
Type of Sample	Random
Number of Files in Error	5

The examiners found the following errors in this review:

Finding 1: In five instances, the Company failed to provide and maintain the completed application, which bears the insured’s signature on the application as part of the underwriting file. See Appendix

Reference: § 374.205, RSMo, and 20 CSR 100-8.040(3)(A)1.A

2. Applications and Forms for Non-Active Policies

No areas of concern were noted.

III. CLAIMS

The claims portion of the examination provides a review of the Company’s compliance with Missouri statutes and regulations regarding claims handling practices such as the timeliness of handling, accuracy of payment, adherence to contract provisions, and compliance with Missouri statutes and regulations.

The examiners used claims examination standards taken from Chapter 20 General Examinations Standards of the NAIC Market Regulation Handbook to determine the Company's compliance with Missouri laws.

A. NAIC Market Regulation Handbook Chapter 20 Standard 2: Timely investigations are conducted.

To test for this standard, examiners requested and reviewed a census of 23 paid total loss claims and a census of 61 non-paid claims from data supplied by the Company to determine if investigations were timely.

1. Investigation Time for Paid Total Loss Claims

Field Size	23
Sample Size	23
Type of Sample	Census
Number of Errors	3
Error Ratio	13.04%

The examiners found the following errors in this review:

Finding 1: For three claims, the Company did not send a letter at 45 days to the insured setting forth the reasons additional time was needed for investigation.

Reference: § 375.1007(3), RSMo, and 20 CSR 100-1.050(1)(C)

2. Investigation Time for Denied/Closed Without Payment Claims

No areas of concern were noted.

B. NAIC Market Regulation Handbook Chapter 20 Standard 4: The regulated entity responds to claims correspondence in a timely manner.

To test for this standard, examiners requested and reviewed a census of 23 paid total loss claims and a census of 61 non-paid claims from data supplied by the Company to determine if response to correspondence was timely.

1. Claim Communication Time for Paid Total Loss Claims

No areas of concern were noted.

2. Claim Communication Time for Denied/Closed Without Payment Claims

Field Size	61
Sample Size	61

Type of Sample	Census
Number of Errors	2
Error Ratio	3.27%

The examiners found the following errors in this review:

Finding 1: In two instances, the Company failed to provide a reply within ten (10) working days to a communication received from a claimant insurance carrier regarding a subrogation demand. See Appendix

Reference: § 375.1007(2), RSMo, and 20 CSR 100-1.030(1)(B)

C. NAIC Market Regulation Handbook Chapter 20 Standard 5: Claim files are adequately documented.

To test for this standard, examiners requested and reviewed a census of 23 paid total loss claims and a census of 61 non-paid claims from data supplied by the Company to determine if claim files were adequately documented.

1. Claim Record Retention for Paid Total Loss Claims

Field Size	23
Sample Size	23
Type of Sample	Census
Number of Errors	2
Error Ratio	8.70%

The examiners found the following errors in this review:

Finding 1: The Company failed to maintain the claim file so as to show clearly the inception, handling, and disposition of each claim by not retaining a copy of the salvage title for the insured vehicle and therefore failed to show the final disposition of the salvage handling. See Appendix

Reference: § 374.205 RSMo, and 20 CSR 100-8.040(3)(B)

Finding 2: The Company failed to maintain the claim file so as to show clearly the inception, handling, and disposition by not explaining why the claim file did not document the prior salvage history for the insured vehicle or explain why a title based settlement deduction was not considered. See Appendix

Reference: § 374.205 RSMo, and 20 CSR 100-8.040(3)(B)

2. Claim Record Retention for Denied/Closed Without Payment Claims

Field Size	61
Sample Size	61
Type of Sample	Census
Number of Errors	1
Error Ratio	1.64%

The examiners found the following error in this review:

Finding 1: The Company failed to date-stamp two subrogation demand letters from a claimant carrier, in a legible form in ink or some other permanent manner upon receipt of the subrogation demand letter.

Reference: § 374.205, RSMo, and 20 CSR 100-8.040(3)(B)2

D. NAIC Market Regulation Handbook Chapter 20 Standard 6: Claims are properly handled in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations.

To test for this standard, examiners requested and reviewed a census of 23 paid total loss claims and a census of 61 non-paid claims from data supplied by the Company to determine if claims are handled in accordance to policy provisions and applicable statutes, rules and regulations.

1. Paid Total Loss Claims

Field Size	23
Sample Size	23
Type of Sample	Census
Number of Errors	14
Error Ratio	60.87%

*Thirteen errors were only counted as one error. See Finding 8

The examiners found the following errors in this review:

Finding 1: In five instances, the Company failed to effectuate a fair and equitable settlement of a claim in which liability had become reasonably clear by failing to pay the sales tax on a total loss claim settlement resulting in underpayments. See Appendix

Reference: § 375.1007(4), RSMo

Finding 2: The Company failed to disclose all pertinent benefits, coverages, or other provisions of an insurance policy by failing to disclose and explain the subrogation rights of the policy. Although the Proof of Loss stated subrogation rights were transferred, the language stated in the Proof of Loss was not the same language stated in the insured’s insurance policy. See Appendix

Reference: § 375.1007(1), RSMo, and 20 CSR 100-1.020(1)(A)

Finding 3: The Company failed in good faith to effectuate prompt, fair and equitable settlement of a claim submitted in which liability has become reasonably clear by not applying or documenting in the claim file the basis of the deduction applied to the total loss settlement. See Appendix

Reference: § 375.1007(3), RSMo, and 20 CSR 100-1.050(2)(E)

Finding 4: In three instances, the Company failed to effectuate a fair and equitable settlement of a claim in which liability had become reasonably clear by failing to include an \$11 salvage processing fee and by taking ownership of the salvage title, which resulted in an underpayment in the amount of \$11 to the claimant. See Appendix

Reference: § 375.1007(4), RSMo

Finding 5: The Company failed to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies by issuing payment in error for a vehicle that should not have been covered under the policy, resulting in an overpayment in the amount of, \$2,300. See Appendix

Reference: § 375.1007(3), RSMo

Finding 6: The Company had failed to effectuate prompt, fair and equitable settlement of a claim in which liability had become reasonably clear by incorrectly calculating the actual cash value of the insured vehicle at settlement resulting in an overpayment in the amount of \$160.88. See Appendix

Reference: § 375.1007(4), RSMo

Finding 7: The Company had failed to effectuate prompt, fair and equitable settlement of a claim in which liability had become reasonably clear by incorrectly calculating the sales tax owed for the insured vehicle at settlement resulting in an underpayment in the amount of \$149.38. See Appendix

Reference: § 375.1007(4), RSMo

Finding 8: In thirteen claim files, the Company failed to adopt and implement reasonable standards for settlements of claims arising under its policies. Insureds were paid the actual cash value of vehicles even though premium charged was significantly higher based on an inaccurate stated value of the vehicle. The Company's processes do not adequately pursue updated stated value amounts from the insured so that total loss claim payments at ACV are more aligned with the stated value. See Appendix

Reference: §§ 375.1007(3), 379.889, RSMo

2. Denied/Closed Without Payment Claims.

No areas of concern were noted.

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 statutes and regulations require companies to respond to criticisms and formal requests within ten (10) calendar days. In the event an extension of time was requested by the Company and granted by the examiners, the response was deemed timely if it was received within the subsequent time frame. If the response was not received within the allotted time, the response was not considered timely.

A. Criticism Time Study

Number of Calendar Days to Respond	Number of Criticisms	Percentage of Total
0 to 10 days	46	95.83%
Over 10 days with extension	2	4.17%
Over 10 days without extension or after extension due date	0	0%
Totals	43	100%

All criticism responses were timely.

B. Formal Request Time Study

Number of Calendar Days to Respond	Number of Requests	Percentage of Total
0 to 10 days	36	67.92%
Over 10 days with extension	17	32.08%
Over 10 days without extension or after extension due date	0	0%
Totals	53	100%

All request responses were timely.

EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation’s Final Report of the examination of National Indemnity Company, Examination Number 352804, MATS #MO-HICKSS1-134. This examination was conducted by Examiner-In-Charge, Shelly Herzing, CIE; Darren Jordan, CIE; and Tad Herin, CIE. The findings in the Final Report were extracted from the Market Conduct Examiner’s Draft Report, dated November 16, 2023. 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.

May 6, 2024

Date



Teresa Krill

Chief Examiner, Market Conduct