

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

<i>In Re:</i>)	
)	
TRAVELERS INDEMNITY COMPANY OF AMERICA (NAIC # 25666))	Market Conduct Exam No. 1201-04-TGT
)	
TRAVELERS PROPERTY AND CASUALTY COMPANY OF AMERICA (NAIC #25674))	Market Conduct Exam No. 1201-05-TGT
)	
PHOENIX INSURANCE COMPANY (NAIC #25623))	Market Conduct Exam No. 1202-06-TGT
)	
FIDELITY AND GUARANTY INSURANCE COMPANY (NAIC #35386))	Market Conduct Exam No. 1202-07-TGT
)	

ORDER OF THE DIRECTOR

NOW, on this 23RD day of NOVEMBER, 2016, Director John M. Huff, after consideration and review of the market conduct examination reports of Travelers Indemnity Company of America (NAIC #25666) (hereafter referred to as “Travelers Indemnity”), report number 1201-04-TGT, Travelers Property and Casualty Company of America (NAIC #25674) (hereafter referred to as “Travelers Property”), report number 1201-05-TGT, Phoenix Insurance Company (NAIC #25623) (hereafter referred to as “Phoenix), report number 1202-06-TGT, and Fidelity and Guaranty Insurance Company (NAIC #35386) (hereafter referred to as “Fidelity), report number 1202-07-TGT, prepared and submitted by the Division of Insurance Market Regulation pursuant to §374.205.3(3)(a), does hereby adopt such reports as filed. After consideration and review of the Stipulation of Settlement and Voluntary Forfeiture (“Stipulation”), reports, relevant work papers, and any written submissions or rebuttals, the findings and conclusions of such reports are deemed to be the Director’s findings and conclusions accompanying this order pursuant to §374.205.3(4).

This order, issued pursuant to §374.205.3(4), §374.280, and §374.046.15. RSMo (Cum. Supp. 2013), is in the public interest.

IT IS THEREFORE ORDERED that Travelers Indemnity, Travelers Property, Phoenix, Fidelity and the Division of Insurance Market Regulation having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that Travelers Indemnity, Travelers Property, Phoenix and Fidelity shall not engage in any of the violations of law and regulations set forth in the Stipulation, shall implement procedures to place Travelers Indemnity, Travelers Property, Phoenix and Fidelity in full compliance with the requirements in the Stipulation and to maintain those corrective actions at all times, and shall fully comply with all terms of the Stipulation

IT IS FURTHER ORDERED that Travelers Indemnity shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$20,000.00 payable to the Missouri State School Fund.

IT IS FURTHER ORDERED that Travelers Property shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$19,000.00 payable to the Missouri State School Fund.

IT IS FURTHER ORDERED that Phoenix shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$21,000.00 payable to the Missouri State School Fund.

IT IS FURTHER ORDERED that Fidelity shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$115,250.00 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 23RD day of NOVEMBER, 2016.



John M. Huff
Director

**IN THE DEPARTMENT OF INSURANCE, FINANCIAL
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)	

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter "the Division") and Travelers Indemnity Company of America (NAIC #25666) (hereinafter "Travelers Indemnity"), Travelers Property and Casualty Company of America (NAIC #25674) (hereinafter "Travelers Property"), Phoenix Insurance Company (NAIC #25623) (hereinafter "Phoenix"), and Fidelity and Guaranty Insurance Company (NAIC #35386) (hereinafter "Fidelity"), as follows:

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

WHEREAS, Travelers Indemnity, Travelers Property, Phoenix, and Fidelity have been granted certificates of authority to transact the business of insurance in the State of Missouri;

WHEREAS, the Division conducted a Market Conduct Examination of Travelers Indemnity, Travelers Property, Phoenix, and Fidelity; and

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

1. Travelers Indemnity failed to apply the Second Injury Fund Surcharge rate to the correct premium for twenty-seven (27) policies in violation of §287.310.9¹ and §287.715.2.
2. In one (1) instance, Travelers Indemnity failed to include the entire amount of the payroll for class code 8742 in determining premium in violation of §287.955.3.
3. In one (1) instance, Travelers Indemnity failed to document that officer's payroll was included in the payroll amount listed on the final audit in violation of §287.020.1.
4. In one (1) instance, Travelers Indemnity failed to provide a Rejection of Coverage form to the insured in violation of §287.037.
5. In fifty (50) instances, Travelers Indemnity misrepresented the terms of the premium adjustment notices in violation of §375.936(4) and (6) (a).
6. In four (4) instances, Travelers Indemnity did not document the file with the basis for the change in the Schedule Modification rate from the previous year in violation of §287.950.1 and 20 CSR 500-4.100(7)(D).
7. In two (2) instances, Travelers Indemnity failed to apply the correct Experience Modification rate to premium on the NCCI algorithm in violation of §287.955.1.
8. Travelers Indemnity failed to apply the Administrative Surcharge rate to the correct premium for sixteen (16) policies resulting in overcharges and undercharges to the Fund in violation of §287.310.9 and §287.716.2.
9. In one (1) instance, Travelers Indemnity failed to apply the correct Premium Discount rate to the total standard premium on the NCCI algorithm in violation of §287.947.1 and §287.955.3.

10. Travelers Indemnity incorrectly applied the deductible credit rate to a premium subtotal on the NCCI algorithm in twenty-one (21) policies in violation of §287.955.3.

11. In one (1) instance, Travelers Indemnity failed to verify at audit that the information reported to the NCCI on the MOCCPAP credit application was accurate in violation of §287.955.3.

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

1. Travelers Property erroneously applied a waiver of subrogation endorsement to one (1) policy containing construction group codes in violation of §287.150.6.

2. Travelers Property incorrectly attached a withdrawn endorsement to one (1) policy in violation of §287.310.1.

3. Travelers Property failed to apply the Second Injury Fund Surcharge rate to the correct premium for twenty-two (22) policies in violation of §287.310.9 and §287.715.2.

4. Travelers Property failed to apply the Administrative Surcharge rate to the correct premium for ten (10) policies resulting in violation of §287.310.9 and §287.716.2.

5. In one (1) instance, Travelers Property failed to apply the Increased Limits Factor to the correct premium resulting in a premium overcharge in violation of §287.955.3.

6. In one (1) instance, Travelers Property failed to apply the correct payroll amount on the final audit resulting in an overcharge in violation of §287.955.3.

7. In one (1) instance, Travelers Property failed to include the officer payroll on the final audit in violation of §287.020.1. and §287.955.3.

8. In one (1) instance, Travelers Property failed to retain the NCCI Experience Modification worksheet in the file in violation of §287.937.2.

9. In one (1) instance, Travelers Property failed to apply the correct Premium Discount rate in violation of §287.955.3.

10. In one (1) instance, Travelers Property failed to verify at audit that the information reported to the NCCI on the MOCCPAP credit application was accurate in violation of §287.955.3.

11. Travelers Property failed to apply the correct Short Rate Surcharge on two (2) policies resulting in overcharges in violation of §287.955.3.

12. In one (1) instance, Travelers Property failed to exclude the correct amount of overtime pay from the workers compensation final audit in violation of §287.955.3.

13. In one (1) instance, Travelers Property failed to allocate 10% of the officer payroll to Class Code 8810 resulting in an overcharge in violation of §287.955.3.

14. In one (1) instance, Travelers Property failed to apply the correct Terrorism rate to premium in violation of §287.947.1.

15. In one (1) instance, Travelers Property failed to retain documentation regarding a reduction of the credit on the Schedule Modification worksheet in violation of §287.350, §287.937.2, and 20 CSR 100-8.040(3)(A).

16. In two (2) instances, Travelers Property failed to apply the correct Experience Modification rate to premium in violation of §287.955.1.

17. Travelers Property failed to apply the deductible credit rate to the total manual premium on the NCCI algorithm for nineteen (19) policies in violation of §287.955.3.

18. In one (1) instance, Travelers Property failed to apply the correct payroll to the final audit in violation of §287.955.3.

WHEREAS, the Market Conduct Examination report of Phoenix revealed:

1. Phoenix failed to file individual risk rating plans and supplementary rate information for three (3) large deductible workers compensation insurance policies in violation of §287.947.1.

2. In one (1) instance, Phoenix failed to file all rates and supplementary rate information

in violation of §287.947.1, 20 CSR 500-6.950(3)(B)3, 20 CSR 500-6.950(5)(B), and 20 CSR 500-6.950(7).

3. In one (1) instance, Phoenix failed to attach a mandatory form to the policy in violation of §287.310.

4. Phoenix failed to apply the deductible credit rate to the total manual premium on the NCCI algorithm for twenty-one (21) policies in violation of §287.955.3.

5. In one (1) instance, Phoenix failed to apply the Short Rate Cancellation Factor in violation of §287.955.3.

6. In one (1) instance, Phoenix incorrectly applied the Increased Limits Factor to the premium in violation of §287.955.3.

7. Phoenix failed to verify at audit that the information reported to the NCCI on the MOCCPAP credit application for ten (10) policies were accurate in violation of §287.955.3.

8. Phoenix failed to apply the Second Injury Fund Surcharge rate to the correct premium for twenty-three (23) policies in violation of §287.310.9 and §287.715.2.

9. In one (1) instance, Phoenix failed to document the basis for the Schedule Modification rate in violation of §287.350, §287.950.1, 20 CSR 100-8.040(3)(A), and 20 CSR 500-4.100(7)(D).

10. Phoenix failed to apply the Administrative Surcharge rate to the correct premium for eighteen (18) policies resulting in violation of §287.310.9 and §287.716.2.

11. In one (1) instance, Phoenix failed to maintain information necessary for the reconstruction of the rating and underwriting of the policy in violation of §287.937.2, §374.205.2(2), and 20 CSR 100-8.040(3)(A).

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

1. In five (5) instances, Fidelity utilized forms that were attached to policies, but either not filed with the Department or were withdrawn from use in violation of §287.310.1 and CSR 500-6.100(1).
2. Fidelity failed to complete, bill and return premium to the insured within 120 days of policy expiration or cancellation for six (6) policies in violation of §287.310.1, §287.955.3 and 20 CSR 500-6.500(2)(A).
3. Fidelity failed to apply the Second Injury Fund Surcharge rate to the correct premium for six (6) policies in violation of §287.310.9 and §287.715.2.
4. In twenty-two (22) instances, Fidelity failed to maintain reasonable records necessary to reconstruct how policy premium was determined in violation of §287.937.2, §374.205.2(2), and 20 CSR 100-8.040(3)(A).
5. Fidelity failed to utilize the correct class code base rates on the premium adjustment notice for three (3) policies resulting in premium overcharges in violation of §287.947.1.
6. In one (1) instance, Fidelity failed to apply the Schedule Modification credit rate from the previous year to the premium when there was no change in the risk resulting in an overcharge in violation of §287.950.1 and 20 CSR 500-4.100(7)(D).
7. In one (1) instance, Fidelity failed to use the correct Experience Modification factor of .75 resulting in a premium overcharge in violation of §287.955.1.
8. In four (4) instances, Fidelity failed to use the correct Scheduled Modification factor resulting in two premium overcharges in violation of §287.955.3.
9. In one (1) instance, Fidelity failed to utilize the correct Terrorism rate in violation of §287.947.1.

10. Fidelity failed to file individual risk rating plans and supplementary rate information for three hundred twelve (312) large deductible workers compensation insurance policies in violation of §287.947.1.

WHEREAS, Travelers Indemnity, Travelers Property, Phoenix, and Fidelity do not agree with certain findings in the Market Conduct Examination and it is the position of Travelers Indemnity, Travelers Property, Phoenix, and Fidelity that this Stipulation of Settlement and Voluntary Forfeiture is a compromise of disputed facts and legal allegation and that the signing of this Stipulation of Settlement and Voluntary Forfeiture and Travelers Indemnity's, Travelers Property's, Phoenix's, and Fidelity's consent to take the remedial actions required by it and to pay the voluntary forfeiture set forth herein does not constitute an admission of wrongdoing or liability on its part and is done to fully and completely resolve and settle the allegations found in the Market Conduct Examination.

WHEREAS, the Division, Travelers Indemnity, Travelers Property, Phoenix, and Fidelity 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 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.** Travelers Indemnity, Travelers Property, Phoenix, and Fidelity agree to take remedial action bringing each into compliance with the statutes and regulations of Missouri and agree to maintain those remedial actions at all times. Such remedial actions shall include, but not be limited to, the following:

1. Travelers Indemnity, Travelers Property, Phoenix, and Fidelity agree to file an amendment to their waiver of subrogation endorsement form to include language that the endorsement does not apply to any construction classifications in the State of Missouri. The amendment is subject to prior approval from the Division.

2. Travelers Indemnity, Travelers Property, Phoenix and Fidelity agree that they will make individual risk filings with the Director for all large deductible workers compensation insurance policies with Missouri premium or exposure. Such filings shall be made within 30 days of the effective date of the policy.

3. Travelers Indemnity, Travelers Property, and Phoenix agree to randomly select 10 small deductible workers compensation insurance policies with Missouri premium or exposure with effective dates spread through policy years from 2012 to the date of the Order closing this examination to determine if the Second Injury Fund Surcharge and Administrative Surcharge were calculated correctly or if its calculation resulted in any overcharges to policyholders or underpayments to either the Second Injury Fund Surcharge or the Administrative Surcharge Fund. If this test results in no additional Second Injury Fund Surcharge or Administrative Surcharge Fund calculation errors, then no additional review of small deductible policies will be required. However, if errors are found then the Companies agree to review all small deductible policies with Missouri premium or exposure from 2012 to the date of the Order closing this examination. If the policyholder is entitled to a refund of premium as a result of any errors in calculating the Second Injury Fund Surcharge or the Administrative Surcharge, the Company must issue any refund due to the insured, including interest of nine per cent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment, indicating that "as a result of a Missouri Market Conduct Examination," it was found that a refund was due to the insured. If the Second Injury Fund Surcharge was

underpaid, such payments that are owed will be paid to the Division of Workers Compensation together with any applicable interest or penalties, and any amended return that may be required by the Division. If the Administrative Surcharge was underpaid, such payments that are owed shall be paid to the Department of Revenue together with any applicable interest or penalties, and any amended returns that may be required by the Premium Tax Section of the Department.

4. Fidelity agrees to review all workers compensation insurance policies with Missouri premium or exposure issued from January 1, 2011 to the date of the Order closing this examination to determine if the Second Injury Fund Surcharge and Administrative Surcharge were calculated correctly or if its calculation resulted in any overcharges to policyholders or underpayments to either the Second Injury Fund Surcharge or the Administrative Surcharge Fund. If the policyholder is entitled to a refund of premium as a result of any errors in calculating the Second Injury Fund Surcharge or the Administrative Surcharge, the Company must issue any refund due to the insured, including interest of nine per cent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment, indicating that “as a result of a Missouri Market Conduct Examination,” it was found that a refund was due to the insured. If the Second Injury Fund Surcharge was underpaid, such payments that are owed will be paid to the Division of Workers Compensation together with any applicable interest or penalties, and any amended return that may be required by the Division. If the Administrative Surcharge was underpaid, such payments that are owed shall be paid to the Department of Revenue together with any applicable interest or penalties, and any amended returns that may be required by the Premium Tax Section of the Department.

5. Travelers Indemnity, Travelers Property, Phoenix, and Fidelity agree to review and revise their premium adjustment notices to correctly label the standard premium amounts.

6. Travelers Indemnity and Fidelity agree to review their standard rating policies with

Missouri premium or exposure that were issued effective January 1, 2011 to the date of the Order closing this examination to determine if the insured is entitled to any adjustment of premium as a result of the failure to document the basis for change in the scheduled modification rate. If a refund is due the insured, the Companies will pay restitution to the affected policyholder (including interest at 9% per annum pursuant to §408.020). A letter will be included with any restitution payments indicating that “as a result of a Missouri Market Conduct Examination, it was found that a refund was owed to the insured.”

7. Travelers Indemnity, Travelers Property, Phoenix and Fidelity agree to review and generate a listing of policies with Missouri premium or exposure with Foreign Reimbursement coverage effective from January 1, 2011 to the date of the Order closing this examination to determine if the Second Injury Fund Surcharge and Administrative Surcharge were calculated correctly or if its calculation resulted in any overcharges to policyholders or underpayments to either the Second Injury Fund Surcharge or the Administrative Surcharge Fund. The Companies agree to report their findings to the Division within 120 days of the entry of a final Order. If the policyholder is entitled to a refund of premium as a result of any errors in calculating the Second Injury Fund Surcharge or the Administrative Surcharge, the Company must issue any refund due to the insured, including interest of nine per cent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment, indicating that “as a result of a Missouri Market Conduct Examination,” it was found that a refund was due to the insured. If the Second Injury Fund Surcharge was underpaid, such payments that are owed will be paid to the Division of Workers Compensation together with any applicable interest or penalties, and any amended return that may be required by the Division. If the Administrative Surcharge was underpaid, such payments that are owed shall be paid to the Department of Revenue together with any applicable interest or penalties, and any

amended returns that may be required by the Premium Tax Section of the Department.

8. Travelers Indemnity, Travelers Property, Phoenix and Fidelity agree that where a census study was conducted, there were 11 policies with Missouri USL&H premium or exposure from 2012 through 2016 found. The Companies agree to review these 11 policies to determine if the Second Injury Fund Surcharge and Administrative Surcharge were calculated correctly or if its calculation resulted in any overcharges to policyholders or underpayments to either the Second Injury Fund Surcharge or the Administrative Surcharge Fund. If the policyholder is entitled to a refund of premium as a result of any errors in calculating the Second Injury Fund Surcharge or the Administrative Surcharge, the Company must issue any refund due to the insured, including interest of nine per cent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment, indicating that “as a result of a Missouri Market Conduct Examination,” it was found that a refund was due to the insured. If the Second Injury Fund Surcharge was underpaid, such payments that are owed will be paid to the Division of Workers Compensation together with any applicable interest or penalties, and any amended return that may be required by the Division. If the Administrative Surcharge was underpaid, such payments that are owed shall be paid to the Department of Revenue together with any applicable interest or penalties, and any amended returns that may be required by the Premium Tax Section of the Department.

9. Travelers Indemnity agrees to issue a refund for premium overcharges to the policyholders (IHUB0947Y216, and 1HUB-7869L71A) listed on page 12 of the Final Market Conduct Examination Report, and to the policyholder (YHUB4837A29010) listed on page 17 of the Final Market Conduct Examination Report. All refunds provided will include interest of nine per cent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment, indicating that “as a result of a Missouri Market Conduct Examination,” it was found that a refund

was due to the insured.

10. Travelers Property agrees to issue a refund for premium overcharges to the policyholder (YJUB-4837A290-09) listed on page 15 of the Final Market Conduct Examination Report, including interest of nine per cent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment, indicating that “as a result of a Missouri Market Conduct Examination,” it was found that a refund was due to the insured.

11. Phoenix agrees to issue a refund for premium overcharges to the policyholder (5681B468) listed on page 10 of the Final Market Conduct Examination Report, and to the policyholder (YNUB894J297310) listed on pages 12 of the Final Market Conduct Examination Report. All refunds provided will include interest of nine per cent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment, indicating that “as a result of a Missouri Market Conduct Examination,” it was found that a refund was due to the insured.

C. **Compliance.** Travelers Indemnity, Travelers Property, Phoenix, and Fidelity agree to file documentation with the Division within 90 days of the entry of a final Order of all remedial action taken to implement compliance with the terms of this stipulation and to document the payment of restitution required by this Stipulation.

D. **Voluntary Forfeiture.** Travelers Indemnity agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$20,000, such sum payable to the Missouri State School Fund in accordance with §374.280, RSMo. Supp. 2013. Travelers Property agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$19,000, such sum payable to the Missouri State School Fund in accordance with §374.280, RSMo. Supp. 2013. Phoenix agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$21,000, such sum payable to the Missouri State School Fund in accordance with §374.280, RSMo. Supp. 2013. Fidelity agrees, voluntarily and

knowingly, to surrender and forfeit the sum of \$115,250, such sum payable to the Missouri State School Fund in accordance with §374.280, RSMo. Supp. 2013.

E. **Other Penalties.** The Division agrees that it will not seek penalties against Travelers Indemnity, Travelers Property, Phoenix, and Fidelity, other than those agreed to in this Stipulation, for the conduct found in Market Conduct Exam Reports 1201-04-TGT, 1201-05-TGT, 1202-06-TGT and 1202-07-TGT.

F. **Waivers.** Travelers Indemnity, Travelers Property, Phoenix, and Fidelity, after being advised by legal counsel, do hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, and review or appeal by any trial or appellate court, which may have otherwise applied to the above referenced Market Conduct Examinations.

G. **Changes.** No changes to this stipulation shall be effective unless made in writing and agreed to by all signatories to the stipulation.

H. **Governing Law.** This Stipulation of Settlement and Voluntary Forfeiture 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 of Settlement and Voluntary Forfeiture, on behalf of the Division, Travelers Indemnity, Travelers Property, Phoenix, and Fidelity respectively.

J. **Effect of Stipulation.** This Stipulation of Settlement and Voluntary Forfeiture shall not become effective until entry of a Final Order by the Director of the Department of Insurance, Financial Institutions and Professional Registration (hereinafter the "Director") approving this Stipulation.

K. **Request for an Order.** The signatories below request that the Director issue an

Order approving this Stipulation of Settlement and Voluntary Forfeiture and ordering the relief agreed to in the Stipulation, and consent to the issuance of such Order.

DATED: 11/21/2016

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

DATED: 11/21/2016

Stewart Freilich
Stewart Freilich
Senior Regulatory Affairs Counsel
Division of Insurance Market Regulation

DATED: 11/8/16

Christine Palmieri
[Christine Palmieri, Vice President]
Travelers Indemnity Company of America

DATED: 11/8/16

Christine Palmieri
[Christine Palmieri, Vice President]
Travelers Property and Casualty Company of
America

DATED: 11/8/16

Christine Palmieri
[Christine Palmieri, Vice President]
Phoenix Insurance Company

DATED: 11/8/16

Christine Palmieri
[Christine Palmieri, Vice President]
Fidelity and Guaranty Insurance Company

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



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

Phoenix Insurance Company
NAIC Group #3548
NAIC #25623

MISSOURI EXAMINATION # 1202-06-TGT

NAIC EXAM TRACKING SYSTEM # MO341-M89

November 22, 2016

Phoenix Insurance Company
One Tower Square
Hartford, Connecticut 06183

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FOREWORD

This is a targeted market conduct examination report of Phoenix Insurance Company (NAIC Code #25623). This examination was conducted at the Missouri Department of Insurance, Financial Institutions, and Professional Registration's Kansas City office at 615 East 13th Street, Room 506, Kansas City, Missouri 64106.

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 Phoenix 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;
- “PIC” refers to Phoenix Insurance Company;
- “NAIC” refers to the National Association of Insurance Commissioners;
- “RSMo” refers to the Revised Statutes of Missouri;
- “MOCCPAP” refers to Missouri Contracting Classification Premium Adjustment Program;
- “NCCI” refers to the National Council on Compensation Insurance;
- “ELPPF” refers to Excess Loss Pure Premium Factor;
- “SIF” refers to Second Injury Fund.

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, 2006 through the present unless otherwise noted. Errors outside of this time period discovered during the course of the examination may also be included in the report.

The examination included a review of the following areas of the Company's operations for the lines of business reviewed:

Workers' Compensation Underwriting, Rating, Policyholder Services and Complaints.

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%). *Note: Most Workers' Compensation laws do not apply a general business practice standard. No error rates were contemplated in these reviews unless the violation(s) were applicable to Missouri's Unfair Trade Practices Act.*

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

Policies with multiple violations were also accounted for in other sections of the report. For amounts less than \$5 the amounts are not listed in the report unless it is a violation of the SIF or Administrative Surcharge. Violations with an asterisk (*) indicate that the amount of the premium overcharge or undercharge is listed elsewhere in the report to avoid duplication.

COMPANY PROFILE

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

Phoenix Insurance Company

The Phoenix Insurance Company was incorporated in June, 1850 and commenced business in July, 1850 under the laws of Connecticut. The company is wholly-owned by The Travelers Indemnity Company, a wholly-owned subsidiary of Travelers Insurance Group Holdings Incorporated, a wholly-owned subsidiary of Travelers Property Casualty Corporation.

Travelers Property Casualty Corporation, a direct, wholly-owned subsidiary of The Travelers Companies, Incorporated, is a property-casualty insurance holding company engaged, through its subsidiaries, in two segments: Commercial Lines and Personal Lines.

On April 12, 1996, The Travelers Property Casualty Corporation purchased the property and casualty business of The Aetna and Surety Company and its property-casualty affiliates.

On April 1, 2004 Travelers Property Casualty Corporation merged with The Saint Paul Companies and became known as The Saint Paul Travelers Companies, Incorporated.

On February 26, 2007 The Saint Paul Travelers Companies, Incorporated changed its name to The Travelers Companies, Incorporated.

EXECUTIVE SUMMARY

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

Large Deductible Policies

- The examiners found three instances where the Company failed to file with the Director all rates and supplementary rate information which is used in Missouri no later than 30 days after the effective date concerning large deductible policies.
- The examiners found one instance where the Company failed to file all rates and supplementary rate information.
- The examiners found one instance where the Company failed to attach a mandatory form to the policy before sending it to the insured.

Small Deductible Policies

- The examiners found 21 instances where the Company applied the deductible credit rate to an incorrect premium amount, resulting in premium over and under charges.
- The examiners found one instance where the Company failed to apply the short-rate cancellation factor, resulting in a premium undercharge.
- The examiners found one instance where the Company applied the increased limits factor to the incorrect premium.
- The examiners found six instances where the Company failed to verify at audit that the information concerning the MOCCPAP credit reported to the NCCI was accurate.
- The examiners found 23 instances where the Company failed to apply the Second Injury Fund Surcharge rate to the correct premium, resulting in premium over and under charges.
- The examiners found one instance where the Company failed to document the basis for the schedule modification rate.
- The examiners found 18 instances where the Company failed to apply the Administrative Surcharge rate to the correct premium amount, resulting in premium over and under charges.

Standard Policies

- The examiners found four instances where the Company failed to verify at audit that the information concerning the MOCCPAP credit reported to the NCCI was accurate.
- The examiners found one instance where the Company failed to maintain information necessary for the reconstruction of the rating and underwriting of the policy.

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 the jurisdictions should be addressed.

The examiners tracked and were mindful of the results, Company responses and public disciplinary action(s) of prior examinations concerning the Phoenix Insurance Company. The DIFP examination tracking system indicated no Missouri market conduct examinations had been performed for this company.

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 its own underwriting guidelines, filed rates, and Missouri statutes and regulations.

The examiners reviewed a census of three large deductible policy files. From a population of 28 small deductible policy files, the examiners reviewed 25 of those as agreed with the Company. From a total population of 3,294 standard policies, the examiners were to review a random sample of 115 policies. As agreed with the Company, instead of reviewing 115 policy files, the examiners reviewed 25 standard policy files as selected by the Missouri DIFP. A policy/underwriting file is reviewed in accordance with 20 CSR 100-8.040 and the NAIC *Market Regulation Handbook*. Error rates are established when testing for compliance with laws that apply a general business practice standard (e.g., §§375.930 – 375.948 and 375.445 RSMo.) and compared with the NAIC benchmark error rate of ten percent (10%). Error rates in excess of the NAIC benchmark error rate are presumed to indicate a general business practice contrary to the law. As most Workers' Compensation laws do not apply a general business practice standard, no error rates were contemplated in these reviews unless the violation(s) discovered fell within the scope of Missouri's Unfair Trade Practices Act.

The examiners requested the Company's underwriting and rating manuals for 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 reviewed all Missouri files 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 was not ambiguous or misleading and is adequate to protect those insured.

The examiners discovered no issues or concerns.

B. Workers Compensation Policies Reviews

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

In three separate reviews the examiners reviewed three large deductible policy files; 25 small deductible policy files taken from a census of 28 files; and 25 standard policy files selected from a random sample of 115.

<u>Name of Review</u>	<u>Type of Sample</u>	<u>Population Size</u>	<u># of Files Reviewed</u>
Large Deductible	Census	3	3
Small Deductible	Random	28	25
Standard	Random	3,294	25

Total: 53 policy files.

1. Underwriting and Rating Practices:

The examiners requested policy files as described in the previously captioned Workers Compensation Policies Reviews.

The following are the results of the reviews:

Large Deductible Policies

1. The examiners found three instances where the Company failed to file with the Director all rates and supplementary rate information which is used in Missouri no later than 30 days after the effective date.

No	Policy #	Eff. Date
1	ECNUB346J847109	10/1/2009
2	TC2JUB487D789A11	4/1/2011
3	TC2OUB179D026709	1/1/2009

Reference: §287.947.1. RSMo, 20 CSR 500-6.950(3)(B)3, & (7) and Company Rate Filings.

2. The examiners found one instance where the Company failed to file all rates and supplementary rate information.

No	Policy #	Eff. Date
1	EC2NUB346J847109	10/1/2009

Reference: §287.947.1. RSMo, 20 CSR 500-6.950(3)(B)3.,(5)(B) & (7) and Company Rate Filings.

3. The examiners found one instance where the Company failed to attach a mandatory form to the policy before sending it to the insured.

No	Policy #	Eff. Date
1	TC2OUB179D026709	1/1/2009

Reference: §287.310 RSMo

Small Deductible Policies

1. The examiners found that the Company failed to adhere to the manual rules of the National Council on Compensation Insurance (NCCI) in writing and reporting its business. The Company failed to apply the deductible credit rate to the Total Manual Premium on the NCCI algorithm, resulting in the following 21 errors.

No	Policy #	Eff. Date	Prem U/C	Prem O/C	Est. Int. as of date of criticism	Total	Paid / Not Paid
1	1437B038	4/1/2007	\$50.00				
2	1437B038	4/1/2008	\$61.00				
3	1437B038	4/1/2009	\$2,509.00				
4	1437B038	4/1/2010	\$45.00				
5	1437B038	4/1/2011	\$583.00				
6	6992B441	4/1/2006	\$2,251.00				
7	6992B441	4/1/2007	\$2,318.00				
8	5681B468	11/1/2008		\$9.00	\$2.31	\$11.31	Not Paid
9	DTJBUB2268N47A	2/5/2010	\$13.00				
10	DTJBUB2268N47A	2/5/2011	\$115.00				
11	DTNUB2789C154	4/1/2010	\$133.00				
12	DTNUB338K4940	9/30/2010	\$129.00				
13	DTNUB6227B270	3/31/2008	\$204.00				
14	DTNUB6227B270	3/31/2009	\$134.00				
15	DTNUB6227B270	3/31/2010	\$254.00				
16	HJUB7796C515	12/31/2008	\$96.00				
17	HJUB7796C515	12/31/2009	\$102.00				
18	HJUB7796C515	12/31/2010	\$53.00				
19	YACRUB5492A766	4/1/2006	\$3,001.00				
20	YJUB9482C362	2/1/2010	\$16.00				
21	YNUB894J2973	1/30/2011	\$5,021.00				

Reference: §287.955.3. RSMo, NCCI Basic Manual (2001 MO)-Miscellaneous Rules: MO Workers Compensation Premium Algorithm.

- The examiners found that the Company failed to adhere to the manual rules of the National Council on Compensation Insurance (NCCI) in writing and reporting its business. The Company failed to apply the short-rate cancellation factor resulting in the following error.

No	Policy #	Eff. Date	Premium U/C
1	YACRUB5492A76606	4/1/2006	\$2,973.00

Reference: §287.955.3. RSMo, NCCI Basic Manual (2001 MO)-Miscellaneous Rules: MO Workers Compensation Premium Algorithm.

- The examiners found that the Company failed to adhere to the manual rules of the National Council on Compensation Insurance (NCCI) in writing and reporting its

business. The Company applied the increased limits factor to the incorrect premium instead of the total manual premium, resulting in the following error.

No	Policy #	Eff. Date
1	YJUB9482C36210*	2/1/2010

Reference: §287.955.3. RSMo, NCCI Basic Manual (2001 MO) - Rule 3 -A.14b., and Miscellaneous Rules: MO Workers Compensation Premium Algorithm.

4. The examiners found that the Company failed to adhere to the manual rules of the National Council on Compensation Insurance (NCCI) in writing and reporting its business. The Company failed to verify at audit that the information concerning the MOCCPAP credit reported to the NCCI was accurate, resulting in the following six errors.

No	Policy #	Eff. Date
1	DTJUB2268N47A	2/5/2011
2	DTNUB2789C154	4/1/2010
3	DTNUB338K4940	9/30/2010
4	DTNUB6227B270	3/31/2008
5	DTNUB6227B270	3/31/2009
6	DTNUB6227B270	3/31/2010

Reference: §287.955.3. RSMo, NCCI Basic Manual (2001 MO)-Miscellaneous Rules: Missouri Contracting Classification Premium Adjustment Program

5. The Company failed to apply the Second Injury Fund Surcharge rate to the correct premium amount, resulting in the following 23 errors.

No	Policy #	Eff. Date	SIF U/C	SIF O/C
1	1437B038	4/1/2007	\$15.00	
2	1437B038	4/1/2008	\$48.00	
3	1437B038	4/1/2009		\$37
4	1437B038	4/1/2010	\$34.00	
5	1437B038	4/1/2011	\$8.00	
6	6992B441	4/1/2006	\$509.00	
7	6992B441	4/1/2007	\$40.00	
8	5977N451	6/1/2011	\$3.00	

9	5681B468	11/1/2008	\$6.00	
10	DTJBUB2268N47A	2/5/2010	\$10.00	
11	DTJBUB2268N47A	2/5/2011	\$11.00	
12	DTNUB2789C154	4/1/2010	\$109.00	
13	DTNUB338K4940	9/30/2010	\$105.00	
14	DTNUB6227B270	3/31/2008	\$166.00	
15	DTNUB6227B270	3/31/2009	\$104.00	
16	DTNUB6227B270	3/31/2010	\$218.00	
17	HJUB7796C515	12/31/2008	\$44.00	
18	HJUB7796C515	12/31/2009	\$49.00	
19	HJUB7796C515	12/31/2010	\$36.00	
20	YACRUB5492A766-06	4/1/2006	\$109.00	
21	YNUB894J2973-09	1/30/2009	\$238.00	
22	YNUB894J2973-10	1/30/2010		\$747
23	YNUB894J2973-11	1/30/2011	\$235.00	

Reference: §§287.715.2 and 287.310.9, RSMo.

6. The Company failed to document the basis for the schedule modification rate, resulting in the following error. The file documented an 11% credit. An 11% debit rate was used, causing the premium overcharge.

No	Policy #	Eff. Date	Premium O/C	Est. Int. as of date of criticism	Total	Paid/Not Paid
1	YNUB894J297310	1/30/2010	\$31,811.00	\$5,742.24	\$37,553.24	Not Paid

Reference: §§287.950.1 , 287.350, RSMo, 20 CSR 500-4.100(7)(D), & 20 CSR 100-8.040(3)(A)

7. The Company failed to apply the Administrative Surcharge rate to the correct premium amount, resulting in the following 18 errors.

No	Policy #	Eff. Date	Admin Surchg U/C	Admin Surchg O/C
1	1437B038	4/1/2007		\$12.00
2	1437B038	4/1/2008		\$10.00
3	1437B038	4/1/2009		\$2.00
4	1437B038	4/1/2010		\$3.00
5	1437B038	4/1/2011		\$3.00

6	6992B441	4/1/2007		\$73.00
7	DTJBUB2268N47A	2/5/2011	\$1.00	
8	DTNUB2789C154	4/1/2010		\$20.00
9	DTNUB338K4940	9/30/2010		\$18.00
10	DTNUB6227B270	3/31/2008		\$28.00
11	DTNUB6227B270	3/31/2009		\$12.00
12	DTNUB6227B270	3/31/2010		\$50.00
13	HJUB7796C515	12/31/2008	\$5.00	
14	HJUB7796C515	12/31/2009	\$3.00	
15	HJUB7796C515	12/31/2010	\$1.00	
16	YNUB894J2973-09	1/30/2009		\$8.00
17	YNUB894J2973-10	1/30/2010		\$11.00
18	YNUB894J2973-11	1/30/2011	\$1.00	

Reference: §§287.716.2 and 287.310.9 RSMo

Standard Policies

1. The examiners found that the Company failed to adhere to the manual rules of the National Council on Compensation Insurance (NCCI) in writing and reporting its business. The Company failed to verify at audit that the information concerning the MOCCPAP credit reported to the NCCI was accurate, in the following four policies.

No	Policy #	Eff. Date
1	DTNUB0234C294	7/1/2008
2	DTNUB1169L883	3/1/2009
3	DTNUB338K6109	1/6/2011
4	DTNUB750K1168	2/28/2007

Reference: §287.955.3. RSMo, NCCI Basic Manual (2001 MO)-Miscellaneous Rules: Missouri Contracting Classification Premium Adjustment Program

2. The examiners found one instance where the Company failed to maintain information necessary for the reconstruction of the rating and underwriting of the policy.

No	Policy #	Eff. Date
1	INUB4587C60710	7/1/2010

Reference: §287.937.2, 374.205.2.(2) RSMo & 20 CSR 300-2.200 (as replaced by 20 CSR 100-8.040(3)(A) eff. 1/30/2009

II. COMPLAINT HANDLING PRACTICES

This section of the report is designed to provide a review of the Company's complaint handling practices. The 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 the present.

A. Complaints Sent Directly to the DIFP

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 300-2.100(3)(D) (as replaced by 20 CSR 100-8.040(3)(D), eff. 1/30/09). There were no complaints sent to the DIFP during the examination period. The examiners found no evidence to the contrary.

The examiners discovered no issues or concerns.

B. Complaints Sent Directly to the Company

This review consisted of a review of the nature of each complaint, the disposition of the complaint, and the time taken to process the complaint. The Company explained that it did not receive any complaints from its insureds, claimants, or others. The examiners found no evidence to the contrary.

The examiners discovered no issues or concerns.

III. 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 within the time limit including any extensions:	20	100.0%
Received outside time limit including any extensions:	0	0.0%
No response:	0	0.0%
Total:	20	100.0%

The examiners discovered no issues or concerns.

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

B. Formal Request Time Study

<u>Calendar Days</u>	<u>Number of Formal Requests</u>	<u>Percentage</u>
Received within the time limit including any extensions:	3	100.0%
Received outside time limit including any extensions:	0	0.0%
No response:	0	0.0%
Total:	3	100.0%

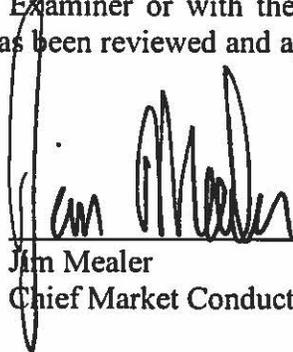
The examiners discovered no issues or concerns.

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

EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Phoenix Insurance Company (NAIC #25623), Examination Number 1202-06-TGT. This examination was conducted by Scott B. Pendleton, Dale Hobart, Dennis Foley, and Teresa Koerkenmeier. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated April 13, 2015. 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.

11/22/2016
Date



Jim Mealer
Chief Market Conduct Examiner