

Notice of Adoption and Filing of Examination Report

Take notice that the proposed limited market conduct examination report of the

Employers Insurance Of Wausau, A Mutual Company
Wausau, WI 54401-7881

dated September & October, 1997, and served upon the company on June 10, 1998, has been adopted as the final report, and has been placed on file as an official public record of this Office.

Dated at Madison, Wisconsin, this 20th day of October, 1998.

Randy Blumer
Commissioner of Insurance

Employers Insurance of Wausau, A Mutual Company
Wausau, Wisconsin

September & October 1997

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October 3, 1997

Honorable Randy Blumer
 Commissioner of Insurance
 Madison, WI 53702

Commissioner:

In accordance with your instructions, a limited market conduct examination has been made of the affairs and financial condition of:

EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL COMPANY
 Wausau, Wisconsin

The following report is respectfully submitted.

I. INTRODUCTION

Employers Insurance of Wausau, A Mutual Company (the company) is a property and casualty insurer licensed to transact business in all 50 states. The company is also licensed to transact business in the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Canada.

Employers Insurance of Wausau, A Mutual Company, was licensed in Wisconsin in 1911. The company affiliated with the Nationwide Insurance Group, of Columbus, Ohio, in 1985. As of December 31, 1996, Employers Insurance of Wausau, A Mutual Company, wrote business in all fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Canada and consisted of the following premiums and losses:

	Direct Premiums Written	Direct Losses Paid
Total Company	\$927,788,211	\$874,287,074
Wisconsin Business Only	141,508,057	105,839,826

During 1996, Employers Insurance of Wausau, A Mutual Company reported the following premiums and losses organized by line of business in Wisconsin:

	Direct Premiums Written	Direct Losses Paid
Fire	\$3,115,130	\$1,210,257
Allied lines	2,446,008	424,458
Homeowners multiple peril	0	(676)
Commercial multiple peril (non-liability)	(947,549)	55
Commercial multiple peril (liability)	388,088	52,136
Inland marine	635,863	252,432
Earthquake	2,513,110	0
Group accident and health	58,877,721	55,814,054
Worker's compensation	56,440,732	38,672,392

Other liability	9,521,471	4,096,813
Products liability	401,202	1,394,061
Other commercial auto liability	5,153,250	2,532,891
Private passenger auto physical damage	0	(1,676)
Commercial auto physical damage	773,734	614,419
Fidelity	487,780	266,473
Surety	2,257,447	392,445
Glass	556	0
Burglary and theft	48,243	(473,680)
Boiler and machinery	1,657,070	592,972
Total	\$141,508,057	\$105,839,826

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II. SUMMARY OF CONSUMER COMPLAINTS

The Office of the Commissioner of Insurance received 168 complaints against Employers Insurance of Wausau, A Mutual Company, between January 1, 1996, and June 30, 1997. A complaint is defined as "a written communication received by the Commissioner's office, which indicates dissatisfaction with an insurance company or agent." The following table categorizes the complaints received against the company by type of policy and complaint reason. There may be more than one type of coverage or reason for each complaint.

Type of Policy	Complaint Reason		
	Underwriting	Claims	Other
Commercial Fire & Allied Lines	0	0	0
Commercial Multiple Peril	0	9	0
Group Accident & Health	0	42	6
Worker's Compensation	5	35	9
Commercial Automobile	0	1	0
All Others	2	53	5
Total	7	140	20

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III. PURPOSE AND SCOPE

The examination was conducted to determine whether the company's practices and procedures comply with the Wisconsin insurance statutes and rules. The examination focused on the period from January 1, 1996, through January 1, 1997. In addition, the examination included a review of any subsequent events deemed important by the

examiner-in-charge during the examination.

The examination included a review of agent/agency monitoring and various aspects of the company's property and casualty business and group accident and health business. The property and casualty portion of the examination included, but was not limited to, a review of the commercial lines policy forms used by Employers Insurance of Wausau, A Mutual Company, on or after, January 1, 1995, claims and underwriting procedures and underwriting and claim files from the following areas:

Line of Business
Commercial automobile
Commercial fire and allied lines
Commercial multi-peril
Worker's compensation

The group accident and health portion of the examination was limited to a review of the company's grievance procedures, policyholder service and complaints, and claims practices and procedures.

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IV. FINDINGS

Agent Monitoring

Employers Insurance of Wausau, A Mutual Company, markets its insurance products using a combination of employe intermediary-agents and independent intermediary agents/brokers. The company used the term "intermediary-broker" to describe all non-employe intermediaries.

The examiners reviewed all agent appointments and terminations for the 1996 calendar year. The review was undertaken to determine whether or not the company's practices and procedures related to the appointment and termination of agents comply with Wisconsin insurance statutes and rules.

The examiners found that the company does not provide a formal demand for the return of all indicia of agency when terminating an agent's listing. Pursuant to s. Ins 6.57 (2), Wis. Adm. Code, when terminating an agent's listing, an insurer must provide the agent with written notice that the agent is no longer to be listed as a representative of the company and that he or she may no longer act as its representative. The notice shall also include a formal demand for the return of all indicia of the agency. To insure compliance with s. Ins. 6.57 (2), Wis. Adm. Code, it is recommended that the company include a demand for the return of all indicia of the agency in the written notice notifying the agent of the termination of the agent's listing.

The examiners found that the company no longer lists "intermediary-brokers" with the Commissioner's office as required by s. 628.11, Wis. Stat., and s. Ins 6.57, Wis. Adm. Code. The company considers all non-employe intermediaries to be "intermediary-brokers"

and, therefore, exempt from the listing requirements of s. Ins. 6.57, Wis. Adm. Code. These "intermediary-brokers," through a Producer Agreement, have authority to act on the company's behalf in accordance with the agreement, issue binders for insurance contracts, countersign insurance contracts and certificates, and request the cancellation of any insurance contract. Section 628.02 (3), Wis. Stat., defines an insurance broker as any intermediary that acts in the procuring of insurance on behalf of an applicant for insurance of an insured, and does not act on behalf of the insurer except by collecting premiums or performing other ministerial acts. Section 628.02 (4), Wis. Stat., defines an insurance agent as any intermediary who acts as an intermediary other than a broker. The Producer Agreement between the company and the "intermediary-brokers" grants the "intermediary-broker" authority to act on the company's behalf in capacities other than collecting premiums or performing other ministerial acts. Therefore, the "intermediary-brokers," as defined by the company, are intermediary-agents as defined by s. 628.02 (3) and (4), Wis. Stat. Section 628.11, Wis. Stat., requires insurers to report to the Commissioner all appointments and terminations of insurance agents in accordance with s. Ins 6.57, Wis. Adm. Code. In order to ensure compliance with s. 628.11, Wis. Stat., and s. Ins 6.57, Wis. Adm. Code, it is recommended that the company revise its procedures to ensure that all intermediaries submitting applications directly to the company are listed with the company.

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Property & Casualty Section--Findings

Underwriting

Employers Insurance of Wausau, A Mutual Company, is a multi-line insurer specializing in insurance products for medium-to-large commercial risks. The company underwrites and services the bulk of its Wisconsin risks in Wausau and Milwaukee, Wisconsin. The remaining Wisconsin business is underwritten and serviced out of regional offices located in states other than Wisconsin.

The examiners selected and reviewed 157 commercial automobile, commercial fire, allied lines and commercial multi-peril, and worker's compensation underwriting files. The company's underwriting procedures were also reviewed.

The examiners found five commercial lines prospect files where documentation related to the reasons the application was rejected was not included in the prospect file. Failure to maintain this documentation could result in the company's inability to support that it is not being unfairly discriminatory in its underwriting. In addition, the company cannot document that it issued proper notification, if required, to the applicant in accordance with s. 631.36, Wis. Stat., and s. Ins 21.01, Wis. Adm. Code. It is recommended that company maintain sufficient information in its prospect files to document the reasons the applicant was rejected and that proper notification, if required, was provided to the applicant in accordance with s. 631.36, Wis. Stat., and s. Ins 21.01, Wis. Adm. Code.

The examiners found that company corporate records procedures call for prospect account files to be purged 13 months after the expiration date of a proposal if coverage for the prospect account is not written. As such, the company was not able to furnish 33 prospect account files requested by the examiners for review. Pursuant to s. Ins 6.80 (4) (b), Wis. Adm. Code, records of insurance company operations and other financial records reasonably related to insurance operations for the preceding three years shall be

maintained and be available to the Commissioner. It is recommended that the company revise its corporate records procedures related to prospect account files to comply with s. Ins 6.80 (4) (b), Wis. Adm. Code.

The examiners found 11 files where the term of binding on the written binder issued to the policyholder was less than the term of the policy. Pursuant to the Wisconsin Supreme Court decision, *Terry v. Mongin Insurance Agency*, 105 Wis. 2d 575, a binder does not expire on its own terms and is subject to the same terms and conditions of the policy ordinarily used by the company, including the term of the policy. To ensure compliance with the Wisconsin Supreme Court decision, *Terry v. Mongin Insurance Agency*, 105 Wis. 2d 575, it is recommended that the company amend its written procedures to provide that the anticipated expiration date and time of the policy should be used as the expiration date and time of the binder. It is further recommended that the company instruct its agents on the proper procedure for completing the expiration date and time of binders.

The examiners found seven files where the binders issued to the policyholder did not clearly indicate which of the Wausau Insurance Companies was providing coverage under the binder. Page B.23.4 of the company's Reference and Rating Manual instructs agents to use the applicable name of the issuing company and not the trade name of Wausau Insurance Companies when completing binders. To ensure compliance with the company's written procedures and to prevent confusion as to which of the Wausau Insurance Companies is providing the coverage under the binder, it is recommended that the company remind all agents to use the exact name of the issuing company and not the trade name of Wausau Insurance Companies when completing a binder.

The examiners noted a significant amount of underwriting-related correspondence did not contain a date stamp or other evidence indicating the date in which the company received the correspondence. Without evidence as to when correspondence was received, the exact date of receipt cannot be determined and it is difficult to determine if correspondence is processed timely. To allow the company to monitor the timeliness of processing underwriting correspondence, it is recommended that the company reaffirm its date stamping procedure to ensure that the date of receipt is recorded on all incoming underwriting correspondence.

The examiners found one file where the company accepted an application signed by an intermediary-agent prior to the agent being appointed and listed with the company pursuant to s. Ins 6.57, Wis. Adm. Code. Section Ins 6.57 (5), Wis. Adm. Code, provides that no insurer shall accept business directly from an intermediary unless that intermediary is a licensed agent listed with that company. It is recommended that the company establish a procedure to ensure that it accepts applications only from listed agents in order to ensure compliance with s. Ins 6.57 (5), Wis. Adm. Code.

The examiners found four files where the company accepted applications from "intermediary-brokers" which were not agents appointed and listed with the company pursuant to s. Ins 6.57 (1), Wis. Adm. Code. Section Ins 6.57 (5), Wis. Adm. Code, provides that no insurer shall accept business directly from an intermediary unless that intermediary is a licensed agent listed with that company. In order to ensure compliance with s. Ins 6.57 (5), Wis. Adm. Code, it is recommended that the company only accept applications from "intermediary-brokers" who are listed with the company in accordance with s. Ins 6.57 (1), Wis. Adm. Code.

Policy Forms

Employers Insurance of Wausau, A Mutual Company, provides insurance coverage to its policyholders by using standard coverage forms and endorsements, filed on the company's behalf by Insurance Services Office, Inc., and independently filed company coverage forms and endorsements. In addition, the company uses the standard National Council on Compensation Insurance Inc., worker's compensation and employer's liability coverage forms and endorsements that have been filed on the company's behalf by the Wisconsin Compensation Rating Bureau.

The examiners selected and reviewed all commercial lines policy forms and endorsements used by the company on or after January 1, 1995, for commercial automobile, commercial fire and allied lines, and commercial multi-peril insurance.

The examiners found two policy forms (form numbers PC9901 02-97 and PC9902 02-97) used by the company which require the insured " to give immediate written notice of loss or damage to Covered Property" to the company. Section 631.81, Wis. Stat., provides that notice of loss should be made as soon as reasonably possible. It is recommended that the company revise the notification requirement in form numbers PC9901 02-97 and PC9902 02-97 to comply with s. 631.81, Wis. Stat.

The examiners found one form (form number ML1500 11-96) used by the company which provides that coverage is bound for a term of 60 days. The Wisconsin Supreme Court decision, Terry v. Mongin Insurance Agency, 105 Wis. 2d 575, held that an insurance company is required to provide the insured the proper notice of cancellation in both insurance binders and insurance contracts. Therefore, a binder does not expire on its own terms and is subject to the same terms and conditions of the policy ordinarily used by the company. It is recommended that the company revise the binder provision in its applications to eliminate the language that limits the term of binding, in order to comply with the Wisconsin Supreme Court decision, Terry v. Mongin Insurance Agency, 105 Wis. 2d 239.

The examiners found one form (form number ML1500 11-96) used by the company which states "This Binder is not valid unless signed by an authorized representative of the Company." Section 628.34 (1), Wis. Stat., provides that no person may make or cause to be made any communication relating to an insurance contract which contains false or misleading information. The countersignature requirement is misleading and, therefore, contrary to s. 628.34 (1), Wis. Stat., as Wisconsin does not require that a policy or binder be countersigned to be valid. It is recommended that the company remove the countersignature requirement from form number ML1500 11-96.

Claims

In settling claims under policies issued to insureds located in Wisconsin, Employers Insurance of Wausau, A Mutual Company, uses employe representatives from two branch offices in Wisconsin and field personnel.

The examiners selected and reviewed 91 commercial automobile, commercial fire and allied lines and commercial multi-peril claim files and 173 worker's compensation claim files. The company's claim practices and methods were also reviewed.

The examiners found three files where the company failed to promptly acknowledge pertinent communications regarding the claim. Section Ins 6.11 (4), Wis. Adm. Code, defines promptly as responsive action within 10 consecutive days from receipt of a communication concerning a claim. Pursuant to s. Ins 6.11 (3) (a) 1, Wis. Adm. Code, it is an unfair claim settlement practice to fail to promptly acknowledge pertinent communications with respect to claims arising under insurance policies. It is recommended that the company promptly, as defined by s. Ins 6.11 (4), Wis. Adm. Code, acknowledge all pertinent communications with respect to claims arising under insurance policies

The examiners found one file where a verbal and written request for additional information from a claimant was made on the same day. No additional follow-up to the claimant requesting the information was made prior to closing the file. It was noted that the company's claim handling procedures call for two requests for additional information from claimants; however, the procedures do not specify the amount of time that should elapse between the initial request and the follow-up request for information. Failure to make provision for adequate claims handling procedures in order to effectively service claims constitutes an unfair method or practice pursuant to s. Ins 6.11 (3) (b) 2, Wis. Adm. Code. It is recommended that the company establish a procedure outlining the amount of time that should elapse between an initial request and a follow-up request for the information from a claimant

The examiners found one file where the company received recoveries from the responsible third party; however, it did not repay the insured's deductible. According to Wisconsin Supreme Court decision and *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263, when collecting subrogation, the insured is to be made whole before the company has a right to retain amounts collected from subrogation. It is recommended that the company institute a procedure to ensure that the insured is made whole before the company retains amounts collected from subrogation pursuant to Wisconsin Supreme Court decision *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263.

The examiners found one file where the total amount of the loss exceeded the policy limit for the loss. Subrogation payments were received from the responsible third party; however, the file contains no documentation to support that the insured was made whole prior to the company retaining amounts collected from subrogation. According to Wisconsin Supreme Court decisions *Garrity v. Rural Mutual Insurance Company*, 77 Wis. 2d 537, and *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263, the insured is to be made whole, before the company has a right to retain amounts collected from subrogation. To ensure compliance with Wisconsin Supreme Court decisions, *Garrity v. Rural Mutual Insurance Company*, 77 Wis. 2d 537, and *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263, it is recommended that the company institute a procedure to ensure that the insured is made whole before the company retains amounts collected from subrogation when the total amount of the loss exceeds the policy limits.

The examiners found that when the company is receiving subrogation recoveries on an installment basis from the responsible third party, the company forwards deductibles collected from subrogation to the insured only after collecting the entire deductible amount. The Wisconsin Supreme Court decision, *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263, provides for the insured to be made whole before the insurance company retains any recovery. Pursuant to s. 628.46, Wis. Stat.,

subrogation recoveries should be returned to the insured within 30 days from the time a reasonable amount is recovered. It is recommended that the company submit a plan to bring its practices into compliance with s. 628.46, Wis. Stat., and *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263.

The examiners found that the company does not include sales tax incurred by insureds when replacing a covered vehicle following a total loss of the covered vehicle due to a comprehensive or collision loss. The direct reimbursement of incurred sales tax or including sales tax in an all-inclusive settlement is an important step in satisfying the principle of indemnity and meeting the company's obligation under the automobile insurance contract. Failure to do so would violate the principle of indemnity and may result in an inequitable settlement of first party comprehensive or collision claims arising under automobile insurance policies issued by the company. Failure to attempt in good faith to effectuate fair and equitable settlement of claims submitted in which liability has become reasonably clear, constitutes an unfair method or practice pursuant to s. Ins 6.11 (3) (a) 4, Wis. Adm. Code. In order to avoid the unfair method or practice described in s. Ins 6.11 (3) (a) 4, Wis. Adm. Code, it is recommended that the company allow for the direct reimbursement of incurred sales tax by insureds when replacing a covered vehicle, following a total loss of the covered vehicle, due to a comprehensive or collision loss.

The examiners found one file where the company did not pay a claim within 30 days of receiving proof of loss or equivalent evidence. Section 628.46 (1), Wis. Stat., provides that a company shall promptly pay insurance claims. A claim shall be overdue if not paid within 30 days after the company is furnished written notice, either by a proof-of-loss or equivalent evidence, of the fact of a covered loss and of the amount of the loss. It is recommended that the company promptly pay claims and, if payment is not made within 30 days of receiving proof-of-loss or equivalent, pay interest as required by s. 628.46 (1), Wis. Stat.

The examiners found two files where the company did not pay interest due their insured on a subrogation recovery returned more than 30 days after receipt. Section 628.46 (1), Wis. Stat., provides that any claim shall be overdue if not paid within 30 days after the insurance company is furnished with written notice of the fact of a covered loss and of the amount of the loss. All overdue payments shall bear simple interest at the rate of 12% per year. In order to comply with s. 628.46 (1), Wis. Stat., it is recommended that the company pay interest on subrogation recoveries not returned to the insured within 30 days.

The examiners found one file where the company failed to report a worker's compensation subrogation recovery to the Wisconsin Compensation Rating Bureau as required by the Wisconsin Statistical Plan Manual For Worker's Compensation Insurance and Employer's Liability Insurance, promulgated by the Commissioner pursuant to s. 626.32 (2), Wis. Stat. Section 626.32 (2), Wis. Stat., provides that all insurers must use the statistical plan promulgated by the Commissioner. It is recommended that the company report all worker's compensation subrogation recoveries to the Wisconsin Compensation Rating Bureau as required by the Wisconsin Statistical Plan Manual For Worker's Compensation Insurance and Employer's Liability Insurance promulgated by the Commissioner pursuant to s. 626.32 (2), Wis. Stat.

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Group Accident & Health Section--Findings

Claims

Employers Insurance of Wausau, A Mutual Company, receives group accident and health insurance claims at the corporate mailroom and forwards them to the group claim administration area to be processed. In this area, the claims are microfilmed, sorted by bill type, reassembled and bundled in groups of 50, and routed to individual claim representatives for handling.

The examiners reviewed the company's claim practices and procedures for claims handling, claims denial, claims paid, and interest payments on late claim payments. The examiners also reviewed the company's explanation of benefit (EOB) and remittance advice forms to determine whether the forms were in compliance with the requirements of s. Ins 3.651 (3) and (4), Wis. Adm. Code. No exceptions were noted.

The examiners reviewed 96 paid and 100 denied claim files. The following exception was noted.

The examiners found one file where the company did not include interest with a claim payment that was not made within 30 days of receiving proof-of-loss or equivalent evidence. Section 628.46 (1), Wis. Stat., provides that a company shall promptly pay insurance claims and include interest at 12% per year on all overdue claims. A claim shall be overdue if not paid within 30 days after the company is furnished written notice, either by a proof-of-loss or equivalent evidence, of the fact of a covered loss and of the amount of the loss. Based on the one file where the company did not include interest, it is recommended that the company promptly pay all claims and, if payment is not made within 30 days of receiving proof-of-loss or equivalent, pay interest as required by s. 628.46 (1), Wis. Stat.

Grievances

Besides traditional group health insurance policies, Employers Insurance of Wausau, A Mutual Company, markets managed-care plans, including health maintenance organization (HMO) and preferred provider plans. Insurers who offer such plans are required to have procedures for the resolution of grievances, pursuant to ss. Ins 3.48 and 3.50, Wis. Adm. Code.

The examiners selected and reviewed 58 grievance files from the company's 1996 grievance experience report. The company's grievance procedures were also reviewed.

The examiners found 26 grievance files, which did not contain a grievance acknowledgment letter in accordance with the company's written procedures. Pursuant to s. Ins 3.50 (10) (f), Wis. Adm. Code, a grievance acknowledgment letter shall be sent to the person who filed the grievance within 10 days of the company's receipt of the written grievance. It is recommended the company revise its procedures to ensure that a grievance acknowledgment letter is sent, in accordance with s. Ins 3.50 (10) (f), Wis. Adm. Code, to the person who filed the grievance.

The examiners found 15 grievance files, which were not resolved within 30 calendar days and did not contain a letter to the person who filed the grievance that the insurer needed an additional 30 days to resolve the dispute. Sections Ins 3.50 (10) (c), and 3.48 (7) (c), Wis. Adm. Code, requires that grievances be resolved within 30 calendar days of receipt of

the grievance. These sections allow the company to extend the time period for resolving the grievance an additional 30 calendar days provided the company notifies, in writing, the person who filed the grievance that the company has not resolved the grievance, when a resolution may be expected, and the reason for why additional time is needed. To ensure compliance with ss. Ins 3.50 (10) (c), and 3.48 (7) (c), Wis. Adm. Code, it is recommended that when a grievance cannot be resolved within 30 calendar days of receipt of the grievance, the company notify in writing, the person who filed the grievance that the company has not resolved the grievance, when a resolution may be expected, and the reason why additional time is needed.

The examiners found that the company does not consider written expressions of dissatisfaction about the company's usual and customary and/or fee schedule to be grievances. Sections Ins 3.50 (3) (c), and 3.48 (2) (b), Wis. Adm. Code, define a grievance as any dissatisfaction with the administration or claims practices of, or provision of, services by a health maintenance organization or a preferred provider plan which is expressed in writing by, or on behalf of, a plan enrollee. As such, written expressions of dissatisfaction about the company's usual and customary and/or fee schedule should be considered grievances and, therefore, subject to the grievance procedures outlined in ss. Ins 3.50, and 3.48, Wis. Adm. Code. To ensure compliance with ss. Ins 3.50, and 3.48, Wis. Adm. Code, it is recommended that the company consider all written expressions of dissatisfaction about usual and customary and/or fee schedules, to be grievances.

The examiners found that the company's provider contracts and administrative services agreements do not contain a provision requiring providers to identify complaints and grievances in a timely manner and forward the complaints and grievances to the health maintenance organization or preferred provider plan for recording and resolution. Sections Ins 3.50 (10) (g) 2, and 3.48 (7) (f) 2., Wis. Adm. Code, require that each provider contract and administrative services agreement entered into between a health maintenance organization or preferred provider plan and a provider, shall contain a provision under which the provider must identify complaints and grievances in a timely manner and forward these complaints and grievances to the health maintenance organization or preferred provider plan for recording and resolution. It is recommended that the company amend each provider contract and administrative services agreement entered into between the company and a provider, to include a provision which requires providers to identify complaints and grievances in a timely manner and forward them to the company as required by ss. Ins 3.50 (10) (g) 2, and 3.48 (7) (f) 2., Wis. Adm. Code.

The examiners found that the 1996 annual grievance experience report, submitted to OCI in accordance with s. 609.15 (1) (c), Wis. Stat., did not include any grievances that were resolved prior to the Grievance Committee meeting. It is recommended that the company include all grievances received during the previous calendar year on the annual grievance experience report which is submitted to OCI, as required by s. 609.15 (1) (c), Wis. Stat.

Policyholder Service & Complaints

Group Claim Administration of Employers Insurance of Wausau, A Mutual Company, does not have a separate and distinct policyholder service department. All units are advised to answer the questions that policyholders may have regarding aspects of their plan. The units consist of Claim Service Representatives, Technical Claim Consultants, and Group ERISA Technicians.

The company defines a complaint as any written consumer complaint referred by a state insurance department or sent directly to the company by the consumers.

All complaints are logged in at the Product Management Department and all group health insurance complaints are forwarded to the Technical Support Unit in the Group Claim Administration for handling. In handling the complaint, this unit gathers information necessary to respond to the complainant, resolves the complaint, and updates the complaint log to reflect this activity. At the end of each calendar year, the Technical Support Unit forwards its complaint log to the Product Management Department for compilation with complaints for Wausau's other lines of insurance.

The examiners selected and reviewed 51 complaint files. The company's complaint handling procedures were also reviewed.

The examiners found that the company does not consider preferred provider plan telephone contacts by enrollees, which express dissatisfaction with the company or its contracted providers and which are resolved during the conversation, to be complaints. Therefore, the company does not include these telephone contacts in the company's complaint log. Pursuant to s. Ins 3.48 (2) (a), Wis. Adm. Code, a complaint for a preferred provider plan is defined as any dissatisfaction about an insurer or its contracted providers expressed by an enrollee. As such, preferred provider plan telephone contacts by enrollees which express dissatisfaction about the company or its contracted providers should be considered complaints. Section Ins 3.48 (7) (f) 1, Wis. Adm. Code, requires preferred provider plans to record and retain, for at least three years, a record of each complaint submitted to the preferred provider plan. To ensure compliance with s. Ins 3.48 (7) (f) 1, Wis. Adm. Code, it is recommended that the company consider all preferred provider plan telephone contacts by enrollees which express dissatisfaction about the company or its contracted providers as complaints and record these complaints in the company's complaint log.

The examiners found that the company does not consider health maintenance organization telephone contacts by enrollees, which express dissatisfaction about the company or its contracted providers and which are resolved during the conversation, to be complaints. Therefore, the company does not include these telephone contacts in the company's complaint log. Pursuant to s. Ins 3.50 (3) (b), Wis. Adm. Code, a complaint for a health maintenance organization is defined as any dissatisfaction about an insurer or its contracted providers expressed by an enrollee. As such, health maintenance organization telephone contacts by enrollees which express dissatisfaction about the company or its contracted providers should be considered to be complaints. Section Ins 3.50 (10) (g) 1, Wis. Adm. Code, requires health maintenance organizations to record and retain, for at least a three-year period, a record of each complaint submitted to the health maintenance organization. To ensure compliance with s. Ins 3.50 (10) (g) 1, Wis. Adm. Code, it is recommended that the company consider all health maintenance organization telephone contacts by enrollees which express dissatisfaction about the company or its contracted providers as complaints and record these complaints in the company's complaint log.

The examiners found eight files where the company received a written request from the provider to review a previously denied claim. The company treated these requests as complaints. Pursuant to ss. Ins 3.50 (3) (b), and 3.48 (2) (a), Wis. Adm. Code, a complaint means any dissatisfaction about an insurer or its contracted providers expressed by an enrollee. Sections Ins 3.50 (3) (c), and 3.48 (2) (b), Wis. Adm. Code, define a grievance as

any dissatisfaction with the administration or claims practices of, or provision of, services by a health maintenance organization or preferred provider plan which is expressed in writing by, or on behalf of, a plan enrollee. Pursuant to ss. Ins 3.50 (3) (b) and (c), and 3.48 (2) (a) and (b), Wis. Adm. Code, these requests should have been considered to be grievances. To ensure compliance with ss. Ins 3.50 (3) (c), and 3.48 (2) (b), Wis. Adm. Code, it is recommended that the company consider any written expressions of dissatisfaction with the administration or claims practices of, or provision of, services by a health maintenance organization or a preferred provider plan submitted by or on behalf of a plan enrollee to be grievances.

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V. CONCLUSION

A total of 31 recommendations were made relating to the need for the Employers Insurance of Wausau, A Mutual Company, to modify certain agency management, underwriting and claims procedures. Nineteen of the recommendations are related directly to the property and casualty portion of the company's book of business. Of the remaining recommendations made, 10 are related to the group accident and health portion of the company's book of business, and two are general recommendations related to agency management for the entire company.

Pursuant to s. Ins 6.57 (5), Wis. Adm. Code, the company must ensure that all intermediaries are listed with the company prior to accepting applications from an employee intermediary-agent or an independent intermediary-agent/broker. To ensure compliance with s. Ins. 6.80 (4) (b), Wis. Adm. Code, the company should review and amend its record retention procedures accordingly for prospect account files. The company must ensure that its subrogation claim procedures comply with the insurance laws, court decisions and the rules that govern worker's compensation insurance. In addition, the company should revise its procedures related to grievances and complaints to ensure compliance with ss. Ins 3.48 and 3.50, Wis. Adm. Code.

Other aspects of the company's forms, agency management, underwriting, and claims practices were noted as being inconsistent with Wisconsin market conduct regulations. The recommendations and suggestions are intended to bring Employers Insurance of Wausau, A Mutual Company, into compliance with statutory standards of policyholder and claimant treatment.

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VI. SUMMARY OF RECOMMENDATIONS

Agent Monitoring

1. To insure compliance with s. Ins. 6.57 (2). Wis. Adm. Code, it is recommended that the company include a demand for the return of all indicia of the agency in the written notice notifying the agent of the termination of the agent's listing.
2. In order to ensure compliance with s. 628.11, Wis. Stat., and s. Ins 6.57, Wis. Adm. Code, it is recommended that the company revise its procedures to ensure that all intermediaries submitting applications directly to the company are listed with the

company.

Property & Casualty Section - Summary of Recommendations

Underwriting

3. It is recommended that company maintain sufficient information in its prospect files to document the reasons the applicant was rejected and that proper notification, if required, was provided to the applicant in accordance with s. 631.36, Wis. Stat., and s. Ins 21.01, Wis. Adm. Code.
4. It is recommended that the company revise its corporate records procedures related to prospect account files to comply with s. Ins 6.80 (4) (b), Wis. Adm. Code.
5. To ensure compliance with the Wisconsin Supreme Court decision, Terry v. Mongin Insurance Agency, 105 Wis. 2d 575, it is recommended that the company amend its written procedures to provide that the anticipated expiration date and time of the policy be used as the expiration date and time of the binder. It is further recommended that the company instruct its agents on the proper procedure for completing the expiration date and time of binders.
6. To ensure compliance with the company's written procedures and to prevent confusion as to which of the Wausau Insurance Companies is actually providing the coverage under the binder, it is recommended that the company remind all agents to use the exact name of the issuing company and not the trade name of Wausau Insurance Companies when completing a binder.
7. To allow the company to monitor the timeliness of processing underwriting correspondence, it is recommended that the company reaffirm its date stamping procedure to ensure that the date of receipt is recorded on all incoming underwriting correspondence.
8. It is recommended that the company establish a procedure to ensure that it accepts applications only from listed agents in order to ensure compliance with s. Ins 6.57 (5), Wis. Adm. Code.
9. In order to ensure compliance with s. Ins 6.57 (5), Wis. Adm. Code, it is recommended that the company only accept applications from 'intermediary-brokers' which are listed with the company in accordance with s. Ins 6.57 (1), Wis. Adm. Code.

Policy Forms

10. It is recommended that the company revise the notification requirement in form numbers PC9901 02-97 and PC9902 02-97 to comply with s. 631.81, Wis. Stat.
11. It is recommended that the company revise the binder provision in its applications to eliminate the language that limits the term of binding, in order to comply with the Wisconsin Supreme Court decision, Terry v. Mongin Insurance Agency, 105 Wis. 2d 575.
12. It is recommended that the company remove the countersignature requirement from form number ML1500 11-96.

Claims

13. It is recommended that the company promptly, as defined by s. Ins 6.11 (4), Wis. Adm. Code, acknowledge all pertinent communications with respect to claims arising under insurance policies.
14. It is recommended that the company establish a procedure outlining the amount of time that should elapse between an initial request for information from a claimant and

a follow-up request for the information.

15. It is recommended that the company institute a procedure to ensure that the insured is made whole before the company retains amounts collected from subrogation pursuant to Wisconsin Supreme Court decision *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263.
16. To ensure compliance with Wisconsin Supreme Court decisions *Garrity v. Rural Mutual Insurance Company*, 77 Wis. 2d 537, and *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263, it is recommended that the company institute a procedure to ensure that the insured is made whole before the company retains amounts collected from subrogation when the total amount of the loss exceeds the policy limits.
17. It is recommended that the company submit a plan to bring its practices into compliance with s. 628.46, Wis. Stat. and *Rimes v. State Farm Mutual Automobile Insurance Company*, 106 Wis. 2d 263.
18. In order to avoid the unfair method or practice described in s. Ins 6.11 (3) (a) 4, Wis. Adm. Code, it is recommended that the company allow for the direct reimbursement of incurred sales tax by insureds when replacing a covered vehicle following a total loss of the covered vehicle due to a comprehensive or collision loss.
19. It is recommended that the company promptly pay all claims and if payment is not made within 30 days of receiving proof of loss or equivalent, pay interest as required by s. 628.46 (1), Wis. Stat.
20. In order to comply with s. 628.46 (1), Wis. Stat., it is recommended that the company pay interest on subrogation recoveries not returned to the insured within 30 days.
21. It is recommended that the company report all worker's compensation subrogation recoveries to the Wisconsin Compensation Rating Bureau as required by the Wisconsin Statistical Plan Manual For Worker's Compensation Insurance and Employer's Liability Insurance promulgated by the Commissioner pursuant to s. 626.32 (2), Wis. Stat.

Group Accident & Health Section--Findings

Claims

22. It is recommended that the company promptly pay claims and if payment is not made within 30 days of receiving proof of loss or equivalent, pay interest as required by s. 628.46 (1), Wis. Stat.

Grievances

23. It is recommended the company revise its procedures to ensure that a grievance acknowledgment letter is sent, in accordance with s. Ins 3.50 (10) (f) Wis. Adm. Code, to the person who filed the grievance.
24. To ensure compliance with ss. Ins 3.50 (10) (c), and 3.48 (7) (c), Wis. Adm. Code, it is recommended that when a grievance cannot be resolved within 30 calendar days of receipt of the grievance, the company notify, in writing, the person who filed the grievance that the company has not resolved the grievance, when a resolution may be expected, and the reason for why additional time is needed.
25. To ensure compliance with ss. Ins 3.50, and 3.48, Wis. Adm. Code, it is recommended that the company consider all written expressions of dissatisfaction about usual and customary and/or fee schedules to be grievances.
26. It is recommended that the company amend each provider contract and administrative

services agreement entered into between the company and a provider, to include a provision which requires providers to identify complaints and grievances in a timely manner and forward them in a timely manner to the company as required by ss. Ins 3.50 (10) (g) 2, and 3.48 (7) (f) 2., Wis. Adm. Code.

27. It is recommended that the company include all grievances received during the previous calendar year on the annual grievance experience report which is submitted to OCI as required by s. 609.15 (1) (c), Wis. Stat.

Policyholder Service & Complaints

28. To ensure compliance with s. Ins 3.48 (7) (f) 1, Wis. Adm. Code, it is recommended that the company consider all preferred provider plan telephone contacts by enrollees, which express dissatisfaction about the company or its contracted providers, as complaints and record these complaints in the company's complaint log.
29. To ensure compliance with s. Ins 3.50 (10) (g) 1, Wis. Adm. Code, it is recommended that the company consider all health maintenance organization telephone contacts by enrollees which express dissatisfaction about the company or its contracted providers as complaints and record these complaints in the company's complaint log.
30. To ensure compliance with ss. Ins 3.50 (3) (c), and 3.48 (2) (b), Wis. Adm. Code, it is recommended that the company consider any written expressions of dissatisfaction with the administration or claims practices of, or provision of services by, a health maintenance organization or a preferred provider plan submitted by, or on behalf of a plan enrollee, to be grievances.

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VII. ACKNOWLEDGMENT

The courtesy and cooperation extended during the course of the examination by the officers and employees of the company are acknowledged.

In addition to the undersigned, the following representatives of the Office of the Commissioner of Insurance, state of Wisconsin, participated in the examination.

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Examiner-in-Charge

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