

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE  
MARKET CONDUCT EXAMINATION

OF

AMERICAN FAMILY MUTUAL INSURANCE COMPANY

MADISON, WISCONSIN

DECEMBER 1997

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December 12, 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:

AMERICAN FAMILY MUTUAL INSURANCE COMPANY  
Madison, Wisconsin

and the following report is respectfully submitted.

#### I. INTRODUCTION

American Family Mutual Insurance Company is a property and casualty insurer licensed to transact business in the following states: Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

American Family Mutual Insurance Company was licensed in Wisconsin in 1927. The company transacts business in 13 states. During 1996, the company wrote the following premiums and paid the following losses:

business in Wisconsin:

	Direct Premiums Written	Direct Losses Paid
Total Company	\$2,400,055,011	\$1,687,589,958
Wisconsin Business Only	563,975,328	368,612,162

During 1996, the company reported the following premiums organized by line of business in Wisconsin.

Wisconsin Business Line of Business	1996	
	Premium Written	Losses Incurred
Personal pass. auto	\$373,011,303	\$256,439,719
Homeowner/farowner	104,679,748	66,366,190
Group A&H	1,498,879	1,533,518
Individual A&H	37,972,017	25,607,840
Commercial auto	6,536,934	3,852,341
All Others <sup>1</sup>	40,276,447	16,114,607
<b>Total</b>	<b>\$563,975,328</b>	<b>\$369,914,215</b>

The Office of the Commissioner of Insurance received 384 complaints in 1996 and 361 complaints in 1995. A complaint is defined as a written communication to the Commissioner's Office which indicates a dissatisfaction with an insurance company or agent. The following chart categorizes these complaints by type of policy and complaint reason. There may be more than one type of coverage or reason for each complaint.

Complaints 01/01/96 thru 12/31/96 Coverage	Total		Underwriting		Claims		Other	
	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total
Personal pass. auto	204	53.13%	62	59.05%	112	52.09%	30	46.88%
Homeowner/farowner	96	25.00	17	16.19	54	25.12	25	39.06
Group A&H	1	0.26	0	0.00	0	0.00	1	1.56
Individual A&H	66	17.19	22	20.95	36	16.67	8	12.50
Commercial auto	1	0.26	0	0.00	1	0.47	0	0.00
All Others	16	4.17	4	3.81	12	5.58	0	0.00
<b>Total</b>	<b>384</b>	<b>100%</b>	<b>105</b>	<b>100%</b>	<b>215</b>	<b>100%</b>	<b>64</b>	<b>100%</b>

<sup>1</sup>Includes fire, allied lines, commercial multiple peril, inland marine, earthquake, worker's compensation, other liability, products liability, fidelity, glass, and burglary and theft.

Complaints 01/01/95 thru 12/31/95 Coverage	Total		Underwriting		Claims		Other	
	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total
Personal pass. auto	189	52.35%	52	57.14%	100	47.62%	37	61.67%
Homeowner/farmowner	81	22.44	17	18.68	52	24.76	12	20.00
Group A&H	7	1.94	2	2.20	4	1.90	1	1.67
Individual A&H	48	13.30	13	14.29	27	12.86	8	13.33
Commercial auto	1	0.28	0	0.00	1	0.48	0	0.00
All Others	35	9.70	7	7.69	26	12.38	2	3.33
Total	361	100%	91	100%	210	100%	60	100%

The company's 1996 complaint ratio for personal passenger automobile, using 1994 written premiums in relation to 1995 complaints, was .06 complaints per \$100,000 of written premium. The Wisconsin average for all insurers writing personal passenger automobile was .08 per \$100,000 written premium. The company's 1995 complaint ratio was .06 and the Wisconsin average was .07.

## II. PURPOSE AND SCOPE

The examination was conducted to determine if the company's practices and procedures comply with Wisconsin insurance statutes and rules.

The examination was limited to a review of the following company practices and procedures:

<b>Business Line</b>	<b>Area</b>
Personal Passenger Automobile	Underwriting
Homeowner's/Farmowner's	Claims
Commercial Automobile (forms)	Marketing and Sales
	Policyholder Service

### III. PREVIOUS EXAMINATION RECOMMENDATIONS

The recommendations contained in the previous market conduct examination of the company, adopted in 1991, and the company's actions therein follow:

1. It is recommended the company, in order to comply with s. 895.045, Wis. Stat., evaluate the negligence their insured contributed to an accident and appropriately reduce damages before demanding reimbursement from an uninsured motorist.

Action: Substantial compliance. The examiners found 1 file, noted in the claims review section, whereby the company did not comply with this recommendation.

2. It is recommended the company promptly return subrogation recoveries to their insureds.

Action: Compliance.

3. It is recommended that the company, in order to comply with s. 628.46, Wis. Stat., pay interest on subrogation recoveries not returned to the insured within 30 days.

Action: Compliance.

4. It is recommended that the company implement procedures to cancel a policy within the first 60 days for underwriting reasons in order to comply with ss. 631.36 (2) (a) and (c), Wis. Stat.

Action: Compliance.

5. It is recommended that the company, in order to be in compliance with s. Ins 6.57 (5), Wis. Adm. Code, accept only applications that are signed and dated by its sales representatives or, in some other way, accurately indicate the agent responsible for the application.

Action: Compliance.

6. Pursuant to s. Ins 6.54 (3) (a) 1, Wis. Adm. Code, it is recommended that the company either delete felony conviction questions from its property applications or, if it chooses to ask these questions, to list any felony convictions along with the date of conviction. It is further recommended that, pursuant to s. Ins 6.54 (3) (b), Wis. Adm. Code, if the company chooses to ask felony conviction questions as outlined above, the company revise its underwriting procedures and agent instructions so that only applications disclosing felony convictions directly related to the risk being insured may be submitted unbound.

Action: Compliance.

7. It is recommended that the company discontinue the use of age of residential property as an underwriting criteria in order to comply with s. Ins 6.68 (3) (b), Wis. Adm. Code.

Action: Noncompliance. The examiners found examples in the underwriting manuals and guidelines, noted in the underwriting review section, whereby the company did not comply with this recommendation.

The examiners reviewed 48 subrogation files, underwriting manuals and guidelines, and 375 underwriting files for compliance with the previous examination recommendations stated above.

## IV. SUMMARY AND FINDINGS

### FORMS REVIEW

The examiners reviewed all the company's personal and commercial forms for compliance with Wisconsin laws and rules. The following discusses areas where the forms did not comply.

The business vehicle application form, U-8 Ed. 3/90, under question 2. c., asks whether any driver has been convicted for other than a motor vehicle violation. Section Ins 6.54 (3) (a) 1, Wis. Adm. Code, prohibits an insurer from refusing, canceling, denying, or placing a risk in a rating classification based solely on an applicant's or insured's past criminal record without credible information supporting such a classification and demonstrating that it equitably reflects differences in past or expected losses and expenses. Section Ins 6.54 (3) (b) 1, Wis. Adm. Code, allows an insurer to deny, cancel, or nonrenew a policy of a person convicted of an offense if the offense which resulted in the conviction is directly related to the risk to be insured. It is recommended that the company either delete the question regarding a conviction for other than a motor vehicle violation from its business vehicle application form, U-8 Ed. 3/90, or, if it chooses to ask the question, that the question be optional and ensure that only convictions directly related to the risk being insured are used for underwriting and/or rating purposes in order to comply with s. Ins 6.54 (3) (a) 1, Wis. Adm. Code.

The business vehicle application form, U-8 Ed. 3/90, under question 2. e., asks whether any driver has had mental/physical/medical impairments (e.g.; heart, diabetes, epilepsy, multiple sclerosis, muscular dystrophy, cerebral palsy, or seen a doctor for any neck or back problems). Section 625.12 (2), Wis. Stat., provides, in part, that risks may be classified in any reasonable way for the establishment of rates and minimum premiums except that classifications in automobile insurance may not be based on physical condition or developmental disability as defined in s. 51.01 (5) (a), Wis. Stat. Also, s. 106.04 (9) (a) 4, Wis. Stat., provides, in part, that no person may refuse to furnish or charge another a higher rate for any automobile insurance because of disability. It is recommended that the company delete from its business vehicle

application form, U-8 Ed. 3/90, the question relating to an applicant's or insured's mental/physical/medical impairments in order to comply with ss. 625.12 (2) and 106.04 (9) (a) 4, Wis. Stat

The automobile policies (used for commercial and personal passenger risks), Wisconsin Basic Car Policy, form U-6 (WI) Ed. 3/96, and Wisconsin Family Car Policy, form U-5 (WI) Ed. 3/96, contain three provisions that do not comply with current Wisconsin insurance laws.

1. Liability exclusion number 2, excludes coverage for bodily injury or property damage caused by an intentional act of, or at the direction of, an insured person even if the actual injury or damage is different than that which was expected or intended. The exclusion contradicts the Commissioner's position regarding intentional acts exclusions which exclude liability coverage in automobile insurance policies. The Commissioner's position is that the policy should not exclude liability coverage for injury or damage which results from intentional acts unless the injury or damage is substantially certain to follow from what the insured does.
2. The medical expense coverage part indicates the company will pay reasonable medical expenses for appropriate and necessary medical and funeral services. The language goes on to define reasonable medical expenses. Chiropractic expenses are not included within the definition. Section 632.32 (4) (b), Wis. Stat., provides that an automobile policy providing liability coverages must provide medical payments coverage to indemnification for medical and chiropractic payments or both if the insured does not reject the coverage. Therefore, chiropractic expenses must be included in the definition of reasonable medical expenses in order to comply with s. 632.32 (4) (b), Wis. Stat.
3. The limits of liability provision under the medical expense coverage indicates that any amount paid or payable for medical expenses under the liability, uninsured motorists, or underinsured motorists coverages of the policy shall be deducted from the limits of liability under this part. Section 631.20 (2) (a), Wis. Stat., provides that the Commissioner may disapprove a form upon a finding that it is misleading. To reduce the limits stated in the policy, unless for payment of the same element of loss, is misleading because it is too restrictive to achieve the purposes for which the policy was sold. The limit would never be paid. The provision should be amended to provide for the amount payable being reduced or not paying for the same element of loss in order to comply with s. 631.20 (2) (a), Wis. Stat.

It is recommended that the company revise its automobile insurance policies, Wisconsin Basic Car Policy, form U-6 (WI) Ed. 3/96, and Wisconsin Family Car Policy, form U-5 (WI) Ed. 3/96, to comply with current Wisconsin insurance laws and Commissioner positions, as listed in this report.

The commercial inland marine endorsement, IM-5006 Ed. 1.1, contains language to amend the policy's forms to comply with the Wisconsin Supreme Court decision, Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263. However, the language amends the Recoveries condition instead of amending the Subrogation condition. It is recommended that the company amend its commercial inland marine endorsement, IM-5006 Ed. 1.1, to refer to the Subrogation condition rather than the Recoveries condition in order to comply with the Wisconsin Supreme Court decision, Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263.

The condominium directors and officers liability policy, UCL-8B Ed. 4/82, contains a subrogation condition which does not comply with the Wisconsin Supreme Court decision, Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263. This decision requires that the insured be made whole before the insurer may keep any recoveries. It is recommended that the company amend its condominium directors and officers liability policy, UCL-8B Ed. 4/82, to comply with the Wisconsin Supreme Court decision, Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263

Question 6. a. in the general information section in the business applicant information form, UBL-10 00 Ed. 1/96, asks whether any individual or partner in the partnership has ever been convicted of a felony or has the corporate entity had a prior felony conviction. This form is applicable to automobile risks and may be applicable to policies covering real property used for residential purposes with not more than four living units. Section Ins 6.54 (3) (a) 1, Wis. Adm. Code, prohibits an insurer from refusing, canceling, or denying coverage nor placing a risk in a rating classification based solely on an applicant's or insurer's past criminal record without credible information supporting such a classification and demonstrating that it equitably reflects differences in past or expected losses and expenses. Section Ins 6.54 (3) (b) 1, Wis. Adm. Code, allows an insurer to deny, cancel, or nonrenew a policy of a person convicted of an offense if the offense which resulted in the conviction is directly related to the risk to be insured. It is recommended that the company either delete question 6. a. from its business applicant

information form, UBL-10 00 Ed. 1/96, or, if it chooses to ask the question, that the question be optional and ensure that only convictions directly related to the risk being insured are used for underwriting and/or rating purposes in order to comply with s. Ins 6.54 (3) (a) 1, Wis. Adm. Code.

Theft peril 9. a. (5) of Perils Insured Against - Section II in the mobile homeowners policies, MH1 Ed. 1/86 and MH3 Ed. 1/86, indicates the peril of theft is not covered when theft is from premises which are vacant for more than 30 consecutive days immediately before the loss. Section Ins 6.76 (3) (e) 2, Wis. Adm. Code, provides that coverage may be suspended or restricted while a described building is vacant or unoccupied beyond a period of 60 consecutive days. It is recommended that the company revise its mobile homeowners policies, MH1 Ed. 1/86 and MH3 Ed. 1/86, to provide theft coverage for premises which are vacant or unoccupied up to and including 60 consecutive days immediately before a loss in order to comply with s. Ins 6.76 (3) (e) 2, Wis. Adm. Code.

Condition 6. b. of Conditions - Section II in the personal property homeowners policies, HO-1 (WI) Ed. 6/94, HO-2 (WI) Ed. 6/94, HO-3 (WI) Ed. 6/94, HO-4 (WI) Ed. 6/94, HO-5 (WI) Ed. 6/94, and HO-6 (WI) Ed. 6/94, and the custom value homeowners policies, CV-1 (WI) Ed. 6/94 and CV-3 (WI) Ed. 6/94, and Condition 4. b. of Sections II - Conditions in the Wisconsin amendatory farm/ranch endorsement, FR 03 00 WI 08 96, indicate no legal action can be brought against the company until the obligation of any insured has been determined by agreement signed by the company. Section 632.24, Wis. Stat., provides, in part, that any policy of insurance covering liability to others for negligence makes the insurer liable, up to the amounts stated in the policy, to the persons entitled to recover against the insured for the death of any person or for injury to persons or property, irrespective of whether the liability is presently established. It is recommended that the company revise its homeowners and farm/ranch policy forms, as listed in this report, to comply with s. 632.24, Wis. Stat.

## **CLAIMS**

The examiners reviewed the company's claims manual. No exceptions were noted.

The examiners interviewed a claims representative from the Madison east claims office. The company processes its Wisconsin claims through 13 regional offices. Each office has a casualty, property damage, and physical damage section. Claims are reported to the company's agents, who input the claims information into the system. The system automatically assigns the claim to the proper office according to the insured's zip code and assigns a claim number. The information is electronically transmitted to the claims office, where it is assigned to an adjuster according to the type and severity of the claim. The claims system is linked with the underwriting system whereby the adjuster can comment on the risk based on information gathered during the claims process.

The examiners reviewed 246 claim files; 99 each of homeowners and automobile paid and not paid claims, and 24 each of homeowners and automobile subrogation files.

The examiners found 1 automobile subrogation file where the company did not reduce its subrogation claim against an uninsured motorist by the amount of negligence its insured contributed to the accident. Section 895.045, Wis. Stat., provides that damages shall be reduced in proportion to the amount of negligence attributable to the person recovering. The company acknowledged the comparative negligence was missed in this file and, during the examination, returned 10% of the amount recovered plus 12% interest (\$399.93) to the uninsured motorist. It is recommended that the company ensure comparative negligence of its insureds be taken into account and reduce its subrogation claims against uninsured motorists by that percentage in order to comply with s. 895.045, Wis. Stat.

#### **UNDERWRITING**

The examiners reviewed the company's underwriting manuals and guidelines. The following discusses areas where the manuals and guidelines did not comply with current Wisconsin insurance laws and rules.

The "Underwriting Memorandums" manual indicates that the insured may obtain the reason for cancellation or nonrenewal of his/her policy by requesting the information from the company. These statements are located in the following sections:

- Underwriting Services Memorandum – Auto #23, page 16, numbers 3 and 4, in the statutes summary chart, “Requirement of Disclosure of Confidential Information to Insured at His Request – Immunity from Suit” and
- Underwriting Services Memorandum – General #23, page 8, Position IV – Statutory Supplement, 2 – Wisconsin (All Property Lines).

Section 631.36 (6), Wis. Stat., requires that a notice of cancellation or nonrenewal state with reasonable precision the facts on which the insurer’s decision is based and that no notice is effective unless it so states the facts. The company indicates it does state the reason in cancellation and nonrenewal notices. It is recommended that the company remove references to the insured’s need to request the reason for cancellation or nonrenewal from its “Underwriting Memorandums” manual in order to reflect its current procedures and to comply with the requirements of s. 631.36 (6), Wis. Stat.

The “Personal Lines Reference Manual,” page 4 - Personal Lines Casualty Reference - AFMIC - ASIC, Private Passenger Vehicle Information, refers to an impaired driver program. The program was developed to record the experience of insureds who had some type of physical or medical impairments to document any difference in loss experience between those with and without impairments. The company no longer records these insureds separately and has discontinued the program. Section 625.12 (2), Wis. Stat., provides, in part, that risks may be classified in any reasonable way for the establishment of rates and minimum premiums except that classifications in automobile insurance may not be based on physical condition or developmental disability as defined in s. 51.01 (5) (a), Wis. Stat. Also, s. 106.04 (9) (a) 4, Wis. Stat., provides, in part, that no person may refuse to furnish or charge another a higher rate for any automobile insurance because of disability. It is recommended that the company delete from its “Personal Lines Reference Manual” reference to the impaired driver program in order to reflect its current procedures and to ensure compliance with ss. 625.12 (2) and 106.04 (9) (a) 4, Wis. Stat.

The Underwriting Eligibility Guidelines indicate that the following are ineligible risks and that insurance will not be provided if any driver “habitually drinks intoxicating beverages to

excess or is a user of illegal narcotics or abuser of controlled substances.” Section Ins 6.54 (3) (a) 7, Wis. Adm. Code, prohibits an insurer from refusing, canceling, or denying insurance coverage based solely on the applicant’s or insured’s “moral” character. The company indicates the information regarding an applicant’s or insured’s drinking habits or involvement with narcotics is developed through its agents and is based on the agent’s personal observations, not on hearsay. It is recommended that the company revise its Underwriting Eligibility Guidelines to reflect its current practice of underwriting risks that include any driver that habitually drinks intoxicating beverages to excess or uses illegal narcotics or abuses controlled substances in order to avoid the possible unfair discrimination set forth in s. Ins 6.54 (3) (a) 7, Wis. Adm. Code.

The Underwriting Eligibility Guidelines indicate that the following are ineligible and that insurance will not be provided if any driver must file proof of financial responsibility with any state. One reason that proof of financial responsibility is required is after a driver’s license is revoked or suspended. Revocations and suspensions of drivers’ licenses may occur for convictions that may or may not involve a motor vehicle. Section Ins 6.54 (3) (a) 1, Wis. Adm. Code, prohibits an insurer from refusing, canceling, or denying insurance coverage or from placing a risk in a rating classification based on the applicant’s or insured’s past criminal record. By using a revocation or suspension, that may not be driving-related, to deny coverage or rate a policy, the company may be basing its decision on the applicant’s or insured’s criminal record rather than the driving record. It is recommended that, before using the possible nondriving-related revocation or suspension and resultant requirement of a financial responsibility filing to underwrite or rate a policy, the company investigate whether the revocation or suspension is driving-related, in order to comply with s. Ins 6.54 (3) (a) 1, Wis. Adm. Code.

The previous market conduct examination, adopted in 1991, recommended that the company discontinue the use of age of residential property as an underwriting criteria in order to

comply with s. Ins 6.68 (3) (b), Wis. Adm. Code. The following underwriting guidelines were found:

- Farm Ranch Manual, Rules & Guidelines, General Information, Ineligible Risks, 16. – Log Construction buildings if over 15 years old when insured or if not made from manufactured logs.
- Personal Lines Reference, Homeowners, Wisconsin Gold Star Eligibility Requirements, 4. Age of Dwelling, B. WI –Other than Milwaukee County, Ineligible – Pre 1940 Dwellings are ineligible.
- Personal Lines Reference, Dwelling Fire Program, General Eligibility Rules, Ineligible Risk, 6. – Log construction buildings over 15 years old when insured.

Section Ins 6.68 (3) (b), Wis. Adm. Code, provides that it is an unfair trade practice to make or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk of 4 units or less, or the personal property contained therein, because of the age of the residential property. It is recommended that the company discontinue the use of age of a residential property as an underwriting criteria in order to comply with s. Ins 6.68 (3) (b), Wis. Adm. Code.

The examiners interviewed a personal lines service representative and an underwriter for the company. The service representative indicated that automobile and property applications are handled differently.

All automobile applications are transmitted electronically from the agent to the company, except new agents who have not taken the company's application entry class. All applications must be prepaid and agent billing is not allowed. A policy number is automatically assigned. The rating territory is automatically assigned by the system according to the insured's home address. The premium is automatically computed by the system, except motor homes and trailers which are manually calculated by the service representative. If an SR-22 is required, the system generates one which is sent to the Department of Transportation. An underwriter is only assigned files where questionable information is involved.

Property applications are not processed electronically. Applications are batched daily and distributed to the service representatives for input into the system. Policy numbers are assigned manually. Premiums, including any discounts or surcharges, are calculated by the system. All homeowners applications are reviewed by an underwriter.

The examiners requested automobile and homeowners declination files to review. The examiners reviewed 91 homeowners declinations, which are retained on microfiche. No exceptions were noted.

The company could not produce the automobile declinations for review. The company refers to automobile declinations as "unbound trial auto applications." The agent enters the application into the system. Coverage is not bound, premium is not collected, and no effective date is entered. The underwriter reviews the application and decides whether or not the application is acceptable for coverage. If acceptable, the agent provides an effective date and a policy is issued. If not acceptable, the agent is notified either by telephone, mail, or electronic mail of the reason for declination. If the reason for declination is due to information contained in a consumer credit report, the applicant is notified, with a copy to the agent. The rejected, unbound trial application is purged from the company's system six months after the underwriting decision is entered into the system. The agent does not retain a copy of the application. Sections Ins 6.80 (4) (b) and (c) 1, Wis. Adm. Code, require that a domestic insurer maintain and make available to the Commissioner records reasonably related to its operations for the preceding three years, including underwriting information. The decision to accept or reject an application is an underwriting decision and, therefore, the application and declination are underwriting information. It is recommended that the company retain copies of applications which have been declined and any related underwriting information for 3 years in order to comply with s. Ins 6.80 (4) (b), Wis. Adm. Code.

The examiners reviewed 375 underwriting files; 100 each of homeowners and automobile new business and 100 automobile and 75 homeowners termination files. No exceptions were noted.

Additional review of the underwriting manuals and guidelines and underwriting files was done to determine whether the company is using information regarding domestic violence to underwrite or rate its policies. No evidence was found to indicate its use.

The company's procedures for use of credit information in underwriting or rating of personal lines policies was reviewed to ensure compliance with our guidelines set forth in the June 16, 1997, *Bulletin to Insurers*. The company has procedures designed to comply with our bulletin. The examiners found that the company is following its procedures when underwriting personal lines policies.

#### **POLICYHOLDER SERVICE**

The company has a detailed complaints tracking system. The company's definition of a complaint is "any written correspondence primarily expressing a grievance." The consumer affairs department consists of a consumer affairs manager and consumer affairs advocates. The department receives, refers, and tracks all insurance department complaints, phone calls, walk-ins, and written complaints received from or on behalf of consumers. All written complaints are logged into a central computerized database, using reason and disposition codes based on the NAIC Model Regulation. The company retains these records for five years. Detailed instructions on how to handle all types of complaints has been disseminated to company management.

#### **MARKETING AND SALES**

The company's computer appointment system identifies active, listed, and licensed agents. When an agent is listed, the agent's name and agent/district code is entered into the system. All departments use this code to verify that an agent is licensed and listed with the company. When an agent is terminated, this code is terminated. If the underwriting services processing department attempts to enter an application which contains an invalid agent/district code, the system will not allow it to be entered. The underwriting services representative contacts the agency services department and apprises them of the invalid agent/district code. The agency services department investigates the reason for the invalid code.

All complaints against an agent are included in the agent's file. Réprimands are kept in the district manager's file and monitored by the district manager.

The examiners reviewed 40 agent files; 20 terminated and 20 active files. The review was to determine the company's compliance with s. Ins 6.57 (1) and (2), Wis. Adm. Code, regarding listing and termination of agents. No exceptions were noted.

#### **EXPANDED REVIEW**

Based on an administrative action, case no. 93-C23337, against American Family Brokerage, Inc., the examiners expanded their review to include this company. The action was an order to have the listed agent sign applications prior to forwarding the applications to the insurers in order to comply with s. Ins 6.66 (3) (c), Wis. Adm. Code. The examiners reviewed 25 applications and declarations pages for policies issued between January 1 and June 30, 1997. The following discusses areas where exceptions were found.

The examiners found five applications where the American Family agents who forwarded business to American Family Brokerage, Inc., did not sign the applications. Section 6.66 (3) (c), Wis. Adm. Code, states that no agent may properly exchange business with another agent unless both the agent forwarding the business and the agent who places the business with the insurer sign the insurance application. It is recommended that American Family Brokerage, Inc., ensure that the agent forwarding the business to it sign the application before placing the business with an insurer in order to comply with s. Ins 6.66 (3) (c), Wis. Adm. Code.

In answer to the previous recommendation, American Family Brokerage, Inc., provided a copy of an application, BR-0657 Rev. 8/95, now used for commercial risks where an insurer has not provided a specific application for the coverage requested. Further inquiry revealed that the application form has not been approved for use in Wisconsin. Section 600.03 (21), Wis. Stat., defines a form as a policy or application prepared for general use. Section 631.20 (1) (a), Wis. Stat., states, in part, that no form, except as exempted under s. 631.01 (2) to (5), Wis. Stat., may be used unless it has been filed with and approved by the Commissioner. It is recommended that American Family Brokerage, Inc., either discontinue use of the application,

BR-0657 Rev. 8/95, or, request the insurers who are accepting the application; to file the application with and have it approved by the Commissioner in order to comply with s. 631.20 (1)

(a), Wis. Stat.

## V. CONCLUSION

A total of fifteen (15) recommendations were made relating to modifications of policy forms, underwriting manuals, and claims procedures.

To ensure compliance with s. Ins 6.80 (4) (b), Wis. Adm. Code, the company must retain copies of its declined applications and any related underwriting information for three years after declination. The company must reduce its subrogation claims against uninsured motorists by the percentage of negligence of its own insureds. The company's forms and underwriting manuals must be amended as noted in this report in order to comply with insurance laws, rules, and court decisions.

The recommendations are intended to bring the company into compliance with statutory standards of policyholder and claimant treatment.

### AMERICAN FAMILY BROKERAGE, INC.

Two (2) recommendations were made relating to American Family Brokerage, Inc.

To ensure compliance with s. Ins 6.66 (3) (c), Wis. Adm. Code, agents forwarding applications to American Family Brokerage, Inc., must sign the applications before they are forwarded to an insurer. In addition, American Family Brokerage, Inc., must ensure its application forms are filed with and approved by the Commissioner in order to comply with s. 631.20 (1) (a), Wis. Stat.

## VI. SUMMARY OF RECOMMENDATIONS

### FORMS

1. Page 7 - It is recommended that the company either delete the question regarding a conviction for other than a motor vehicle violation from its business vehicle application form, U-8 Ed. 3/90, or, if it chooses to ask the question, that the question be optional and ensure that only convictions directly related to the risk being insured are used for underwriting and/or rating purposes in order to comply with s. Ins 6.54 (3) (a) 1, Wis. Adm. Code.
2. Page 7 - It is recommended that the company delete from its business vehicle application form, U-8 Ed. 3/90, the question relating to an applicant's or insured's mental/physical/medical impairments in order to comply with ss. 625.12 (2) and 106.04 (9) (a) 4, Wis. Stat.
3. Page 8 - It is recommended that the company revise its automobile insurance policies, Wisconsin Basic Car Policy, form U-6 (WI) Ed. 3/96, and Wisconsin Family Car Policy, form U-5 (WI) Ed. 3/96, to comply with current Wisconsin insurance laws and Commissioner positions, as listed in this report.
4. Page 9 - It is recommended that the company amend its commercial inland marine endorsement, IM-5006 Ed. 1.1, to refer to the Subrogation condition rather than the Recoveries condition in order to comply with the Wisconsin Supreme Court decision, Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263.
5. Page 9 - It is recommended that the company amend its condominium directors and officers liability policy, UCL-8B Ed. 4/82, to comply with the Wisconsin Supreme Court decision, Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263.
6. Page 9 - It is recommended that the company either delete question 6. a. from its business applicant information form, UBL-10 00 Ed. 1/96, or, if it chooses to ask the question, that the question be optional and ensure that only convictions directly related to the risk being insured are used for underwriting and/or rating purposes in order to comply with s. Ins 6.54 (3) (a) 1, Wis. Adm. Code.
7. Page 10 - It is recommended that the company revise its mobile homeowners policies, MH1 Ed. 1/86 and MH3 Ed. 1/86, to provide theft coverage for premises which are vacant or unoccupied up to and including 60 consecutive days immediately before a loss in order to comply with s. Ins 6.54 (3) (e) 2, Wis. Adm. Code.
8. Page 10 - It is recommended that the company revise its homeowners and farm/ranch policy forms, as listed in this report, to comply with s. 632.24, Wis. Stat.

### CLAIMS

9. Page 11 - It is recommended that the company ensure comparative negligence of its insureds be taken into account and reduce its subrogation claims against uninsured motorists by that percentage in order to comply with s. 895.045, Wis. Stat.

## **UNDERWRITING**

10. Page 12 - It is recommended that the company remove references to the insured's need to request the reason for cancellation or nonrenewal from its "Underwriting Memorandums" manual in order to reflect its current procedures and to comply with the requirements of s. 631.36 (6), Wis. Stat.
11. Page 12 - It is recommended that the company delete from its "Personal Lines Reference Manual" reference to the impaired driver program in order to reflect its current procedures and to ensure compliance with ss. 625.12 (2) and 106.04 (9) (a) 4, Wis. Stat.
12. Page 13 - It is recommended that the company revise its Underwriting Eligibility Guidelines to reflect its current practice of underwriting risks that include any driver that habitually drinks intoxicating beverages to excess or is a uses illegal narcotics or abuses controlled substances in order to avoid the possible unfair discrimination set forth in s. Ins 6.54 (3) (a) 7, Wis. Adm. Code.
13. Page 13 - It is recommended that, before using the possible nondriving-related revocation or suspension and resultant requirement of a financial responsibility filing to underwrite or rate a policy, the company investigate whether the revocation or suspension is driving related, in order to comply with s. Ins 6.54 (3) (a) 1, Wis. Adm. Code.
14. Page 14 - It is recommended that the company discontinue the use of age of a residential property as an underwriting criteria in order to comply with s. Ins 6.68 (3) (b), Wis. Adm. Code.
15. Page 15 - It is recommended that the company retain copies of applications which have been declined and any related underwriting information for three years in order to comply with s. Ins 6.80 (4) (b), Wis. Adm. Code.

## **EXPANDED REVIEW**

### **AMERICAN FAMILY BROKERAGE, INC.**

16. Page 17 - It is recommended that American Family Brokerage, Inc., ensure that the agent forwarding the business to it sign the application before placing the business with an insurer in order to comply with s. Ins 6.66 (3) (c), Wis. Adm. Code.
17. Page 17 - It is recommended that American Family Brokerage, Inc., either discontinue use of the application, BR-0657 Rev. 8/95, or, request the insurers who are accepting the application, to file the application with and have it approved by the Commissioner in order to comply with s. 631.20 (1) (a), Wis. Stat.

## VII. ACKNOWLEDGMENT

The examiners acknowledge the cooperation and courtesy extended by the company. In addition to the undersigned, Jane Kovacik, Gary Morris, Mark Reinholz, and Norm Wirtz of the Office of the Commissioner of Insurance, participated in the examination and preparation of this report.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rhonda Peterson".

Rhonda Peterson  
Examiner-in-Charge