

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

OF

AMERICAN STANDARD INSURANCE COMPANY OF WISCONSIN  
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 STANDARD INSURANCE COMPANY OF WISCONSIN  
Madison, Wisconsin

and the following report is respectfully submitted.

#### I. INTRODUCTION

American Standard Insurance Company of Wisconsin 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 Standard Insurance Company of Wisconsin was licensed in Wisconsin in 1961. The company transacts business in 13 states. During 1996, the company wrote the following premiums and paid the following losses:

|                         | Direct Premiums Written | Direct Losses Paid |
|-------------------------|-------------------------|--------------------|
| Total Company           | \$393,269,518           | \$282,116,234      |
| Wisconsin Business Only | 88,408,338              | 63,835,778         |

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

| Wisconsin Business<br>Line of Business | 1996                |                     |
|--|---------------------|---------------------|
|  | Premium Written     | Losses Incurred     |
| Personal pass. auto                    | \$87,889,582        | \$62,091,733        |
| Commercial auto                        | 518,756             | 239,256             |
| <b>Total</b>                           | <b>\$88,408,338</b> | <b>\$62,330,989</b> |

The Office of the Commissioner of Insurance received 16 complaints in 1996 and 14 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<br>01/01/96 thru 12/31/96<br>Coverage | Total     |               | Underwriting |               | Claims   |               | Other    |               |
|--|-----------|---------------|--------------|---------------|----------|---------------|----------|---------------|
|  | No.       | % of<br>Total | No.          | % of<br>Total | No.      | % of<br>Total | No.      | % of<br>Total |
| Personal pass. auto                              | 16        | 100.00%       | 7            | 100.00%       | 6        | 100.00%       | 3        | 100.00%       |
| Commercial auto                                  | 0         | 0.00          | 0            | 0.00          | 0        | 0.00          | 0        | 0             |
| <b>Total</b>                                     | <b>16</b> | <b>100%</b>   | <b>7</b>     | <b>100%</b>   | <b>6</b> | <b>100%</b>   | <b>3</b> | <b>100%</b>   |

| Complaints<br>01/01/95 thru 12/31/95<br>Coverage | Total     |               | Underwriting |               | Claims   |               | Other    |               |
|--|-----------|---------------|--------------|---------------|----------|---------------|----------|---------------|
|  | No.       | % of<br>Total | No.          | % of<br>Total | No.      | % of<br>Total | No.      | % of<br>Total |
| Personal pass. auto                              | 14        | 100.00%       | 7            | 100.00%       | 7        | 100.00%       | 0        | 100.00%       |
| Commercial auto                                  | 0         | 0.00          | 0            | 0.00          | 0        | 0.00          | 0        | 0             |
| <b>Total</b>                                     | <b>14</b> | <b>100%</b>   | <b>7</b>     | <b>100%</b>   | <b>7</b> | <b>100%</b>   | <b>3</b> | <b>100%</b>   |

The company's 1996 complaint ratio for personal passenger automobile, using 1994 written premiums in relation to 1995 complaints, was .02 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 .02 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 included, but was not limited to, a review of the following company practices and procedures:

| <b>Business Line</b>          | <b>Area</b>          |
|-------------------------------|----------------------|
| Personal Passenger Automobile | Underwriting         |
| Commercial Automobile (forms) | Claims               |
|                               | 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 follows:

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: Compliance

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

The company has complied with the recommendations from the previous market conduct examination.

#### IV. SUMMARY AND FINDINGS

##### COMMERCIAL AUTOMOBILE FORMS REVIEW

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

The business vehicle application, 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.

## **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 121 automobile claims files; 100 paid and not paid claims and 21 subrogation files.

The examiners found one subrogation file which did not contain documentation to show when, or if, the insured was reimbursed their deductible. The company believes the insured recovered their deductible from the adverse insurer although nothing in the file indicates this was the case. Without complete and proper documentation, it is difficult to determine whether the company is returning its insureds' deductibles within 30 days of receipt of subrogation recoveries. If reimbursement is not made within 30 days, interest is due under s. 628.46, Wis. Stat. It is recommended that the company completely and properly document its subrogation files to show when, or if, its insureds were reimbursed their deductibles, in order to ensure compliance with s. 628.46, 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. This statement is located in the 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." 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 statements that the insured request the reason for cancellation or nonrenewal from its "Underwriting Memorandums" manual in order to reflect its current procedures and to ensure compliance 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 "is in the habit of drinking intoxicating

beverages to excess" or "is known to be a user of narcotics." 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 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 is in the habit of drinking intoxicating beverages to excess or is known to use narcotics in order to avoid the possible unfair discrimination set forth in s. Ins 6.54 (3) (a) 7, Wis. Adm. Code.

The examiners requested declination files to review. The company refers to these 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 requests an effective date. 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 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 three years in order to comply with s. Ins 6.80 (4) (b), Wis. Adm. Code.

The examiners interviewed a personal lines service representative and an underwriter for the company. 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.

The examiners reviewed 200 automobile underwriting files; 100 terminations and 100 new business 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 used for underwriting 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. Reprimands 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.

## V. CONCLUSION

A total of eight (8) 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 completely document its subrogation files to ensure compliance with s. 628.46, Wis. Stat. 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.

## VI. SUMMARY OF RECOMMENDATIONS

### FORMS

1. Page 5 - 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 5 - 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 6 - 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.

### CLAIMS

4. Page 7 - It is recommended that the company completely and properly document its subrogation files to show when, or if, its insureds were reimbursed their deductibles, in order to ensure compliance with s. 628.46, Wis. Stat.

### UNDERWRITING

5. Page 8 - It is recommended that the company remove statements that the insured request the reason for cancellation or nonrenewal from its "Underwriting Memorandums" manual in order to reflect its current procedures and to ensure compliance with the requirements of s. 631.36 (6), Wis. Stat.
6. Page 8 - 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.
7. Page 9 - It is recommended that the company revise its Underwriting Eligibility Guidelines to reflect its current practice of underwriting risks that include any driver that is in the habit of drinking intoxicating beverages to excess or is known to use narcotics in order to avoid the possible unfair discrimination set forth in s. Ins 6.54 (3) (a) 7, Wis. Adm. Code.
8. Page 9 - 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.

## 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