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Notice of Adoption and Filing of Examination Report

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

Greatway Insurance Company  
P O Box 979  
Sheboygan WI 53082-0979

dated September 1998, and served upon the company on April 19, 1999, 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 twenty-second day of September 1999.

Connie L. O'Connell  
Commissioner of Insurance

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STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

MARKET CONDUCT EXAMINATION

OF

GREATWAY INSURANCE COMPANY  
SHEBOYGAN, WISCONSIN

SEPTEMBER 1998

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September 11, 1998

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Honorable Connie L. O'Connell  
Commissioner of Insurance  
State of Wisconsin  
121 East Wilson Street  
Madison, WI 53702

Commissioner:

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

Greatway Insurance Company  
2800 South Taylor Drive  
Sheboygan, Wisconsin

The following report is respectfully submitted.

## I. INTRODUCTION

Greatway Insurance Company (the company) is a property and casualty insurer licensed to transact business in the following states: Arkansas, Colorado, Idaho, Indiana, Iowa, Kentucky, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Washington, and Wisconsin.

Greatway Insurance Company incorporated on August 3, 1987, in Wisconsin and commenced operations on August 29, 1987. As of December 31, 1997, Greatway Insurance Company reported direct premium writings in: Indiana, Iowa, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin, and consisted of the following premiums and losses:

	Direct Premiums Written	Direct Losses Paid
Total Company	\$14,218,251	\$9,307,231
Wisconsin Business Only	\$8,569,273	\$4,977,208

During 1997, Greatway Insurance Company reported the following premiums and losses organized by line of business in Wisconsin:

1997	Direct Premiums Written	Direct Losses Paid
Private Passenger Auto Physical Damage	\$2,696,125	\$1,651,219
Private Passenger Auto Liability	\$5,873,148	\$3,325,989
Total	\$8,569,273	\$4,977,208

## II. SUMMARY OF CONSUMER COMPLAINTS

The Office of the Commissioner Of Insurance received 23 complaints against Greatway Insurance Company between January 1, 1996, and August 1, 1998. A complaint is defined as "a written communication received by the Commissioner's Office that indicates dissatisfaction with an insurance company or agent." The following chart categorizes the complaints received against the company by type of policy and complaint reason for the time period noted above. There may be more than one type of coverage or reason for each complaint.

Automobile	Complaint Reason				
	Underwriting	Marketing & Sales	Claims	Policyholder Service	Other
As of 8/1/98	2	2	0	0	0
1997	1	3	2	1	0
1996	2	1	6	2	1
Total	5	6	8	3	1

Each year the Office of the Commissioner of Insurance publishes a list of insurance companies writing automobile insurance that have an above average complaint ratio. The list is comprised of all companies that received 10 or more complaints during the year and that had a complaint ratio above the average. The average complaint ratio for automobile insurance in Wisconsin for 1997 was .07 complaints per \$100,000 of written premium. Since the company did not receive 10 or more complaints in 1997, it did not meet the minimum eligibility requirements to be considered for inclusion on the list.

### III. PURPOSE

The examination was conducted to determine whether the company's practices and procedures comply with the Wisconsin insurance statutes and rules. The targeted examination focused on the period January 1, 1997, through August 1, 1998, and included a review of any subsequent events deemed important by the examiner-in-charge during the examination.

The examination included, but was not limited to, a review of agent management, claims handling, marketing and sales, policy forms currently used by the company, policy rating, policyholder service and complaints, and underwriting. The claims and underwriting portion of the examination consisted of a review of company procedures and files for personal automobile insurance. To review the issues targeted in this examination, the examiners selected closed claims and underwriting files from the period of January 1, 1997, to August 1, 1998.

## IV. FINDINGS

### Agent Monitoring

Greatway Insurance Company markets its insurance products through the independent agency system. The examiners reviewed 10 agent appointments and terminations to determine whether 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 when an agency representing the company is purchased by another agency, the agency's business is transferred to the new agency and to a producer within the new agency. The company's system does not require that the newly assigned producer be a licensed agent listed with the company in accordance with ss. 628.03, Wis. Stat., and Ins 6.57 (1), Wis. Adm. Code. In order to comply with ss. 628.03, Wis. Stat., and Ins 6.57 (1), Wis. Adm. Code, it is recommended that the company implement procedures to ensure that when transferring a book of business from one agency to another, that the newly assigned agent of record is a licensed agent listed with the company.

### Claims

In settling claims under policies issued to insureds located in Wisconsin, Greatway Insurance Company uses employee representatives located in the central office in Sheboygan, Wisconsin, and several remote claim offices located throughout the state.

The examiners reviewed 80 closed claim files for personal passenger automobile insurance (49 paid and denied claims and 31 subrogation files). The company's claim practices and methods were also reviewed. The following exceptions were noted.

The examiners discovered that the company does not reduce its subrogation claims by the amount of negligence its insured contributed to the accident when pursuing subrogation against an uninsured motorist. This procedure is contrary to s. 895.045, Wis. Stat., which provides that damages shall be reduced in proportion to the amount of negligence attributable to the person recovering. In order to ensure compliance with s. 895.045, Wis. Stat., it is recommended that the company evaluate the negligence its insured contributes to an accident and appropriately reduce damages before demanding reimbursement from an uninsured motorist.

The examiners found that when the company is receiving subrogation recoveries on an installment basis from the negligent third party, it waits to reimburse its insured's deductible until it obtains the full amount of the insured deductible from the other party. If the installment payments from the responsible third party extend over a long period, there could be a considerable span of time, if ever, before the insured is made whole. According to the Wisconsin Supreme Court decision 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 the Wisconsin Supreme Court decision Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263. It is further recommended that the company submit a plan to OCI detailing how it will promptly reimburse its insureds' deductibles when collecting installment payments from negligent parties in order to make its insureds whole and to comply with the Wisconsin Supreme Court decision, Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263.

### **Marketing and Sales**

All personal lines coverages are marketed via the independent agency system. The company's Sales Department is responsible for marketing the company to agents, educating agents, and monitoring agency growth and loss ratios. The company also publishes brochures for agents and consumers for the lines of insurance sold by the company. While the company does not maintain a home page on the worldwide web, the parent company (Heritage Mutual Insurance Company) does have a home page which is designed to provide information to consumers and agents.

The examiners reviewed the brochures published by the company along with general information related to the marketing and sales tactics of the company. No notable exceptions were found.

## **Policy Forms**

Greatway Insurance Company provides insurance coverage to its policyholders using independently filed company coverage forms and endorsements. The examiners reviewed the coverage forms and endorsements currently used by the company in Wisconsin for automobile insurance. No notable exceptions were found.

## **Policy Rating**

The company has two programs for auto policies: Performance and Prestige. To qualify for the Prestige Program and the 10% discount, an insured is required to meet several additional underwriting criteria involving driving record and prior coverage.

The company uses a complex rating algorithm that relies on numerous, commonly used factors. Evaluation of these factors was not included in the scope of this exam. The examiners chose to review two of the factors that may involve the discretion of the underwriter and/or the agent when checking new business underwriting files.

One hundred and one new business underwriting files were reviewed. In addition, the examiners reviewed the rating manual and underwriting guidelines used by the company. The following exceptions were noted.

The company has three agent commission levels available: 15%, 12.5%, and 10%. The commission level is directly reflected in the premium level. Fifty-seven of the files reviewed, were written at the standard commission level of 15%, 2 files were written at 12.5% and 42 files at 10%. To qualify for the lower commission levels, an insured is required to meet several underwriting criteria involving availability of motor vehicle records, length of residence, and minimum coverage limits. Qualification for the lower commission level does not guarantee that an insured will be placed in that plan. Rather, the commission options appear to be a method for agents to lower the premium for competitive purposes. Offering of a policy at a reduced premium based solely on a commission reduction is contrary to ss. 628.34 (2) and (3) (a), Wis. Stat. To ensure compliance with ss. 628.34 (2) and (3) (a), Wis. Stat., it is recommended the company eliminate the use of commission plan factors or that the 3 plan levels be distinguished by a set of mutually exclusive underwriting criteria which do not rely on competition or agent discretion.

### **Policyholder Service & Complaints**

The company does not maintain a separate policyholder service department to handle complaints. All insurance department complaints are received and logged by a single person and then distributed to the appropriate department for handling. A copy of the response to the complaint is sent to the individual responsible for logging and distributing the insurance department complaints.

All complaints received that are not from the insurance department are forwarded directly to the appropriate department for handling. The company does not maintain a complaint log or other formal record of noninsurance department complaints. In addition, the company does not have written procedures for handling noninsurance department complaints. Each department is responsible for reviewing noninsurance department complaints and handling as deemed appropriate.

While the examiners did not find any unanswered noninsurance department complaints during their review, the lack of a complaint log and written procedures makes it difficult to track problems related to a particular agent, employe, or company procedure. It is recommended that the company implement procedures for handling and documenting responses to complaints received from sources other than the insurance department. It is further recommended that the company maintain a log of complaints received from sources other than the insurance department.

### **Underwriting**

Greatway Insurance Company is a nonstandard insurer providing personal passenger automobile insurance to individuals that represent an above-average risk of loss to an insurer. The underwriting for Greatway Insurance Company is done independently of the company's parent, Heritage Mutual Insurance Company.

The examiners reviewed 98 new business files and 38 termination files for personal passenger automobile insurance. The company's underwriting procedures were also reviewed. The following exceptions were noted.

The examiners found one automobile file where the policy was issued within the first 60 days from the effective date but on policy terms different than requested on the original application. The company's procedure is to notify the agent of the change; however, it relies on the agent to communicate the change and the reason for the change to the policyholder. Issuing a policy on terms other than requested on the original application, without notice to the policyholder, is misleading by omission and is considered an unfair marketing practice per s. 628.34, (1), Wis. Stat. It is recommended that the company provide notice directly to the policyholder when issuing a policy on different terms than applied for in the application in order to avoid unfair marketing practices as defined by s. 628.34 (1), Wis. Stat.

The standard nonrenewal notice used by the company when nonrenewing a policy because the agent/agency no longer represents the company states:

"If your agent cannot place you with another company or you desire to remain with Greatway, you may write directly to us to determine if you are eligible for continuing coverage."

Section 631.36 (6), Wis. Stat., provides that a notice of nonrenewal shall state with reasonable precision the facts on which the insurer's decision is based. If a policy is to be nonrenewed for reasons in addition to the agent/agency termination, the notice should give the additional reasons. Failure to include this information is misleading by omission and is considered an unfair marketing practice per s. 628.34, (1), Wis. Stat. In order to ensure compliance with ss. 628.34 (1), and 631.36 (4), Wis. Stat., it is recommended that the company remove the language "if you are eligible for continuing coverage" from the notice of nonrenewal used when nonrenewing a policy because the agent/agency no longer represents the company.

The company's Wisconsin Car Insurance Manual documents a set of requirements that an agent is to follow when completing an application for new business and binding coverage.

The Manual states:

"Coverage is bound as of the time and date the application is fully completed and signed by both the applicant and the agent, provided it is postmarked by the U.S. Postal Service within three working days after binding."

The bound effective date set by the company's agent may not be changed by the company, per s. 628.40, Wis. Stat., even when the agent fails to follow company instructions

related to the completion or processing of the application. Pursuant to s. 628.40, Wis. Stat., every insurer is bound by any act of its agent performed in this state that is within the scope of the agent's apparent authority, while the agency contract remains in force and after that time until the insurer has made reasonable efforts to recover from the agent its policy forms and other indicia of agency. While the company may set certain procedures and require its agents to follow those procedures, an agent's failure to follow the company's procedures does not invalidate the agent's actions, such as binding coverage, which are performed within the scope of the agent's apparent authority. It is recommended that the company eliminate from its Wisconsin Car Insurance Manual the requirement that coverage is bound only if the application is complete and signed by the agent and applicant, and postmarked within three working days of the binding to ensure compliance with s. 628.40, Wis. Stat.

The examiners verified that the company does not require applications to be signed by the applicant or that the agent of record maintain a signed paper copy of an electronically transmitted application. In order to ensure that the applicant provides the information contained on the application, applications should be signed by the applicant. In those instances where a paper application is not completed, other evidence that the applicant provided the application information should be collected. Failure to collect and maintain documentation supporting that the information contained in the application was provided by the applicant jeopardizes the company's ability to deny a claim or cancel or rescind a policy for material misrepresentations made by the applicant. While the insurance laws do not require an insurance company to collect and maintain such documentation, it may be in the company's best interest to institute a procedure that allows the company to document that the applicant provided the information contained in the application.

The company accepts applications and policy change requests in paper and electronic format. In addition, the company accepts policy change requests received over the telephone or through personal interviews. The company's record retention procedures provide that paper applications are retained for only one year after the information from the original document has been keyed in the company system. The company does not maintain a copy of the original source document after the original document is purged. The company's record retention

procedures also provide that endorsement request received via paper or electronic mail are purged immediately after the information from the original document has been keyed into the company's system. The company does not retain a copy of the original source document after it is keyed into the company system. The only information retained by the company after an original source document is purged is the electronic data keyed into the company's system from the original source document. In addition, the company does not require their agents to retain a copy of the original source document.

Section Ins 6.80 (4) (b), Wis. Adm. Code, provides that:

"Records of insurance company operations and other financial records reasonably related to insurance operations for the preceding 3 years shall be maintained and be available to the commissioner."

Section Ins 6.80 (4) (c), Wis. Adm. Code, provides that:

"Records maintained under par. (b) may be in written form or in any other form capable of being converted to written form within a reasonable period of time."

In addition, s. Ins 6.80 (4) (c) 1, Wis. Adm. Code, provides that

Original documents, such as claim files, invoices, cancelled checks, underwriting information and other similar materials may be maintained on microfilm or microfiche so long as the records thus maintained are readily available to the commissioner and can be reproduced in hard copy.

The retention of only the electronic data keyed into the company system from the original source document does not meet the record retention requirements of s. Ins 6.80 (4), Wis. Adm. Code. It is recommended that the company revise its record retention procedures to comply with s. 6.80 (4), Wis. Adm. Code.

Question number eight of the Underwriting interrogatories asked the company to describe the steps involved in the company's processing of new business. As a part of the response to this question, the company advised that:

"If the underwriters decide to reject a bound application, he may either waive the binder or charge for the time insured."

Further inquiry into this matter with the company revealed that a binder would be waived and no charge made only if the company did not incur the costs of issuing a policy. The

company advised that a policy would not be issued only when the information provided on the application itself clearly indicated that the risk did not meet the company's underwriting guidelines. If the application, on its face, appeared to meet the underwriting guidelines, a policy is issued and further underwriting of the risk is done.

Section 628.34 (3) (a), Wis. Stat., provides that no insurer may unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved. During the review of company's underwriting and procedural manuals, the examiners did not find a written procedure related to the waiver of a binder and the circumstances under which an underwriter may waive the binder charge for the time coverage was provided. Without a written procedure describing the circumstances in which an underwriter may waive a binder or charge for the time insured, the company may inadvertently unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved. To avoid the unfair marketing practices described in s. 628.34 (3) (a), Wis. Stat., it is recommended that the company revise its underwriting and or procedural manuals to reflect its actual procedures related to the circumstances under which an underwriter should waive the binder or charge for the time coverage was provided.

The Wisconsin Personal Lines Manual provides that refunds of less than \$5.00 will not be made. Section 628.34 (3) (a), Wis. Stat., provides that no insurer may unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage except on the basis of classification related to the nature and the degree of the risk covered. To ensure compliance with s. 628.34 (3) (a), Wis. Stat., it is recommended that the company revise its Wisconsin Personal Lines Manual to allow for refunds of less than \$5.00 when the company receives a request from the policyholder for the refund.

The Wisconsin Personal Lines Manual provides that agents may bind additional cars on existing policies for up to 30 days. 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. A

binder is issued in place of a policy and notice of cancellation must be sent to the insured to terminate coverage. If an agent binds coverage for an additional car, the coverage is bound until proper notice of termination is provided pursuant to s. 631.36, Wis. Stat. It is recommended that the company eliminate the agent binding restriction of 30 days for additional cars on existing policies from the Wisconsin Personal Lines Manual to ensure compliance with the Wisconsin Supreme Court decision, Terry v. Mongin Insurance Agency, 105 Wis. 2d 575, and s. 631.36, Wis. Stat.

## V. CONCLUSION

A total of 12 recommendations were made relating to the need for the Greatway Insurance Company to modify certain aspects of the company business related to agent management, claims, policy forms, policy rating, policyholder service and complaints, and underwriting.

The company must ensure that its subrogation claim procedures comply with the insurance laws and court decisions. In addition, the company must ensure that its record retention procedures comply with s. Ins 6.80, Wis. Adm. Code.

Other aspects of the company's forms, underwriting, and claims practices were noted as being inconsistent with Wisconsin market conduct regulations. The market conduct recommendations are intended to bring the company's practices into compliance with statutory standards of policyholder treatment.

## VI. SUMMARY OF RECOMMENDATIONS

1. Page 5 - Agency Monitoring - In order to comply with ss. 628.03, Wis. Stat., and Ins 6.57 (1), Wis. Adm. Code, it is recommended that the company implement procedures to ensure that when transferring a book of business from one agency to another, that the newly assigned agent of record is a licensed agent listed with the company.
2. Page 5 - Claims - In order to ensure compliance with s. 895.045, Wis. Stat., it is recommended that the company evaluate the negligence their insured contributes to an accident and appropriately reduce damages before demanding reimbursement from an uninsured motorist.
3. Page 6 - Claims - 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 the Wisconsin Supreme Court decision Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263. It is further recommended that the company submit a plan to OCI detailing how it will promptly reimburse its insureds' deductibles when collecting installment payments from negligent parties in order to make its insureds whole and to comply with the Wisconsin Supreme Court decision, Rimes v. State Farm Mutual Automobile Insurance Company, 106 Wis. 2d 263.
4. Page 7 - Policy Rating - To ensure compliance with ss. 628.34 (2) and (3) (a), Wis. Stat., it is recommended the company eliminate the use of commission plan factors or that the 3 plan levels be distinguished by a set of mutually exclusive underwriting criteria which do not rely on competition or agent discretion.
5. Page 8 - Policyholder Service & Complaints - It is recommended that the company implement procedures for handling and documenting responses to complaints received from sources other than the insurance department. It is further recommended that the company maintain a log of complaints received from sources other than the insurance department.
6. Page 9 - Underwriting - It is recommended that the company provide notice directly to the policyholder when issuing a policy on different terms than applied for in the application in order to avoid unfair marketing practices as defined by s. 628.34 (1), Wis. Stat.
7. Page 9 - Underwriting - In order to ensure compliance with ss. 628.34 (1), and 631.36 (4), Wis. Stat., it is recommended that the company remove the language "if you are eligible for continuing coverage" from the notice of nonrenewal used when nonrenewing a policy because the agent/agency no longer represents the company.
8. Page 10 - Underwriting - It is recommended that the company eliminate from its Wisconsin Car Insurance Manual the requirement that coverage is bound only if the application is complete and signed by the agent and applicant and postmarked within three working days of the binding, to ensure compliance with s. 628.40, Wis. Stat.
9. Page 11 - Underwriting - It is recommended that the company revise its record retention procedures to comply with s. 6.80 (4), Wis. Adm. Code.

10. Page 12 - Underwriting - To avoid the unfair marketing practices described in s. 628.34 (3) (a), Wis. Stat., it is recommended that the company revise its underwriting and or procedure manuals to reflect its actual procedures related to the circumstances under which an underwriter should waive the binder or charge for the time coverage was provided.
11. Page 12 - Underwriting - To ensure compliance with s. 628.34 (3) (a), Wis. Stat., it is recommended that the company revise its Wisconsin Personal Lines Manual to allow for refunds of less than \$5.00 when the company receives a request from the policyholder for the refund.
12. Page 13 - Underwriting - It is recommended that the company eliminate the agent binding restriction of 30 days for additional cars on existing policies from the Wisconsin Personal Lines Manual to ensure compliance with the Wisconsin Supreme Court decision Terry v. Mongin Insurance Agency, 105 Wis. 2d 575, and s. 631.36, Wis. Stat.

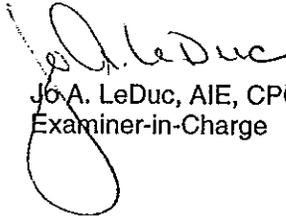
## VII. ACKNOWLEDGMENT

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

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

Name	Title
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Respectfully submitted,



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Examiner-in-Charge