



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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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

Wisconsin Compensation Rating Bureau and Wisconsin Worker's Compensation Insurance Pool  
20700 Swenson Drive  
Waukesha WI 53186

dated October 7, 2011, and served upon the company on June 6, 2013, 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 8th day of January, 2014.

A handwritten signature in black ink, appearing to read 'Theodore K. Nickel', written over a horizontal line.

Theodore K. Nickel  
Commissioner of Insurance

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

MARKET CONDUCT EXAMINATION

OF

WISCONSIN COMPENSATION RATING BUREAU AND THE  
WISCONSIN WORKER'S COMPENSATION INSURANCE POOL  
WAUKESHA, WISCONSIN

SEPTEMBER 26-OCTOBER 7, 2011

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Scott Walker, Governor  
Theodore K. Nickel, Commissioner

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October 7, 2011

Honorable Theodore K. Nickel  
Commissioner of Insurance  
Madison, WI 53702

Commissioner:

Pursuant to your instructions and authorization, a targeted market conduct examination was conducted September 26 to October 7, 2011, of the:

WISCONSIN COMPENSATION RATING BUREAU, AND THE  
WISCONSIN WORKER'S COMPENSATION INSURANCE POOL  
Waukesha, Wisconsin

and the following report is respectfully submitted.

## I. INTRODUCTION

Wisconsin enacted the first constitutionally valid American workman's compensation law as Chapter 50, Laws of 1911, effective September 1, 1911. In 1917, legislation was enacted which, in part, provided for the creation of a Compensation Board and provided that:

"Every company transacting the business of worker's compensation insurance in this state shall be a member of a bureau to be maintained in this state for the following purposes:

1. To separate the industries of this state that are subjects of worker's compensation insurance into proper classes for compensation insurance purposes; to make inspections of compensation risks and to apply thereto the schedule of merit rating system approved for use in this state; to establish charges and credits under such system and to make reports showing all facts affecting such risks on the subject of compensation insurance.
2. To assist the compensation insurance board and companies in approving rates, determining hazards, and other material facts in connection with compensation risks and to assist in promoting safety in the industries."

The bureau created by this legislation was the Wisconsin Compensation Rating & Inspection Bureau (Bureau). The first regular meeting of the Bureau was held on July 24, 1917. At this meeting, bylaws were duly adopted and the Bureau, a nonprofit, unincorporated association of insurers authorized to write worker's compensation insurance in Wisconsin, commenced operations. The Bureau functioned under this name until May 9, 1950, when the bylaws were amended to change the name to the Wisconsin Compensation Rating Bureau (Bureau).

From its inception in 1917 to 1933, the Bureau was under the jurisdiction of the Compensation Insurance Board which consisted of the Commissioner of Insurance, one member of the Industrial Commission chosen by that commission, and a third person appointed by the Governor. In 1933, the law was changed and the Compensation Insurance Board was discontinued. Since 1933, the Bureau has been under the jurisdiction of the Office of the Commissioner of Insurance (commissioner).

The Bureau is licensed as a rate service organization in accordance with ss. 625.31, 625.32 and 626.09, Wis. Stat. It operates under the bylaws, as amended, which were established in 1917. The purposes of the Bureau are set forth in s. 626.09 (1), Wis. Stat, and are as follows:

- (a) To establish, maintain and administer rules, regulations, classifications, rates and rating plans to govern the transaction of insurance included in s. 626.03;
- (b) To cooperate with other rate service organizations and with insurers in the development of rules, rates and rating plans and insurance policies and forms;
- (c) To secure and analyze statistical and other data required to accomplish these purposes;
- (d) To inspect and classify risks;
- (e) To file with the commissioner on behalf of its members every manual of classifications, rules and rates, every rating plan and every modification of any of them proposed for use in this state;
- (f) To assist the commissioner and insurers in the promotion of safety in industry; and

(g) To assist in any matter necessary for the accomplishment of these purposes.

Section 626.06, Wis. Stat., provides that every insurer authorized to write worker's compensation insurance in Wisconsin is a member of the Bureau. Membership by group is not permitted. Each individual company in a group of insurers must be a member of the Bureau and pay all dues and assessments if it is licensed to write worker's compensation insurance in Wisconsin. Each individual member has one vote and voting by proxy is permitted.

Each member must pay an initial fee of \$500 on becoming a member of the Bureau. There is no longer an annual membership fee. In addition, each member must pay any charges levied against the member for any special service, and any charges, fees or fines for failure to comply with reporting requirements. The balance of the expenses of the Bureau is paid by assessment, with each member's share based on their proportion of the direct written worker's compensation insurance premium in the Wisconsin voluntary market.

In 1917, there were 33 companies transacting worker's compensation insurance in Wisconsin. As of December 31, 2011, the Bureau had 527 members. According to the 2011 Wisconsin Insurance Report, 278 of the 527 Bureau members reported worker's compensation insurance premiums. Nineteen Bureau members reported excess worker's compensation insurance premiums.

In accordance with the provisions of the Wisconsin Worker's Compensation Act and a written agreement between the Bureau and the Department of Workforce Development (DWD), the Bureau receives required information on every worker's compensation policy issued to every employer with operations in Wisconsin and every termination thereof and electronically transmits this information to the Worker's Compensation Division of DWD.

## Complaints

The commissioner defines a complaint as a written communication received by the commissioner that indicates dissatisfaction with an insurance company, agent, or other licensee. The commissioner received three complaints against the Bureau between January 1, 2009, and December 31, 2011.

The following table categorizes the complaints received against the Bureau by complaint reason:

WCRB Complaints By Reason Type <sup>1</sup>	2011	2010	2009
Underwriting	2	0	1
Marketing & Sales	0	0	0
Claims	0	0	0
Policyholder Service	0	0	0
Other	0	0	0
<b>Total</b>	<b>2</b>	<b>0</b>	<b>1</b>

The examiners reviewed all of the worker's compensation insurance complaints filed against the insurance companies acting as servicing carriers for the Pool between January 1, 2009, and December 31, 2011. The review indicated that 44 complaints involved a policy issued on behalf of the Pool. The following table categorizes the complaints received by the commissioner against the servicing carriers that involved a policy issued on behalf of the Pool by complaint reason. Since agents do not represent the Pool, complaints against agents which involve Pool policies are not included:

<sup>1</sup> There may be more than one type of coverage and/or reason for each complaint.

Pool Complaints By Reason Type <sup>2</sup>	2011	2010	2009
Underwriting	2	2	4
Marketing & Sales <sup>3</sup>	0	0	0
Claims	1	0	6
Policyholder Service	0	9	13
Other	0	0	0
<b>Total</b>	<b>3</b>	<b>11</b>	<b>23</b>

Pursuant to s. 626.31 (3) and (4), Wis. Stat., aggrieved persons can apply for a hearing before the Bureau's Governing Board, Rating Committee or Pool Committee. The hearing decision can be appealed to the commissioner. The following table categorizes the hearings and appeals initiated in 2009 and 2010:

Hearings and Appeals	2011	2010	2009
Hearing Applications	3	2	1
Appeals to Commissioner	0	2*	0

\* Both appeals to the commissioner were withdrawn by the complainants.

<sup>2</sup> There may be more than one type of coverage and/or reason for each complaint.

<sup>3</sup> Since agents do not represent the Pool, complaints against agents which involve a Pool policy are not included.

## II. PURPOSE AND SCOPE

The examination was conducted to determine whether the practices and procedures of the Wisconsin Compensation Rating Bureau (Bureau) and the Wisconsin Worker's Compensation Insurance Pool (Pool) comply with the Wisconsin insurance statutes and rules.

The examination focused on the period from January 1, 2010, through June 30, 2011. The examination of the Bureau included, but was not limited to, Bureau organization and management, electronic commerce, policyholder service and complaint handling, Bureau operations, activities and the residual market operations of the Pool. In addition, the examination included a review of any subsequent events deemed important by the examiner-in-charge during the examination.

The report is prepared on an exception basis and comments on those areas of the Bureau's operations where adverse findings were noted.

### III. CURRENT EXAMINATION FINDINGS

#### Organization and Management

The examiners reviewed the following areas of the Bureau's organization and management: bylaws and annual reports, board and committees, Bureau membership, and electronic commerce as follows.

##### Bylaws and Annual Reports

Section 626.31, Wis. Stat., provides that the Bureau shall make bylaws for its government, which, with amendments thereto, shall be filed with, and approved by, the commissioner before they are effective. The Bureau operates under the filed bylaws approved on July 24, 1917, as most recently amended on June 2, 2008. Each Bureau member must, through a duly authorized official, subscribe to and file with the Bureau a signed copy of the bylaws. Such acceptance of these bylaws is deemed an agreement to be a member of the Bureau.

The examiners reviewed information from the Bureau regarding its operation, the Bureau annual reports for the last three years, the Bureau's current bylaws and the signed bylaws of 50 Bureau members. The following exceptions were noted.

The examiners found the Bureau could not provide a signed copy of any bylaws for 6 of 50 Bureau members. In addition, 18 of the 44 signed bylaws provided by the Bureau were not the most current bylaws as they were signed prior to the June 2, 2008, amendment.

- 1. Recommendation:** It is recommended that, when a member has not returned a signed copy of the most current version of the bylaws within a reasonable period of time, the Bureau follow up with the member to obtain a signed copy in order to ensure that all members accept the obligations of membership in the Bureau as defined by the current version of the bylaws.

##### Board and Committees

Section 626.31 (1) (b), Wis. Stat., and the bylaws provide for a 10-member Rating Committee which consists of 4 non-stock insurers and 4 stock insurers elected from the

membership and 2 additional members representing noninsurer employer interests who are appointed by and serve at the pleasure of the Governor. The bylaws of the Bureau define stock insurers as stock corporations. Non-stock insurers are defined as mutual corporations and reciprocal interinsurers.

The bylaws of the Bureau provide for a 10-member Governing Board consisting of 4 non-stock insurers and 4 stock insurers elected from the membership. The bylaws were revised in 2008 to add 2 non-insurer employer representatives, appointed by the Governor, and to add powers that were previously assigned specifically to the Rating Committee of the Bureau.

The Rating Committee and Governing Board include 2 members that are elected to 4-year terms during the annual meeting held in May. The stock insurers and non-stock insurers, respectively, acting separately, elect by majority ballot their respective members to the Rating Committee and Governing Board. Each committee/board member shall have one vote, with the commissioner deciding the matter in the event of a tie. Not more than one insurer in a group under the same management or ownership shall serve on the Governing Board or the Rating Committee at the same time.

#### Governing Board

The Governing Board has complete charge and management of the affairs of the Bureau under the authority of the bylaws. The Governing Board shall make such rules and regulations, provide such facilities, and take such steps as from time to time may be necessary for the operation of the Bureau and compliance with the laws of Wisconsin that govern the Bureau. In addition, the Governing Board has control and supervision over the finances of the Bureau with the authority to determine and approve appropriations for expenses, and make payments thereon, and authority to approve and direct assessments and fees to be levied against members. It also has the power to appoint auxiliary standing and temporary committees to carry out the objectives of the Bureau.

The Governing Board members, as of May 2011, and their market share rank based on their Wisconsin worker's compensation written premium volume in 2011 are as follows:

<b>Governing Board Member</b>	<b>2011 Market Share Ranking</b>
American Home Assurance Company	None*
Employers Insurance Company of Wausau	32
General Casualty Insurance Company	None*
SECURA Insurance, A Mutual Company	13
Sentry Insurance a Mutual Company	14
Society Insurance, A Mutual Company	8
The Travelers Indemnity Company	129
United Wisconsin Insurance Company	4
Employer Representative	N/A
Employer Representative	N/A

\* Zero or negative worker's compensation written premium reported in Wisconsin

Rating Committee

The Rating Committee has the authority to classify and rate all worker's compensation and employers' liability risks in Wisconsin, except employers' liability insurance on domestic servants and farm employees written in conjunction with other forms of insurance. The Rating Committee adopts rules and regulations regarding the writing of such risks and maintains a manual of rules, classifications, rates and rating plans.

Pursuant to s. 626.13, Wis. Stat., the Bureau shall file with the commissioner on behalf of its members every manual of classifications, rules and rates, every rating plan and every modification of any of them proposed for use in Wisconsin. The commissioner has final approval of rules, rates, and rating plans that govern the transactions of worker's compensation and employers' liability insurance.

The members of the Rating Committee as of May 2011, and their market share rank based on their Wisconsin worker's compensation written premium volume in 2011, are as follows:

<b>Rating Committee Member</b>	<b>2011 Market Share Ranking</b>
American Home Assurance Company	None*
Employers Insurance Company of Wausau	32
Employers Mutual Casualty Company	26
General Casualty Insurance Company	None*
Sentry Insurance a Mutual Company	14
Society Insurance, A Mutual Company	8
The Travelers Indemnity Company	129
United Wisconsin Insurance Company	4
Employer Representative	N/A
Employer Representative	N/A

\* Zero or negative worker's compensation written premium reported in Wisconsin

### Subcommittees

The Governing and Rating Committees have established several subcommittees to assist in carrying out the objectives of the Bureau. A summary of the subcommittees, their purpose, and respective members as of May 2011, are as follows:

- I. *Actuarial*: The Actuarial subcommittee ensures the selected Wisconsin ratemaking methodology, trends, expense provisions, etc., result in rate accuracy and integrity. This subcommittee reports to the Rating Committee. Its members are:

Acuity, A Mutual Insurance Company  
American Home Assurance Company  
Continental Casualty Insurance Company  
Employers Insurance Company of Wausau  
General Casualty Insurance Company  
Sentry Insurance a Mutual Company  
The Travelers Indemnity Company  
West Bend Mutual Insurance Company

- II. *Investment*: The Investment subcommittee provides general oversight and direction on matters pertaining to investment advisor performance and appropriateness of investment guidelines to ensure stability of the Pool fund surplus. This subcommittee reports to the Governing Board. Its members are:

Continental Casualty Company  
General Casualty Insurance Company  
Liberty Mutual Insurance Company  
Sentry Insurance a Mutual Company

In addition to the subcommittees listed above, the Governing Board has appointed an auxiliary standing committee to administer the Wisconsin Worker's Compensation Insurance Pool (Pool) under the supervision of the Governing Board. The Wisconsin Worker's

Compensation Insurance Pool Committee (Pool Committee) primarily exists to bring about a maximum degree of uniformity in the servicing of Pool business by allowing a regular meeting format to discuss operational problems and solutions.

The Pool Committee consists of the servicing carriers for the Pool and one or more additional members added to meet the requirement that the Pool Committee be comprised of an equal number of stock and mutual insurers. The members of the Pool Committee as of May 2011, and their market share rank based on their Wisconsin voluntary market worker's compensation written premium volume in 2011, are as follows:

<b>Pool Committee Member</b>	<b>2011 Market Share Ranking</b>
Employers Mutual Casualty Company **	26
General Casualty Insurance Company	None*
Liberty Mutual Insurance Company **	41
Middlesex Insurance Company **	37
Society Insurance, A Mutual Company **	.8
The Travelers Indemnity Company	129
Tri-State Insurance Company of MN **	None*
West Bend Mutual Insurance Company **	1

\* Zero or negative worker's compensation written premium reported in Wisconsin  
 \*\* Servicing carrier for the Pool through December 31, 2011

The examiners reviewed information provided by the Bureau about its operations, policies and procedures, the agendas and minutes for the Governing Board, Rating Committee, and Pool Committee for the period under review. The following exceptions were noted.

The examiners found the Bureau's Circular Letter 1130 dated March 21, 2011, which is published on the Bureau's Web site incorrectly identified Travelers Insurance Company instead of Travelers Indemnity Company as the member elected as the chairperson of the Rating Committee and the acting chairperson of the Pool committee. The examiners further found the Bureau identified Employers Insurance Company of Wausau and Employers Insurance of Wausau interchangeably as the same carrier (Carrier ID 15555) in published communications on its Web site. The commissioner's licensing records indicate Employers Insurance of Wausau, A Mutual Company is the former name of Employers Insurance Company

of Wausau. Section 628.34 (1) (a), Wis. Stat., states, in part, that no person licensed under chs. 600 to 646 may make or cause to be made any communication relating to any insurer that contains false or misleading information, including information that is misleading because of incompleteness.

2. **Recommendation:** It is recommended that the Bureau verify and display the current full name of Bureau members in Bureau communications that are published and/or distributed for public release and to its members in order to comply with s. 628.34 (1) (a), Wis. Stat.

### **Bureau Membership**

Section 626.03, Wis. Stat., provides that every insurer writing worker's compensation insurance is a member of the Bureau. An insurance company may be a member of the Wisconsin Compensation Rating Bureau regardless of its licensing status in Wisconsin. This is due in part to the fact that the insurer must be a member of the Bureau before the commissioner will grant the insurer the authority to write worker's compensation insurance.

The examiners compared a list of Bureau members to all insurance companies licensed to transact worker's compensation business in Wisconsin in order to verify that the Bureau has internal controls in place to ensure that all Bureau members are licensed and have the authority to write worker's compensation insurance before the Bureau accepts policies from members. No exceptions were noted.

### **Electronic Commerce**

The Bureau maintains a Web site at [www.wcrb.org](http://www.wcrb.org). The information available to the general public includes: the ability to look up classification codes, descriptions and rates; to look up the worker's compensation insurer for any Wisconsin employer as of a specific date; the ability for employers to submit an on-line application for the Wisconsin Contractors Premium Adjustment Credit (WCPAP); financial data call reporting information for insurer; a list with samples of forms approved for use in Wisconsin; copies of all of the Bureau's manuals; a rate table containing the miscellaneous rate values; the premium algorithm; the ability to download

classification code rates; a frequently asked questions area; general information about the worker's compensation system in Wisconsin; history of the Bureau; the Bureau's annual reports back to 2002; information on the Bureau Committees/Board; a list with copies of all Bureau circular letters back to 1998; a related links area; and general contact information.

The Web site also has a members-only section which requires registration for a user I.D. and password and is secured via Secure Socket Layer (SSL). The members-only section contains system programs that allow Bureau members to receive, retrieve, and transmit policy and claims data, and to access various reports, notices, and rate files. It also enables licensed agents and Wisconsin employers to submit Pool applications, tax records, and down payments electronically.

The examiners reviewed information from the Bureau regarding the Bureau's Web site and the contractual agreement between the Bureau and the Web site vendor. No exceptions were noted.

### **Policyholder Service and Complaints**

Section 626.31 (3) (a) 3., Wis. Stat., establishes a hearing process for the Bureau which states:

"The following persons or their authorized representatives shall be heard by the bureau upon written request:

1. Any insurer or employer on any matter affecting the risk in connection with a survey under sub. (2) (a);
2. Any person aggrieved by the application of the bureau's rating system to the person;
3. Any member alleging discrimination as to services or charges of the bureau; and
4. Any municipality, as defined under s. 345.05 (1) (c), or any state department or agency."

Section 626.31 (3) (b) 1., Wis. Stat., states that the Bureau shall provide a specified procedure for review of the matters under s. 626.31 (3) (a), Wis. Stat. Further, s. 626.31 (4), Wis. Stat., establishes an appeal process from the Bureau's hearing decision which states:

"The following persons or their authorized representatives may petition the commissioner in writing for review of a bureau action or decision:

1. Any member aggrieved by an apportionment of costs made by the bureau under sub. (1) (c), or by the bureau's failure to make an apportionment;
2. Any member aggrieved by discrimination in the supplying of services by the bureau;
3. Any member aggrieved by the bureau's rejection of proposed changes in or additions to its filings that would affect the member;
4. Any insurer or employer aggrieved by findings made in a survey under sub. (2) (a); and
5. Any insurer, municipality, as defined under s. 345.05 (1) (c), any state department or agency or employer aggrieved by the application of the bureau's rating system to that person or agency."

The examiners reviewed the process used by the Bureau to handle complaints, and hearings and appeals requested pursuant to s. 626.31 (3) and (4), Wis. Stat. No exceptions were noted.

#### **Bureau Operations**

The Bureau is organized into four areas of operation: Operations, Technical Services, Administrative Services and Information Technology.

The Operations area performs all activities associated with policy review including, but not limited to, data entry, quality review, proof of coverage, processing all unit statistical reports, and promulgation of all intrastate experience modifications. The issuance of Notice to Carriers (NTCs) is the primary method for notifying carriers when there are issues that are related to the quality review (i.e., Carrier Compliance). This area also works with Bureau members and data collection organizations on data reporting issues and assists in maintaining and enhancing the Bureau's computer system for internal data collection and ongoing operations.

The Technical Services area is responsible for inspections and audits of employers, administration of the Wisconsin Worker's Compensation Insurance Pool (Pool) and the Wisconsin Contractor's Premium Adjustment Program, and handling employer ownership

changes. In addition, this area serves as a technical resource for Bureau staff, members, insurance agents, and employers subject to the Worker's Compensation Act of Wisconsin.

The Administrative Services area is responsible for the finance, human resources, imaging, and general office administration. This area oversees the Bureau budget process, payroll, and the handling of all financial reporting required for administration of the Pool.

The Information Technology area is responsible for management of Bureau hardware and software for all automated systems used by the Bureau, providing Bureau staff with support for the automated applications, including maintaining existing applications, developing new applications, identifying new automated applications, and training. This area also provides application and connectivity to the Department of Workforce Development (DWD) and the Office of the Commissioner of Insurance.

The examiners reviewed the following responsibilities of the Bureau operations: policy processing and carrier compliance, rate/rule and form filings, Wisconsin Contractors Premium Adjustment Program, experience rating plan, unit statistical plan, and employer inspections and test audits as follows:

**Policy Processing and Carrier Compliance**

The Bureau's responsibilities include, among other things, maintaining and providing proof of coverage for all Wisconsin employers subject to the Worker's Compensation Act, including those employers that voluntarily agree to be subject to the Act. All insurers writing worker's compensation policies in Wisconsin are required to file policy information with the Bureau. The policy information filed with the Bureau includes new and renewal policies, change endorsements attached to policies after the policy has been issued, and notices of termination and reinstatement.

The Bureau verifies the accuracy of key information reported and checks for compliance with specific approved rules, rates, rating plans and policy contract forms. If the Bureau discovers any incorrect items or requires additional information about the policy

information or the risk being insured, it issues a mandatory or advisory Notice to Carrier (NTC) to the insurer that issued the policy. A mandatory NTC requires the insurer to promptly make the necessary corrections to the policy information and/or provide the Bureau with additional information needed to process the policy information. Insurers are required to respond to a mandatory NTC. Insurers who fail to respond to mandatory NTCs within specified timeframes are levied fines. As of 2010, all policy information filed with the Bureau, NTCs issued, and responses to NTCs are required to be submitted electronically. An advisory NTC is meant to provide information to the insurer regarding the risk insured. Members are not required to respond to an advisory NTC.

The examiners reviewed the Bureau's procedures for processing policy information, the carrier compliance processes, and the following types and number of files received by the Bureau during the period under review:

100	New Business Policies
50	Renewal Policies
100	Change Endorsements
100	Termination Notices
100	Reinstatement Notices
50	Notices To Carrier (NTCs)

The examiners also reviewed 50 policies filed with the Bureau in excess of 60 days after the policy's effective date. The following exceptions were noted:

The examiners found 5 instances where the change endorsements were not entered within the timeframes set forth in the agreement between the Bureau and DWD which requires critical endorsements to be entered within 5 business days of receipt and non-critical endorsements to be entered within 10 business days of receipt.

- 3. Recommendation:** It is recommended that the Bureau ensure all change endorsement requests are entered in accordance with the timeframes set forth in the agreement between the Bureau and the Department of Workforce Development.

### Rate/Rule and Form Filings

In accordance with s. 626.09 (1) (a), Wis. Stat., the Bureau establishes, maintains and administers the rules, regulations, classifications, rates and rating plans to govern the transaction of worker's compensation insurance in Wisconsin. Pursuant to s. 626.13, Wis. Stat., the Bureau filed the following rule and rating plan manuals with the commissioner on behalf of its members:

- *Wisconsin Worker's Compensation and Employers Liability Insurance (Basic Manual)*
- *Wisconsin Experience Rating Plan Manual for Worker's Compensation and Employers Liability Insurance (Experience Rating Manual)*
- *Retrospective Rating Plan Manual for Worker's Compensation and Employers Liability Insurance<sup>4</sup> (Retro Rating Manual)*
- *Wisconsin Statistical Plan Manual for Worker's Compensation and Employers Liability Insurance (Unit Stat Plan)*
- *Wisconsin Worker's Compensation Classification Code Manual (Class Code Manual)*
- *Wisconsin Worker's Compensation Insurance Pool Manual (Pool Handbook)*

In addition, the Bureau files all worker's compensation forms on behalf of its members to be available for use by all members. Members cannot submit form filings directly to the commissioner and cannot deviate from the Bureau's filed and approved forms.

The examiners reviewed the Bureau's manuals for compliance with Wisconsin insurance laws and regulations. The examiners also reviewed all of the form filings that were submitted by the Bureau during the review period. In addition, the examiners reviewed a list of all policy forms reported as currently being used by Bureau members for every worker's compensation policy issued during the review period in order to verify the forms have been approved for use in Wisconsin. The following exceptions were noted.

The examiners found that filed Rules I.B and I.C. in the Basic Manual address the worker's compensation policy and endorsement forms. These rules define an endorsement form

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<sup>4</sup> The Retrospective Rating Plan Manual for Workers Compensation and Employers Liability Insurance is a publication of the National Council on Compensation Insurance (NCCI) used by the Bureau with the permission of the NCCI.

as "standard and advisory endorsements contained in the Policy and Endorsement Forms Manual." It further states "With the exception of dividend filings under Section 631.51, Wis. Stats. member carriers may not submit form filings to the OCI. The WCRB will review and file all appropriate forms with the OCI on behalf of all member insurers. Only forms that have been approved by the OCI may be used in WI." The Bureau also files all worker's compensation application forms and supplemental application forms with the commissioner on behalf of its member carriers. However, the Basic Manual does not clearly specify that application forms and supplemental application forms are inclusionary in these rules. Section 631.20 (1), Wis. Stat., states, in part, that no form for worker's compensation may be used unless it has been filed with and approved by the commissioner. Section 600.03 (21), Wis. Stat., defines a "form" as a policy, group certificate, or application.

4. **Recommendation:** It is recommended that the Bureau modify the Basic Manual rules regarding form filings to clarify and specifically include application forms and supplemental application forms in order to ensure its members comply with the Bureau's filed rules and s. 631.20, Wis. Stat.

The examiners found that the Bureau filed the following forms on behalf of its members during the period of review but did not notify members of the filing and approval:

- Worker's Compensation Application (voluntary) form #ACORD 130 editions 2009/09 and 2010/05
- Additional Remarks Schedule form (an addendum to any ACORD application form) #ACORD 101 edition 2008/01
- Wisconsin Supplementary Limited Other States Coverage Request application form #ACORD 136 WI edition 2010/04

Section 631.20 (1), Wis. Stat., states, in part, that no form for worker's compensation may be used unless it has been filed with and approved by the commissioner. In addition, Rule I.C. of the Basic Manual as filed with and approved by the commissioner states, in part, that Bureau "members may not submit form filings to the OCI. The WCRB will review and file all appropriate forms with the OCI on behalf of all member insurers. Only forms that have been approved by the OCI may be used in WI."

5. **Recommendation:** It is recommended that the Bureau promptly notify its members when the Bureau has filed and received approval of any new, revised, or withdrawn forms on behalf of its members to ensure its members are aware of current forms in order to comply with s. 631.20, Wis. Stat., and the Basic Manual rule.

The examiners found that 113 distinct policy form numbers were reported to the Bureau as being used by members for Wisconsin policies which were not filed by the Bureau on behalf of its members and approved by the commissioner. Section 631.20 (1), Wis. Stat., states, in part, that no form for worker's compensation may be used unless it has been filed with and approved by the commissioner. The Bureau advised the examiners that it had allowed members to use and report unique carrier form numbers as long as the information on the form did not affect the coverage afforded. The Bureau had notified all members on April 16, 2009, that it would no longer allow unique carrier form numbers as of January 1, 2010. The computer system was also programmed to automatically identify any noncompliance by a member and to issue a Notice to Carrier.

The examiners found the filed Rule 1.h.IV. of the Pool Handbook states "If payment of any billing, including interim audit, final audit, renewal or deposit premium, or any other additional information is received after the effective date of termination, the reinstatement or renewal policy is effective as of 12:01 A.M. on the day following receipt. This may result in a lapse in coverage." (i.e., a "received date rule" for payments). In addition, the examiners found the payment procedures for two of the six servicing carriers allow a 5- or 10-day grace period to receive a late payment before incurring a lapse in coverage. The Pool advised the examiners that if a payment is received and postmarked or metered and mailed prior to the due date, the Pool uses a "mailbox rule" (i.e., "postmark date rule") for applying lapses in coverage. Section 626.13, Wis. Stat., states the Bureau must file with the commissioner on behalf of its members every manual of classifications, rules and rates, every rating plan, and every modification of any of them proposed for use in this state. The Bureau shall also file the information upon which it supports the filings. The commissioner's Bulletin dated November 13,

1990, regarding grace periods states, in part, that "reinstatement" indicates that the coverage is "reinstated" exactly as it was before termination or lapse, including the same anniversary date and without a lapse in coverage. Coverage can be "reissued" with a lapse in coverage with a new policy inception date and use of the terminology "reinstatement" with a lapse in coverage is misleading and confusing to policyholders. Section 628.34 (1) (a), Wis. Stat., states, in part, that no person licensed under chs. 600 to 646 may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer or any intermediary that contains false or misleading information, including information that is misleading because of incompleteness.

6. **Recommendation:** It is recommended that the Pool review and revise the Pool Handbook rule regarding lapses in coverage for late payments in order to avoid an unfair marketing practice as defined in s. 628.34 (1), Wis. Stat.
7. **Recommendation:** It is recommended that the Pool take the appropriate steps to ensure that consistency exists among the rule, procedures and actual reinstatement/reissue practices of the Pool servicing carriers in order to comply with s. 626.13, Wis. Stat.

The examiners found that the cover page and every page within the Basic Manual shows it is effective January 1, 2005, which is the date when the manual was originally filed with the commissioner. This effective date is not revised when changes to individual sections within the manual are made. Similarly, the Pool Handbook reflects an effective date of September 1, 2008, and the Experience Rating Manual reflects an effective date of January 1, 2005. Rule I.F.2. of the Basic Manual states, in part, "The effective date of a change in any rule, classification or rate is 12:01 A.M. on the date specified on the manual page. Any change will be issued on a reprinted page and will be designated by an asterisk (\*) and a reprint date and sequence number." The examiners found that changes to the manuals are not identified in accordance with the rule. Instead, changes to the manuals are recorded in a Summary of Changes page in the respective manual. The examiners also found changes that were made in the manual(s) which were not recorded in the Summary of Changes, changes that were made in

the manual(s) and the Summary of Changes which were not filed with the commissioner, changes that were recorded in the Summary of Changes page which did not indicate the effective date of the change and changes which were not recorded in the Summary of Changes in a timely manner. In addition, the examiners found that the Summary of Changes page is not updated timely or consistently to reflect the Wisconsin Contractors Premium Adjustment Program (WCPAP) rule changes in the manual.

Section 626.13, Wis. Stat., states the Bureau must file with the commissioner on behalf of its members every manual of classifications, rules and rates, every rating plan, and every modification of any of them proposed for use in this state. The Bureau shall also file the information upon which it supports the filings. Section 628.34 (1) (a), Wis. Stat., states, in part, that no person licensed under chs. 600 to 646 may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer or any intermediary that contains false or misleading information, including information that is misleading because of incompleteness.

8. **Recommendation:** It is recommended that the Bureau/Pool identify, clearly and in a consistent manner, the effective date of every revision to any rules contained in its manual.
9. **Recommendation:** It is recommended that the Bureau/Pool file all revisions to any rules in its manuals with the commissioner prior to making them available for use in Wisconsin by its members in order to comply with ss. 626.13 and 628.34 (1), Wis. Stat.
10. **Recommendation:** It is recommended that Rule I.F.2. of the Basic Manual reflect the actual method of identifying changes to the manual in order to comply with s. 626.13, Wis. Stat.

#### **Wisconsin Contractors Premium Adjustment Program**

The Bureau adopted, filed, and received approval from the commissioner for a Wisconsin Contractors Premium Adjustment Program (WCPAP). Under WCPAP, a premium credit is granted to employers that qualify for the program. An employer qualifies for the program if the employer's policy contains one or more contracting classification codes and has

at least 50% of its exposure or premium in the contracting classifications. Employers wishing to receive a WCPAP credit must apply to the Bureau annually. The Bureau reviews each application to determine if the employer qualifies for the program and determines the amount of the WCPAP credit to be granted.

The credit authorized by the Bureau must appear in Item 4. of the Information Page of the policy or be endorsed on the policy if the credit was not available at the time the policy was issued. At audit, the insurer shall verify the information that was submitted by the employer and used in the calculation of the credit. If the insurer discovers an error in the original request for policy credit, the revised information must be submitted to the Bureau so that the credit can be recalculated.

The examiners reviewed the Bureau's process for handling WCPAP applications and the processing of 50 employer applications for WCPAP credits received by the Bureau during the period under review. No exceptions were noted.

### **Experience Rating Plan**

Section 626.12 (2), Wis. Stat., provides that risks may be classified in any reasonable way for the establishment of rates and minimum premiums. In addition, this section allows classification rates to be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. The Bureau has filed the *Wisconsin Experience Rating Plan Manual for Worker's Compensation and Employers Liability Insurance* (Experience Rating Manual) with the commissioner for use in Wisconsin.

The application of the Experience Rating Manual is a mandatory experience rating plan for all eligible employers. An employer becomes eligible for experience rating if the remuneration developed during the experience period produced enough premium to meet the eligibility threshold. As of October 1, 2011, an employer would qualify for experience rating if the remuneration developed during the last year or last two years of the experience period

produced a premium of at least \$13,500 or if remuneration developed during the experience period of more than two years produced an average annual premium of at least \$6,750.

The examiners reviewed the Bureau's process for promulgating experience rating modification factors and the Experience Rating Manual for compliance with Wisconsin insurance laws and regulations. In addition, the examiners reviewed the Bureau's processing of 50 risks where an experience rating factor was promulgated during the period under review. Exceptions related to the Experience Rating Manual are included in the Rate/Rule and Form Filing area of the Bureau Operations section. Otherwise, no exceptions were noted.

#### Unit Statistical Plan

Pursuant to s. 626.09 (1), Wis. Stat., the purposes of the Bureau include, but are not limited to, establishing, maintaining and administering the rates and rating plans for worker's compensation insurance in Wisconsin, cooperating with other rate service organizations and insurers in the development of the rates and rating plans and to secure and analyze statistical and other data required to accomplish these purposes. In order to accomplish these purposes, the Bureau has filed the *Wisconsin Statistical Plan Manual for Worker's Compensation and Employers Liability Insurance* (Unit Stat Plan) with the commissioner for use in Wisconsin and in accordance with s. 626.32, Wis. Stat., it shall be used by the Bureau and its members in recording and reporting of Wisconsin loss and country-wide expense experience for Wisconsin worker's compensation insurance.

The examiners reviewed the Bureau's processes for handling processing unit statistical cards and the Unit Stat Plan for compliance with Wisconsin insurance laws and regulations. The examiners also reviewed 50 Unit Stat Report (USR) files that were rejected or delinquent in addition to reports related to the activity of rejected or delinquent USRs for each member of the Bureau. Exceptions related to the Unit Stat Plan manual are included in the Rate/Rule and Form Filing area of the Bureau Operations section. Otherwise, no exceptions were noted.

### Employer Inspections and Test Audits

Pursuant to s. 626.09 (1) (d), Wis. Stat., a purpose of the Bureau is to inspect and classify risks. In addition, s. 626.32 (2), Wis. Stat., provides that the Bureau shall assign each compensation risk to its proper class, and its classification shall be used by all insurers writing worker's compensation insurance. This section also provides that on behalf of all members the Bureau shall inspect and make a written survey of compensation risks to determine their proper classifications, maintain a record of its classification of risks and the written surveys of all risks inspected by it showing such facts as are material in the writing of worker's compensation insurance.

To accomplish this purpose and to comply with s. 626.32 (2), Wis. Stat., the Bureau employs individuals who conduct inspections of employer operations to determine the proper classification or classifications for the risk and prepare written reports summarizing the findings.

In addition, the objectives of the Bureau in their bylaws include, but are not limited to, conducting test audits upon request, or as deemed necessary by WCRB staff, to verify accuracy of members' policy auditing procedures.

The examiners reviewed information provided by the Bureau regarding its employer inspection and test audit programs and the processing of 50 inspections completed by the Bureau during the period under review. The Bureau did not receive any test audit requests during the period under review. No exceptions were noted.

### **Wisconsin Worker's Compensation Insurance Pool**

The Wisconsin Worker's Compensation Insurance Pool (Pool) is a risk-sharing plan continued under the provisions of s. 619.01 (6), Wis. Stat., to provide worker's compensation insurance to any Wisconsin employer who is unable to obtain coverage in the open market and who is, in good faith, entitled to such insurance. The Bureau administers the Pool and is the trustee for the Wisconsin Worker's Compensation Insurance Pool Fund (Pool Fund).

All members of the Bureau must participate in the Pool. They are represented by a select number of members that have been designated as "servicing carriers." Until the end of 2011, there were six servicing carriers. As of January 1, 2012, there are four servicing carriers. The servicing carriers issue policies in their own name and provide claims, loss control, auditing, and other services to employers whose policy has been issued on behalf of the Pool.

Bureau members share the premiums earned and the losses paid under the Pool in direct proportion to their direct Wisconsin worker's compensation insurance premium writings. Prior to 2012, the servicing carriers retained 30% of the adjusted written premiums for the expenses of servicing the risks insured through the Pool. As of 2012, this amount is established through a sealed bid process and differs by servicing carrier. The remaining premiums go into the Pool Fund for the payment of losses.

The examiners reviewed information provided by the Bureau about the operations of the Pool and the servicing carriers related to their handling of Pool risks. In addition, the examiners reviewed the following operations of the Pool: new business processing, *Wisconsin Worker's Compensation Insurance Pool Manual* (Pool Handbook), and servicing carrier agreements as follows.

#### **Pool New Business**

The examiners reviewed the Pool's procedures for processing applications to the Pool and 50 new business applications submitted to the Pool during the period under review. No exceptions were noted.

#### **Pool Handbook**

Pursuant to s. 626.13, Wis. Stat., the Bureau is required to file the Pool Handbook and all modifications to it with the commissioner on behalf of the Pool. The Pool Handbook is a supplement to the rates and rule manuals filed for the voluntary market.

The examiners reviewed the Pool Handbook for compliance with Wisconsin insurance laws and regulations. Exceptions related to the Pool Handbook are included in the Rate/Rule and Form Filing area of the Bureau Operations section.

**Pool Servicing Carriers**

The examiners reviewed servicing carrier agreements and interrogatory responses related to the handling of Pool risks that were provided by the servicing carriers at the request of the examiners. The following exceptions were noted.

The examiners found that the procedure manual for one servicing carrier states that a notice of nonrenewal will be sent 35 days prior to the expiration date. The servicing carrier reported that it has never actually nonrenewed a Pool policy. Section Ins 21.01 (6), Wis. Adm. Code, provides that "a policyholder has a right to have the worker's compensation policy renewed, on the terms then being applied by the insurer to similar risks, for an additional period of time equivalent to the expiring term if the agreed term is 1 year or less, or for 1 year if the term is longer than 1 year, unless at least 60 days prior to the date of expiration provided in the policy a notice of intention not to renew the policy beyond the agreed expiration date is mailed or delivered to the policyholder, or with respect to failure timely to pay a renewal premium a notice is given, not more than 75 days nor less than 30 days prior to the due date of the premium, which states clearly the effect of nonpayment of premium by the due date."

11. **Recommendation:** It is recommended that the Pool direct the servicing carriers to review, revise, and implement nonrenewal procedures accordingly in order to ensure compliance with s. Ins 21.01 (6), Wis. Adm. Code.

#### IV. CONCLUSION

A total of 11 recommendations were made as a result of this targeted examination relating to the Bureau's need to modify certain management and processing procedures along with certain Bureau and Pool procedures and rules.

The Bureau must ensure that it promptly notifies its members when it has filed and received approval of any new, revised, or withdrawn forms on behalf of its members to ensure its members are aware of current forms in order to comply with s. 631.20, Wis. Stat., and the Basic Manual rule. Furthermore, the Bureau must take steps to clearly identify when revisions are made to the rules, to help ensure that its members are abiding by the rules that govern worker's compensation insurance, and that any and all such revisions are filed with OCI prior to making them available for use in Wisconsin.

The Bureau must also take steps to ensure that the full name of its members is used in communications to ensure compliance with s. 628.34 (1) (a), Wis. Stat. In addition, the Bureau must take steps to clarify its procedures and manuals to ensure that the provisions contained in the procedures and manuals are consistent and comply with applicable insurance laws.

The Pool must take the appropriate steps to help ensure that consistency exists among the rules, procedures, and actual practices of its servicing carriers in order to comply with the rules that govern worker's compensation and other applicable insurance laws.

## V. SUMMARY OF RECOMMENDATIONS

### Organization and Management

- Page 07 1. It is recommended that, when a member has not returned a signed copy of the most current version of the bylaws within a reasonable period of time, the Bureau follow up with the member to obtain a signed copy in order to ensure that all members accept the obligations of membership in the Bureau as defined by the current version of the bylaws.
- Page 12 2. It is recommended that the Bureau verify and display the current full name of Bureau members in Bureau communications that are published and/or distributed for public release and to its members in order to comply with s. 628.34 (1) (a), Wis. Stat.

### Bureau Operations

- Page 16 3. It is recommended that the Bureau ensure all change endorsement requests are entered in accordance with the timeframes set forth in the agreement between the Bureau and the Department of Workforce Development.
- Page 18 4. It is recommended that the Bureau modify the Basic Manual rules regarding form filings to clarify and specifically include application forms and supplemental application forms in order to ensure its members comply with the Bureau's filed rules and s. 631.20, Wis. Stat.
- Page 19 5. It is recommended that the Bureau promptly notify its members when the Bureau has filed and received approval of any new, revised, or withdrawn forms on behalf of its members to ensure its members are aware of current forms in order to comply with s. 631.20, Wis. Stat., and the Basic Manual rule.
- Page 20 6. It is recommended that the Pool review and revise the Pool Handbook rule regarding lapses in coverage for late payments in order to avoid an unfair marketing practice as defined in s. 628.34 (1), Wis. Stat.
- Page 20 7. It is recommended that the Pool take the appropriate steps to ensure that consistency exists among the rule, procedures and actual reinstatement/reissue practices of the Pool servicing carriers in order to comply with s. 626.13, Wis. Stat.
- Page 21 8. It is recommended that the Bureau/Pool identify, clearly and in a consistent manner, the effective date of every revision to any rules contained in its manual.
- Page 21 9. It is recommended that the Bureau/Pool file all revisions to any rules in its manuals with the commissioner prior to making them available for use in Wisconsin by its members in order to comply with ss. 626.13 and 628.34 (1), Wis. Stat.

Page 21 10. It is recommended that Rule I.F.2. of the Basic Manual reflect the actual method of identifying changes to the manual in order to comply with s. 626.13, Wis. Stat.

**Wisconsin Worker's Compensation Insurance Pool**

Page 26 11. It is recommended that the Pool direct the servicing carriers to review, revise, and implement nonrenewal procedures accordingly in order to ensure compliance with s. Ins 21:01 (6), Wis. Adm. Code.

## VI. ACKNOWLEDGMENT

The courtesy and cooperation extended to the examiners during the course of the examination by the officers and employees of the Bureau 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.

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Respectfully submitted,



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