



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor  
Theodore K Nickel, Commissioner

Wisconsin.gov

125 South Webster • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 266-3585 • Fax: (608) 266-9935  
E-Mail: [information@oci.state.wi.us](mailto:information@oci.state.wi.us)  
Web Address: [oci.wi.gov](http://oci.wi.gov)


Notice of Adoption and Filing of Examination Report

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

ACUITY, A MUTUAL INSURANCE COMPANY  
2800 S TAYLOR DR  
SHEBOYGAN WI 53081-8470

dated May 4, 2012, and served upon the company on July 23, 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 21st day of May, 2014.

  
Theodore K. Nickel  
Commissioner of Insurance

**STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE**

**MARKET CONDUCT EXAMINATION**

**OF**

**ACUITY, A MUTUAL INSURANCE COMPANY  
SHEBOYGAN, WISCONSIN**

**APRIL 23-MAY 4, 2012**

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May 4, 2012

Bureau of Market Regulation  
125 South Webster • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
(608) 286-3585 • (800) 236-8517 (WI Only)  
E-Mail: [ocicomplaints@wisconsin.gov](mailto:ocicomplaints@wisconsin.gov)  
Web Address: [oci.wi.gov](http://oci.wi.gov)

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

Commissioner:

Pursuant to your instructions and authorization, a targeted market conduct examination was conducted April 23 to May 4, 2012, of:

ACUITY, A MUTUAL INSURANCE COMPANY  
Sheboygan, Wisconsin

and the following report of the examination is respectfully submitted.

## I. INTRODUCTION

Acuity, A Mutual Insurance Company (hereafter referred to as the company) was founded in 1925 and headquartered in Sheboygan County, Wisconsin. At that time it was known as the "Mutual Auto Insurance Company of the Town of Herman." The company moved from a rural area of Sheboygan County to the city of Sheboygan in 1960. The company became known as ACUITY, A Mutual Insurance Company in 2001. The company opened a \$39 million addition to its headquarters in 2004. This addition added 262,000 square feet to the facility. It should be noted that the company was known as Heritage Mutual Insurance Company until it changed its name to Acuity, A Mutual Insurance Company in 2001.

The following table summarizes the states and jurisdictions where the company was licensed to write during 2010 and 2011:

**Licensed States and Jurisdictions in 2010 and 2011:**

Alabama	Illinois	Mississippi	Oregon	Washington
Arkansas	Indiana	Montana	Pennsylvania	Wisconsin
Arizona	Kansas	North Dakota	South Dakota	West Virginia
Colorado	Kentucky	Nebraska	Tennessee	Wyoming
Delaware	Maine	New Mexico	Texas	
Georgia	Michigan	Nevada	Utah	
Iowa	Minnesota	Ohio	Virginia	
Idaho	Missouri	Oklahoma	Vermont	

In 2010 the company reported written premium in Arizona, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Utah and Wisconsin. The following table summarizes the total direct national premium written in 2010 and 2011 as compared to the total direct premium written in Wisconsin. As indicated below, the percentage remains virtually unchanged from 2010 to 2011.

**National Direct Premium Written to Wisconsin Direct Premium Written:**

	<b>Wisconsin Direct Premium Written</b>	<b>Total Direct Premium Written</b>	<b>Wisconsin as a Percentage of the National Premium</b>
2010	\$298,124,393	\$776,693,232	38.40%
2011	305,315,443	839,592,267	36.36%

The majority of the premium earned by the company in 2011 was in its worker's compensation division while the second largest majority was in its personal passenger automobile sector.

The following tables summarize the premium earned and incurred losses in Wisconsin for 2010 and 2011 broken down by line of business.

### Wisconsin Direct Premium and Loss Summary

2011				
Line of Business	Premium Earned	% of WI Total	Losses Incurred	Pure Loss Ratio
Fire & Allied Lines	\$ 10,693,838	4%	\$ 4,622,804	43%
Homeowner's/Farmowner's	40,003,279	13	29,442,575	74
Commercial Multiple Peril	16,604,101	5	8,629,660	52
Worker's Compensation	77,769,786	26	34,653,198	45
Private Passenger Auto	89,738,930	30	51,482,471	57
Commercial Auto	34,136,208	11	22,079,080	65
All Others	33,530,644	11	9,238,311	28
<b>Total</b>	<b>\$302,476,786</b>		<b>\$160,148,099</b>	<b>53%</b>

2010				
Line of Business	Premium Earned	% of WI Total	Losses Incurred	Pure Loss Ratio
Fire & Allied Lines	\$ 10,620,972	4%	\$ 4,487,406	42%
Homeowner's/Farmowner's	37,270,031	13	29,265,328	79
Commercial Multiple Peril	16,601,047	6	11,152,769	67
Worker's Compensation	72,342,665	25	40,578,798	56
Private Passenger Auto	89,945,417	31	54,096,445	60
Commercial Auto	34,584,315	12	16,008,106	46
All Others	33,405,288	11	(486,313)	-1
<b>Total</b>	<b>\$294,769,735</b>		<b>\$155,102,539</b>	<b>53%</b>

In 2010, the company ranked as the 5<sup>th</sup> largest writer of private passenger automobile insurance in Wisconsin with a 3.8% market share. In addition, the company ranked as the 3<sup>rd</sup> largest writer of homeowner's insurance in Wisconsin with a 3.8% market share.

The Office of the Commissioner of Insurance (OCI) received 79 complaints against the company between January 1, 2010, through December 31, 2011. A complaint is defined as "a written communication received by the Commissioner's Office that indicates dissatisfaction with an insurance company or agent."

The total number of complaints received in 2011 (48) increased by 55% from the number of complaints received in 2010 (31). The company received the majority of its complaints in its homeowner's line of business in 2010, while in 2011 the greatest number of complaints was in its auto line of business. Claims complaints were the most common type of

complaint received against the company for both years of the period under review in both the automobile and home divisions.

The following table categorizes the complaints received against the company by type of policy and complaint reason. There may be more than one type of coverage and/or reason for each complaint.

### Complaints Received

Reason Type Coverage Type	2010				
	Underwriting No.	Marketing and Sales No.	Claims No.	Policyholder Service No.	Other No.
Personal Auto		1	5	1	
Commercial Vehicle					
Commercial Property and Liability	2		3	1	
Homeowner's/Farmowner's Commercial Liability	2	1	10	1	
Worker's Compensation			4		
Fidelity and Surety					
All Others					
<b>Total</b>	<b>4</b>	<b>2</b>	<b>22</b>	<b>3</b>	

Reason Type Coverage Type	2011				
	Underwriting No.	Marketing and Sales No.	Claims No.	Policyholder Service No.	Other No.
Personal Auto	3		16	2	
Commercial Vehicle			3	1	
Commercial Property and Liability		2	5		
Homeowner's/Farmowner's Commercial Liability	3		5	1	
Worker's Compensation		2	1		
Fidelity and Surety					
All Others					
<b>Total</b>	<b>6</b>	<b>4</b>	<b>34</b>	<b>4</b>	

### E-Commerce

The Web site for the company is acuity.com. The Web site is interactive in certain respects; namely, an insured is able to pay premiums directly via the Web site, and prospective applicants are able to enter their zip codes in order to find a producer in their area who services the company. To pay premiums online a policyholder may provide an ID and password. If the

policyholder does not have that information they may provide their zip code, policy number and agency code, which are all found on their payment invoices to access the Web site. Visitors to the Web site are unable to obtain an online quote or apply for a policy. Current insureds are able to submit a claim online by using their company-issued ID and password. Claim reporting via the company's Web site is accessible for third-party claimants when they enter into the appropriate claims Web page such general information as name, e-mail address, date of loss, description of loss and personal contact information.



## II. PURPOSE AND SCOPE

A targeted examination was conducted to determine whether the company's practices and procedures comply with the Wisconsin insurance statutes and rules. The examination focused on the period from July 1, 2010, through December 31, 2011. In addition, the examination 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 private passenger automobile and homeowner's business in Wisconsin and included a review of company operations and management, marketing and sales, policyholder service and complaints, underwriting, claims, and policy forms.

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

### III. CURRENT EXAMINATION FINDINGS

#### Claims

All claims are reported into the company's call center where customer service representatives record and enter the claims information. The representatives then assign the claims to one of the company's adjusters based on the location, severity and type of claim.

The examiners randomly selected and reviewed 300 closed homeowner's and private passenger automobile claims files. Of these claims 100 were paid homeowner's claims, 100 were paid private passenger automobile claims, 50 were homeowner's claims closed without payment, and 50 were private passenger automobile claims closed without payment. The company's claims handling practices and procedures were also reviewed.

The examiners found eight files in which the company did not mail a written claim denial after a verbal denial was given and five files in which a written follow up was not sent to the insured after the decision was made by the insured to not submit the claim or to submit the claim to the adverse carrier. The company's claims handling procedures require that a written claim denial letter follow up a verbal denial. In addition, s. Ins. 6.11 (3) (a) 7., Wis. Adm. Code, states insurers must not, as a business practice, fail to affirm or deny coverage of claims within a reasonable time frame.

1. **Recommendation:** It is recommended that the company send a written reminder to all claims handling personnel instructing them to send a written claim denial letter after verbally denying a claim in order to ensure compliance with the company's claim handling procedures and avoid the unfair claim settlement practice described in s. Ins. 6.11 (3) (a) 7., Wis. Adm. Code.

#### Company Operations and Management

The organization of the company is set up with a board of directors at the top and a president and CEO under them. In the third rung of the company's organizational chart are ten vice presidents who oversee the following divisions of operation: Finance, Claims, Services & Administration, Enterprise Technology, Human Resources, Sales & Communications,

Commercial Lines, Marketing & Personal Lines, Actuarial, and Business Consulting. Certain managers and directors are second in command to the vice presidents. Internal audits of the company are conducted by its Internal Audit Department. Each year this department puts together an audit plan for the upcoming year based on the annual risk assessment. No exceptions were noted.

### **Policy Forms and Rates**

The company provides coverage to its policyholders using independently filed company policy forms and endorsements. The examiners selected and reviewed 40 private passenger automobile forms and 104 homeowner's forms currently used by the company in Wisconsin in order to verify that the provision of the policy forms comply with the Wisconsin insurance laws. In addition, the examiners reviewed the policy forms used by the company during the period of review to verify that they have been approved for use in Wisconsin.

The examiners were unable to verify through a form number search in OCI's records that four forms were filed with OCI. However, the company was able to provide documentation of the filing submission page and the certificate of compliance with an OCI form filing approval stamp. Subsequent to fieldwork these forms are no longer being used.

### **Marketing and Sales**

The company's marketing is primarily directed through their independent agents. The focus is to create sales by motivating the agents with different themes and sales contests. The company does not market directly to consumers. No exceptions were noted.

### **Underwriting and Rating**

The company receives new business applications solely from independent producers and has no field underwriting process. Essentially all of the company's business is submitted electronically through its Rating and Submission System. When a producer uploads an application, the system gives the agent submission instructions informing the producer of any forms that may require special handling. The company indicates that the online system

prohibits a person from entering an application without completing the producer field and only licensed and appointed persons have a login/password for the system. A customer service representative (CSR) can enter application information on behalf of a producer. When the CSR is logged in, the system identifies them as the writing producer unless the CSR changes the name field to the actual writing producer.

The examiners randomly selected and reviewed 200 new business personal lines underwriting files (100 private passenger automobile and 100 homeowner's) and 200 personal lines termination files (100 private passenger automobile and 100 homeowner's) in order to verify that the issuance and termination of policies comply with the Wisconsin insurance laws and regulations.

The examiners found that none of the online files contained an image or copy of a signed application; however, the online new business files did contain a field for the producer writing the account. Because the online files did not contain an image or copy of a signed application, the examiners requested a hard-copy application of 25 randomly selected files from the full sample. Of these 25, the examiners found 6 files in which the producer who signed the hard-copy application was not the person listed on the company database as the writing producer. The examiners found 1 file where the term "Allied Conversion" was listed under producer name in the company database rather than the name of the producer writing the account. The examiners also found 2 files in which the signature line of the hard-copy application was blank and no other information was contained in the application that identified the producer submitting the business.

The company indicated they did not have written procedures for licensed producers and CSRs to follow when entering the information in the company's database. In addition, section 628.03 (1), Wis. Stat., states in part that no natural person may perform, offer to perform, or advertise any service as an intermediary in the state unless the natural person obtains the license. While it appears that these findings were clerical in nature and a licensed

producer was identifiable from the files, the company's database did not contain the correct licensed producer.

- 2. Recommendation:** It is recommended that the company develop, document and implement procedures to ensure the correct producer is entered into the system and remind producers of the importance that the system reflect the actual producer in order to ensure compliance with s. 628.03 (1), Wis. Stat.

The examiners found one automobile policy that was cancelled at the insured's request in which the company calculated the refund using a short-rate calculation. In processing this cancellation the company failed to provide the policyholder with a separate written notice that the policyholder may pay a penalty if the policyholder cancels the policy prior to the expiration date. Section Ins 6.10 (4) (b), Wis. Adm. Code, requires in any policy under which an insurer may return a premium that is less than the pro rata unearned premium, the insurer shall provide the policyholder with a separate written notice that the policyholder may pay a substantial penalty if the policyholder cancels the policy prior to the expiration date. The notice must be provided either on the application, on the declarations, or in a separate notice provided to the insured/applicant.

The examiners also found the following inconsistencies involving the company's refund calculation when an insured requests cancellation:

- The company's filed Rate and Rule Manual, the Cancellations, rules for personal auto, homeowner's and Road & Residence allow for short-rate refund if the insured requests cancellation.
- The language in the company's filed policy forms for personal auto, homeowner's and Road & Residence which allows for a short-rate refund.
- The company's Agent's Manual, under the Cancellation section, states if the policyholder requests cancellation, the company will compute the return premium at .90 of the pro rata unearned premium (short-rate).
- The company's written procedure for Insured's Request For Termination states that terminations are done on a pro-rated basis.
- A statement by the company to the examiners that they do not short-rate cancel at this time.

Section 625.13 (1), Wis. Stat., requires that insurers file all rates and supplementary rate information within 30 days after they become effective. The company's procedures should be revised to only allow for pro-rata cancellation as it is stated they do no short-rate at this time.

- 3. Recommendation:** It is recommended that the company revise its agent manual to reflect its current process and to comply with their filed rates/rules/forms pursuant to s. 625.13 (1), Wis. Stat.

The examiners found that the company's notice of policy nonrenewal included an obsolete address for the Wisconsin Automobile Insurance Plan. Section 631.36 (7) (a) 2., Wis. Stat., provides that no notice of cancellation or nonrenewal required under s. 632.31 (2) (b) or (4), Wis. Stat., is effective unless the notice contains adequate instructions to the policyholder for applying for insurance through a risk-sharing plan under ch. 619, Wis. Stat., for the kind of coverage being cancelled or nonrenewed.

- 4. Recommendation:** It is recommended that the company develop, document and implement procedures to ensure that all notices of nonrenewal or cancellation provide adequate instructions to the policyholder for applying for insurance through the Wisconsin Automobile Insurance Plan in order to comply with s. 631.36 (7) (a) 2., Wis. Stat.

During the review of the automobile new business files the examiners found two files in which the company or the producer did not retain a full and legible application for insurance. Section Ins 6.80 (4) (b), Wis. Adm. Code, provides that the records of insurance company operations and other financial records reasonably related to insurance operations for the preceding three years shall be maintained and be available to the Commissioner.

- 5. Recommendation:** It is recommended that the company develop, document and implement procedures to ensure that a complete and legible copy of the signed application is retained as a record in order to comply with s. Ins 6.80 (4) (b), Wis. Adm. Code.

#### IV. CONCLUSION

A total of five recommendations were made as a result of this examination relating to the company's need to modify underwriting and rating, claims and policy forms and rates.

The company should ensure compliance with their claims handling procedures and provide a written reminder to claim staff that they need to send a written claim denial after verbally denying a claim.

The company needs to implement a procedure to verify that producers writing business can be documented in the company's database. In addition, the company should revise its procedures to comply with its process for insured-requested cancellations. The company must develop and document procedures to ensure termination notices contain adequate instructions for applying to the residual market insurer. Lastly, the company needs to develop a procedure that ensures a legible copy of each signed application is retained as a record.

## V. SUMMARY OF RECOMMENDATIONS

### Claims

- Page 7 1. It is recommended that the company send a written reminder to all claims handling personnel instructing them to send a written claim denial letter after verbally denying a claim in order to ensure compliance with the company's claim handling procedures and avoid the unfair claim settlement practice described in s. Ins. 6.11 (3) (a) 7., Wis. Adm. Code.

### Underwriting and Rating

- Page 10 2. It is recommended that the company develop, document and implement procedures to ensure the correct producer is entered into the system and remind producers of the importance that the system reflect the actual producer in order to ensure compliance with s. 628.03 (1), Wis. Stat.
- Page 11 3. It is recommended that the company revise its agent manual to reflect its current process and to comply with their filed rates/rules/forms pursuant to s. 625.13 (1), Wis. Stat.
- Page 11 4. It is recommended that the company develop, document and implement procedures to ensure that all notices of nonrenewal or cancellation provide adequate instructions to the policyholder for applying for insurance through the Wisconsin Automobile Insurance Plan in order to comply with s. 631.36 (7) (a) 2., Wis. Stat.
- Page 11 5. It is recommended that the company develop, document and implement procedures to ensure that a complete and legible copy of the signed application is retained as a record in order to comply with s. Ins 6.80 (4) (b), 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 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.

Name	Title
Karen Becker, MCM	Insurance Examiner
Rebecca Rebholz	Insurance Examiner
Gary Morris	Insurance Examiner
Pam Johnson, AIS	Insurance Examiner
Katherine Otis, MCM	Insurance Examiner

Respectfully submitted,



Drew Hunkins, MCM  
Examiner-in-Charge