

DEPARTMENT OF COMMERCE & INSURANCE

P.O. Box 690, Jefferson City, Mo. 65102-0690

In Re:

BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY (NAIC # 20044))
Market Conduct Examination No. 352802)

ORDER OF THE DIRECTOR

NOW, on this 11th day of September, 2023, Director, Chlora Lindley-Myers, after consideration and review of the market conduct examination report of Berkshire Hathaway Homestate Insurance Company (hereinafter “BHHIC”), examination report number #352802, prepared and submitted by the Division of Insurance Market Regulation (hereinafter “Division”) pursuant to §374.205.3(3)(a)¹, does hereby adopt such report as filed. After consideration and review of the Stipulation of Settlement and Voluntary Forfeiture (“Stipulation”), relating to the market conduct examination #352802, the examination report, relevant work papers, and any written submissions or rebuttals, the findings and conclusions of such report are deemed to be the Director’s findings and conclusions accompanying this order pursuant to §374.205.3(4). The Director does hereby issue the following orders:

This order, issued pursuant to §374.205.3(4) and §374.046.15. RSMo, is in the public interest.

IT IS THEREFORE ORDERED that BHHIC and the Division having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

¹ All references, unless otherwise noted, are to Revised Statutes of Missouri 2016.

IT IS FURTHER ORDERED that BHHIC shall not engage in any of the violations of statutes and regulations set forth in the Stipulation, shall implement procedures to place it in full compliance with the requirements in the Stipulation and the statutes and regulations of the State of Missouri, and to maintain those corrective actions at all times, and shall fully comply with all terms of the Stipulation.

IT IS FURTHER ORDERED that BHHIC shall pay, and the Department of Commerce and Insurance, State of Missouri, shall accept, the Voluntary Forfeiture of \$19,250.00, payable to the Missouri State School Fund.

IT IS SO ORDERED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 11th day of September, 2023.



Chlora Lindley-Myers

Chlora Lindley-Myers
Director

**IN THE DEPARTMENT OF COMMERCE AND INSURANCE
STATE OF MISSOURI**

In Re:)
)
BERKSHIRE HATHAWAY HOMESTATE) Market Conduct Examination No. 352802
INSURANCE COMPANY (NAIC # 20044))

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter the “Division”), and Berkshire Hathaway Homestate Insurance Company (NAIC #352802) (hereinafter “BHHIC”), as follows:

WHEREAS, the Division is a unit of the Missouri Department of Commerce and Insurance (hereinafter the “Department”), an agency of the State of Missouri, created and established for administering and enforcing all laws in relation to insurance companies doing business in the State of Missouri;

WHEREAS, BHHIC has been granted a certificate of authority to transact the business of insurance in the State of Missouri;

WHEREAS, the Division conducted a market conduct examination of BHHIC, Examination No. 352802; and

WHEREAS, based on the market conduct examination of BHHIC the Division alleges that:

1. In 12 instances, BHHIC did not properly utilize its filed rates, rules or classifications in violation of §379.321¹ and 20 CSR 500-4.100 (1) and (6).

2. In 13 instances, BHHIC omitted to clearly disclose at renewal the relationship between the Stated Value of a vehicle and the premium charged for the coverage in violation of §375.936 (6) (a) and §375.934.

¹ All statutory references, unless otherwise noted, are to the 2016 Revised Statutes of Missouri, as amended.

3. In eight instances, BHHIC did not maintain sufficient documentation to support schedule rating modifications in violation of §374.205.2 (2), 20 CSR 500-4.100 (7) (D) and 20 CSR 100-8.040 (3) (A).

4. BHHIC charged higher rates for collision coverage to insureds that selected comprehensive coverage instead of specified causes of loss coverage in violation of §379.889 and 20 CSR 500-4.100.

5. In one instance, BHHIC did not send a 45 day letter to the insured setting forth the reasons additional time was needed for investigation implicating the provisions of §375.1007 (3) and in violation of 20 CSR 100-1.050 (1) (C).

6. In two instances, BHHIC did not provide an appropriate reply within 10 working days to a communication regarding a subrogation demand implicating the provisions of §375.1007 (2) and in violation of 20 CSR 100-1.030 (1) (B).

7. In five instances, BHHIC did not effectuate a fair and equitable settlement of a claim or did not adopt and implement reasonable standards for the settlement of a claim, in violation of §375.1007 (3), §375.1007 (4), §375.1005 and 20 CSR 100-1.050.

WHEREAS, the Division and BHHIC have agreed to resolve the issues raised in the market conduct investigation as follows:

A. **Scope of Agreement.** This Stipulation of Settlement and Voluntary Forfeiture (hereinafter “Stipulation”) embodies the entire agreement and understanding of the signatories with respect to the subject matter contained herein. The signatories hereby declare and represent that no promise, inducement or agreement not herein expressed has been made, and acknowledge that the terms and conditions of this agreement are contractual and not a mere recital.

B. **Remedial Action.** BHHIC agrees to take remedial action bringing it into compliance

with the statutes and regulations of Missouri and agrees to maintain those remedial actions at all times. Such remedial actions shall include the following:

1. BHHIC agrees that it will apply the anti-lock brake discount to all vehicles that include anti-lock brakes and the airbag discount to all vehicles that include airbags.

2. BHHIC agrees to utilize only filed rates and rules in its underwriting of commercial auto policies in Missouri.

3. BHHIC agrees to revise its written notices to commercial insureds at renewal to clearly delineate to the insured that a reduction in the Stated Value amount of the vehicle due to depreciation or other factors may result in a reduction of premium. BHHIC further agrees to submit the revised written notice to the Division for review and approval prior to use.

4. BHHIC agrees to maintain documentation supporting schedule rating credits or debits in its policy file, and to apply the credits or debits based only on the documentation contained in the file at the time the debit or credit is applied.

5. BHHIC agrees to review all commercial auto policies from June 21, 2020 to the date of the Order approving this Stipulation to determine if the rating factor contained in Rule 17A of its Commercial Auto Manual was applied to collision coverage. If the rating factor was applied, BHHIC will refund the difference between the premium without application of the rating factor and with application of the rating factor. Interest, calculated pursuant to §374.191, will be included with the refund. A letter will be included indicating that as a result of a Missouri Market Conduct Examination it was discovered that a premium refund was owed to the insured.

6. BHHIC agrees to review all commercial auto policies from June 21, 2020 to the date of the Order approving this Stipulation to determine if any policyholders should have qualified for an anti-lock brake discount. If a policyholder should have qualified for an anti-lock brake

discount, BHHIC will refund the difference between the premium charged without the discount and the premium that would have been charged if the discount had been applied. Interest, calculated pursuant to section 374.191, will be included with the refund. A letter will be included indicating that as a result of a Missouri Market Conduct Examination it was discovered that a premium refund was owed to the insured.

7. BHHIC agrees to review all commercial auto policies from June 21, 2020 to the date of the Order approving this Stipulation to determine if any policyholders should have qualified for an airbag discount. If a policyholder should have qualified for an airbag discount, BHHIC will refund the difference between the premium charged without the discount and the premium that would have been charged if the discount had been applied. Interest, calculated pursuant to section 374.191, will be included with the refund. A letter will be included indicating that as a result of a Missouri Market Conduct Examination it was discovered that a premium refund was owed to the insured.

8. BHHIC agrees to review all commercial auto policies from June 21, 2020 to the date of the Order approving this Stipulation to determine if any policyholders would have qualified for the loss-free discount by being loss-free with any insurance carrier for at least nine months. If a policyholder should have qualified for the discount, BHHIC will refund the difference between the premium charged without the discount and the premium that would have been charged if the discount had been applied. Interest, calculated pursuant to §374.191, will be included with the refund. A letter will be included indicating that as a result of a Missouri Market Conduct Examination it was discovered that a premium refund was owed to the insured.

9. BHHIC agrees to reimburse all claimants for premium overcharges or claim underpayments identified in the exam report which have not already been reimbursed. Payment of

interest, pursuant to §374.191 will be included. A letter will be included indicating that as a result of a Missouri Market Conduct Examination it was discovered that additional payments were owed on the claim.

10. BHHIC has provided the Division with an attestation affirming that it has not contested in connection with a claim any warranty, representation or condition contained in any application for commercial auto insurance coverage not containing a signature of the applicant since January 1, 2017. BHHIC agrees that it will not contest in connection with a claim any warranty, representation or condition contained in the application for a commercial auto policy not containing a signature of the applicant.

C. **Compliance.** BHHIC agrees to file documentation pursuant to section 374.205 with the Division, in a format acceptable to the Division, within 90 days of the entry of an Order approving this Stipulation, of any remedial action taken to implement compliance with the terms of this Stipulation, including documentation of any refund or claim payments made to insureds.

D. **Voluntary Forfeiture.** BHHIC agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$19,250, such sum payable to the Missouri State School Fund, in accordance with §§374.049.11 and 374.280.2.

E. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by BHHIC, this Stipulation being part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above referenced market conduct examination.

F. **Waivers.** BHHIC, after being advised by legal counsel, does hereby voluntarily and knowingly waive any and all rights to procedural requirements, including notice and an opportunity for a hearing, and review or appeal by any trial or appellate court, which may have otherwise applied to the market conduct examination no.352802 .

G. **Amendments.** No amendments to this Stipulation shall be effective unless made in writing and agreed to by authorized representatives of the Division and BHHIC.

H. **Governing Law.** This Stipulation shall be governed and construed in accordance with the laws of the State of Missouri.

I. **Authority.** The signatories below represent, acknowledge and warrant that they are authorized to sign this Stipulation, on behalf of the Division and BHHIC, respectively.

J. **Counterparts.** This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document. Execution by facsimile or by electronically transmitted signature shall be fully and legally effective and binding.

K. **Effect of Stipulation.** This Stipulation shall not become effective until entry of an Order by the Director of the Department (hereinafter "Director") approving this Stipulation.

L. **Request for an Order.** The signatories below request that the Director issue an Order approving this Stipulation and ordering the relief agreed to in the Stipulation, and consent to the issuance of such Order.

DATED: August 10, 2023

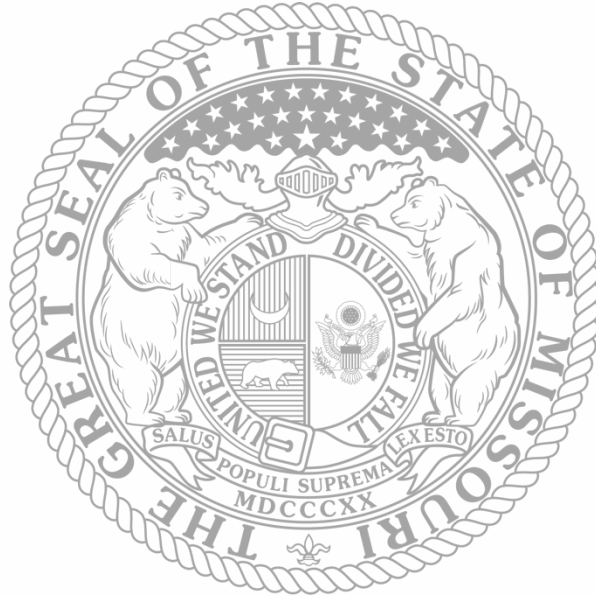


Teresa Kroll
Chief Market Conduct Examiner
Division of Insurance Market Regulation

DATED: 7/27/23



Brian Hall, Vice President
Berkshire Hathaway Homestate Insurance Company



**MARKET CONDUCT EXAMINATION REPORT
Property and Casualty of**

**Berkshire Hathaway Homestate Insurance Company
NAIC #20044**

MISSOURI SBS EXAMINATION # 352802

NAIC MATS #MO-HICKSS1-135

February 23, 2023

**Home Office
1314 Douglas Street, Suite 1300
Omaha, NE 68102**

**STATE OF MISSOURI
DEPARTMENT OF COMMERCE & INSURANCE**

JEFFERSON CITY, MISSOURI

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February 23, 2023

Honorable Chlora Lindley-Myers, Director
Missouri Department of Commerce and Insurance
301 West High Street, Room 530
Jefferson City, Missouri 65101

Director Lindley-Myers:

In accordance with your market conduct examination warrant, a targeted market conduct examination has been conducted of the specified lines of business and business practices of

Berkshire Hathaway Homestate Insurance Company (NAIC #20044)

hereinafter referred to as BHHIC or as the Company. This examination was conducted as a desk examination at the offices of the Missouri Department of Commerce and Insurance (DCI).

FOREWORD

This examination report is a report by exception. However, failure to criticize specific practices, procedures, products or files does not constitute approval thereof by the DCI.

During this examination, the examiners cited errors considered potential violations made by the Company. Statutory citations were as of the examination period unless otherwise noted.

When used in this report:

- “ABS” refers to the Anti-lock Braking Systems of vehicles
- “Company” or “BHHIC” refers to the Berkshire Hathaway Homestate Insurance Company
- “CSR” refers to the Missouri Code of State Regulation
- “DCI” refers to the Missouri Department of Commerce and Insurance
- “Director” refers to the Director of the Missouri Department of Commerce and Insurance
- “MODOT” refers to the Missouri Department of Transportation
- “NAIC” refers to the National Association of Insurance Commissioners
- “RSMo” refers to the Revised Statutes of Missouri

SCOPE OF EXAMINATION

The DCI has authority to conduct this examination pursuant to, but not limited to, §§374.110, 374.190, 374.205, 375.938, and 375.1009, RSMo., and conducted in accordance with §374.205.

The purpose of this examination was to determine if the Company complied with Missouri statutes and DCI regulations. The primary period covered by this review is January 1, 2017 through December 31, 2019, unless otherwise noted. Errors found outside of this time period may also be included in the report.

The examination was a targeted examination involving the following lines of business and business functions: Commercial Auto (Underwriting and Rating, Claims and Operations and Management).

The examination was conducted in accordance with the standards in the 2020 NAIC's Market Regulation Handbook. As such, the examiners utilized the benchmark error rate guidelines from the NAIC Market Regulation Handbook when conducting reviews that applied a general business practice standard. The NAIC benchmark error rate for claims practices is seven percent (7%) and for other trade practices it is ten percent (10%). Error rates exceeding these benchmarks are presumed to indicate a general business practice. The benchmark error rates were not utilized for reviews not applying the general business practice standard.

In performing this examination, the examiners reviewed only a sample of the Company's practices, procedures, products and files. Therefore, some noncompliant practices, procedures, products and files may not have been found. As such, this report may not fully reflect all of the practices and procedures of the Company.

COMPANY PROFILE

The following company profile was provided to the examiners by the Company.

Berkshire Hathaway Homestate Insurance Company (BHHIC) is a Nebraska domiciled property & casualty insurance company. BHHIC is a wholly owned subsidiary of National Indemnity Company. BHHIC writes primarily commercial automobile, commercial property, and workers' compensation insurance in most jurisdictions of the United States.

EXECUTIVE SUMMARY

The DCI conducted a targeted market conduct examination of Berkshire Hathaway Homestate Insurance Company. The examiners found the following areas of concern:

OPERATIONS AND MANAGEMENT

- The Company did not update the stated value of vehicles on many policies which caused them to charge a premium not commensurate with the value of the vehicle. The company supplied ten policy history illustrations with stated value coverage that serve as examples that the Company's procedures do not require verification of the value of the vehicle at policy inception or require an update at the time of renewal. Reference: §379.889 RSMo.

UNDERWRITING AND RATING

ACTIVE

- The Company charged rates not commensurate with the value of the vehicles as evidenced in total loss claims. In 13 claim files, the stated value of the vehicles were excessively overvalued or undervalued compared to the actual cash value determination at the time of the claim. The difference in actual cash value paid at the time of the claim compared to the stated value which premium was based on appears to show that the premium charged was excessive or inadequate. Reference: §379.889 RSMo.
- In one file, the Company failed to properly classify a risk as “Excavating & Grading.” Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In one file, the Company failed to follow filed underwriting rules, rates and classifications when a 2005 Hummer Limousine was misclassified under Section V. Rule 2.E.3. of the Commercial Auto Manual. This vehicle should have been classified under Section V. Rule 2.G.6, “All Other Transportation Operations & Businesses (NOC).” Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In one file, the Company failed to properly rate a driver for an alcohol related violation. Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In one file, the Company failed to properly classify and rate the vehicle by failing to apply the correct points to a driver having alcohol related offenses. Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In three files, the Company failed to properly classify and rate the vehicles by failing to apply an ABS discount. Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In one file, the Company failed to properly classify and rate the vehicle by failing to apply an airbag discount. Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In one file, the Company failed to apply filed underwriting rules, rates and classifications for application of the Loss Free Credit. Reference: §§379.321, 379.889, RSMo., 20 CSR 500-4.100(1) and (6)
- In one file, the Company failed to follow underwriting rules, rates and classifications when assessing points and driver rating factors to drivers. Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In the rating for all physical damage coverages, the Company failed to follow filed rules and rates for combined physical damage rates. The premium allocated by coverage was 75% to collision and 25% other than collision instead of the filed 50% collision and 50% other than collision rate. Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In eight instances, the Company failed to maintain the appropriate documentation necessary to support the schedule rating modifications with the appropriate basis, reasons and supporting evidence to assure policyholder nondiscrimination and fairness with premium determination. Reference: §374.205, RSMo., 20 CSR 500-4.100(7)(D), and 20 CSR 100-8.040(3)(A)
- In 53 instances, the Company failed to provide and maintain the completed application, which bears the insured’s signature on the application as part of the underwriting file. Reference: §374.205, RSMo., and 20 CSR 100-8.040(3)(A)1.A
- In the rating calculations for all physical damage coverages, rates were unfairly discriminatory in the application of combined rates between risks having essentially the same hazard. Higher rates were charged for collision coverage to a person solely because

of their selection of comprehensive coverage instead of specified causes of loss coverage. Reference: §379.889, RSMo., and 20 CSR 500-4.100(1) and (6)

NON-ACTIVE

- In one file, the Company failed to use filed rates to properly rate a driver by failing to apply a Driving While Intoxicated conviction. Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)
- In one file, the Company failed to follow filed rules and rates by issuing an ABS discount in error. Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

PAID CLAIMS

- In one claim, the Company failed to effectuate a prompt and equitable settlement of a claim by not paying the tow bill at claim settlement. Reference: §375.1007(4), RSMo., and 20 CSR 100-1.050
- In one claim, the Company failed to effectuate a fair settlement when sales tax was paid for a total loss claim even though the vehicle was considered exempt from sales tax. Reference: §375.1007(4), RSMo., and 20 CSR 100-1.050
- In one claim, the Company failed to adopt and implement reasonable standards for settlement of claims arising under its policies. The Company was aware of resulting damage to a MODOT guardrail that the insured was liable for but failed to contact MODOT or acknowledge a claim arising from the accident. Reference: §375.1007(3), RSMo.
- In one claim, the Company failed to effectuate a fair and equitable claim settlement by over paying a claim. Reference: §375.1007(4), RSMo.
- In 13 claim files, the Company failed to apply fair, equitable and reasonable standards for settlements of claims arising under its policies. Insureds were paid the actual cash value of vehicles even though premium charged was significantly higher based on an inaccurate stated value of the vehicle, resulting in unreasonable standards for settlements of total loss claims. Reference: §§375.1007(3), 375.1007(4), 379.889, RSMo., and 20 CSR 100-1.030(1)(B)

NON-PAID CLAIMS

- In one claim, the Company failed to send a letter at 45 days to the insured setting forth the reasons additional time was needed for investigation. Reference: §375.1007(3), RSMo., and 20 CSR 100-1.050(1)(C)
- In one claim, the Company failed to reply within ten (10) working days to the communication received. Reference: §375.1007(2), RSMo., and 20 CSR 100-1.030(1)(B)
- In one claim, the Company failed to provide a reply to a third party carrier within ten (10) working days for a subrogation demand. Reference: §375.1007(2), RSMo., and 20 CSR 100-1.030(1) (B)
- In one claim, the Company failed to effectuate a fair and equitable settlement by not attempting to settle a bodily injury claim for a third party claimant having medical expenses involved in a low velocity rear end accident with the insured driver. Reference: §§375.1007(4), RSMo.

EXAMINATION FINDINGS

I. OPERATIONS/MANAGEMENT

The operations/management portion of the examination provides a review of what the Company is and how it operates. The examiners used operations and management examination standards taken from Chapter 20 General Examinations Standards of the NAIC Market Regulation Handbook to determine the Company's compliance with Missouri laws.

A. NAIC Market Regulation Handbook Chapter 20 Standard 7: Records are adequate, accessible, consistent and orderly and comply with state record retention requirements.

To test for this standard, examiners requested and reviewed an underwriting random sample of 86 of 772 active policies, 60 of 550 non-active policies, a census of 56 paid claims and random sample of 31 of 60 non-paid claims to determine if compliance of state record retention requirements were met.

No areas of concern were noted.

B. NAIC Market Regulation Handbook Chapter 20 Standard 11: The regulated entity has developed and implemented written policies, standards and procedures for the management of insurance information.

To test for this standard, examiners requested and reviewed policies, standards, procedures, and guidelines. In addition, a random sample of 86 active underwriting files were reviewed to determine whether the Company applied the policies, standards, procedures, and guidelines in accordance with Missouri law.

1. Procedures and Standards for Active Policies

The examiners found the following errors in this review:

Finding 1: The Company did not update the stated value of vehicles on many policies which caused them to charge a premium not commensurate with the value of the vehicle. The company supplied ten policy history illustrations with stated value coverage that serve as examples that the Company's procedures do not require verification of the value of the vehicle at policy inception or require an update at the time of renewal. See Appendix

Reference: §379.889 RSMo.

II. UNDERWRITING AND RATING

The underwriting and rating portion of the examination provides a review of the Company's compliance with Missouri statutes and regulations regarding underwriting and rating practices such as the use of policy forms, adherence to underwriting guidelines, assessment of premium, and

procedures used to decline or terminate coverage beginning on January 1, 2017 and ending on December 31, 2019.

The examiners used underwriting and rating examination standards taken from Chapter 20 General Examinations Standards and Chapter 21 Conducting the Property and Casualty Examinations of the NAIC Market Regulation Handbook to determine the Company’s compliance with the handbook and Missouri laws.

A. NAIC Market Regulation Handbook Chapter 20 Standard 1: The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the regulated entity’s rating plan.

To test for this standard, examiners requested and reviewed a random sample of 86 of 772 active and 60 of 550 non-active policies from the data supplied by the Company to determine if the premiums charged agreed with the Company’s rate filings.

1. Rates for Active Policies

Field Size	772
Sample Size	86
Type of Sample	Random
Number of Files in Error	86*

*Policies with more than one error were only counted once.

The examiners found the following errors in this review:

Finding 1: The Company failed to use filed rates to properly classify a risk, classifying it as a “Lawn & Tree Service,” when it should have been properly classified as “Excavating & Grading” resulting in an overall \$26 undercharge. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 2: The Company failed to use filed underwriting rules, rates and classifications when a 2005 Hummer Limousine was misclassified under Section V. Rule 2.E.3. of the Commercial Auto Manual dated 07/01/2015, due to the seating capacity limitation. This vehicle should have been classified under Section V. Rule 2.G.6, “All Other Transportation Operations & Businesses (NOC).” Section V does not yield a classification for a 14 passenger non-sedan limousine and the rate could not be re-calculated to determine under or over charges. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 3: The Company failed to properly use filed rates to rate a driver for an alcohol related violation resulting in a \$725 undercharge. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 4: The Company failed to use filed rates to properly classify and rate a vehicle by failing to apply the correct points to a driver having alcohol related offenses resulting in an overcharge of \$1,150. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 5: The Company failed to use filed rates to properly classify and rate a vehicle by failing to apply an ABS discount resulting in an overcharge of \$66. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 6: The Company failed to use filed rates to properly classify and rate three vehicles when it failed to apply an ABS discount resulting in a \$50 overcharge. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 7: The Company failed to use filed rates to properly classify and rate a vehicle by failing to apply an ABS discount resulting in an overcharge of \$1,015. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 8: The Company failed to use filed rates to properly classify and rate this vehicle by failing to apply an airbag discount resulting in an overcharge of \$6. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 9: The Company failed to use filed underwriting rules, rates and classifications by not applying the Loss Free Credit to a vehicle with verifiable experience and no third party losses, but the violation did not result in an over or undercharge (\$0). See Appendix

Reference: §§379.321, 379.889, RSMo., 20 CSR 500-4.100(1) and (6)

Finding 10: The Company failed to use filed underwriting rules, rates and classifications when assessing points and driver rating factors to drivers resulting in an undercharge of \$638. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 11: In the rating sample of 86 policies with physical damage coverages, the Company failed to follow its filed rules and rates. The premium allocated by coverage was 75% to collision and 25% other than collision instead of the filed 50% collision and 50% other than collision rate. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 13: The Company charged rates not commensurate with the value of the vehicles as evidenced in total loss claims. In 13 claim files, the stated value of the vehicles were excessively overvalued or undervalued compared to the actual cash value determination at the time of the claim. The difference in actual cash value paid at the time of the claim compared to the stated value which premium was based upon appears to show that the premium charged was excessive or inadequate. See Appendix

Reference: §379.889 RSMo.

2. Rates for Non-Active Policies

Field Size	550
Sample Size	60
Type of Sample	Random
Number of Files in Error	2

The examiners found the following errors in this review:

Finding 1: The Company failed to use filed rates by failing to include the driver’s Driving While Intoxicated conviction, which resulted in a \$2,923 undercharge. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

Finding 2: The Company failed to follow filed rules and rates by applying an ABS discount resulting in a \$201 undercharge. See Appendix

Reference: §379.321, RSMo., and 20 CSR 500-4.100(1) and (6)

B. NAIC Market Regulation Handbook Chapter 21 Standard 2: Schedule rating or individual risk premium modification plans, where permitted are based on objective criteria with usage supported by appropriate documentation.

To test for this standard, examiners requested and reviewed a random sample of 86 of 772 active and 60 of 550 non-active policies from data supplied by the Company to determine appropriate application of schedule rating.

1. Schedule Rating for Active Policies

Field Size	772
Sample Size	86
Type of Sample	Random
Number of Files in Error	8

The examiners found the following errors in this review:

Finding 1: In eight instances, the Company failed to maintain the appropriate documentation necessary to support the schedule rating modifications with the appropriate basis, reasons and supporting evidence to ensure policyholder nondiscrimination and fairness with premium determination. See Appendix

Reference: §374.205, RSMo., 20 CSR 500-4.100(7)(D) and 20 CSR 100-8.040(3)(A)

2. Schedule Rating for Non-Active policies

No areas of concern were noted.

C. NAIC Market Regulation Handbook Chapter 20 Standard 4: The regulated entity’s underwriting practices are not unfairly discriminatory. The regulated entity adheres to applicable statutes, rules and regulations and regulated entity guidelines in the selection of risks.

To test for this standard, examiners requested and reviewed a random sample of 86 of 772 active policies from data supplied by the Company to determine if selection of risks were unfairly discriminatory.

Finding 1: In the rating calculations for all physical damage coverages, rates were unfairly discriminatory in the application of combined rates between risks having essentially the same hazard. Higher rates were charged for collision coverage to a person solely because of their selection of comprehensive coverage instead of specified causes of loss coverage, which resulted in overcharges on collision premiums. See Appendix

Reference: §379.889, RSMo., and 20 CSR 500-4.100

D. NAIC Market Regulation Handbook Chapter 21 Standard 18: Applications or enrollment forms are properly, accurately and fully completed, including any required signatures, and file documentation adequately supports decisions made.

To test for this standard, examiners requested and reviewed a random sample of 86 of 772 active and 60 of 550 non-active policies from data supplied by the Company to determine if applications or enrollment forms were accurate and complete.

1. Applications and Forms for Active Policies

Field Size	772
Sample Size	86
Type of Sample	Random
Number of Files in Error	53

The examiners found the following errors in this review:

Finding 1: In 53 instances, the Company failed to provide and maintain the completed application, which bears the insured's signature on the application as part of the underwriting file. See Appendix

Reference: §374.205, RSMo., and 20 CSR 100-8.040(3)(A)1.A

2. Applications and Forms for Non-Active Policies

No areas of concern were noted.

III. CLAIMS

The claims portion of the examination provides a review of the Company's compliance with Missouri statutes and regulations regarding claims handling practices such as the timeliness of handling, accuracy of payment, adherence to contract provisions, and compliance with Missouri statutes and regulations.

The examiners used claims examination standards taken from Chapter 20 General Examinations Standards of the NAIC Market Regulation Handbook to determine the Company's compliance with the handbook and Missouri laws.

A. NAIC Market Regulation Handbook Chapter 20 Standard 1: The initial contact by the regulated entity with the claimant is within the required time frame.

To test for this standard, examiners requested and reviewed a census of 56 paid total loss claims and a random sample of 31 of 60 non-paid claims from data supplied by the Company to determine if initial contacts were timely.

1. Initial Contact for Paid Claims

No areas of concern were noted.

2. Initial contact For Denied/Closed Without Payment Claims

No areas of concern were noted.

B. NAIC Market Regulation Handbook Chapter 20 Standard 2: Timely investigations are conducted.

To test for this standard, examiners requested and reviewed a census of 56 paid total loss claims and a random sample of 31 of 60 non-paid claims from data supplied by the Company to determine if investigations were timely.

1. Investigation Time for Paid Claims

No areas of concern were noted.

2. Investigation Time for Denied/Closed Without Payment Claims

Field Size	60
Sample Size	31
Type of Sample	Random
Number of Errors	1
Error Ratio	3.22%

The examiners found the following errors in this review:

Finding 1: The Company failed to send a letter at 45 days to the insured setting forth the reasons additional time was needed for investigation. See Appendix

Reference: §375.1007(3), RSMo., and 20 CSR 100-1.050(1) (C)

C. NAIC Market Regulation Handbook Chapter 20 Standard 3: Claims are resolved in a timely manner.

To test for this standard, examiners requested and reviewed a census of 56 paid total loss claims and a random sample of 31 of 60 non-paid claims from data supplied by the Company to determine if claims were investigated and resolved in timely manner.

1. Determination Time for Paid Claims

No areas of concern were noted.

2. Determination Time for Denied/Closed Without Payment Claims

No areas of concern were noted.

D. NAIC Market Regulation Handbook Chapter 20 Standard 4: The regulated entity responds to claims correspondence in a timely manner.

To test for this standard, examiners requested and reviewed a census of 56 paid total loss claims and a random sample of 31 of 60 non-paid claims from data supplied by the Company to determine if response to correspondence was timely.

1. Claim Communication Time for Paid Claims

No areas of concern were noted.

2. Claim Communication Time for Denied/Closed Without Payment Claims

Field Size	60
Sample Size	31

Type of Sample	Random
Number of Errors	2
Error Ratio	6.45%

The examiners found the following errors in this review:

Finding 1: The Company failed to provide an appropriate reply within ten (10) working days to the communication received from the claimant insurance carrier regarding a subrogation demand. See Appendix

Reference: §375.1007(2), RSMo., and 20 CSR 100-1.030(1)(B)

Finding 2: The Company failed to provide an appropriate reply to a third party carrier within ten (10) working days for a subrogation demand. A response was not made until 27 days later. See Appendix

Reference: §375.1007(2), RSMo., and 20 CSR 100-1.030(1)(B)

E. NAIC Market Regulation Handbook Chapter 20 Standard 5: Claim files are adequately documented.

To test for this standard, examiners requested and reviewed a census of 56 paid total loss claims and a random sample of 31 of 60 non-paid claims from data supplied by the Company to determine if claim files were adequately documented.

1. Claim Record Retention for Paid Claims

No areas of concern were noted.

2. Claim Record Retention for Denied/Closed Without Payment Claims

No areas of concern were noted.

F. NAIC Market Regulation Handbook Chapter 20 Standard 6: Claims are properly handled in accordance with policy provisions and applicable statutes, rules and regulations.

To test for this standard, examiners requested and reviewed a census of 56 paid total loss claims and a random sample of 31 of 60 non-paid claims from data supplied by the Company to determine if claims are handled in accordance to policy provisions and applicable statutes, rules and regulations.

1. Paid Claims

Field Size	56
Sample Size	56

Type of Sample	Census
Number of Errors	5*
Error Ratio	8.92%

*Thirteen errors were only counted as one error. See Finding 5

The examiners found the following errors:

Finding 1: The Company failed to effectuate a prompt and equitable settlement of a claim by not paying the tow bill at claim settlement resulting in a \$147 underpayment. See Appendix

Reference: §375.1007(4), RSMo., and 20 CSR 100-1.050

Finding 2: The Company failed to effectuate a fair settlement when sales tax was paid for a total loss claim even though the vehicle was considered exempt from sales tax resulting in an overpayment of \$2,325.09. See Appendix

Reference: §375.1007(4), RSMo., and 20 CSR 100-1.050

Finding 3: The Company failed to adopt and implement reasonable standards for settlement of claims arising under its policies. The Company was aware of resulting damage to a MODOT guardrail that the insured was liable for but failed to contact MODOT or acknowledge a claim arising from the accident. See Appendix

Reference: §375.1007(3), RSMo.

Finding 4: The Company failed to effectuate a fair and equitable claim settlement when the claims adjuster mistakenly overpaid a claim for a vehicle decal and window replacement by \$20. See Appendix

Reference: §375.1007(4), RSMo.

Finding 5: In 13 claim files, the Company failed to apply fair, equitable and reasonable standards for settlements of claims arising under its policies. In 13 claim files from the paid claims sample, the Company failed to apply fair, equitable and reasonable standards for settlements of claims arising under its policies. Insureds were paid the actual cash value of vehicles even though premium charged was significantly higher based on an inaccurate stated value of the vehicle, resulting in unreasonable standards for settlements of total loss claims. See Appendix

Reference: §§375.1007(3), 375.1007(4), 379.889, RSMo., and 20 CSR 100-1.030(1)(B)

2. Denied/Closed Without Payment Claims.

No areas of concern were noted.

G. NAIC Market Regulation Handbook Chapter 20 Standard 9: Denied and closed without payment claims are handled in accordance with policy provisions and state law.

To test for this standard, examiners requested and reviewed a census of 56 paid total loss claims and a random sample of 31 of 60 non-paid claims from data supplied by the Company to determine if denied claims are handled in accordance with policy provisions and state law.

1. Paid Claims

No areas of concern were noted.

2. Denied and Closed Without Payment Claims

Field Size	60
Sample Size	31
Type of Sample	Random
Number of Errors	1
Error Ratio	3.23%

The examiners found the following errors:

Finding 1: The Company failed to effectuate a fair and equitable settlement by not attempting to settle a bodily injury claim for a third party claimant that submitted \$609.52 in medical expenses in a low velocity rear end accident with the insured driver. See Appendix

Reference: §375.1007(4) RSMo.

VI. CRITICISMS AND FORMAL REQUESTS TIME STUDY

This study is based upon the time required by the Company to provide the examiners with the requested material or to respond to criticisms. Missouri statutes and regulations require companies to respond to criticisms and formal requests within ten (10) calendar days. In the event an extension of time was requested by the Company and granted by the examiners, the response was deemed timely if it was received within the subsequent time frame. If the response was not received within the allotted time, the response was not considered timely.

A. Criticism Time Study

Number of Calendar Days to Respond	Number of Criticisms	Percentage of Total
0 to 10 days	33	100%
Over 10 days with extension	0	0%
Over 10 days without extension or after extension due date	0	0%
Totals	33	100%

All criticism responses were timely.

B. Formal Request Time Study

Number of Calendar Days to Respond	Number of Requests	Percentage of Total
0 to 10 days	64	100%
Over 10 days with extension	0	0%
Over 10 days without extension or after extension due date	0	0%
Totals	64	100%

All request responses were timely.

EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Berkshire Hathaway, Examination Number 352802, MATS #MO-HICKSS1-135. This examination was conducted by Examiner-In-Charge, Shelly Herzing, CIE; Darren Jordan, CIE; Dale Hobart, CIE; and Tad Herin, CIE.. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated February 23, 2023. Any changes from the text of the Market Conduct Examiner's Draft Report reflected in this Final Report were made by the Chief Market Conduct Examiner or with the Chief Market Conduct Examiner's approval. This Final Report has been reviewed and approved by the undersigned.

August 28, 2023

Date



Teresa Kroll

Chief Examiner, Market Conduct