

STATE OF MISSOURI



DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In re:)
) Examination No. 1012-16-TGT
Zenith Insurance Company (NAIC #13269))
)

ORDER OF THE DIRECTOR

NOW, on this 6th day of SEPTEMBER, 2012, Director John M. Huff, after consideration and review of the market conduct examination report of Zenith Insurance Company (NAIC #13269) (hereafter referred to as "Zenith"), report number 1012-16-TGT, prepared and submitted by the Division of Insurance Market Regulation pursuant to §374.205.3(3)(a), RSMo, and the Stipulation of Settlement ("Stipulation"), does hereby adopt such report as filed. After consideration and review of the Stipulation, reports, 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), RSMo.

This order, issued pursuant to §§374.205.3(4) and 374.280, RSMo and §374.046.15. RSMo (Cum. Supp. 2010), is in the public interest

IT IS THEREFORE ORDERED that Zenith and the Division of Insurance Market Regulation having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that Zenith shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place the Company 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.

IT IS FURTHER ORDERED that Zenith shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$21,500 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 6th day of SEPTEMBER, 2012.


John M. Huff
Director



**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

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

TO: Zenith Insurance Company
21255 Califa Street
Woodland Hills, CA 91367

RE: Zenith Insurance Company (NAIC #13269)
Missouri Market Conduct Examination #1012-16-TGT

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DEPT OF INSURANCE
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

**STIPULATION OF SETTLEMENT
AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereinafter referred to as "Director," and Zenith Insurance Company (NAIC #13269), (hereafter referred to as "Zenith"), as follows:

WHEREAS, John M. Huff is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereafter referred to as "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 in Missouri; and

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

WHEREAS, the Department conducted a Market Conduct Examination of Zenith and prepared report number 1012-16-TGT; and

WHEREAS, the report of the Market Conduct Examination revealed that:

1. In 113 instances, Zenith policies included one or more form that had been withdrawn

from use in Missouri in violation of §287.310.1 and 20 CSR 500-6.100(1)¹;

2. In 2 instances, Zenith failed to endorse policies within 60 days of the receipt of the Workers Compensation Experience Rating Worksheet in violation of §287.310.1, 20 CSR 500-6.100(1), and 20 CSR 500-6.500(1) (B);

3. In 7 instances, Zenith failed to document underwriting files with the basis for the scheduled modification debits or credits applied to the policy or changed scheduled modifications from year to year without documenting a material change in the risk in violation of §287.950.1, and 20 CSR 500-4.100 (7) (D) and 20 CSR 300-2.200 [as replaced by 20 CSR 100-8.040 (3) (A)] ;

4. In 1 instance, Zenith failed to notify the insured that a scheduled rating factor had the effect of increasing premium in violation of 20 CSR 500-4.100 (7) (D) (2);

5. In 19 instances, Zenith violated the NCCI's basic manual in violation of §287.955.3 ;

6. In 2 instances, Zenith failed to adhere to the uniform classification system and uniform experience rating plan in violation of §287.955.1;

7. In 2 instances, Zenith failed to apply the correct factor for the Second Injury Fund Surcharge in violation of §287.715.2;

8. In 6 instances, Zenith utilized base rates not on file with the Department of Insurance and did not submit a filing within 30 days after the effective date of the policy in violation of §287.947.1; and

9. In 1 instance, Zenith failed to return premium within 120 days of policy expiration or cancellation in violation of §287.310 and 20 CSR 500-6.500 (2) (A).

WHEREAS, Zenith hereby agrees to take remedial action bringing it into compliance with the statutes and regulations of Missouri and agrees to maintain those corrective actions at all times, to reasonably assure that the errors noted in the above-referenced market conduct examination reports do not recur. The remedial actions include, but are not limited to, the following:

1. Pay restitution in the amount of \$39,372.00 to policyholders affected by the error in the Missouri Employer Paid Medical Endorsement referenced on pages 8-9 of the exam report;

2. Pay restitution in the amount of \$30,947.55 to policyholders for premium overcharges

¹ All references, unless otherwise noted, are to Missouri Revised Statutes 2000, as amended.

as set out in the table on page 10 of the exam report;

3. Pay restitution in the amount of \$2,003.55 to policyholders for premium overcharges as set out in the table on pages 11-12 of the exam report;

4. Pay restitution to the Second Injury Fund for the net underpayment of \$19.00 as set out on page 13 of the exam report;

5. Review all Zenith Insurance Company Workers Compensation Insurance Policies issued from January 1, 2006 until the date a final Order is entered in this matter to determine if any other policyholders were overcharged as a result of any of the errors listed in Section B. 1. 1. on page 10 of the Final Market Conduct Exam Report, or as a result of any of the errors listed in Section B. 1. 3. on pages 11-12 of the Final Market Conduct Exam Report. If the policyholder was overcharged, Zenith must issue restitution to the policyholders, bearing in mind that an additional payment of nine per cent (9%) interest per annum is also required pursuant to §408.020.

6. A letter must be included with all restitution payments made pursuant to paragraphs 1-3 and 5, indicating that "as a result of a Missouri Market Conduct examination" it was found that there was a premium overcharge". Additionally, evidence must be provided to the Department that all payments required pursuant to paragraphs 1-4 have been made within 90 days after the date of the Order finalizing this examination and that all payments required pursuant to paragraph 5 have been made within 180 days after the date of the Order finalizing this examination.

WHEREAS, Zenith, after being advised by legal counsel, does hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, which may have otherwise applied to the above referenced Market Conduct Examination.

WHEREAS, Zenith hereby agrees to the imposition of the ORDER of the Director and as a result of Market Conduct Examination #1012-16-TGT further agrees, voluntarily and knowingly to surrender and forfeit the sum of \$21,500.

NOW, THEREFORE, in lieu of the institution by the Director of any action for the SUSPENSION or REVOCATION of the Certificate(s) of Authority of Zenith to transact the business of insurance in the State of Missouri or the imposition of other sanctions, Zenith does hereby voluntarily and knowingly waive all rights to any hearing, does consent to undertake the remedial

actions set forth in this Stipulation, does consent to the ORDER of the Director and does surrender and forfeit the sum of \$21,500, such sum payable to the Missouri State School Fund, in accordance with §374.280.

DATED: 8/29/12



President
Zenith Insurance Company

STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS
AND
PROFESSIONAL REGISTRATION



FINAL MARKET CONDUCT EXAMINATION REPORT
of the Property and Casualty Business of

Zenith Insurance Company
NAIC Group #0336
NAIC #13269

MISSOURI EXAMINATION # 1012-16-TGT

NAIC EXAM TRACKING SYSTEM # MO341-M16

September 5, 2012

Zenith Insurance Company
21255 Califa Street
Woodland Hills, California 91367

TABLE OF CONTENTS

FOREWORD.....	3
SCOPE OF EXAMINATION.....	4
COMPANY PROFILE.....	5
EXECUTIVE SUMMARY	6
EXAMINATION FINDINGS	7
I. UNDERWRITING AND RATING PRACTICES.....	7
A. Forms and Filings.....	8
B. Zenith Insurance Company Workers' Compensation Policies	10
II. CRITICISMS AND FORMAL REQUESTS TIME STUDY	14
A. Criticism Time Study	15
B. Formal Request Time Study	15
EXAMINATION REPORT SUBMISSION.....	16

FOREWORD

This is a targeted market conduct examination report of Zenith Insurance Company (NAIC Code #13269). This examination was conducted at the Missouri Department of Insurance, Financial Institutions, and Professional Registration's Kansas City office at 615 East 13th Street, Room 510, Kansas City, Missouri 64106.

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

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

When used in this report:

- "Company" refers to Zenith Insurance Company;
- "CSR" refers to the Missouri Code of State Regulation;
- "DIFP" refers to the Missouri Department of Insurance, Financial Institutions and Professional Registration;
- "Director" refers to the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration;
- "ZIC" refers to Zenith Insurance Company;
- "NAIC" refers to the National Association of Insurance Commissioners;
- "RSMo" refers to the Revised Statutes of Missouri.

SCOPE OF EXAMINATION

The DIFP has authority to conduct this examination pursuant to, but not limited to, §§374.110, 374.190, 374.205, 375.445, 375.938, and 375.1009, RSMo.

The purpose of this examination was to determine if the Company complied with Missouri statutes and DIFP regulations and to consider whether the Company's operations are consistent with the public interest. The primary period covered by this review is January 1, 2006 through the present unless otherwise noted. Errors outside of this time period discovered during the course of the examination may also be included in the report.

The examination included a review of the following areas of the Company's operations for the lines of business reviewed:

Workers' Compensation Underwriting, Rating, and Policyholder Services.

The examination was conducted in accordance with the standards in the NAIC's *Market Regulation Handbook*. As such, the examiners utilized the benchmark error rate guidelines from the *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 is ten percent (10%). *Note: Most Workers' Compensation laws do not apply a general business practice standard, no error rates were contemplated in these reviews unless the violation(s) were applicable to Missouri's Unfair Trade Practices Act.*

In performing this examination, the examiners only reviewed a sample of the Company's practices, procedures, products and files. Therefore, some noncompliant practices, procedures, products and files may not have been discovered. As such, this report may not fully reflect all of the practices and procedures of the Company. As indicated previously, failure to identify or criticize improper or noncompliant business practices in this state or other jurisdictions does not constitute acceptance of such practices.

COMPANY PROFILE

The following company profile was provided to the examiners by the Company through the Company's website.

Zenith National Insurance Corp. is an indirect wholly-owned subsidiary of Fairfax Financial Holdings Limited. Zenith National Insurance Corp. is the holding company for Zenith Insurance Company and its subsidiaries, including ZNAT Insurance Company ("Zenith").

Zenith is primarily engaged nationally in the workers' compensation insurance business. Zenith conducts business in 45 states and the District of Columbia through independent agencies. For 60 years, Zenith Insurance Company has been a specialist in workers' compensation.

In May 2010, A.M. Best Company affirmed the financial strength rating of A (Excellent) of Zenith National Insurance Corp. and its subsidiaries. For the latest rating, access www.ambest.com.

EXECUTIVE SUMMARY

The DIFP conducted a targeted market conduct examination of the Zenith Insurance Company (ZIC). The examiners found the following principal areas of concern:

The examiners discovered the following errors regarding the Zenith Insurance Company Workers' Compensation Underwriting and Rating Practices reviews:

- The examiners found 113 instances where the Company utilized forms that had been withdrawn from use in the State of Missouri and two instances where the Company failed to endorse policies.
- The examiners found seven instances where the Company failed to document the underwriting file with the basis for the scheduled modification debits or credits applied to policies, failed to apply a debit or credit, or added and removed debits and credits without a material change in the risk.
- The examiners found one instance where the Company failed to send the insured notice that a change in the scheduled modification was having the effect of increasing the premium.
- The examiners found 19 instances where the Company failed to adhere to the rules of the National Council on Compensation Insurance (NCCI)'s Basic Manual by excluding executive officers, failing to apply the MOCCPAP credit, failing to notify the insured of the MOCCPAP program, failing to use the correct premium discount and failing to waive the expense constant.
- The examiners found two instances where the Company failed to adhere to the uniform classification system and uniform experience rating plan by failing to apply the correct experience modification factor and class code.
- The examiners found two instances where the Company failed to apply the correct factor for the Second Injury Fund Surcharge resulting in incorrect charges to the insured and incorrect payments to the Second Injury Fund.
- The examiners found one instance where the Company used base rates not on file with the Department of Insurance and did not submit a filing within 30 days after the effective date of the policy, and five instances where the Company failed to use the correct officer minimum or maximum payroll, resulting in improper premium charges to the insured.
- The examiners found one instance where the Company failed to return premium within 120 days from the audit.
- The examiners found one instance where the Company failed to furnish records to the examiners within 10 calendar days of the request.
- The examiners found five instances where the Company accepted applications that included an answer to the prohibited question regarding an applicant's prior coverage being declined, cancelled, or non-renewed.

Examiners requested that the Company make refunds concerning underwriting premium overcharges found for amounts greater than \$5.00 during the examination.

Various non-compliant practices were identified, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to the Missouri insurance laws and regulations. When applicable, corrective action for the jurisdictions should be addressed.

The examiners tracked and were mindful of the results, Company responses and public disciplinary action(s) of prior examinations concerning the Zenith Insurance Company. The DIFP examination tracking system indicated no Missouri market conduct examinations had been performed for this company.

EXAMINATION FINDINGS

I. UNDERWRITING AND RATING PRACTICES

This section of the report is designed to provide a review of the Company's underwriting and rating practices. These practices included the use of policy forms, adherence to underwriting guidelines, assessment of premium, and procedures to decline or terminate coverage. Examiners reviewed how the Company handled new and renewal policies to ensure that the Company underwrote and rated risks according to their own underwriting guidelines, filed rates, and Missouri statutes and regulations.

The examiners reviewed a random sample of 114 obtained from a field of 1,431 in conducting their compliance testing. A policy/underwriting file is determined in accordance with 20 CSR 100-8.040 and the NAIC *Market Regulation Handbook*. Error rates are established when testing for compliance with laws that apply a general business practice standard (e.g., §§375.930 – 375.948 and 375.445 RSMo.) and compared with the NAIC benchmark error rate of ten percent (10%). Error rates in excess of the NAIC benchmark error rate are presumed to indicate a general business practice contrary to the law. As Workers' Compensation laws do not apply a general business practice standard, no error rates were contemplated in these reviews.

The examiners requested the Company underwriting and rating manuals for the line of business under review. This included all rates, guidelines, and rules that were in effect on the first day of the examination period and at any point during that period to ensure that the examiners could properly rate each policy reviewed.

The examiners also reviewed the Company's procedures, rules, and forms filed by or on behalf of the Company with the DIFP. The examiners reviewed all Missouri files from a listing furnished by the Company.

The examiners also requested a written description of significant underwriting and rating changes that occurred during the examination period for underwriting files that were maintained in an electronic format.

An error can include, but is not limited to, any miscalculation of the premium based on the information in the file, an improper acceptance or rejection of an application, the misapplication of the company's underwriting guidelines, incomplete file information preventing the examiners from readily ascertaining the company's rating and underwriting practices, and any other activity indicating a failure to comply with Missouri statutes and regulations.

A. Forms and Filings

The examiners reviewed the Company's policy and contract forms to determine its compliance with filing, approval, and content requirements to ensure that the contract language was not ambiguous or misleading and is adequate to protect those insured.

1. The examiners discovered 113 policies which included one or more forms that had been withdrawn from use in Missouri. The Missouri Property and Casualty Guaranty Association Endorsement (WC 24 06 02A) was withdrawn effective 7/1/2006, the Missouri Employer Paid Medical Endorsement (WC 24 04 06A) was withdrawn effective 8/28/1998, the Terrorism Risk Insurance Act Endorsement (WC 00 04 20) was withdrawn effective 1/1/2006, the Longshore and Harbor Workers Compensation Act Exclusion Endorsement (WC 00 01 07A) was withdrawn effective 4/1/1992, the Missouri Limit of Liability Endorsement (WC 24 03 01) was withdrawn effective 1/1/1999, and Missouri Terrorism Risk Insurance Program Reauthorization Act Endorsement (WC 24 01 01) was withdrawn effective 9/1/2008. One or more of these forms were included on each of the policies listed below. Note: Policies with multiple violations were accounted for in various sections of the report, where applicable, as denoted by a single asterisk. Some policies with violations were from a prior or subsequent year to a policy in the sample and are denoted by a double asterisk.

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
Z046473108	Z046237911	Z068241803	Z068312903*
Z046474208	Z046473807	Z068241804*	Z068312904
Z046479507	Z046475007	Z068261301*	Z068313202
Z047640906	Z046480007	Z068294301	Z068415402
Z048302406*	Z046888506	Z068400501*	Z068430105*
Z048537305*	Z046888510*	Z068428702*	Z068461703

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
Z049540804	Z047939605	Z068447704	Z068541401
Z065518603	Z048343805	Z068493601	Z068621002*
Z065767903	Z049126504	Z068552901*	Z068629402
Z066162004*	Z049677704*	Z068621702	Z068676102
Z066855406	Z065543203*	Z068658301	Z070365601*
Z067012003*	Z065812806	Z068709602	Z068685101*
Z067328303	Z066745702	Z068742702*	Z068785801
Z067373405*	Z066974902*	Z068768603*	Z068953601
Z067520802*	Z067089202	Z068886701*	Z069090101
Z067630302	Z070180401	Z069053001*	Z069126202*
Z067630303	Z067258802*	Z069099701*	Z069196104*
Z067732502	Z067348603	Z069160603*	Z069293703
Z067732503	Z067446102	Z069240103*	Z069375701
Z067732504	Z067572603	Z069305502	Z069419501*
Z067788904	Z067779405	Z069387102	Z069713304
Z067834803	Z067804703	Z069645601	Z069817801
Z067916301	Z067904002	Z069736601	Z069817802
Z067991101*	Z067990802*	Z069856703	Z069827402
Z068056601*	Z067992403*	Z069871301*	Z069857203
Z068203801*	Z068061802*	Z069915902	Z069884103
Z068203803	Z068234201*	Z070274802	Z070159001*
Z068229501	Z068281602*	Z070871601	Z070159002
Z068685001**			

Reference: §287.310.1RSMo and 20 CSR 500-6.100(1).

- The examiners found that the Company failed to endorse the policy within 60 days of the receipt of the Workers Compensation Experience Rating Worksheet for the following two policies.

<u>Policy Number</u>	<u>Premium Overcharge</u>	<u>Interest</u>	<u>Total Restitution</u>
Z068685001**	--	\$132.56	\$132.56
Z068685101*	--	\$21.82	\$21.82

Reference: §287.310.1. RSMo, 20 CSR 500-6.100(1) and 20 CSR 500-6.500(1)(B).

B. Zenith Insurance Company Underwriting and Rating Practices

The examiners reviewed applications for coverage that were issued or modified by the Company to determine the accuracy of rating and adherence to prescribed and acceptable underwriting criteria.

The following are the results of the reviews:

1. Underwriting and Rating Practices:

The examiners requested a sample from the total population of Missouri Zenith Insurance Company Workers Compensation policies during the examination period.

Field Size:	1,431
Sample Size:	114
Type of Sample:	Random
Number of Files with Errors:	113

The examiners discovered the following exceptions during the review.

1. The examiners found that the Company failed to document the underwriting file with the basis for the scheduled modification debits or credits applied to the policy or changed scheduled modifications from year to year without documenting a material change in the risk in seven files. Note: Policies with multiple violations were accounted for in other sections of the report. In some cases, the amount of the over- or undercharges was not separated out for each violation, and, in order to avoid duplication, the amount was included with the most appropriate violation and dashes were entered in the other sections. In some cases, the amount of the over- or undercharges was separated out to obtain the amount specific to that violation; therefore, the amount noted in each section is not a duplication.

<u>Policy Number</u>	<u>Premium Overcharge</u>	<u>Interest</u>	<u>Total Restitution</u>	<u>Premium Undercharge</u>
Z067373405*	\$1,798.00	\$193.32	\$1,991.32	--
Z067520802*	\$3,428.00	\$1,572.34	\$5,000.34	--
Z068056602	--	--	--	\$4,313.00
Z068203801*	\$15,875.00	\$6,287.13	\$22,162.13	--
Z068241804*	\$1,159.00	\$153.48	\$1,312.48	--
Z070159001*	--	--	--	\$1,268.00
Z068768603*	\$2,122.00	\$350.60	\$2,472.60	--

Reference: §287.950.1. RSMo, 20 CSR 500-4.100(7)(D), 20 CSR 300-2.200 [as replaced by 20 CSR 100-8.040(3)(A) eff. 1/30/2009], Bulletin 97-03,

Bulletin 02-02 and NCCI Basic Manual (2001-MO) Miscellaneous Values-Missouri.

- The examiners found that the Company failed to document the underwriting file with a renewal notice for any risk which would have the effect of increasing the premium charged to the insured. This was due to a change in any scheduled rating factor applied to the policy during the previous policy period, containing the information that any inquiry by the insured concerning the increased, premium, may be directed to the insurer or the producer for the following policy. Note: This policy was accounted for in other sections of the report, where applicable.

Policy Number
Z068768603*

Reference: §379.893 RSMo and 20 CSR 500-4.100(7)(D)2.

- The examiners found that the Company failed to adhere to the rules of the National Council on Compensation Insurance (NCCI)'s Basic Manual by excluding executive officers, failing to apply the MOCCPAP credit, failing to notify the insured of the MOCCPAP program, failing to use the correct premium discount factor and failing to waive the expense constant in the following 19 files. Note: Policies with multiple violations were accounted for in other sections of the report. In some cases, the amount of the over- or undercharges was not separated out for each violation, and, in order to avoid duplication, the amount was included with the most appropriate violation and dashes were entered in the other sections. In some cases, the amount of the over- or undercharges was separated out to obtain the amount specific to that violation; therefore, the amount noted in each section is not a duplication.

<u>Policy Number</u>	<u>Premium Overcharge</u>	<u>Interest</u>	<u>Total Restitution</u>	<u>Premium Undercharge</u>
Z067258802*	--	--	--	\$959.00
Z068061802*	--	--	--	\$76.00
Z049677704*	--	--	--	\$2,909.00
Z068281602*	--	--	--	--
Z068621002*	--	--	--	--
Z069126202*	--	--	--	\$259.00
Z068428702*	--	--	--	\$79.00
Z068886701*	--	--	--	\$599.00
Z048302406*	\$140.00	\$41.01	\$181.01	--
Z048537305*	\$140.00	\$54.41	\$194.41	--
Z067012003*	\$140.00	\$47.33	\$187.33	--

<u>Policy Number</u>	<u>Premium Overcharge</u>	<u>Interest</u>	<u>Total Restitution</u>	<u>Premium Undercharge</u>
Z068400501*	\$140.00	\$55.24	\$195.24	--
Z068552901*	\$140.00	\$53.34	\$193.34	--
Z069099701*	\$99.00	\$34.20	\$133.20	--
Z069240103*	\$140.00	\$16.16	\$156.16	--
Z069871301*	\$140.00	\$29.86	\$169.86	--
Z065543203*	\$140.00	\$73.57	\$213.57	--
Z067992403*	\$140.00	\$48.82	\$188.82	--
Z069419501*	\$140.00	\$50.61	\$190.61	--

Reference: §287.955.3. RSMo, NCCI Basic Manual (2001 MO) Rule 2-E.1. & 2. and Exceptions – Rule C.1.a. & b, NCCI Basic Manual (2001 MO) MO Contracting Classification Premium Adjustment Program.

- The examiners found that the Company failed to adhere to the uniform classification system and uniform experience rating plan in two files. Note: Policies with multiple violations were accounted for in other sections of the report. In one file, the amount of the undercharge was not separated out for each violation, and, in order to avoid duplication, the amount was included with the most appropriate violation. The other file did not denote an undercharge for the violation.

<u>Policy Number</u>	<u>Premium Overcharge</u>	<u>Interest</u>	<u>Total Restitution</u>	<u>Premium Undercharge</u>
Z046888510*	--	--	--	\$190.00
Z069160603*	--	--	--	--

Reference: §287.955.1. RSMo.

- The examiners found that the Company failed to apply the correct factor for the Second Injury Fund Surcharge resulting in incorrect charges to the insured in the following two files. Note: Policies with multiple violations were accounted for in other sections of the report. In some cases, the amount of the over- or undercharges was not separated out for each violation, and, in order to avoid duplication, the amount was included with the most appropriate violation and dashes were entered in the other sections. In some cases, the amount of the over- or undercharges was separated out to obtain the amount specific to that violation; therefore, the amount noted in each section is not a duplication.

<u>Policy Number</u>	<u>Premium Undercharge</u>	<u>SIF Overpayment</u>	<u>SIF Underpayment</u>
Z066974902*	--	--	\$30.00
Z046888510*	--	\$11.00	--

Reference: §287.715.2. RSMo.

6. The examiners found that the Company utilized base rates not on file with the Department of Insurance and did not submit a filing within 30 days after the effective date of the policy, resulting in improper premium charges to the insured in the following six files. In five files, the Company failed to use the correct officer minimum or maximum payroll amounts as set by the NCCI and in one file, failed to use its published rates. Note: Policies with multiple violations were accounted for in other sections of the report. In some cases, the amount of the over- or undercharges was not separated out for each violation, and, in order to avoid duplication, the amount was included with the most appropriate violation and dashes in the other sections. In some cases, the amount of the over- or undercharges was separated out to obtain the amount specific to that violation; therefore, the amount noted in each section is not a duplication.

<u>Policy Number</u>	<u>Premium Overcharge</u>	<u>Interest</u>	<u>Total Restitution</u>	<u>Premium Undercharge</u>
Z068203801*	\$616.00	\$243.96	\$859.96	--
Z068430105*	--	--	--	\$764.00
Z069196104*	--	--	--	\$76.00
Z066162004*	--	--	--	\$34.00
Z068312903*	--	--	--	\$404.00
Z068742702*	--	--	--	\$130.00

Reference: §287.947.1. RSMo, DIFP Bulletin 02-01 and Company Rate Filings.

7. The examiners found that the Company failed to return premium within 120 days of policy expiration or cancellation for the following policy. Note: This policy was listed for additional violations in other sections of the report.

Policy Number
Z069053001*

Reference: §287.310 RSMo, and 20 CSR 500-6.500(2)(A).

2. Unfair Trade Practices

The examiners requested a sample from the total population of Missouri Zenith Insurance Company Workers Compensation policies during the examination period.

Field Size:	1,431
Sample Size:	114
Type of Sample:	Random
Number of Errors:	5
Error Ratio:	4.4%
Within DIFP Guidelines:	Yes

1. The following five files were found to be in violation of Missouri's Unfair Trade Practices Act. The examiners found that the Company accepted applications that included an answer to the prohibited question regarding an applicant's prior coverage being declined, cancelled, or non-renewed. Note: All policies were listed for additional violations in other sections of the report.

Policy
Number
Z067991101*
Z068056601*
Z068261301*
Z068428702*
Z067990802*

Reference: §375.936(11)(f) RSMo, 20 CSR 500-6.100(6), and DIFP Bulletin 94-04.

II. 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 law requires companies to respond to criticisms and formal requests within 10 calendar days. Please note that in the event an extension was requested by the Company and granted by the examiners, the response was deemed timely if it was received within the time frame granted by the examiners. If the response was not received within that time period, the response was not considered timely.

A. Criticism Time Study

<u>Calendar Days</u>	<u>Number of Criticisms</u>	<u>Percentage</u>
Received within the time limit including any extensions:	52	98.1%
Received outside time limit including any extensions:	1	1.9%
No response:	0	0.0%
Total:	53	100.0%

Reference: §§374.049.7., 374.205.2.(2) RSMo and 20 CSR 100-8.040(6).

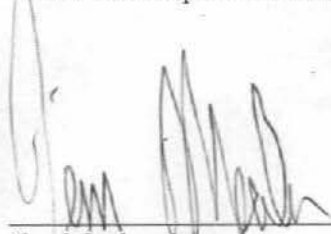
B. Formal Request Time Study

<u>Calendar Days</u>	<u>Number of Formal Requests</u>	<u>Percentage</u>
Received within the time limit including any extensions:	2	100.0%
Received outside time limit including any extensions:	0	0.0%
No response:	0	0.0%
Total:	2	100.0%

Reference: §§374.049.7., 374.205.2.(2) RSMo and 20 CSR 100-8.040(6).

EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Zenith Insurance Company (NAIC #13269), Examination Number 1012-16-TGT. This examination was conducted by Scott Pendleton, Dale Hobart, and Teresa Koerkenmeier. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated December 13, 2011. 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.



9/6/2012

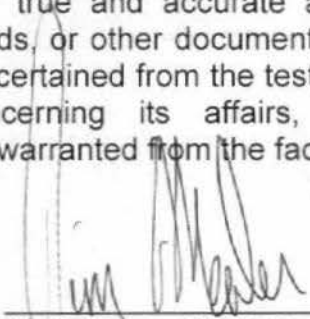
Jim Mealer
Chief Market Conduct Examiner

Date

STATE OF MISSOURI)
)
COUNTY OF COLE)


VERIFICATION OF WRITTEN REPORT OF EXAMINATION

I, Jim Mealer, on my oath swear that to the best of my knowledge and belief, the attached Examination Report is true and accurate and is comprised of only facts appearing upon the books, records, or other documents of the Company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as reasonably warranted from the facts.



Jim Mealer, Chief Market Conduct Examiner
Department of Insurance, Financial Institutions &
Professional Registration,
State of Missouri

Sworn to and subscribed before me this 6th day of September, 2012.



Notary

(Seal)

My commission expires: May 18, 2016

KIMBERLY LANDERS Notary Public - Notary Seal State of Missouri Commissioned for Callaway County My Commission Expires: May 18, 2016 Commission Number: 12558402
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February 7, 2012

Stewart Freilich
Legal Counsel
Market Conduct Section
State of Missouri
Department of Insurance
Division of Insurance Market Regulation
301 West High Street, Room 530
Jefferson City, Missouri 65102-0690

Re: Missouri Market Conduct Examination #1012-16-TGT
Zenith Insurance Company (NAIC #13269)

Dear Mr. Freilich:

Zenith Insurance Company ("Zenith") acknowledges receipt of the examiners' draft market conduct report of the company, dated December 11, 2011, on January 10, 2012. Our comments are set forth below in the same order in which the examination findings are presented.

Before we address the draft report, we would like to thank the examiners for the professionalism and courtesy they showed us during the course of the desk exam. In addition, we would like you to know that Zenith seriously considers all examination reports, thoroughly reviews all findings and criticisms, investigates each one, and attempts to remedy any deficiencies as quickly as possible. We also look at the applicability of any findings to states other than Missouri.

EXAMINATION FINDINGS AND ZENITH'S RESPONSE

As we will explain in more detail below, the substantive findings of the Department's examiners have all been addressed and remedied by Zenith, generally prior to the commencement of this examination. In addition, none of the findings resulted in any material harm to policyholders. And, where there was agreement regarding restitution, it was immediately made by Zenith once it was brought to its attention and the proper amount was calculated.

I. UNDERWRITING AND RATING PRACTICES

A. Forms and Filings

1. The draft report concluded that 113 policies included one or more of 6 forms that had been withdrawn from use in Missouri. The forms in question are:

a) Missouri Guaranty Association Notification Endorsement (WC 24 06 02A (“A Version”), WC 24 06 02B (“B Version”)) – This endorsement provided an explanation of benefits if the company were to go insolvent. Since Zenith is financially healthy and far from insolvent, this endorsement had no impact on any policyholder. The major changes in the current B Version were 1) eliminating the limitation that the association would only pay the portion of a claim between \$100 and \$300,000, and 2) raising the amount of unearned premium that would be returned to an insured from \$10,000 to \$25,000. The change in form also added a \$25 million net worth provision to be eligible for claims covered by the guaranty association. As evidenced by the files reviewed, the standard Zenith customer will not reach this maximum. The changes from the A Version to the B Version do not impact coverage or premium charged to policyholders.

b) Longshore & Harbor Workers (“USL&H”) Compensation Act Exclusion Endorsement (WC 00 01 07A) – This endorsement specifically excluded USL&H exposure from a workers’ compensation policy. It was rendered redundant with the 1992 policy jacket changes. Having it included with a policy subsequent to the jacket changes in no way impacted coverage. The inclusion of this form also did not impact premium charged to policyholders.

c) Missouri Limit of Liability Endorsement (WC 24 03 01) – This endorsement was withdrawn January 1, 1999, when Missouri began to allow carriers to write workers’ compensation and employers’ liability policies with limits on the employers’ liability coverage. This error could have expanded coverage for the insured beyond what was intended and to their benefit. No employers’ liability claims were submitted, and there was no impact on the premium charged.

d) Terrorism Risk Insurance Act Endorsement (WC 00 04 20) – This was the original terrorism endorsement that defined terrorism and when the U.S. Government would step in and cover losses. This endorsement was included with the newer version of the endorsement (WC 00 04 22). Having it attached to policies after January 1, 2006, along with the current version, may have possibly created some confusion since it only defines the deductible amounts applicable to the insurer from 2002 through 2005, but it would not have had any coverage impact for the policyholder. No terrorism events occurred and no coverage or premium was impacted.

e) Missouri Terrorism Risk Insurance Program Reauthorization Act Endorsement (WC 24 01 01) – This Missouri form, when combined with Missouri Endorsement WC 24 04 07, which is also cited in the section of the Department’s criticism, is basically identical to national form WC 00 04 22A and serves to outline where our liability is limited, when the Federal government would pay for losses resulting from

an act of terrorism and the premium charge. Again, there is no coverage risk here to the insured or any premium impact with the switch from the Missouri version of the forms to the combined national version.

f) Missouri Employer Paid Medical Endorsement (WC 24 04 06A (“A Version”), WC 24 04 06B (“B Version”), WC 24 04 06C (“C Version”)) – This endorsement outlines a Missouri employer’s right to pay medical-only claims out-of-pocket and have them excluded from its experience modification calculation. The A Version of the endorsement capped the medical-only claim at \$500. The superseding B Version and current C Version changed the limit for medical-only claims to \$1,000. While there is a possibility that insureds with medical-only claims between \$500 and \$1,000 would have paid such claims, our experience in Missouri as well as in other states is that very few actually do. In addition, for many accounts, paying medical-only claims themselves has either no impact on their experience modifications or a savings that would be less than the amount of the claim itself. Further, many small accounts do not qualify for an experience modification. The newest version of this endorsement was available for insureds in the event they inquired about the program, and up-to-date information about payment limits was correctly explained by our underwriters whenever an inquiry occurred. Any information needed to accurately calculate any possible effect on an experience modification is difficult to obtain, especially on accounts no longer insured with Zenith.

Zenith has corrected the use of withdrawn versions of Missouri endorsements. We believe our use of forms complies with current requirements. Zenith believes that no policyholders were negatively impacted by its use of any of the superseded forms.

2. Zenith agrees that the two policies cited were not endorsed within 60 days of the receipt of the Workers Compensation Experience Rating Worksheet. During the course of the exam, Zenith remitted the interest charged to the insureds. Full restitution has been made.

B. Zenith Insurance Company Underwriting and Rating Practices

1. Underwriting and Rating Practices

1. This section of the draft report looked at schedule modifications. Zenith agrees with the exam findings for policy number Z067373405. A final restitution check in the amount of \$1,991.32 was sent to the insured.

With regard to policy Z067520802, Zenith continues to disagree with the examiner's findings. The Department is contesting the 10% total debit applied to the policy, which is comprised of 2 parts. Part 1 was worth a 3% debit and was due to the failure to document the seasonal employees. The debit applied is correct, based on the large number of seasonal workers employed by the insured. There is more exposure to loss on this policy than is contemplated by the average risk and as determined by the safety and health report and verified at final audit. Part 2 was worth a 7% debit and was for loss ratio as supported in the file documentation provided to the examiner. In the examiner's premium calculation, the examiner appears to have included a debit of 3%, indicating that she was agreeing with the use of at least 3% of the debit. It would now appear that the Department is agreeing to a total of 6% debit from the revised amount included in the report (which is not either of the original 3% and 7% debits).

Since the Department is agreeing that the higher proportion of the seasonal employees is now sufficiently documented, we only have remaining the issue regarding the loss ratio. The use of loss ratio seems acceptable to the Department, as outlined in their acceptance of it in connection with Policy Z06876860. Thus, this entire criticism should be withdrawn.

The use of loss ratio is also involved with policies Z068056602, Z06803801 and Z068241804. Therefore, we believe that this finding should be removed from policies Z068056602 and Z068241804. Our position on Z06803801 is discussed below.

Zenith disagrees with the inclusion of policy Z068056602 in this section of the report. The overall credit applied was appropriate. In reviewing the schedule rating form, the four risk characteristics that were identified were Health Benefits being provided, Safety Program, General Housekeeping conditions and loss ratio below 25%. We agree that the percentages should have been maintained in the areas of Health Benefits being provided, Safety Program and General Housekeeping conditions, with the percentages totaling 20% as shown on the 2006 schedule rating form, since there had been no change in these risk characteristics from the prior term.

We respectfully disagree that the documentation regarding the loss ratio being below 25% was insufficient. The loss results from our first year of coverage (which incepted January 1, 2006), falls outside of the experience period for a January 1, 2007 experience modification. As documented on the form, our loss ratio for our first policy term would qualify under this category and not be reflected in the experience modification. We agree that the 10% credit was not

appropriate. If we maintain the overall schedule credit percentages from the 2006 policy term for the categories as noted above, the maximum credit percentage that could be applied in this category would be 5% to stay within the range of our filed schedule rating plan. Overall we feel that the 25% credit as applied is appropriate.

Zenith agrees in part and disagrees in part with the inclusion of policy Z068203801. The schedule rating was based on four components. The examiner contested three of the four. We agreed with one of the examiner's findings of the three components but disagree with the other two. In this case, we agreed that the use of loss ratio was inappropriate not because the use of loss ratio was incorrect as contested by the Department but inappropriate when used in conjunction with loss severity. We do feel that the use of loss severity is correct as demonstrated in the documentation provided to the Department. In addition, the Total Restitution shown in the report is \$15,875, versus the original figure of \$20,782; the interest charge has been changed as well. Apparently, one of the two outstanding components, for loss severity and for unusual exposure within a class, has been resolved. We believe that the report needs to clarify what has transpired to change these amounts.

Zenith continues to disagree with the Department's position regarding policy Z068241804. The 10% debit applied to the account is appropriate, as supported by the policy history section of the form contained in the file and provided to the examiner. Losses from the most recent policy year fall outside of the experience period used in determining the experience modification factor used for this policy term. The use of more current losses which fall outside of the experience period used for experience rating are appropriate for schedule rating.

Zenith agrees with the findings for policy Z070159001.

Zenith disagrees with the inclusion of policy Z068768603. The examiner took exception to the deletion of the schedule credit that was applied to the 2007 policy period, which was not selected as part of the examination, to the 2008 renewal. However, the examiner never requested the reasoning behind the lack of schedule rating on the 2008 renewal. We agree that the loss ratio outside of the experience rating period continued, supporting a 10% schedule credit on the 2007 policy term as outlined by the Department. The changing nature of the insured's business and subsequent change in the governing class resulted in an offsetting debit. Thus, no credit or debit was applied.

2. Zenith disagrees with the finding in connection with policy Z068768603. This criticism included an indication that a renewal notice was required because of an increase in premium under 20 CSR 500-4.100(7)(D)2. This is incorrect, as the premium actually decreased between 2007 and 2008, as documented by Zenith in its response to the examiner. Although the 2007 policy was not selected for review, the 2007 policy was issued at a premium of \$50,365. The 2008 renewal policy was issued at \$34,932, a reduction of over \$15,000. At the time of the policy renewal, the overall effect was a decrease in the premium charged to the insured. As such, a notice was not required. We believe that this section should be removed from the report.

3. In connection with policy Z067258802, Zenith has agreed that the executive officer was improperly excluded, but we did not agree with the basis of exposure used in the Department's revised premium calculation. From the final audit, Zenith feels that the appropriate amount of remuneration to include for the executive officer is \$2,500 (\$500 x 5 weeks of exposure) for the short-term period of the policy. This would be consistent with NCCI Basic Manual Rule 2 E 1 b (3). Additionally, in a subsequent review of the payroll information included in the final audit material, Zenith found that there had been an error in totaling the reported payroll for many of the individuals. After deleting duplicate entries and adding the payroll for the executive officer as above, Zenith arrived at a revised payroll figure of \$14,010. This revised amount should be taken into consideration by the Department.

Zenith agrees with the findings for policy Z068061802.

Zenith agrees with policy Z049677704 findings. However, we advised the examiner that the Premium Undercharge should be \$2907, not \$2909.

Zenith also agrees with policy Z068281602 findings. Please note that the Amount of Premium Undercharge / Restitution identified by the Department is \$0.

With regard to policy Z068621002, Zenith agrees with its inclusion but would point out that the insured would not have qualified for the MOCCPAP program based on the hourly wage determined at final audit. We wish to note that the Amount of Premium Undercharge / Restitution identified by the Department is \$0.

Zenith agrees with the findings regarding policy Z069126202.

Zenith also agrees with policy Z068428702 findings.

Zenith disagrees with the inclusion of policy Z068886701. NCCI Basic Manual Rule 2 E 2 b. applies here to determine premium. Members of a limited liability company are to be treated as executive officers subject to Rule 2 E 1. Under Rule 2 E 1, where members are owners only and are not active in the business, payroll is not included. As outlined in the documentation previously provided to the Department, the members of the limited liability company were not active in the business.

Zenith disagrees with the inclusion of policies Z048302406, Z048537305, Z067012003, Z068400501, Z068552901, Z069099701, Z069240103, Z069871301, Z065543203, Z067992403 and Z069419501. Due to our systems design, we were unable to issue a multi-state policy until November 1, 2009. Prior to that date, all states were issued on individual policies and combined for premium discount purposes, but issued with each state's expense constant on the respective state policy. Now that we can report a true multi-state policy, we only include the highest expense constant for all states that are covered under our program. We believe Zenith was correct in its handling of premium discounts and expense constants under these policies and that the NCCI rule wouldn't apply to individual as opposed to true multi-state policies.

In addition, Zenith wishes to point out that the insured under policy Z060099701 (already mentioned above) specifically requested to continue to maintain separate policies in each state covered by our insurance program. For this reason alone, the policy should be deleted from the report.

- Zenith disagrees with the inclusion of policy Z046855510 in the report. While Zenith applied an incorrect experience modification to this insured at policy issuance due to a similarity in name with another company, we do not show that we ever received the preliminary experience modification which would have increased the experience modification from 106% to 107%. When Zenith became aware of the promulgation of the final experience modification of 109%, which changed the status from a preliminary to a final modification, we identified the initial issuance error but were unable to revise the experience modification to reflect the 109% since we could not provide the required 60-day notice prior to the application of the increased experience modification to our insured as required in Missouri. Additionally, endorsement number WC 00 04 03 was not attached to the policy which would have allowed the increased experience modifications of 107% or 109%. Due to the late issuance of the experience modification by NCCI

and the lack of endorsement WC 00 04 03, we were unable to endorse the finalized experience modification prior to the expiration of the policy. The experience modification was, therefore, correct as applied under NCCI rules.

5. Zenith agrees that policies Z066974902 and Z046888510 have incorrect Second Injury Fund surcharges. The net total is an undercharge of \$19.

6. This section of the report addresses premium charges. Of the six policies mentioned, Zenith agrees with the findings for policies Z068203801 and Z068312903. Once policy Z068203801 came to our attention, total restitution of \$860 was paid to the insured.

Zenith disagrees with the inclusion of policies Z068430105 and Z069196104. Zenith reviewed its filing with the Department of its miscellaneous values page and determined that a clerical error in that filing was made regarding the premium determination for executive officers. It was always Zenith's intent to adopt the changes recommended by NCCI in their advisory filing, including the changes applicable to the values on the miscellaneous values page reflecting the revision applicable to executive officers. When consulting with the Department's filing section, it was their understanding that Zenith's filing intended to adopt the methodology and limits as outlined by NCCI. Zenith was requested by the Department to update its filing via SERFF to add an explanatory note confirming the agreed understanding. Zenith added such a note. Based on the approved note in Zenith's filing, the correct maximum payroll limit was applied when determining total payroll used in calculating the final audited premium for this risk.

Zenith respectfully disagrees with the findings concerning policy Z066162994. As detailed in the filing material previously provided to the Department, the only filing that Zenith Insurance Company made in 2007 was effective March 2007. It included a Miscellaneous Values page detailing the average weekly wage of \$333 to be used in determining the minimum payroll amount for remuneration for executive officers. The next filing that Zenith made was effective January 1, 2008. The payroll amount used here was \$17,316, which represents the filed and approved minimum weekly wage of \$333 x 52 weeks. As Zenith did not file nor receive approval of the minimum weekly wage of \$359.52 effective July 1, 2007, as included in the advisory filing until January 1, 2008, it would be inappropriate to use this amount in determining the final audited premium, since we would not

be using filed and approved rates to determine the final premium for this insured which inceptioned July 22, 2007, and was subject to our March 2007 filing.

Zenith also disagrees with the inclusion of policy Z068742702. Two issues were raised concerning this policy: the treatment of executive officers and the minimum limit that was used in calculating the minimum payroll limit for each officer. A review of Zenith's records indicates a physical audit was conducted on this risk for the previous policy term and for the policy term immediately after this term. In the previous year's audit, Zenith learned that there was a sole corporate officer for this entity. On the physical audit for the term following this policy term, it was confirmed that during that policy term that this officer had changed. When Zenith processed the final audit for this policy term, it used the information in the prior physical audit and payroll up to the minimum executive officer payroll limit. As there was not yet a new officer, her payroll was included at the actual payroll due to her employee status. Zenith feels that the executive officers have been treated correctly. With regard to the second issue of the payroll used for the executive officers, Zenith believes that the proper payroll was used in determining the final audit for this insured. We acknowledge that there may be some confusion when reviewing the form used in determining the payroll used in the final audit. The reported payroll for the officer was \$855. When determining the payroll in the final audit, Zenith increased the reported payroll by \$17,845. The total of the reported and additional payroll is \$18,700 and this payroll amount was used in the final audit (\$168,120 insured reported payroll + \$17,845 - \$16 overtime adjustment = \$185,949). Since there was no new officer yet, her payroll was included at the actual payroll, as discussed above.

7. Zenith disagrees with the findings regarding policy Z069053001. Return premium was made on a timely basis. This insured program includes California exposure as well as Idaho, Oregon and Nevada. The final audit was delayed at the request of the insured. This audit generated an additional premium of \$47,842 which was billed on August 3, 2007, due on August 24, 2007, and paid August 27, 2007. While the Missouri audit indicated a premium return, the other states covered in the program generated an additional premium. The refund check was issued as soon as we received notice that the check had cleared on September 12, 2007. Since the sum total of all the return premiums for the various invoices associated with this program year did not offset the additional premium owed in Oregon, it is against Zenith's policy to return premium until the outstanding balance owed Zenith is paid. The refund check was paid as soon as possible after Zenith received notice that the insured's check had cleared. The insured had not elected to offset the various balances and pay the net amount due.

2. Unfair Trade Practices

Zenith disagrees for multiple reasons with all of the policies listed in this section as well as with the contention that it engaged in an unfair trade practice. Zenith used a widely-accepted ACORD application. It is used by many agents and brokers, is used in multiple states, and is accepted by most companies. While a question is pre-printed on the ACORD application that cannot be used in Missouri, the question clearly indicates that it is “not applicable in Missouri.” Thus, Zenith ignores the question and the response, even if it is completed by the applicant. It does not impact Zenith’s underwriting decision. The examiners did not find one instance of the improper use of a response to the referenced “forbidden question”, which reads: *Any policy or coverage declined, cancelled, or non-renewed during the prior 3 years? (Not applicable in MO)*. Also, Zenith would like to point out that 9 of the cited policies represent multi-state risks. Thus, the question was conceivably applicable in underwriting states other than Missouri.

The fact that this question appears is not any sort of statutory or regulatory violation. Nor is an answer to the question. Even the current version of this ACORD application, approved by the Department, contains the “prohibited question” with instructions not to complete the question in Missouri. Yet, it is still possible for a Missouri applicant to complete the question. As Zenith interprets the applicable statute and regulation, the mere appearance of such a question is not prohibited. Section 375.936(11)(f) of the Missouri Insurance Code states that it is unfairly discriminatory to refuse to insure solely because the applicant has been refused coverage or been canceled or non-renewed. Also, an insurer cannot “require any applicant or policyholder to divulge in a written application or otherwise whether any insurer has canceled or refused to renew ... a policy of insurance.” (Emphasis added.) Thus, while a voluntary response to the question could seemingly be used (since it was not “required” that the insured respond), Zenith ignores this question, whether it has been completed or not. In addition, the fact that a voluntary response could be used is contemplated in the language in the statute that says that an insurer cannot base a refusal to issue or renew a policy “solely” because a prior carrier took such action. A prior refusal to issue or renew could, it appears, be one of but not the only reason for not writing an applicant or renewing a policyholder.

Our review of 20 CSR 500-6.100(6) leads to a similar conclusion. This regulation states that all workers’ compensation policies must “exclude any agreement, warranty or representation by the insured pertaining to prior cancellation or refusal to renew coverage by a previous carrier.” If the knowledge of such an action by a previous carrier is not used by Zenith, and is not mentioned in the policy, then there can be no violation.

Lastly, Zenith would like to address the bulletin cited by the Department, DIFP Bulletin 94-04. This bulletin states that "asking about prior insurance cancellations and nonrenewals is forbidden in Missouri." That does not appear to be true or in line with the language of Section 375.936(11)(f). The statute forbids a company from requiring that a question about cancellations or nonrenewals be answered. The question can be asked; the answer simply cannot be required or used solely to deny coverage or to renew. While this might be a rather fine distinction, it's important from an ACORD application standpoint. ACORD applications are often submitted by a producer to more than one carrier in order to obtain quotes. In addition, it is used in multiple states. In fact, as noted above, 9 of the policies cited involve multi-state risks. And, 3 of the other 5 applications were submitted by brokers located outside of Missouri. Especially on a multi-state risk, this information could impact an underwriting decision or pricing in another state. Thus, while the answer might be usable in other states, it cannot be used in evaluating a policy's Missouri risk.

It is worth pointing out that instructions pertaining to the Missouri workers' compensation residual market plan, administered by Travelers in Orlando, Florida, states that a "complete application is required (ACORD 130)." This application, for the assigned risk plan, contains the "prohibited question."

While the ACORD application contains a question regarding prior cancellations, declinations and nonrenewals, the fact that the form says that it's not applicable in Missouri, the applicant is not required to answer it for Missouri, and Zenith does not use any response to this question in its underwriting decision, it does not believe that this criticism is justified. And, Zenith will continue to ignore the question in Missouri in the future, even though the current Missouri-approved version, while instructing the Missouri applicant not to answer, still contains a blank area in which to write a response.

II. CRITICISMS AND FORMAL REQUESTS TIME STUDY

A. Criticism Time Study

Zenith disagrees with the inclusion of one file deemed as received outside the time limit. The response to the Lake Center Boat Works Criticism #42 was not late under the language of the cited statutes and regulation. While our response might not have been within 10 calendar days, there is no violation of Section 374.205.2(2) as the statute requires the company to "provide within ten calendar days any record requested by an examiner during a market conduct examination." (Emphasis added). A record is described as policy records, completed application, declaration pages, binder with terms and conditions that differ from the terms and conditions of the policy subsequently issued, and guidelines, manuals, or other information necessary for the reconstruction of

Stewart Freilich
Page 12 of 12
February 7, 2012

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the rating and underwriting in the policy. See 20 CSR 100-8-040 (3)(A)(1-4). Section 374.205.2(2) is inapplicable because the examiner's comments in the original underlying Criticism 34 did not include a request for records as described by the regulation, but rather instructed the company to reimburse the insured.

Even if Section 374.205.2(2) were applicable, there is no violation as the "requested record cannot be provided within ten calendar days of the request." (Emphasis added). See Section 374.205.2(2). The requested response was submitted within 12 days. Many individuals contribute to the responses to Department criticisms and inquiries. Due to company travel, personal vacations, weekends and other business obligations (e.g., this is the period of most policy renewals, which occupies much of our underwriters' time and attention), Zenith was unable to respond to this rather complex criticism within 10 days. However, this slight delay in no way jeopardized the examiners' ability to conduct the exam or review our response. In addition, Zenith believes the underlying criticism was unfounded and not justified in the first place, as outlined on other sections of our response.

Zenith has endeavored to respond to all of the issues and policies contained in the Department's draft market conduct examination report. In addition, Zenith has taken appropriate action to update its forms, improve its file documentation practices and emphasize in its underwriter training the proper calculation of discounts and use of officer payroll, and has also taken other appropriate action to help assure compliance with Missouri requirements.

We appreciate your consideration of the points we have raised and look forward to reviewing a revised draft report. In the meantime, we request a meeting with you to discuss and resolve any open issues. We look forward to working with you to finalize the report and reach a resolution of any issues where we might presently disagree.

Yours truly,



Bennett L. Katz
Vice President and Assistant General Counsel,
Regulatory Affairs
Zenith Insurance Company

cc: Jack Miller, President
Mike Jansen, General Counsel
Lew Melahn, Attorney-at-law
Hank Edmiston, Fairfax, Inc.