STATE OF ALABAMA
DEPARTMENT OF INSURANCE
MONTGOMERY, ALABAMA

REPORT OF

MARKET CONDUCT EXAMINATION

OF

AFFIRMATIVE INSURANCE COMPANY

(NAIC GROUP CODE: 3596; COMPANY CODE: 42609)
ETS # AL008-M14

HOME OFFICE: BURR RIDGE, ILLINOIS
EXAMINATION LOCATION: BATON ROUGE, LOUISIANA

AS OF

JUNE 30, 2010

PARTICIPATION:

ALABAMA

TABLE OF CONTENTS

EXAMINER'S AFFIDAVIT

STATE OF ALABAMA
MONTGOMERY COUNTY

Blase Francis Abreo, CFE, being duly sworn, states as follows:

- I have authority to represent Alabama in the examination of Affirmative Insurance Company.
- I have reviewed the examination workpapers and examination report, and the examination of Affirmative Insurance Company was performed in a manner consistent with the standards and procedures required by the State of Alabama.

The affiant says nothing further.

Francis Blase Abreo
Blase Francis Abreo

Subscribed and sworn before me by

Charlene H. Williams on this day of

April 8th, 2011

(SEAL)

ROBERT BENTLEY
GOVERNOR

JIM L. RIDLING
COMMISSIONER

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
201 MONROE STREET, SUITE 502
POST OFFICE BOX 303351
MONTGOMERY, ALABAMA 36130-3351
TELEPHONE: (334) 269-3550
FACSIMILE: (334) 241-4192

DEPUTY COMMISSIONER
CHARLES M. ANGELL (acting)
CHIEF OF STAFF
RAGAN INGRAM
CHIEF EXAMINER
RICHARD L. FORD
STATE FIRE MARSHAL
EDWARD S. PAULK
GENERAL COUNSEL
REYN NORMAN

Montgomery, Alabama
April 8, 2011

Honorable Jim L. Ridling
Commissioner of Insurance
Alabama Department of Insurance
201 Monroe Street, Suite 502
Montgomery, Alabama 36104

Dear Commissioner:

Pursuant to your instructions and in compliance with the statutory requirements of the State of Alabama and the resolutions adopted by the National Association of Insurance Commissioners, a target market conduct examination as of June 30, 2010, has been made of the affairs and market conduct of

Affirmative Insurance Company

at its office located at 7163 Florida Blvd, Baton Rouge, Louisiana, 70806. The report of examination is submitted herewith. Where the description "Company" or "Affirmative" appears herein, without qualification, it will be understood to be Affirmative Insurance Company.

FOREWORD

This report of examination reflects only the exceptions or issues that were noted during the various reviews, which were in violation of State of Alabama's laws, regulations, and bulletins in addition to the procedures and guidelines promulgated by the National Association of Insurance Commissions, and which were not consistent with the public interest of the consumers residing in Alabama.

Failure to identify or criticize improper or noncompliant business practices in this state or other jurisdictions does not constitute acceptance of such practices.

SCOPE OF EXAMINATION

This market conduct examination was conducted pursuant to the provisions of the ALA. CODE §§ 27-2-21 (1975), 27-2-22 (1975), 27-2-23 (1975), 27-2-24 (1975), 27-2-25 (1975), 27-3-21, § 27-12-24and the Alabama Department of Insurance regulations ALA. ADMIN. CODE 482-1-125, and ALA. ADMIN. CODE 482-1-097-.06, and in accordance with the procedures and guidelines provided in the Market Regulation Handbook, as adopted by the National Association of Insurance Commissioners (NAIC), and is consistent with the predetermined market conduct examination procedures presented to and approved by the ALDOI.

This market conduct examination generally covers the period of September 1, 2007 through June 30, 2010. The exam was conducted by representatives of Insurance Logic, Inc. as examination consultants for the Alabama Department of Insurance and by Alabama examiners.

The purpose of this market conduct examination was to determine if the Company has complied with the various specified sections of the Code of Alabama 1975 and the Administrative Rules and Regulations, as they pertain to the following areas under review in this examination.

- Marketing and Sales Practices
- Producer Licensing
- Complaint Handling
- Underwriting and Rating Practices
- Claims Handling Practices

This examination report reflects only the exceptions or issues that were noted during the various reviews, which were in violation of Alabama's laws and

regulations, and which were not consistent with the public interest of the consumers residing in this state.

During the course of the exam, the Company provided various requested data files and documents from which random samples were obtained using ACL. The samples derived from the data files were then reviewed based on NAIC prescribed examination procedures and sampling techniques as noted in this report.

ORGANIZATION AND HISTORY

Affirmative Insurance Company (AIC) was incorporated in Ohio on June 10, 1983 and received an Ohio certificate of authority on July 17, 1983. The Company re-domesticated to Illinois July 16, 2001. Previously a member of the Vesta Insurance Group, AIC was bought by Affirmative Insurance Holdings, Inc (Holdings) effective December 31, 2003. The Company's affiliates include retail agencies with 201 Company owned stores in nine states, underwriting agencies and premium finance companies.

The Company writes only personal lines private passenger non-standard automobile insurance policies for individual consumers in targeted geographic markets. While the Company is licensed in 35 states, and is an Accredited Reinsurer in two states, AIC currently has active operations in only Alabama, California, Illinois, Indiana, Michigan, Missouri, South Carolina and Texas. In addition to the retail stores, AIC also utilizes the independent agency system.

AIC became licensed in Alabama in 2004 and started writing policies in June, 2007 when it took over the business of USAgencies Direct Insurance Company (Direct) after Direct was purchased earlier that year by Holdings. The policies are sold in Alabama through independent agents and by its affiliate and General Agent, USAgencies Management Services, Inc., through their retail outlets and by telephone. The majority of the policies are financed through an affiliate, LIFCO, LLC.

The Company's A.M. Best rating was B-(fair) as of June 18, 2010. The Company is 100% owned by Affirmative Insurance Holding, Inc., a Delaware corporation listed on the NASDAQ stock exchange.

During 2009, the direct premiums written were $117,792,691 and reinsurance premiums assumed from affiliated companies were $189,789,840, and non-affiliated companies $76,673,410; premiums ceded to non-affiliated companies were less than $2 million. During 2008, the direct premiums written were $146,231,247 and reinsurance assumed from affiliated companies were $151,723,211, and non-

affiliated companies $60,232,533; premiums ceded to affiliated companies were $7,227,229. Direct premiums written in Alabama as a percentage to the direct premiums written was 25.42% in 2009. Total net written premiums to surplus ratio was 357% with a net underwriting loss of $48,505,065 recorded at December 31, 2009.

EXECUTIVE SUMMARY

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 ALA. CODE §§ 27-2-21 (1975), 27-2-22 (1975), 27-2-23 (1975), 27-2-24 (1975), 27-2-25 (1975), and the Alabama Department of Insurance regulations ALA. ADMIN. CODE 482-1-125 (2003) and ALA. ADMIN. CODE 482-1-097 (2009).

The Producers Licensing review performed by the examiners indicated that the Company's producers listing did not agree with the Department's listing. Company management corrected the records. During the review of a sample of thirty producers, the examination determined that three producers sold fourteen policies generating $6,258 in premiums before they were appointed for the Company. The Company could be contingently liable for a fine up to three times the premium amount or $18,774. The examination also determined that seven terminated producers out of the listing of thirty active and terminated producers did not have termination documents in their files.

During the review of the Complaint Handling Practices, the Company's policy and procedures were reviewed. The examination determined that the procedures did not address complaints received directly from consumers. Company management indicated that the complaints received from consumers are handled in the same manner as those received from the insurance department. The examination determined that the thirty complaints received from the Alabama Department of Insurance were responded to timely. There were also three complaints where the issues raised were not fully addressed.

The Company's Underwriting and Rating Practices were reviewed. The examiners determined the following: 1) Lack of consistency in applying discounts. The discounts were not applied to policies where discounts were supposed to be applied and were applied to policies where the discounts were not to be applied. 2) The Company used incorrect vehicle symbols; vehicles were rated with a symbol different from the symbol with which the vehicle should have been rated. 3) The Company's rate formulas used incorrect rating factors (some to the insureds' favor

and some to the Company's advantage). 4) Discounts were listed on the policy application that may not apply to that vehicle, which is misleading to the insured. 5) The Company automatically assigns all unmatched vehicles to a Non-Standard Tier (which results in a 15% higher premium). However, the rate rule P11, as approved by the Alabama Department of Insurance, states that any unmatched vehicle should be assigned either a Middle Market or Non-Standard Tier, depending on specific requirements. 6) Application incorrectly showed the maximum discount of 35% instead of 27.5%. The Company should have used form AIC 1050 AL (07/2010), instead of AIC 1050 AL (02/2009). Company management indicated that the Company was getting the IT department to correct the discount on the various documents to show the revised maximum discount at 27.5% and the revised format of the required Forms.

PREVIOUS EXAMINATION FINDINGS

The Report of Target Examination was issued on March 18, 2008. The response from the Company to the Alabama Department of Insurance was dated April 30, 2008. The Company indicated corrective actions were being taken.

In an Agreement of Order, Case No. C-2008-212FM, dated August 19, 2008, the USAgencies Direct Insurance Company was Ordered to pay a fine in the amount of $379,000 for certain conduct in the Examination Report. An additional $100,000 was paid as a reimbursement for the value of time expended by Department employees and costs incurred in the investigation of certain matters discussed in the report.

MARKETING AND SALES PRACTICES

The Company operates nineteen retail sales offices in Alabama, staffed with approximately forty licensed agents, and supported on the phone with approximately 120 licensed agents operating in Louisiana retail stores.

The Company, whose main message is to give out their toll-free telephone number for the customer to call and receive a quote, advertises on radio, TV and the internet. If the call is for a new quote and is sales related, it is automatically routed to the next available Alabama licensed agent in the queue; otherwise, if the call is to make a payment, the system routes that call to the next person in the general queue. The agents then use the Company's system screens to input the necessary information and generate the quote. About 80% of the customers who decide to purchase with the Company usually visit one of the 19 sales offices to complete the transaction.

All agents, upon hiring, attend a week-long New Agent Training Course prepared and delivered by the Company's Corporate Training Unit. Training includes topics such as products and services, underwriting guidelines, sales excellence, quoting, binding, endorsing, and store operations policies and procedures. Training materials are available on the Company's employee portal for access and review by all CSRs. The Company's national training program ensures consistency in knowledge and process among all of its retail locations and agents.

Agents and managers are not paid on a commission basis, but are all paid under a program called Pay for Performance, in which they are paid a specified amount for each of the various targeted activities that they perform.

PRODUCERS LICENSING

The Company's listing of licensed and appointed producers was compared with the listings obtained from the Alabama Department of Insurance (ALDOI). The examiners determined the following:

1. Out of the 72 producers on the ALDOI listing, 45 were not on the Company's listing. Company management agreed that these 45 had been erroneously excluded. The Company corrected their records.
2. Out of the 72 producers on the ALDOI listing, 23 were not on the Company's listing. Company management indicated that these 23 had been initially excluded because they did not provide "non-retail" producers in their producer lists. These were licensed and appointed individual staff that operated from the Underwriting, Customer Service or Marketing Departments in the Baton Rouge branch office.
3. The Company did not provide supporting documents for eleven producers from the listing of 72 producers. Company management indicated that they could not locate their documents.

NAIC - Standard 1

Regulated entity records of licensed and appointed (if applicable) producers...agree with insurance department records

The issues noted above were not in compliance with the NAIC Market Regulation Handbook, *NAIC Standard 1 - Regulated entity records of licensed and appointed (if applicable) producers...agree with insurance department records* and ALA. CODE § 27-2-23 (1975), which states:

"(c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for proper examination of the condition and affairs of the examinee, he shall give written notice to such examinee specifying: (1) The deficiencies to be corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

NAIC - Standard 2

The producers are properly licensed and appointed and have appropriate continuing education in the Jurisdiction where the application was taken.

The review was performed to determine Company's compliance with the NAIC Market Regulation Handbook, *NAIC Standard 2 - The producers are properly licensed and appointed to sell their products in Alabama.* A sample of thirty producers out of 456 producers was selected and the production records were obtained for those producers who were appointed during the period beginning September 1, 2007 through December 31, 2009. The examination determined that there were fourteen policies which were written by three producers who were not appointed by the Company as of the date of issue of the policies. The fourteen policies sold by the producers generated $6,258 in premiums. The Company was not in compliance with ALA. CODE § 27-7-4 (1975), which states:

"(a) No person shall in this state sell, solicit, or negotiate insurance for any class or classes of insurance unless the person is then licensed for that line of authority in accordance with this chapter. Any insurer accepting business directly from a person not licensed for that line of authority and not appointed by the insurer shall be liable to a fine up to three times the premium received from the person."

According to the above statute, the Company is contingently liable for a fine up to three times the premiums received from the fourteen policies or an amount of $18,774.

The Company was also not in compliance with the above statute during the prior target examination. However, the issue noted during this examination is much less severe than that noted during the prior exam. Company management stated in their response:

"The producing of the nine policies by one agent is unexplainable. The process at the time that he came on board was that the name was entered into the system and then as the employee became licensed and appointed, a

field had to be affirmatively checked for both actions. Until those fields were checked, the employee status was "view only." This employee was hired 12/15/2008, the producer licensing and appointment operation was transferred from Baton Rouge to Addison that same month and the employee wrote the policies between 1/1/2009 and 2/12/2009. The producer became licensed 2/17/2009 and was appointed 2/25/2009.

It is possible that this instance was human error that allowed for an early "licensed" and "appointed" entry to be made to the system during the operational transfer period which allowed him to quote and write policies.

The system enhancements were put in place as a result of the previous Examination. The other two agents wrote the remaining five polices before these enhancements were made."

File Review

A sample of thirty producers was selected from the Company's listing of 456 producers (independent agents and Company agents) operating in Alabama during the examination period. The examiners requested specific documents for review maintained in the producer files. Fifteen of the producers were active and fifteen were terminated. The examiners determined that the Company did not provide the following:

1) One producer's license or electronic verification of the license. Company management disagreed with the finding and stated in their response:

   "...For the missing verification listed, while he was no longer an employee-producer, there was no copy of his license in the file. However, we were able to document that he was appointed in the mass appointment of agents on 5/17/2007, as a result of the previous Market Conduct Examination findings, and we renewed the appointment until termination. This appointment history would confirm that he was licensed."

2) Three verifications of appointment, such as appointment forms and dates.
3) Seven out of fifteen terminated agents did not have documentation of termination and any related memos. [See caption Termination of Producers below for related discussion.]

The Company should maintain the documents listed above in the producers' files and comply with ALA. CODE § 27-2-23 (1975), which states:

"(c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for proper examination of the condition and affairs of the examinee, he shall give written notice to such examinee specifying: (1) The deficiencies to be corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

In the first point above, Company management stated that an employee/producer was no longer with the Company and hence there was no copy of the license in the file. ALA. ADMIN. CODE 482-1-118-.03 (1999), which states:

"Every insurer, which term shall include every domestic insurer, foreign insurer, health care services corporation, health maintenance organization, prepaid dental plan, managing general agent or any other legal entity regulated by the Insurance Code and licensed to do business in this state shall maintain its books, records, documents and other business records in order that the insurer's financial condition may be readily ascertained by the Department of Insurance, taking into consideration other record retention requirements. All records must be maintained for not less than five (5) years."

NAIC - Standard 3

Termination of producers complies with applicable standards, rules and regulations regarding notification to the producer and notification to the state

Termination of producers

The sample of 30 producers licensed and appointed for the Company was taken from a population of 457 producers. The examiners requested the producers files to verify compliance with Alabama statutes and NAIC Market Regulation Handbook, *NAIC Standard 3 - Termination of producers complies with applicable standards, rules and regulations regarding notification to the producer and notification to the state.* The examiners determined that seven producers who were terminated did not have the termination documents in the files. Company management indicated the following:

"...when the appointment is terminated, there is nothing sent to the independent agent. Likewise, when the USAgencies employee resigns or is let go, it's a Human Resources transaction, and their appointment is terminated, and we do not send anything to them to tell them. A screenshot would have to be taken at the time the appointment is terminated electronically in order to have verification of the termination. (It is not

available after that.) The proof of the termination is the DOI's website that shows the termination as cancelled. There is no requirement that we are aware of that paper proof of appointment termination is necessary...."

Since the Company did not provide the copy of the termination notification (screen print outs) to the Alabama Department of Insurance, and the termination notification to the producers, the Company was not in compliance with ALA. CODE § 27-2-23 (1975), which states:

"(c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for proper examination of the condition and affairs of the examinee, he shall give written notice to such examinee specifying: (1) The deficiencies to be corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

The examiners also could not determine if the Alabama Department of Insurance was notified of the termination within thirty days following the effective date of the termination as required by ALA. CODE § 27-7-30 (e) (1975), which states:

"Subject to the producer's contract rights, if any, an insurer or authorized representative of the insurer may terminate a producer's appointment at any time. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason shall within 30 days following the effective date of the termination, using a format prescribed by the commissioner, give notice of the termination to the commissioner."

Since the Company has no procedures to notify the producers of the termination of their contract, the Company was not in compliance with ALA. CODE § 27-7-30.1(a) (1975), which states:

"(a) Within 15 days after making the notification required by subsection (e) of Section 27-7-30, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in Section 27-7-19, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier."

COMPLAINT HANDLING PRACTICES

NAIC - Standard 2

The Company has adequate complaint handling procedures in place and communicates such procedures to policyholders.

The Company provided its complaint handling procedure "Department of Insurance Complaint Expectations." The procedures addressed complaints forwarded to the Company by the Alabama Department of Insurance (ALDOI). The procedures did not address consumers written direct complaints to the Company and how the complaints would be handled including the communication with the consumer to addressing the final disposition of the written grievances. In a response to the examiners, Company management indicated that complaints received directly from customers are handled in the same manner as that received from ALDOI.

The examiners determined that the Company's written procedures guidelines did not address how complaints received directly from consumers would be handled. The examiners reviewed the Company's complaints log for written complaints received directly from the consumers and determined that they were handled appropriately.

Since the complaint handling procedures did not address consumers written complaint, the Company did not comply with NAIC Standard 2 - Complaint Handling Procedure - *The Company has adequate complaint handling procedures in place and communicates such procedures to policyholders* of the NAIC Market Regulation Handbook.

NAIC - Standards 3

The regulated entity takes adequate steps to finalize and dispose of the complaint in accordance with applicable statute, rules and regulations and contract language.

The examiners reviewed the Company's complaint register for complaints forwarded by the Alabama Department of Insurance to the Company between September 1, 2007 through June 30, 2010. There were thirty complaints recorded on the Company's complaint register as forwarded by the Alabama Department of Insurance. The review of the complaint files indicated the following:

1. Three out of thirty complaints filed, the Company's response did not fully address issues raised by the complainants. Company management agreed with the findings, but noted in their response that the Alabama Department of Insurance Analyst did not request additional clarification.

The Company responded to the nine written complaints received directly from customers during the period covered by the examination within ten days.

UNDERWRITING AND RATING PRACTICES

The sample of 106 polices was taken and the underwriting files were obtained and reviewed. The findings were presented to the Company and explanation obtained. The final count was that out of the 106 policies reviewed and re-rated, the examiners identified 32 issues or errors (some with multiple items per policy) 30%. The following common errors noted resulting in the miscalculation of premiums:

1. Discounts were not applied to policies where discount should have been applied, and discounts were applied to policies where discount should have not been applied. For example policy number 3103521, where the alarm & hood anti-theft discount was not applied and for policy number 3255676, the air bag and anti-lock brakes discount was not applied when the vehicle, a 1999 Lexus RX300 comes with standard air bags and anti-lock brakes. See the table below for inconsistencies where it was determined that the Company had not applied discounts where discounts should have been applied and applied discounts where it should not have been applied. [Note: Reference No. with an asterisk next to the number is from the sample of eighty items following the original sample of 26 items.]

Ref. No.	Policy Number	Effective Date	Examiners Comments	Company's Initial Response
2	3103521	10/19/07	Alarm & hood anti-theft discount not applied	We agree discount should have been applied
17	3255676	8/18/09	1999 Lexus RX300 should have air bags and anti-lock brakes. Discounts not applied in rating	Company's response: "It appears that the Air Bag and Anti-Lock Brakes discounts were not selected for this vehicle. This scenario would occur if the insured informed the Producer that they did not know if the vehicle is equipped with those options or not."
25	3258320	3/10/10	2007 Chevy Impala - anti-lock brakes discount not listed on	Company's response: "It appears that the Anti-Lock Brakes discount

			application.	was not selected for this vehicle. This scenario would occur if the insured informed the Producer that they did not know if the vehicle is equipped with those options or not."
42*	3127817	2/14/09	Why did this policy not receive a 15% Renewal discount in terms 2-4 (when the policy was initially transferred to Affirmative, their prior insurer was a Standard Co.)? Additional comments after Company's response: The At Fault Acc occurred on 11/26/07, & not, per Rule P16, "during the immediately policy period." Therefore, it would appear that the 7% discount should have applied to term 2, and 15% to terms 3 & 4. The insured was told they would get the 10% discount as stated on their application. The Company should not list a discount the insured will not get.	P16 - Insured had an At Fault Acc; did not qualify for 15%. P10 - Multicar discount does not apply - must have more than one paired vehicle with like coverages on policy.
52*	3172033	3/19/09	The Comp and Coll discount for vehicle 1 appear to be incorrect. Additional comments after Company's initial response: The insured was told they would get the 10% discount as stated on their application. The Company should not list a discount the insured will not get.	Vehicle 1 - comp; Renewal 7%; Mult Auto 10%; Anti-theft(comp cat 3) 15%; VIN 5%; P10 Multi car discount does not apply - must have more than one paired vehicle with like coverage on policy.
52*	3172033	3/19/09	The Chevy Silverado was not given the 4-door sedan discount, yet in several other instances (noted below) it was provided on other policies. Please explain the inconsistency. Additional comments after Company's initial response: The 2010 Chevy Silverado and the 2000 Chevy Silverado are not 4 dr sedans as required by Rule V10. This is inconsistent with how other	Sym lookup for 2010 Chevy and the 2000 Chevy Silverado are attached.

			similar vehicles are rated.	
59*	3247192	7/13/09	Why were the discounts for the Comp and Coll rates only 22% and not 32% for vehicle 2? Additional comments after Company's initial response: The insured was told they would get the 10% multi vehicle discount, as stated on their application. The Company should not list a discount the insured will not get.	Comp and Coll: P10 - Multicar discount does not apply - must have more than one paired vehicle with like coverages on policy.
69*	3124179	2/19/10	Why was the Chevy Suburban given the 10% 4-door sedan discount? Additional comments after Company's initial response: The Chevy Suburban is a 4 door vehicle, but it is not a 4 door sedan, which is required to qualify for the 10 % discount. However, there appears to be a great deal of inconsistency in how this discount is applied. # 76 below does not apply the 4-door sedan discount to the Lincoln Navigator.	Attached is a copy of the Symbol Look Up which shows the 2004 Chevy Suburban is a 4-door vehicle.
80*	3327499	6/03/10	Why wasn't vehicle 1 assigned to the Preferred (or Standard) tier? Why wasn't the Transfer discount at 15%? The discounts listed on the Dec page indicates a 4-dr sedan discount of 10%, but it does not appear this discount was applied to the policy rate. Additional comments after Company's initial response: Yes, the premium should be adjusted and provided either as a refund or as a credit to the insured on their renewal per their choice.	1) Acceptance Ins Co was programmed in system as a non-standard company instead of standard company. This has been corrected. 2) Due to the reason set forth in no. 1 above Should we adjust premium?

2. Incorrect vehicle symbols were used. Vehicles were rated with a symbol which was different from the symbol with which the vehicle should have been rated. The table below will indicate that not all policyholders received the benefit of the

symbol error. For example policy numbers 3099079, 3146072, 3107285, listed in the table below, were rated with a higher symbol and were overcharged and policy number 3114671 was rated with the symbol 17, when the policy should have been rated 14. The Company in its explanation to policy number 3114671 did not provide the difference in the premiums (see Company's initial response). Company management indicated that programming has been corrected. The Company should review all cases before the programming was corrected and apply the overcharged amount as a credit to future premiums or refund the premiums to the policyholders.

Ref. No.	Policy Number	Effective Date	Examiners Comments	Company's Initial Response
3	3106493	11/05/07	Policy issued on symbol 12; should have been symbol 11. Additional comment: The error cannot be overlooked just because the difference between the two symbols was small.	Company provided the rate difference: The difference between symbols 12 and 11 for Comp was $1. The difference between symbol 12 and for collision was $2.
3*	3098358	9/24/07	Symbol for Vehicle 2 shown as 14; s/b 15 per symbol manual.	Rated as Symbol 14; should have been rated as Symbol 15, which would have resulted in $7 more premium in comp and $22 more premium in collision.
9*	3114671	12/20/07	Symbol is shown as 17 on application; s/b 14 per manual. Additional comments: The difference in premiums calculation not provided by Company	(1) Rated as Symbol 17; should have been rated as Symbol 14, which would have resulted in $? more/less premium in comp and $? more/less premium in collision.
20*	3099079	3/30/08	Symbol per manual s/b 13; rated by Company at 17.	Rated as Symbol 17; should have been rated as Symbol 13, which would have resulted in $9 less premium in comp and $30 less premium in collision.
22*	3146072	4/24/08	Symbol per manual s/b 12; rated by Company at 13.	Rated as Symbol 13; should have been rated as Symbol 12, which would have resulted in $5 less premium in comp and $11 less premium in collision.
23*	3107285	5/10/08	Symbol per manual s/b 18; rated by Company at 19.	Rated as Symbol 19; should have been rated as Symbol 18, which would have resulted in $7 less premium in comp and $26 less premium in collision.
24*	3105078	5/24/08	Why was vehicle rated with symbol 18, when per manual, it is 20?	(1) Rated as Symbol 18; should have been rated as Symbol 20, which would have resulted in $26

				more premium in comp and $65 more premium in collision.

3. There were several instances where the Company's rate formulas used incorrect rating factors (some to the insured's favor and some to the Company's advantage). Company management indicated in their follow-up response stated: "However, a review of the responses to this issue indicates that premium difference was in insured's favor. No insured was overcharged for an incorrect Territory rate." The examiners have not reviewed the Company's claims that the premium difference was in the insured's favor.

Ref. No.	Policy Number	Effective Date	Examiners Comments	Company's Initial Response
4	3115508	12/27/07	It appears the Co. used an incorrect territory 8 instead of territory 1 to calculate the BI and PD premiums.	Company indicated that due to programming error, the system is displaying as territory 13; however, the policy is correctly rated with territory 8.
17	3255676	8/18/09	Territory: 0.984 per rating calculation in system. 1.413 is the correct per rate filing.	Company agrees that the BI factor should be 1.413 instead of 0.984. The customer paid $38, should have been $55.
24	3130837	3/02/10	Territory 7 per system; s/b Territory 8 per rate filing and zip code.	Company indicated that due to programming error, the system is displaying as territory 13; however, the policy is correctly rated with territory 7.
57*	3193483	6/03/09	The BI Territory rate in the system is .984. However, this location should be Territory 1, and the BI rate per the rate manual is 1.413.	It appears that the system programmed BI rate for Territory 11 instead of Territory 1.
75*	3181368	4/05/10	The BI Territory rate in the system is .977. However, this location should be Territory 11, and the BI rate per the rate manual is .984. All other Territory rates were correct, only the BI rate is wrong. Note: Company agreed with the findings.	BI Factors using 2007 rate filing. PD Factors using 2009 rate filing. Comp/Coll factors using 2007 rate filing. 3181368-4 In rate file 5, the territory factors do not agree with the filing.

4. The Company was inconsistent in the application of the 4-door sedan discount (to only be applied to American manufactured 4-door sedans per the rate rule V10). There were instances when a Honda Accord or Ford F150 pickups were given this discount and instances when they wouldn't. Company management's response was to attach a copy of their symbol lookup for that vehicle, and point

out that it was listed as a 4-door vehicle. In a follow-up response Company management stated: "Disagree. The discount rule that examiners cite in each instance of the "4-door sedan" discount is misinterpreted. A manufactured-in-America 4-door sedan is eligible for the discount. A "sedan" is any 4-door automobile. Consequently, a crew-cab pickup and SUVs do, in fact, qualify for this discount. For each cited file, Company provided the symbol lookup to confirm that the discount was applied correctly." The table below will indicate the determination made by the examiners were based on documents and research in the type of vehicle for which discounts were applied to some and discounts were not applied to others. According to the ISO symbol pages, a Suburban is considered Utility (UTL), the 4 door car is a sedan (SED), the 2 door is considered a coupe (CPE) and all trucks are considered Pickups (PKP). It is the examiner's position that the Four Door Sedan discount should not be given to SUV's or 4 Door Trucks unless clearly defined in the manual. At this time, the manual doesn't include SUV's or Pickup trucks. If the Company chooses to continue offering 10% discounts for SUVs or pickup trucks, they need to file the same for approval by the Alabama Department of Insurance.

Ref. No.	Policy Number	Effective Date	Examiners Comments	Company's Initial Response
43*	3176256	3/11/09	Per your response to a prior Request #11, you stated re Reference #26, that a 2010 Chev Silverado does not qualify for a 4-door sedan discount, yet this policy reflects the same discount to this Ford F-150 pickup Additional comments after Company's response: The Ford F150 is not a 4 dr sedan; however, it is a 4 dr truck. The 1999 4-door Ford Explorer insured under policy 3331127 did not get the 4-dr sedan discount, which is inconsistent with the discounts applied to other 4-dr vehicles.	Attached is a copy of the Symbol Look Up which shows that the 2010 Chevy was a 2 dr vehicle. Attached is a copy of the page from the Symbol ID Manual which shows that the 2000 Ford F150 is a 4 dr sedan.
45*	3214195	3/23/09	Per your response to a prior Request #11, you stated re Reference #26, that a 2010 Chevy Silverado does not qualify for a 4-door sedan discount, yet this policy reflects the same discount to this Ford Expedition. Why the inconsistency and this question also apply to similar situations noted below.	Attached is a copy of the Symbol Look Up which shows that the 2010 Chevy was a 2 dr vehicle. Attached is a copy of the page from the Symbol ID Manual which shows that the 1999 Ford Expedition is a 4 dr vehicle.

			Additional comments after Company's response: A Ford Expedition is not a 4-dr sedan as required by Rule V10. As has been noted, there is inconsistency in which some 4-dr vehicles get this discount, while others do not. Also, some foreign made vehicles, such as the Honda Civic in policy # 3169299-1 was given the 4-dr sedan discount, while many others were not, per Rule V10 reaffirming the inconsistency on how this discount is applied.	
50*	3135002	3/10/09	Per your response to a prior Request #11, you stated re Reference #26, that a 2010 Chevy Silverado does not qualify for a 4-door sedan discount, yet this policy reflect that same discount to this Chevy Silverado and to the Chevy Suburban. Why the inconsistency and this question also apply to similar situations noted below. Additional comments after Company's response: The 2010 Chevy Silverado, the 2003 Chevy Suburban, and the 2002 Chevy Silverado are not 4 dr sedans as required by Rule V10. This is inconsistent with how other similar vehicles are rated.	The 2010 Chev was listed as a 4 door vehicle; The 2003 Chev Suburban is a 4 door sedan; The 2002 Chev Silverado is a 4 dr sedan.
57*	3193483	6/03/09	The Ford Explorer was given the 4-door sedan discount. Additional comments after Company's response: The 2010 Chevy Silverado and the 1997 Ford Explorer are not 4 dr sedans as required by Rule V10. This is inconsistent with how other similar vehicles are rated.	Sym lookup for 2010 Chevy and the 1997 Ford Explorer are attached.

5. Discounts were listed on the policy application that may not apply to that vehicle, which is misleading to the insured. Company management's general response was, "Application reflects all available discounts for policy level and driver level. This does not mean that they apply to each specific vehicle or specific driver." In a follow-up response Company management indicated:

"However, they are not displayed on the Declarations, only the Application, and "misleading" is a subjective assumption. However, the Application is revised to delete the display of the percentage amounts. Only the names of the discount are displayed, and if applicable to the policy, a percentage amount will display."

Ref. No.	Policy Number	Effective Date	Examiners Comments	Company's Initial Response
67*	3296359	2/09/10	Why do the application page and the internal listing of the discounts list the 10% 4-door sedan discount, while the rating formula does not apply it to the premiums for Comp and Collision? Additional comments after Company's initial response: This does not appear to be consistent with other policies. The Company should not list a discount the insured will not get.	Application reflects all available discounts for policy level and driver level. This does not mean that they apply to each specific vehicle or specific driver.
79*	3277630	6/03/10	The driver of vehicle 1 did not receive all applicable discounts that were noted on the application page. Additional comments after Company's initial response: The discounts listed on the Application under each vehicle with the listed assigned driver were not properly applied to the applicable vehicle. The Company should not list a discount the insured will not get.	Application reflects all available discounts for policy level and driver level. This does not mean that they apply to each specific vehicle or specific driver.

6. The Company automatically assigns all unmatched vehicles to a Non-Standard Tier (which results in a 15% higher premium). However, the rate rule P11, as approved by the Alabama Department of Insurance, states that any unmatched vehicle should be assigned either a Middle Market or Non-Standard Tier, depending on specific requirements. There were many unmatched vehicles assigned the Non-Standard Tier rate during the examination period. The Company revised the wording of this rate rule P11 in their latest rate filing in August, 2010 to eliminate the possibility of being assigned the Middle Market Tier.

Ref. No.	Policy Number	Effective Date	Examiners Comments	Company's Initial Response
23*	3107285	5/10/08	Rated driver was assigned NS coverage on unmatched vehicle. Additional comments per Company's response: This statement was revised in the July 2010 filing. However, during the examination period of 9/1/2007 to 6/30/2010, these unmatched vehicles should have been assigned the Middle Market Tier (ie a 15% discount), unless the Company can provide evidence that they should have been Non-Standard.	P11 – Unmatched vehicle is assigned to non-standard tier. Number 2 of the Rate Rule Manual was corrected to reflect this in the 2010 filing. The statement (Non-Standard or Middle Market Tier – based on policy points, stated value and vehicle symbol) was a typographical error.
26*	3115321	6/28/08	Why rated driver assigned NS coverage and not MM on unmatched vehicle? See above for additional comments.	P11 - Unmatched vehicle is assigned to non-standard tier. Number 2 of the Rate Rule Manual was corrected to reflect this in the 2010 filing. The statement (Non-Standard or Middle Market Tier - based on policy points, stated value and vehicle symbol) was a typographical error.
28*	3121379	8/06/08	Same as above	Company's response was same as above.
46*	3174819	3/05/09	Why vehicle 1 was not assigned the Middle Market Tier as noted in Rule Number P11.2? See additional comment above.	1 Driver, 2 vehicles P11 – Unmatched vehicle is assigned to non-standard tier. Number 2 of the Rate Rule Manual was corrected to reflect this in the 2010 filing. The statement (Non-Standard or Middle Market Tier – based on policy points, stated value and vehicle symbol) was a typographical error.
51*	3135891	3/13/09	Same as above	P11 - Unmatched vehicle is assigned to non-standard tier. Number 2 of the Rate Rule Manual was corrected to reflect this in the 2010 filing. The statement (Non-Standard or Middle Market Tier - based on policy points, stated value and vehicle symbol) was a typographical error.
52*	3172033	3/19/09	Same as above	Company's response was same as above.
65*	3109407	11/21/09	Why was vehicle 1 not assigned to the Middle Market tier (Rate	No assigned driver. - P11 – Unmatched vehicle is assigned to

			rule P11.2 states it should be either NS or MM and it appears that this vehicle should have qualified for at least the MM Tier)? Additional comments per Company's response: This statement was revised in the July 2010 filing. However, during the examination period of 9/1/2007 to 6/30/2010, these unmatched vehicles should have been assigned the Middle Market Tier (ie a 15% discount), unless the Company can provide evidence that they should have been Non-Standard.	non-standard tier. Number 2 of the Rate Rule Manual was corrected to reflect this in the 2010 filing. The statement (Non-Standard or Middle Market Tier – based on policy points, stated value and vehicle symbol) was a typographical error.
66*	3290357	1/27/10	Why was vehicle 1 not assigned to the Middle Market tier? Additional comments per Company's response: This statement was revised in the July 2010 filing. However, during the examination period of 9/1/2007 to 6/30/2010, these unmatched vehicles should have been assigned the Middle Market Tier (ie a 15% discount), unless the Company can provide evidence that they should have been Non-Standard.	No assigned driver. - P11 – Unmatched vehicle is assigned to non-standard tier. Number 2 of the Rate Rule Manual was corrected to reflect this in the 2010 filing. The statement (Non-Standard or Middle Market Tier – based on policy points, stated value and vehicle symbol) was a typographical error.
75*	3181368	4/05/10	Why vehicles 2 and 4 were not assigned the Middle Market Tier? Additional comments per Company's response: This statement was revised in the July 2010 filing. However, during the examination period of 9/1/2007 to 6/30/2010, these unmatched vehicles should have been assigned the Middle Market Tier (ie a 15% discount), unless the Company can provide evidence that they should have been Non-Standard.	This statement was revised in the July 2010 filing. However, during the examination period of 9/1/2007 to 6/30/2010, these unmatched vehicles should have been assigned the Middle Market Tier (ie a 15% discount), unless the Company can provide evidence that they should have been Non-Standard.

7. Application incorrectly showed the maximum discount of 35% instead of 27.5%. The Company should have used form AIC 1050 AL (07/2010, instead of AIC 1050 AL (02/2009). Company management indicated that the Company was getting the IT department to correct the discount on the various documents to show the revised maximum discount at 27.5% and the revised format of the required Forms.

Ref. No.	Policy Number	Effective Date	Examiners Comments	Company's Initial Response
24	3130837	3/02/10	This policy renewal was effective 9/3/10. However, the Application shows maximum 35%. Company should have used form AIC 1050 AL (07/2010), instead of AIC 1050 AL (02/2009)	Company's response: "A rate filing changing the maximum discount from 35% to 27.5% was filed and approved by the ALDOI. In addition, the application changing the Maximum Discount from 35% to 27.5% has been submitted and approved by the ALDOI..."
26	3256475	9/03/10	The Co. only allowed a maximum discount of 27.5% per the revised rate filing that became effective on 8/1/2010. However, the application still told the insured that the maximum discount would be 35%.	Company's response: "A rate filing changing the maximum discount from 35% to 27.5% was filed and approved by the ALDOI. In addition, the application changing the Maximum Discount from 35% to 27.5% has been submitted and approved by the ALDOI..."

The errors noted above resulted in the Company miscalculating premiums because the rates charged for the policy coverage was not in accordance with the filed rates and hence the Company was not incompliance with ALA. CODE § 27-13-67, which states:

> "....copy of the rating plan upon which such rate is based or by which such rate is fixed or determined. The filing required in this section may be made on behalf of such insurer by a rating organization of which such insurer is a member or subscriber. From and after the date of the filing of such rating plans, every insurer shall charge and receive rates fixed or determined in strict conformity therewith, except as in this article otherwise expressly provided."

The examiners recommend that the Company identify those policies where the appropriate rates and rules were not utilized and refund the excess premiums charged for the coverage and comply with the aforementioned statute.

The examination also determined that there were four policies where according to the rate filings the maximum discount effective as of September 1, 2010 was 27.5%,

the application showed the maximum discount was 35%. Since the Company did not correctly disclose the discount rate on the application, the Company was not in compliance with ALA. CODE § 27-2-23 (1975), which states:

> "(c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for proper examination of the condition and affairs of the examinee, he shall give written notice to such examinee specifying: (1) The deficiencies to be corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

The Company should correctly disclose the maximum discount rate on the application forms and comply with the aforementioned statute.

NAIC – Standard 1

The rates charged for the policy coverage are in accordance with filed rates or the regulated entities rating plan.

See the rating errors noted in items 1 through 7, above. The Company did not comply with NAIC - Standard 1.

Company management indicated that: "Affirmative Insurance Company continues to make positive strides in the gathering and validation of rating information. We have implemented the following procedures in order to assist in the validation of rate data on our Alabama risks: 1) We have our National Call Center contact customers on data elements that are missing from the application process. 2) We have instituted a process as of July 1st this year, whereby all newly bound new business policies will have a Motor Vehicle Report obtained to verify driving experience. 3) In addition to #2 above, we also use iiX's APlus Report in an effort to verify prior losses that are associated with drivers on our policies. 4) In October of this year, we have instituted a process whereby agents will be required to submit proof of prior insurance as well as proof of homeownership to validate tier criteria."

Company management did not provide detailed documentation on how changes and controls are implemented and monitored. The Company was not in compliance with ALA. CODE § 27-2-23 (1975), which states:

> "(c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for proper examination of the condition and affairs of the examinee, he shall give

written notice to such examinee specifying: (1) The deficiencies to be corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

NAIC – Standard 5

All forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department.

The examiner utilized the sample of 68 items out of a population of 135,433 policies issued and cancelled by the Company. The testwork was to verify Company's compliance with following NAIC Market Regulation Handbook, Underwriting Standard: Standard 5 - *All forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department.*

The examiners in their underwriting review determined that several policy forms that were labeled (02/2009) were not submitted to, or approved by the Alabama Department of Insurance. Company management stated that the Declarations page (AIC 1075 AL (02/2009)) and Policy/Coverage page (AIC 1000 AL (04/2009)) were submitted, several other forms were not submitted along with them. This included the Application, the Named Driver Exclusion, the AL Auto Insurance ID Card, the Arbitration Agreement Endorsement and the Selection/Rejection of UMBI Endorsement. The examiner also noted that the Arbitration Agreement Endorsement (AIC 2001 AL (01/2008)) was labeled as AIC 2001 AL (02/2009) in 49 of the 68 or 72% percent items in the sample. Also, in four instances of 68 or six percent, the UMBI Endorsement and/or the Arbitration Agreement Endorsement were listed incorrectly on the "Declarations" page. Company management stated:

> "It is correct that the only form that was filed to have the newer 02/2009 edition date was the Application. IT inadvertently created 2009 edition dates of the Declarations, the Driver Exclusion Endorsement, the ID card and the Arbitration Agreement, apparently to match the new Application being used for the independent agent book of business being rolled out, even though there was no difference between the 2008 and 2009 editions of these 4 forms and those dates should have remained 01/2008. However, since this time there was another filing (AFIN-126733848) made on the four forms with the edition date issue in July 2010. Our Product Development Team has made a request to IT to program these changes to move into production. This request is still pending at this time. A Company representative has agreed to work with Product and IT in order to have these changes implemented as soon as possible."

Since the Company did not file the endorsement forms mentioned above with the Alabama Department of Insurance, the Company did not comply with ALA. ADMIN. CODE 482-1-123-.05 (b) (2001), which states:

> "(b) Property and Casualty insurance, personal lines. All rates and forms filings for the personal lines of property and casualty insurance shall be according to the Prior Approval System."

Company management indicated that they disagree that they were in violation with Alabama Code regarding the findings, and that there is no evidence that the Company has not filed its forms for prior approval when a new, revised form is used. The Company did not file its forms, including Named Driver Exclusion, the AL Auto Insurance ID Card, and the Arbitration Agreement Endorsement as noted above, and therefore is not in compliance with the above mentioned regulation.

CLAIMS HANDLING PRACTICES

NAIC - Standard 3

Claims are resolved in a timely manner.

The claim files, notes and pertinent documents were reviewed to determine if claim payments were made in a timely manner. From a sample of 109 paid and denied claims, the examiners determined that the following eight claims were not paid within thirty days after the Company accepted the liability.

Ref. No.	Claim Number	Policy Number	Date Co. accepted liability	Final Payment Date	No. of Days	Comments
3	286199	3087443	9/19/07	3/20/08	183	Taxes & other fees reimbursement
7	290445	3091048	11/09/07	4/09/08	152	Taxes & other fees reimbursement
23	305260	3118055	3/10/08	7/22/08	134	Reimbursement to body shop not timely
41	318843	3151381	7/15/08	9/17/08	64	Taxes & other fees reimbursement
45	320457	3153343	3/25/09	7/29/09	126	Medical reimbursement to other insurance company
59	342068	3183817	4/08/09	12/11/09	247	Reimbursement for repairs
81	369484	3229419	10/06/09	12/11/09	66	Reimbursement to insurance company
86	372755	3235785	11/18/09	3/05/10	107	Reimbursement to rental company

1. For three of the eight claims, the Company elected to offer a replacement automobile; however the applicable taxes and other fees reimbursement were not included in the initial check. Company management indicated that a total loss claim audit for the period 2004 through 2007 took place during the August 31, 2007 market conduct exam. The review was conducted during the first quarter of 2008 with the oldest total loss claims being reviewed first. For this reason the total loss settlements for the last quarter of 2007 took longer. The examiners noted that one of the three paid claims, the Company accepted the liability on July, 15, 2008 and the final payment was on September 17, 2008 or after sixty-four days.
2. For two of the eight claims, the Company agreed that the reimbursements were not made timely. For claim # 305260, Company management agreed that the payment should have been processed more promptly and for claim # 342068, the Company management agreed that the settlement should have taken place earlier, and indicated that the adjuster was under the presumption that claimant went through his own carrier.
3. For two out of eight claims, Company management agreed that the reimbursements were not timely. For claim # 369484, Company management agreed that the payment should have been made earlier and that the claim was transferred over to the subrogation adjuster. For claim # 320457, Company management indicated that the medical payment reimbursement to the insurance company should have been made earlier.
4. For claim # 372755 out of eight claims, Company management indicated: "There is no reason provided in the claim file for this delay and the rental invoice itself is not timed or dated stamped so it is unclear as to when it was actually received from the rental agency."

As noted above, the Company did not pay the eight claims in a timely manner. The Company did not comply with ALA. ADMIN. CODE 482-1-125-.07 (2003), which states:

> "(6) The insurer shall tender payment within thirty (30) days or the time specified in the policy, after accepting liability, reaching an agreement on the amount of the claim and receipt of any documents necessary to consummate the settlement...."

NAIC – Standard 5

Claims files are adequately documented

The claim files and pertinent claims payment documents were reviewed to determine that the claims files were properly documented and that the files were maintained in accordance with the NAIC Market Regulation Handbook, Claims

Standard. From a sample of 109 paid claims and denied claims reviewed, the following claims files did not have some of the documents necessary or the documents were not adequately maintained to support claim-handling activities:

Ref. No.	Claim number	Policy Number	Date Company accepted responsibility	Comments
3	286199	3087443	9/19/07	Salvage documents not date stamped
7	290445	3091048	11/09/07	Documents not date stamped
8	303413	3091592	2/25/08	Documents in the file not complete
20	313939	3111107	8/15/08	Document not date stamped
21	301042	3114118	2/08/08	Invoice not date stamped
26	305750	3119643	4/25/08	There is no document in the claim file for supplemental payment
28	308200	3129053	4/10/08	The repair estimate mentioned in claim notes was not imaged into claim file.
36	312221	3138722	5/08/08	Amount of $58.61 withheld which was due the Medicaid lien. Medicaid was not paid the amount. Company management indicated that the casualty adjuster overlooked issuing the payment
74	366384	3211550	8/31/09	Documents not date stamped
97	390461	3264812	4/14/10	No scanned documents in the file

1. For five claims listed in the table above, some of the documents were not date stamped. For claim numbers 286199, 290445, 313939, 301042 and 366384, Company management agreed and indicated that the documents were not date stamped.
2. For claim number 303413, the examiners determined that the Company had requested subrogation amount from an insurance company. The information contained in the file did not adequately indicate if the subrogation amount was received by the Company. Company management response stated: "It does not appear that any subrogation recovery was ever made for the rear end damage to the insured's total loss vehicle. As such deducible was never refunded. Subrogation should not have been closed."
3. For two claims listed in the table above, the Company did not have documents for which payment was processed. For claim number 305750, Company management agreed that there were no supporting documents for the supplementary payment. For claim number 308200, Company management indicated that the payment was made based on the estimate which was written on the claim notes.
4. For claim number 312221, the examiners determined that an amount of $58.61 was reduced from the settlement amount. The examiners could not determine

the reason. Company management indicated: "The $58.61 was withheld due to the Medicaid Lien however the Casualty adjuster appears to have overlooked issuing this payment."

5. For claim number 390461, the examiners determined that the claim files did not have any scanned documents. Company management agreed with the examiners.

NAIC - Standard 9

Denied and closed-without-payment claims are handled in accordance with policy provisions and Alabama's rules and regulations

The claim files, notes and pertinent documents for denied claims were obtained for a sample of 109 denied claims. The documents were reviewed to determine if the decisions of the Company to deny claims were handled based on policy provisions and applicable Alabama State's statutes and regulations. Based on the facts of the files, notes and pertinent documents reviewed, the examiners determined that the following:

Ref. No	Claim number	Policy Number	Date of Loss	Reason for denial
17	304580	3122283	2/29/2008	Denied due to contributory negligence
20	310074	3136807	Unknown	No denial letter

The Company was asked to provide the factual evidence used to determine the contributory negligence for claim #304580. Company management indicated that the adjuster did not make an accurate liability decision. The examination determined that the Company improperly denied the claim. The Company did not comply with § 27-3-21(b)(4), § 27-12-24, and ALA. ADMIN. CODE 482-1-125.

The Company was asked to provide the claim denial letter for claim # 310074 in order to determine the reason for the denial of the claim. Company management indicated that the denial letter that was sent to the insured could not be located. Since the Company did not provide the denial letter, the Company did not comply with ALA. CODE § 27-2-23 (1975), which states:

> "(c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for proper examination of the condition and affairs of the examinee, he shall give written notice to such examinee specifying: (1) The deficiencies to be

corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

NAIC - Standard 11

Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due the policyholders.

The claim files, notes and pertinent documents for denied claims were obtained for a sample of 109 denied claims. The examiners also reviewed the Company's claim manual and procedures to determined that the denied and closed without payment claims were properly handled according to Alabama laws, and policy provisions of the NAIC Market Regulation Handbook Standard 11 - *Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due the policyholders.* The following twelve claims were denied due to contributory negligence in excess of one percent by the claimant driver. Company management provided the explanation as noted below in the table why it considered that the causes of the accidents were due to the claimant's contributory negligence:

Ref. No.	Claim No.	Examiner's Notes, Comments or Concerns	Response from Company
5	291905	Provide the factual evidence that the company used to determine that it was light outside at the time of the accident. Provide documentation that an attempt was made to contact the witness.	There is no evidence to confirm it was light out. However, the reason the negligence was placed on the CD [Claimant Driver] was due to the CD's failure to yield right of way. No contact was made with the witness as the witness statement is included in the police report.
25	3113645	Contributory negligence; Tool kit found that claimant was 39% negligent, therefore, co denied claim. What factual evidence was used to determine the contributory negligence?	This claim involved a red light dispute. Due to the disputed facts of loss, both parties were deemed to contribute to the loss.
28	317184	Contributory negligence; Tool kit found that claimant was 35% negligent, therefore, co denied claim. What factual evidence was used to determine the contributory negligence?	The CD [Claimant Driver] statement confirmed she never saw the IV [Insured Vehicle] at all. In addition the point of impact to the IV was the rear 1/4 panel behind the wheel. Given that POI had the CD maintained proper lookout and taken evasive action there was a high likely hood the loss could have been avoided.
29	318335	Contributory negligence; tool kit not used; claims committee decided to deny	The adjuster obtained statements from both the insured driver and claimant driver which

		based on claim note. Police report stated insured driver was "coming out of a parking space". Notes in ID [Insured Driver] Statement: Insured vehicle was "coming forward out of parking space". No attempt was noted in file to reconcile these two versions. Denial letter incorrectly states per the police report that insured was "pulling forward from her parking space". Claimant driver had right of way. Did the claims rep attempt to call this #? Claim notes state that the witness works in the shop where the insured driver gets her hair done. Did the claim rep ask the insured for the name or number of that shop? What factual evidence was used to determine the contributory negligence?	were in conflict. Attempts were made to contact the witness were unsuccessful. Given the disputed facts of loss the decision was made to believe the fact set provided by the insured and liability was denied.
39	332856	Contributory negligence denial; insured and claimant claim on policy report that the other was at fault. What factual evidence was used to determine the contributory negligence?	NI [Named Insured] statement confirms CV [Claimant Vehicle] changed lanes and struck IV [Insured Vehicle]. CD [Claimant Driver] statement was not secured as the CD did not cooperate. The police report confirms liability was disputed. Due to the disputed facts of loss, both parties were deemed as negligent and contributed to the loss.
43	333200	Contributory negligence. The company denied the claim and found the claimant was 100% negligent. What factual evidence was used to determine the contributory negligence?	This was a word versus word dispute. There was no police report and no witnesses to the loss. There was no evidence to contradict the NI [Named Insured] version of the facts of loss, therefore liability was finalized adverse to the clmt [Claimant].
44	334566	Claim was denied due to contributory negligence. Claimant stated that she was about to back out of a parking space when she was hit by insured who was backing out of a parking space. Insured claims she was backing out and claimant was backing into a parking space and the vehicles collided. Statements directly contradict each other. Tool kit was used and determined that the claimant was 82% negligent and the insured was 18% negligent. Even if the insured's version was correct, how can it be justified that she was only 18% negligent? Was any effort made to reconcile the 2 versions	The adjuster used statements from the parties involved and point of impact to the clmt [Claimant Vehicle] vehicle. The adjuster misspoke in the claim note that states the CV was pulling into the spot. In a claim summary in the file documents, the adjuster correctly states both the IV [Insured Vehicle] and CV were backing at the time of loss. The toolkit note is incorrect in that neither the IV nor CV had established the right of way as both were backing. The evidence mentioned in the denial was the statements taken from the parties and photos of the CV, which show damage to the rear bumper of the CV which is indicative of the CV backing at the time of

		of the accident? Tool kit stated insured had the right of way. How was this determined? Denial letter stated "Evidence shows that both parties were backing at the time of loss." Please provide the evidence. Denial letter sent 37 days after receipt of proofs of loss (completion of "tool kit"); violation of 482-1-125-.07(1).	loss.
47	335582	What factual evidence was used to determine the contributory negligence? Were any other attempts to contact the witness made? If no, why?	The point of impact to the IV [Insured Vehicle] indicates the insured controlled the intersection at the time of loss. In the CD [Claimant Driver] statement clmt states did not see the IV until the impact occurred, which places some negligence on the clmt. There were no other attempts to contact the witness.
52	339318	Claim was denied due to contributory negligence per claim notes, but denial letter cites Section 32-5A-111. Claim is in litigation and is still open at this time. Why is this claim in the close without payment listing? However, denial appeared to be unjustified and latest claim notes discuss getting medical records to determine a settlement amount. In the interview, the insured driver stated in response to the question: DO YOU BELIEVE THE DRIVER WITH THE RIGHT OF WAY COULD HAVE AVOIDED THIS AX BY DRIVING SLOWER OR BY PAYING MORE ATTENTION? - NO. On what basis was the claimant driver assigned 35% negligence in the tool kit analysis? The denial letter cited Section 32-5A-111, inferring that the claimant was making a left turn, when the police report states the claimant was going straight and the insured was making the left turn. Please explain.	The PD [Property Damage] and BI [Bodily Injury] reserves are currently open, and have been so since receiving the notice of suit. It appears the initial adjuster inverted the vehicles involved in the loss when entering the toolkit analysis.
58	353866	Claim file is incomplete. Last note in file is dated 1/21/10. Company received letter of representation from a claimant (passenger in named insured's vehicle) on 1/8/10. BI [Bodily Injury] denial letter not present in file. How was this claim adjudicated?	The insured guest passenger did not present a BI [Bodily Injury] claim. A UM [Uninsured Motorist] claim was presented to the company. There is no UM coverage on the file. So a copy of the dec page, UM rejection and no UM letter were sent to the attorney. The attorney was also informed of this

			information verbally. This is not a guest passenger case.
67	365090	This claim was denied due to contributory negligence - Form Letter # 132 sent out to claimant. The Company used their "tool kit" to estimate the percentages of their "Rule of Thumb Insured Negligence" vs the percentage for "Rule of Thumb Claimant Negligence". On 8/6/09 (1st day of the claim & prior to receipt of the police report) the Co. was discussing contributory negligence as a reason to deny. In the denial letter, the Co. referenced AL Rules of the Road 32-5A-32 citing the claimant should have sounded their horn when entering the intersection, even though they had the green light and right of way. The Co. seemed to think that because the insured had already entered (illegally) the intersection (against a red light), the claimant was more negligent than the claimant. Therefore, it appears this claim should not have been denied.	Statements were obtained by both the insured and claimant driver in this loss. The clmt statement was that there was a large SUV to the left of her and she was unable to view the intersection to determine if all vehicles had cleared the intersection. The insured driver was in the intersection and traveled across more than 2 lanes of travel when the clmt vehicle struck the right front of the insured vehicle. The claimant was found negligent for improper lookout and contributed to the accident.
69	365942	Claim denied due to contributory negligence - Form Letter # 132 sent out to claimant. The Company used their "tool kit" to estimate the percentages of their "Rule of Thumb Insured Negligence" vs the percentage for "Rule of Thumb Claimant Negligence".	The police report confirmed the CD [Claimant Driver] pulled from the stop sign while making a right turn. The IV [Insured Vehicle] was turning left onto the same street at the time of loss. The CD failed to yield pulling from a stop sign thus contributing to the loss.

Two of the twelve cases were in litigation or handled by the claimant's attorneys. The Company should review these claims and determine if the liability decision were accurately made and comply with § 27-3-21(b)(4), § 27-12-24, and ALA. ADMIN. CODE 482-1-125.

The prior limited scope examination had also determined that the Company had denied claims for alleged contributory negligence in excess of one percent. During the prior exam the Company agreed with the examiners that 22 of the denied claims should not have been denied, and agreed to open and pay those claims.

CONTINGENT LIABILITIES

The examination determined that fourteen policies were written by three producers who were not appointed by the Company as of the date of issue of the policies. The fourteen policies generated $6,258 in premiums. The Company was not in compliance with ALA. CODE § 27-7-4 (1975), which states:

> "(a) No person shall in this state sell, solicit, or negotiate insurance for any class or classes of insurance unless the person is then licensed for that line of authority in accordance with this chapter. Any insurer accepting business directly from a person not licensed for that line of authority and not appointed by the insurer shall be liable to a fine up to three times the premium received from the person."

The Company is contingently liable for a fine up to three times the premiums received or an amount of $18,774.

The Company was also not in compliance with the above statue during the prior target examination. However, the issue noted during this examination is much less severe than that noted during the prior exam

CLOSED LITIGATED CLAIMS

During the period covered by this examination, the Company had 313 Alabama-litigated claims files that were closed. Of the 313 closed files, 218 were closed with payment. Of the 313 closed litigated claims files, the examiner selected a sample of 84 files. Of the 84 cases, 30 related to physical damage, 33 related to bodily injury, 12 related to uninsured motorist coverage and 9 were related to collision, medical and rental claims.

COMMENTS AND RECOMMENDATIONS

Producers Licensing – Page 6

It is recommended that the Company maintain a complete and accurate records of its licensed and appointed producers along with supporting documents and comply with NAIC Standard 1 - *Regulated entity records of licensed and appointed (if applicable) producers...agree with insurance department records* and ALA. CODE § 27-2-23 (1975), which states:

> " (c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for

proper examination of the condition and affairs of the examinee, he shall give written notice to such examinee specifying: (1) The deficiencies to be corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

It is recommended that the Company only accept insurance from licensed agents appointed by the Company as required by ALA. CODE § 27-7-4 (1975), which states:

"(a) No person shall in this state sell, solicit, or negotiate insurance for any class or classes of insurance unless the person is then licensed for that line of authority in accordance with this chapter. Any insurer accepting business directly from a person not licensed for that line of authority and not appointed by the insurer shall be liable to a fine up to three times the premium received from the person."

It is recommended that the Company notify the Alabama Department of insurance within thirty days following the effective date of termination of the producer as required by ALA. CODE § 27-7-30 (e) (1975), which states:

"Subject to the producer's contract rights, if any, an insurer or authorized representative of the insurer may terminate a producer's appointment at any time. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason shall within 30 days following the effective date of the termination, using a format prescribed by the commissioner, give notice of the termination to the commissioner."

It is recommended that the Company provide the terminated producers with the termination notice as required by ALA. CODE § 27-7-30.1(a) (1975), which states:

"(a) Within 15 days after making the notification required by subsection (e) of Section 27-7-30, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in Section 27-7-19, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier."

Policyholders Complaint – Page 11

It is recommended that the Company's complaint handling written procedure guidelines include written complaints received directly from consumers in accordance with the guidance provided by the NAIC Standard 2 -Complaint Handling Procedure - *The Company has adequate complaint handling procedures in place and communicates such procedures to policyholders* of the NAIC Market Regulation Handbook.

It is recommended that Company responses fully address issues raised by the complainant and the documentation in the complaint files should support the complaint resolution.

Underwriting and Rating Practices – Page 12

It is recommended that the Company file for approval its practice of offering a 10% discount on all four-door vehicles, including sedans, pickups, and SUVs.

It is recommended that the Company use the filed rates while calculating the premiums and comply with ALA. CODE § 27-13-67, which states:

> "....copy of the rating plan upon which such rate is based or by which such rate is fixed or determined. The filing required in this section may be made on behalf of such insurer by a rating organization of which such insurer is a member or subscriber. From and after the date of the filing of such rating plans, every insurer shall charge and receive rates fixed or determined in strict conformity therewith, except as in this article otherwise expressly provided."

It is recommend that the Company identify those policies where the appropriate rates and rules were not utilized and refund the excess premiums charged for the coverage and comply with the aforementioned statute.

It is recommended that the Company's properly disclose the maximum discount of 27.5% instead the 35% currently listed on the applications.

It is recommended that the Company provide requested information with ten working days as required by ALA. ADMIN. CODE 482-1-118-.06, (1999), which states:

> " The insurer shall provide, within ten (10) working days, any record or response requested in writing by any duly appointed deputy, assistant, employee or examiner of the commissioner. When the requested record or

response is not produced or cannot be produced by the insurer within ten working days, the nonproduction shall be deemed a violation of this rule, unless the Commissioner or duly appointed person making the request grants an extension in writing or the insurer can demonstrate to the satisfaction of the Commissioner that there is a reasonable justification for the delay."

It is recommended that the Company maintain documentation of its detailed processes on how changes and controls are implemented and monitored and comply with ALA. CODE § 27-2-23 (1975), which states:

> "(c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for proper examination of the condition and affairs of the examinee, he shall give written notice to such examinee specifying: (1) The deficiencies to be corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

It is recommended that the Company file all forms before use in accordance with NAIC Market Regulation Handbook, Underwriting Standard: Standard 5 - *All forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department* and as required by ALA. ADMIN. CODE 482-1-123-.05 (b) (2001), which states:

> "(b) Property and Casualty insurance, personal lines. All rates and forms filings for the personal lines of property and casualty insurance shall be according to the Prior Approval System."

Claims Handling Practices – Page 25

It is recommended that the Company make the claims payments in a timely manner, including any supplement payments required by Alabama laws and regulation and as required by ALA. ADMIN. CODE 482-1-125-.07 (2003), which states:

> "(6) The insurer shall tender payment within thirty (30) days or the time specified in the policy, after accepting liability, reaching an agreement on the amount of the claim and receipt of any documents necessary to consummate the settlement...."

It is recommended that the Company maintain adequate documents in the claim files that are necessary to support claim-handling activity; the file should include date the documents were received, proof of mailing, copies of the claim checks and

documents required by ALA. ADMIN. CODE 482-1-125-.04 (2003), which states:

> "a) The insurer shall maintain claim files that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss, and date and amount of payment."

It is recommended that the Company make claims decisions in a manner to not conflict with § 27-3-21(b)(4), § 27-12-24, and ALA. ADMIN. CODE 482-1-125.

It is recommended that the Company maintain the denial letter in the claim files so that the examiners can determine the reason or the ground claims were denied and comply with ALA. CODE § 27-2-23 (1975), which states:

> "(c) If the commissioner or examiner finds any account or record of an insurer being examined to be inadequate or inadequately kept or posted for proper examination of the condition and affairs of the examinee, he shall give written notice to such examinee specifying: (1) The deficiencies to be corrected; and(2) A reasonable period within which to correct the stated deficiencies...."

CONCLUSION

Acknowledgement is hereby made of the courtesy and cooperation extended by all persons representing the Affirmative Insurance Company during the course of the examination.

In addition to the undersigned, Mr. Joel S. Silva, AIE, FLMI, Frank Fricks, CFE, AIE, with Insurance Logic, all representing the Alabama Department of Insurance, participated in this examination.

Respectfully submitted,

Francis Blase Abreo

Blase Abreo, CFE
Examiner-in-charge
Alabama Department of Insurance