



**DEPARTMENT OF COMMERCE & INSURANCE**

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

*In Re:* )  
 )  
AMTRUST INSURANCE COMPANY ) **Market Conduct Examination**  
OF KANSAS, INC. (NAIC #15954) ) **No. 317134**

**ORDER OF THE DIRECTOR**

NOW, on this 15<sup>th</sup> day of November, 2021, Director, Chlora Lindley-Myers, after consideration and review of the market conduct examination report of AmTrust Insurance Company of Kansas (NAIC #15954) (hereinafter “AmTrust Kansas”), examination report number #317134, prepared and submitted by the Division of Insurance Market Regulation (hereinafter “Division”) pursuant to §374.205.3(3)(a)<sup>1</sup>, does hereby adopt such report as filed. After consideration and review of the Stipulation of Settlement and Voluntary Forfeiture (“Stipulation”), relating to the market conduct examination #317134, the examination report, relevant work papers, and any written submissions or rebuttals, the findings and conclusions of such report are deemed to be the Director’s findings and conclusions accompanying this order pursuant to §374.205.3(4). The Director does hereby issue the following orders:

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

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

<sup>1</sup> All references, unless otherwise noted, are to Revised Statutes of Missouri 2016, as amended, or to the Code of State Regulations, 2020, as amended.

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

**IT IS FURTHER ORDERED** that AmTrust Kansas shall pay, and the Department of Commerce and Insurance, State of Missouri, shall accept, the Voluntary Forfeiture of \$26,850.00 payable to the Missouri State School Fund in connection with the examination.

**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 15<sup>th</sup> day of November, 2021.



*Chlora Lindley-Myers*  
Chlora Lindley-Myers  
Director

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

*In Re:* )  
 )  
AMTRUST INSURANCE COMPANY ) **Market Conduct Examination**  
OF KANSAS, INC. (NAIC #15954) ) **No. 317134**

**STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter “the Division”) and AmTrust Insurance Company of Kansas (NAIC #15954) (hereinafter “AmTrust Kansas”), as follows:

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

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

**WHEREAS**, the Division conducted a market conduct examination of AmTrust Kansas, examination #317134; and

**WHEREAS**, based on the market conduct examination of AmTrust Kansas, the Division alleges that:

1. In one instance, AmTrust Kansas misclassified and applied the wrong rate for the insured’s operation in violation of §287.947<sup>1</sup>, §287.950, §287.955 and 20 CSR 500-6.950.
2. In one instance, AmTrust Kansas did not charge the applicable minimum premium in violation of §287.955.1.

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<sup>1</sup> All references, unless otherwise noted, are to Missouri Revised Statutes 2016, as amended or to the Code of State Regulations, 2020, as amended.

3. In one instance, AmTrust Kansas did not allocate correct payroll amounts to the governing classification code of 8832 in violation of §287.947, §287.950, §287.955 and 20 CSR 500-6.950.

4. In one instance, AmTrust Kansas incorrectly included all restaurant employees in an incorrect classification code in violation of §287.955.

5. In one instance, AmTrust Kansas did not use the correct classification code in violation of §287.955 and 20 CSR 500-6.950.

6. In one instance, AmTrust Kansas did not include the insured's president in the correct classification in violation of §287.955.

7. In one instance, AmTrust Kansas did not properly allocate payroll at final audit in violation of §287.955 and 20 CSR 500-6.950.

8. In one instance, AmTrust Kansas incorrectly assigned payroll to classification codes 8810 and 8742 in violation of §287.955 and 20 CSR 500-6.950.

9. In three instances, AmTrust Kansas did not correctly calculate total payroll remuneration to be included in final audit in violation of §287.955 and 20 CSR 500-6.950.

10. In two instances, AmTrust Kansas did not include the sole proprietor's payroll limit in classification 8810 in violation of §287.955.

11. In one instance, AmTrust Kansas did not adequately document that it included and classified correct payroll at final audit in violation of §374.205.2 (2) and 20 CSR 100-8.040 (3) (A).

12. In one instance, AmTrust Kansas excluded an LLC member without having an exclusionary endorsement signed in violation of §287.037.

13. In seven instances, AmTrust Kansas applied or decreased schedule rating credits without documenting a change in the risk in violation of §287.955.6 (4) (d) and 20 CSR 500-4.100 (7) (D).

14. In 162 instances, AmTrust Kansas used unapproved forms in violation of §287.310.1 and 20 CSR 500-6.100 (1).

15. In 167 instances, AmTrust Kansas did not attach required Missouri endorsements or forms to policies in violation of §§287.955.4 & .5, §287.310.1 and 20 CSR 500-6.100 (1).

16. In one instance, AmTrust Kansas did not apply the correct hazard group to calculate the small deductible credit in violation of §287.947.

17. In 13 instances, AmTrust Kansas used an unfiled rate by incorrectly applying a multiplier of 150% to estimated payroll and failing to calculate the audit noncompliance charge in violation of §287.955.5 and §287.947.

18. In 13 instances, AmTrust Kansas used an unfiled rate to determine the audit noncompliance charge in violation of §287.947.

19. In 61 instances, AmTrust Kansas materially aided producers, not listed on its Registry, to write business, in violation of §375.022.2 and 20 CSR 700-1.020.

20. In 17 instances, AmTrust Kansas failed to complete and bill audits or return premium within 120 days of policy expiration or cancellation in violation of §287.310.1, §§287.955.1 & .3 and 20 CSR 500-6.500 (2) (A).

21. In three instances, AmTrust Kansas did not notify the insured of the specific amount of the audit noncompliance charge in violation of §287.955.5.

22. In six instances, AmTrust Kansas was late in responding to examiner criticisms in violation of §374.205.2 (2) and 20 CSR 100-8.040 (6).

**WHEREAS**, the Division and AmTrust Kansas have agreed to resolve the issues raised in the market conduct examination as follows:

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

B. **Remedial Action.** During the course of the examination, AmTrust Kansas represented that it had already corrected many of the issues raised in the market conduct examination. To the extent it has not already done so, AmTrust Kansas agrees to take further remedial action bringing it into compliance with the statutes and regulations of Missouri and agrees to maintain such remedial actions at all times, to reasonably ensure that the errors noted in the market conduct examination and in this Stipulation do not recur. Such remedial actions shall consist of the following:

1. AmTrust Kansas agrees to use only filed rates in calculating workers compensation insurance with Missouri premium or exposure.
2. AmTrust Kansas agrees that it will attach all Missouri required forms or endorsements to workers compensation policies with Missouri premium or exposure.
3. AmTrust Kansas agrees not to utilize unfiled or unapproved forms on workers compensation policies with Missouri premium or exposure.
4. AmTrust Kansas agrees that it will not utilize a schedule rating credit or debit, or increase or decrease such credits or debits, on workers compensation policies with Missouri premium or exposure without documenting a change in the risk.

5. AmTrust Kansas agrees that it will review all in-force guarantee cost workers compensation insurance policies with Missouri premium or exposure as of the date of the Order approving this Stipulation to determine if schedule rating credits were decreased in the current policy without a documented change in the risk. If schedule rating credits were decreased without a documented change in the risk, AmTrust Kansas will refund any overcharge to the affected policyholder with interest as determined under §374.191. However, if the review reveals an error ratio that exceeds 7%, then in addition to providing refunds to affected policyholders for the overcharge in the current policy term, AmTrust Kansas agrees to conduct an additional review of active guarantee cost workers compensation insurance policies with Missouri premium or exposure from January 1, 2018 through the date of the Order, exclusive of the policy terms reviewed in the initial review. Refunds will be issued for all policy terms within the scope of the review period where scheduled rating credits were decreased without a documented change in the risk. A letter will be included with the payment indicating that “as a result of a Missouri market conduct examination, it was found that a partial refund of premium was owed.”

6. AmTrust Kansas agrees that it will maintain records for Missouri risks, including schedule rating worksheets, in an archival manner and will not add information to a record that is finalized for file documentation or permanent retention purposes.

7. AmTrust Kansas agrees that it will maintain policy file documentation as required by §374.205.2 and 20 CSR100-8.040 (3) (A).

8. AmTrust Kansas agrees not to permit producers to write AmTrust Kansas workers compensation policies with Missouri premium or exposure unless the producer is licensed and listed on AmTrust Kansas Producer Registry at the time of the sale.

9. AmTrust Kansas agrees that audits on workers compensation policies with Missouri premium or exposure will be completed, billed, and premiums returned within 120 days of policy expiration or cancellation unless a) a delay is caused by the policyholder's failure to respond to reasonable audit requests provided that the requests are timely and adequately documented or b) a delay is by the mutual agreement of the policyholder and AmTrust Kansas provided that the agreement is adequately documented.

10. AmTrust Kansas agrees to timely notify Missouri policyholders of the specific amount of the Audit Noncompliance Charge applied for non-cooperation in the audit process prior to applying such a charge.

11. AmTrust Kansas agrees to issue refunds to all policyholders identified as being overcharged in the Examination Report, and will include interest as determined under §374.191. A letter will be included with the payment indicating that "as a result of a Missouri market conduct examination, it was found that a premium refund was owed."

12. AmTrust Kansas agrees to timely respond to criticisms in future Missouri market conduct examinations.

C. **Compliance.** AmTrust Kansas agrees to file documentation with the Division, in a format acceptable to the Division, within 180 days of the entry of a final order of any remedial action taken pursuant to Paragraph B to implement compliance with the terms of this Stipulation or to document the payment of restitution required by this Stipulation. Such documentation is provided pursuant to §374.205.

D. **Ongoing Examination.** AmTrust Kansas agrees to pay any reasonable examination fees expended by the Division in conducting its review of the documentation provided by AmTrust Kansas pursuant to Paragraph C of this Stipulation.

E. **Other Penalties.** The Division agrees that it will not seek penalties against AmTrust Kansas other than those agreed to in this Stipulation, in connection with the above-referenced market conduct examination.

F. **Voluntary Forfeiture.** AmTrust Kansas agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$26,850 such sum payable to the Missouri State School Fund, in accordance with §374.049.11 and §374.280.2.

G. **Non-Admission.** Nothing in this Stipulation nor any act performed by AmTrust Kansas pursuant to or in furtherance of this Stipulation shall be construed as an admission by AmTrust Kansas, this Stipulation being part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above-referenced market conduct examination. AmTrust Kansas expressly denies that any of its actions or alleged actions were knowingly committed or represented a pattern or business practice that would violate insurance unfair trade practice laws or any other applicable statutes or regulations. The parties agree that nothing in this Stipulation is intended to create any private rights or remedies against AmTrust Kansas, to constitute evidence of wrongdoing by AmTrust Kansas for the purpose of any third-party proceeding, or to waive any of AmTrust Kansas's defenses against any person or entity not a party to this Stipulation. AmTrust Kansas enters into this Stipulation to fully, finally, and completely resolve all matters encompassed within the scope of this Stipulation and market conduct examination without further regulatory or administrative process or any actions, requirement, or monetary payments beyond those enumerated herein.

H. **Waivers.** AmTrust Kansas, 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, and review or appeal by any trial or appellate court, which may

have otherwise applied to the above-referenced market conduct examination.

I. **Changes.** No changes to this Stipulation shall be effective unless made in writing and agreed to by representatives of the Division and AmTrust Kansas.

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

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

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

M. **Effect of Stipulation.** This Stipulation shall become effective only upon entry of a Final Order by the Director of the Department (hereinafter "Director") approving this Stipulation.

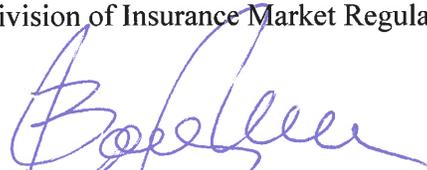
N. **Request for an Order.** The signatories below request that the Director issue an Order approving this Stipulation and ordering the relief agreed to in the Stipulation, and consent to the issuance of such Order.

DATED: 11-02-2021



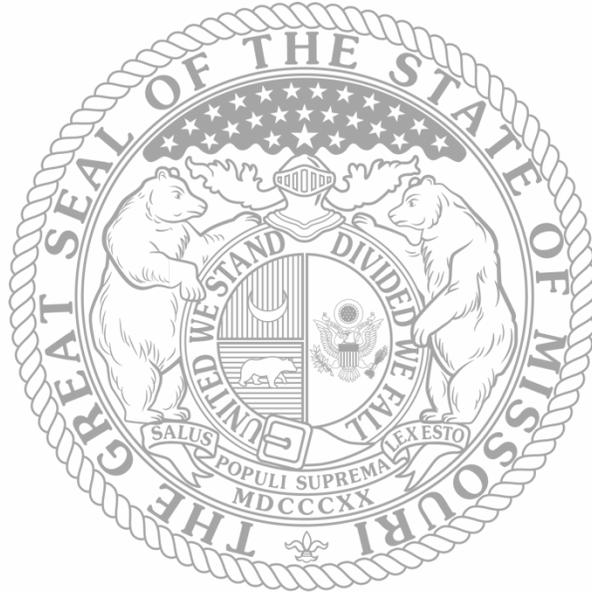
Stewart Freilich  
Chief Market Conduct Examiner and Senior  
Counsel  
Division of Insurance Market Regulation

DATED: October 28, 2021



Barry Moses  
Assistant Secretary and Vice President,  
Senior Regulatory Counsel

**AmTrust Insurance Company f/k/a AmTrust  
Insurance Company of Kansas, Inc.**



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

**AmTrust Insurance Company of Kansas, Inc.  
NAIC # 15954**

**MISSOURI SBS EXAMINATION # 317134**

**NAIC MATS #MO-HICKSS1-102**

**November 2, 2021**

**Home Office  
4455 LBJ Freeway Suite 700  
Dallas TX 75244**

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

**JEFFERSON CITY, MISSOURI**

## TABLE OF CONTENTS

<b>FOREWORD.....</b>	<b>3</b>
<b>SCOPE OF EXAMINATION.....</b>	<b>3</b>
<b>COMPANY PROFILE.....</b>	<b>4</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>EXAMINATION FINDINGS .....</b>	<b>6</b>
<b>I. UNDERWRITING AND RATING.....</b>	<b>6</b>
<b>II. PRODUCER LICENSING .....</b>	<b>13</b>
<b>III. POLICYHOLDER SERVICE.....</b>	<b>14</b>
<b>IV. CRITICISMS AND FORMAL REQUESTS TIME STUDY .....</b>	<b>15</b>
<b>EXAMINATION REPORT SUBMISSION.....</b>	<b>17</b>

November 2, 2021

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

Director Lindley-Myers:

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

**AmTrust Insurance Company of Kansas, Inc. (NAIC #15954)**

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

**FOREWORD**

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

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

When used in this report:

- “Company” refers to the AmTrust Insurance Company of Kansas, Inc.
- “CSR” refers to the Missouri Code of State Regulations
- “DCI” refers to the Missouri Department of Commerce and Insurance
- “Director” refers to the Director of the Missouri Department of Commerce and Insurance
- “NAIC” refers to the National Association of Insurance Commissioners
- “NCCI” refers to the National Council on Compensation Insurance
- “RSMo” refers to the Revised Statutes of Missouri

**SCOPE OF EXAMINATION**

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

The purpose of this examination was to determine if the Company complied with Missouri statutes and DCI regulations. The primary period covered by this review is January 1, 2015 through December 31, 2017, unless otherwise noted. Errors found outside of this time period may also be included in the report.

The examination was a targeted examination involving the following lines of business and business functions: Workers' Compensation Insurance (Underwriting/Rating, Licensing, and Policyholder Service).

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 NAIC *Market Regulation Handbook* when conducting reviews that applied a general business practice standard. The NAIC benchmark error rate for claims practices is seven percent (7%) and for other trade practices it is ten percent (10%). Error rates exceeding these benchmarks are presumed to indicate a general business practice. The benchmark error rates were not utilized for reviews not applying the general business practice standard.

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

## **COMPANY PROFILE**

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

### **COMPANY HISTORY**

AmTrust Insurance Company of Kansas, Inc. (the "Company") was organized and incorporated on January 10, 1972, under K.S.A. 40-901, et seq. – General Provisions Relating to Fire Insurance Companies and K.S.A. 40-1101, et seq. - General Provisions Relative to Casualty, Surety and Fidelity Companies. The Company was organized and chartered January 10, 1972, under the name Trinity Universal Insurance Company of Kansas, Inc. ("Trinity") and was authorized and commenced business on February 1, 1972. Trinity was owned by Trinity Universal Insurance Company, a Texas domiciled property and casualty insurance company, which was ultimately owned by Unitrin, Inc., (now Kemper Corporation) an insurance holding company domiciled in the state of Delaware. On June 1, 2008, Trinity was sold to AmTrust Financial Services, Inc., a publicly-held insurance holding company incorporated in the state of Delaware. On July 1, 2009, Trinity changed its name to AmTrust Insurance Company of Kansas, Inc.

### **TERRITORY AND PLAN OF OPERATION**

As of December 31, 2017, the Company is licensed and authorized to write business in 49 states and territories except for California, Florida, American Samoa, Guam, Puerto Rico, U.S. Virgin Island and the Northern Marina Islands. The Company offers the following lines of businesses: fire, allied lines, commercial multi-peril, inland marine, earthquake, workers compensation, other liability, commercial automobile liability, commercial auto physical damage, fidelity, burglary and theft and boiler and machinery. The Company's primary line of business is workers compensation, which amounted to 80% of its direct written premium in 2017.

## EXECUTIVE SUMMARY

The DCI conducted a targeted market conduct examination of AmTrust Insurance Company of Kansas, Inc. The examiners found the following areas of concern:

### **UNDERWRITING AND RATING**

#### **Active Guarantee Cost Workers' Compensation Policies**

- In one policy, the Company did not classify the insured's operations with the correct classification code and rate. Reference: §§287.947, 287.950 and 287.955, RSMo, and 20 CSR 500-6.950
- In one policy, the Company charged the incorrect increase limit minimum amount. Reference: §287.955.1, RSMo, and NCCI 2001 Basic Manual Appendix C, Table 1 – Employers Liability Increased Limits
- In four policies, the Company failed to adhere to the rules of the NCCI Basic Manual by applying incorrect governing classification codes. Reference: §287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User's Guide - Missouri – Rule 1.B.2.a.
- In one policy, the Company failed to include the sole proprietors payroll limit in the classification code as indicated by the audit worksheets for the final audit. Reference: §287.955, RSMo, and NCCI Basic Manual – 2001 Edition User's Guide - Missouri – Rule 2.E.
- In one policy, the Company failed to adhere to the rules of the NCCI Basic Manual by excluding the only Limited Liability Company (LLC) member without having an exclusionary endorsement (WC 00 03 08) signed and in the file. Reference: §287.037, RSMo, and NCCI Basic Manual – 2001 Edition User's Guide - Missouri – Rule 2.E.1.a.
- In seven policies, the Company failed to include or calculate the correct NCCI Standard payroll amounts. Reference: §287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User's Guide - Missouri – Rule 2.B.
- In one file, the Company applied a schedule rating credit with no documented change in the risk. Reference: §§287.950.1, 287.955.6(4)(d), (2014), 287.955.6(2)(d), (2016), RSMo, and 20 CSR 500-4.100(7)(D)
- In six files, the Company decreased the schedule rating credit with no documented change in the risk. Reference: §§287.950.1, 287.955.6(4)(d), (2014), 287.955.6(2)(d), (2016), RSMo, and 20 CSR 500-4.100(7)(D)
- In 112 policies, the Company failed to submit various forms for approval from DCI. Reference: §287.310.1, RSMo, and 20 CSR 500-6.100(1)
- In 112 policies, the Company failed to attach required forms to the policy. Reference: §§287.955.4 and 5, RSMo, and NCCI Forms Manual

#### **Active Small Deductible Workers' Compensation Policies**

- In five files, the Company failed to complete and attach the required Missouri Benefits Deductible Endorsement WC 24 06 03 to the small deductible policies. Reference: §§287.955.4 and 5, RSMo, and NCCI Forms Manual
- In one policy, the Company applied the incorrect hazard group for the insured's operations to calculate the small deductible credit. Reference: §287.947.1, RSMo

### **Late Audit Policies**

- In 50 files, the Company attached forms to its policies for which it failed to obtain approval from the DCI. Reference: §287.310.1, RSMo, and 20 CSR 500-6.100(1)
- In 36 files, the Company failed to attach the Missouri required form WC 24 06 04 A to the policy. Reference: §§287.955.4 and .5, RSMo, 287.310.1, RSMo, 20 CSR 500-6.100(1), and NCCI Forms Manual
- In 14 files, the Company failed to attach the Missouri required form WC 24 06 04 B to the policy. Reference: §§287.955.4 and .5, RSMo, 287.310.1, RSMo, 20 CSR 500-6.100(1), and NCCI Forms Manual
- In 13 files, the Company incorrectly applied the multiplier of 150 % to the estimated payroll and failed to calculate the Audit Noncompliance Charge (ANC) in accordance with the NCCI rule. Reference: §287.955.5, RSMo, and NCCI Rule 3-A-13 a. and b.
- In 13 files, the Company used an unfiled rate at audit to determine the ANC. Reference: §287.947.1, RSMo

## **PRODUCER LICENSING**

### **Active Guarantee Cost Workers' Compensation Policies**

- In 61 files, the policy was written by producers that were not appointed by the Company. Reference: §§375.014, 375.022(2), RSMo, and 20 CSR 700-1.020

## **POLICYHOLDER SERVICE**

### **Late Audit Policies**

- In 17 files, the Company failed to complete and bill audits or return premium within 120 days of policy expiration or cancellation without an allowable reason for the delay. Reference: §§287.955.1 and .3, RSMo, and NCCI Rule 3-A-13.b.
- In three files, the Company did not notify the insured of the amount of the ANC that would be applied to the policy if the insureds were uncooperative during the audit. Reference: §287.955.5, RSMo, and NCCI Basic Manual Rule 3.A.1.13

## **EXAMINATION FINDINGS**

### **I. UNDERWRITING AND RATING**

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

#### **A. Active Guarantee Cost Workers' Compensation Policies**

- 1. NAIC Chapter 20 Underwriting and Rating Standard 1: The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the regulated entity's rating plan.**

To test for this standard, examiners requested and reviewed a random sample of 113 active guarantee cost workers' compensation policies from data supplied by the Company to determine if the premiums charged agreed with the Company's rate filing and NCCI rules.

Field Size	1,285
Sample Size	113
Type of Sample	Random
Number of Files in Error	15
Error Ratio	13.27%

The following errors were found in this review.

Finding 1: In one file, the Company misclassified and applied the wrong rate for the insured's operations. On August 22, 2017, the underwriting file indicated the insured's operation description should be 9063 (Health Spa or Steam Bath NOC and Clerical) with a rate of (1.04). On September 20, 2018, the final audit used 9586 (Barbershop, Beauty Parlor or Hair Styling Salon) with a rate of (.74) which resulted in undercharges.

Reference: §§287.947, 287.950 and 287.955, RSMo, and 20 CSR 500-6.950

Finding 2: In one file, the policy had Bodily Injury limits by Accident and Disease of \$1,000,000. According to the NCCI Manual, Appendix C, Table 1- Employers Liability Increased Limits Minimum Premium, the applicable minimum premium was \$120. The Company charged the insured \$93 at audit and did not charge the \$27 Increase Limit minimum amount resulting in undercharges.

Reference: §287.955.1, RSMo, and NCCI 2001 Basic Manual Appendix C, Table 1 – Employers Liability Increased Limits

Finding 3: In one file, the Company failed to allocate correct payroll amounts to the governing classification code of 8832 Physician and Clerical when it applied 10% of the Officer's payroll to the 8810 classification and applied payroll to the uninsured subcontractor classification of 9015 resulting in undercharges.

Reference: §§287.947, 287.950, and 287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User's Guide - Missouri – Rule 1.B.2.a.

Finding 4: In one file, the Company incorrectly included all of the restaurant employees in classification code 8810 Clerical Office Employees NOC for the final audit, which resulted in undercharges.

Reference: §287.955, RSMo, and NCCI Basic Manual – 2001 Edition User's Guide - Missouri – Rule 1.A.1 and Rule 1.B.2.a.

Finding 5: In one file, the Company failed to use the governing classification code of 8832 Physician and Clerical and should not have placed all employee payroll in the 8810 classification code, resulting in undercharges.

Reference: §287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rule 1.B.2.a.

Finding 6: In one file, the Company failed to include payroll to the governing classification code of 9082 Restaurant NOC although the President of the Company was described on the audit worksheet as being involved in the daily operations of the business. The President’s payroll should not have been included in classification 8810, which resulted in undercharges.

Reference: §287.955, RSMo, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rule 1.A.1 and Rule 1.B.2.a.

Finding 7: In one file, the Company failed to properly allocate payroll at final audit when they used the insured’s unofficial notes assigning 25% of one employee’s wages to clerical office work, and 75% of the employee’s wages to the governing classification, 8001 –Store: Florist and Drivers to their final audit, resulting in undercharges.

Reference: §287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rule 1.B.2.a.(3)(b)

Finding 8: In one file, the company incorrectly included officers’ assigned wages in classification code 8810 and placed uninsured subcontractor costs under standard exception classification 8742 for the final audit when no payroll should have been assigned to either classification, resulting in undercharges.

Reference: §287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rules 1.B.2.a., 1.D.3.d.(2), 1.B.3.a.(4), 2.E.1.a.

Finding 9: In one file, the Company failed to correctly calculate the total payroll remuneration to be included in the final audit.

Reference: §287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rules 1 and 2

Finding 10: In one file, the company failed to include the sole proprietors payroll limit in classification 8810 as indicated by the audit worksheets for the final audit, resulting in overcharges.

Reference: Reference: §287.955, RSMo, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rule 2.E.

Finding 11: In one file, the Company failed to correctly calculate the total payroll remuneration to be included in the final audit. Since the Clerical Office NOC wages and Officer Wages are

specifically identified by exclusion, the overage in payroll should not have been included by the Company in the governing class of Restaurant NOC, resulting in overcharges.

Reference: §287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rule 2.B.

Finding 12: In one file, the Company failed to include and classify correct payroll in the final audit resulting in incorrect total remuneration.

Reference: §287.955, RSMo, 20 CSR 500-6.950, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rule 2.B.

Finding 12A: In one file, the Company failed to adequately document that it included and classified correct payroll in the final audit.

Reference: §374.205.2 RSMo and 20 CSR 100-8.040(3)(A).

Finding 13: In one file, the Company failed to adhere to the rules of the National Council on Compensation Insurance (NCCI)’s Basic Manual when it failed to include only 10% of the Officer’s payroll limit in classification code 8810 for the final audit, resulting in overcharges.

Reference: §287.955.4, RSMo, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rule 2.E.1.a.

Finding 14: In one file, the Company failed to adhere to the rules of the NCCI Basic Manual when it excluded the only LLC member without having an exclusionary endorsement (WC 00 03 08) signed and in the file and failed to properly allocate payroll to correct class codes, resulting in undercharges.

Reference: §287.037, RSMo, and NCCI Basic Manual – 2001 Edition User’s Guide - Missouri – Rule 2.E.1.a.

**2. NAIC Chapter 21 Underwriting and Rating Standard 2: Schedule rating or individual risk premium modification plans, where permitted, are based on objective criteria with usage supported by appropriate documentation.**

To test for this standard, examiners requested and reviewed a random sample of 113 active guarantee cost workers’ compensation policies from data supplied by the Company files to determine if schedule rating credits or debits were based on actual changes in risk and whether the evidence was contained in the file of the insurer at the time the debit or credit was applied.

Field Size	1,285
Sample Size	113
Type of Sample	Random
Number of Files in Error	8
Error Ratio	7.07%

The following errors were found in this review.

Finding 1: In one file, the Company applied a 10% credit with no documentation in the file regarding any change in the risk, which resulted in an undercharge.

Reference: §§287.950.1, 287.955.6(4)(d), (2014), 287.955.6(2)(d), (2016), RSMo, and 20 CSR 500-4.100(7)(D)

Finding 2: In six files, the Company decreased the schedule rating credit when there was no change in the risk, which resulted in overcharges.

Reference: §§287.950.1, 287.955.6(4)(d), (2014), 287.955.6(2)(d), (2016), RSMo, and 20 CSR 500-4.100(7)(D)

**3. NAIC Chapter 20 Underwriting and Rating Standard 5: All forms, including policies, contracts, riders, amendments, endorsement forms and certificates are filed with the insurance department, if applicable.**

To test for this standard, examiners requested and reviewed a random sample of 113 active guarantee cost workers' compensation policy files from data supplied by the Company files to determine if the forms making the policy were filed with the Director and used as filed.

Field Size	1,285
Sample Size	113
Type of Sample	Random
Number of Files in Error	112
Error Ratio	99.11%

The following errors were found in this review.

Finding 1: In 112 policies, the Company failed to submit various forms to the DCI for specific approval prior to use. The Company failed to obtain approval for forms: Workers Compensation and Employers Liability Insurance Policy – WC 00 00 00 A, Information Page Notes – WC 00 00 01A (w/d 1/1/2015), Missouri Amendatory Endorsement WC 24 06 04 (w/d 09/1/2013) and Missouri Employer Paid Medical Endorsement WC 24 04 06 C (w/d 8/28/2016).

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

Finding 2: In 112 policies, the Company failed to attach the following required forms to the policy: Missouri Property and Casualty Guaranty Association Notification Endorsement WC 24 06 02B, Missouri Notification of Additional Mesothelioma Benefits Endorsement WC 24 03 02 and Missouri Exclusion of Additional Mesothelioma Benefits Endorsement WC 24 03 03.

Reference: §§287.955.4 and .5, RSMo, and NCCI Forms Manual

## B. Active Small Deductible Workers' Compensation Policies

1. **NAIC Chapter 21 Underwriting and Rating Standard 11: All forms and endorsements forming a part of the contract are listed on the declaration page and should be filed with the insurance department (if applicable).**

To test for this standard, examiners requested and reviewed a census of 16 active small deductible workers' compensation policies from data supplied by the Company to determine if policies contained required forms.

Field Size	16
Sample Size	16
Type of Sample	Census
Number of files in Error	6
Error Ratio	37.50%

The following errors were found in this review.

Finding 1: In five files, the Company failed to adhere to the approved manual rules of the NCCI by not completing and attaching the required Missouri Benefits Deductible Endorsement WC 24 06 03 to the small deductible policies reviewed.

Reference: §§287.955.4 and .5, RSMo, and NCCI Forms Manual

Finding 2: In one policy, the Company failed to apply the correct hazard group for the insured's operations to calculate the small deductible credit, which resulted in a premium overcharge.

Reference: §287.947.1, RSMo

## C. Late Audit Policies

1. **NAIC Chapter 20 Underwriting and Rating Standard 5: All forms, including policies, contracts, riders, amendments, endorsement forms and certificates are filed with the insurance department, if applicable.**

To test for this standard, examiners requested and reviewed a random sample of 50 late audit workers' compensation policy files from data supplied by the Company files to determine if the forms making the policy were filed with the Director and were used as filed.

Field Size	362
Sample Size	50
Type of Sample	Random
Number of files in Error	50
Error Ratio	100.00%

The following errors were found in this review.

Finding 1: In 50 files, the Company attached form WC 24 06 04 to its policies. The Company failed to submit and obtain approval for form WC 24 06 04 from the DCI for approval to use. All endorsements attached to or made part of the basic policy, which have not been submitted by a filing agency on behalf of its members and subscribers must be submitted by each Company. Forms that have been withdrawn from use by the filing agency, must be filed individually by the Company for use.

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

**2. NAIC Chapter 21 Underwriting and Rating Standard 11: All forms and endorsements forming a part of the contract are listed on the declaration page and should be filed with the insurance department (if applicable).**

To test for this standard, examiners requested and reviewed a random sample of 50 late audit workers’ compensation policy files from data supplied by the Company files to determine if policies contained required forms.

Field Size	362
Sample Size	50
Type of Sample	Random
Number of files in Error	50
Error Ratio	100.00%

The following errors were found in this review.

Finding 1: In 36 files, the Company failed to adhere to the approved manual rules of the NCCI by not attaching the Missouri required forms WC 24 06 04 A.

Reference: §§287.955.4 and .5, RSMo, 287.310.1, RSMo, 20 CSR 500-6.100(1), and NCCI Forms Manual

Finding 2: In 14 files, the Company failed to adhere to the approved manual rules of the NCCI by not attaching the Missouri required forms WC 24 06 04 B.

Reference: §§287.955.4 and .5, RSMo, 287.310.1, RSMo, 20 CSR 500-6.100(1), and NCCI Forms Manual

**3. NAIC Chapter 20 Underwriting and Rating Standard 1: The rate charged for the policy coverage are in accordance with filed rates (if applicable) or the regulated entity’s rating plan.**

To test for this standard, examiners requested and reviewed a random sample of 50 late audit workers’ compensation policy files from data supplied by the Company files to determine if the premiums charged agreed with the Company’s rate filings and NCCI rules.

Field Size	362
Sample Size	50
Type of Sample	Random
Number of files in Error	13
Error Ratio	26.00%

The following errors were found in this review.

**Finding 1:** In 13 files, the Company incorrectly applied the multiplier of 150 % to the estimated payroll and failed to calculate the ANC in accordance to the NCCI rule.

Reference: §287.955.5, RSMo, and NCCI Rule 3-A-13 a. and b.

**Finding 2:** In 13 files, the Company used an unfiled rate at audit to determine the ANC.

Reference: §287.947.1, RSMo

#### **D. Policies Shifted Between Affiliated Companies Policies**

Examiners requested and reviewed a census of four policies that were written by affiliated insurers for subsequent policy terms or moved to AICK in the current term from an affiliated insurer to determine if risks were moved between affiliated insurers due to an actual change in risk or to circumvent rate decreases and schedule rating constraints.

Field Size	4
Sample Size	4
Type of Sample	Census
Number of files in Error	0
Error Ratio	0.00%

The examiners found no errors in this review.

## **II. PRODUCER LICENSING**

The producer licensing portion of the examination reviews a regulated entity's compliance with Missouri producer licensing laws and regulations.

### **A. Active Guarantee Cost Workers' Compensation Policies**

#### **1. NAIC Chapter 20 Producer Licensing Standard 1: Regulated entity records of licensed and appointed (if applicable) producers and in jurisdictions where applicable, licensed company or contracted independent adjusters agree with insurance department records.**

To test for this standard, examiners requested and reviewed a random sample of 113 active guarantee cost workers' compensation policies from data supplied by the Company to

determine if any policies were sold by producers that were not properly appointed by the Company.

Field Size	1,285
Sample Size	113
Type of Sample	Random
Number of files in Error	61
Error Ratio	53.98%

The following errors were found in this review.

Finding 1: In 61 files, policies were written by producers that were either not listed on the Company’s producer registry or the appointment date was more than thirty days after the policy’s effective date.

Reference: §§375.014, 375.022(2), RSMo, and 20 CSR 700-1.020.

### III. POLICYHOLDER SERVICE

The policyholder service portion of the examination reviews the Company’s compliance with Missouri statutes and regulations regarding notice/billing, delays/no response, and premium refund and coverage questions.

#### A. Late Audit Policies

##### 1. NAIC Chapter 20 Policyholder Service Standard 1: Premium notices and billing notices are sent out with an adequate amount of advance notice.

To test for this standard, examiners requested and reviewed a random sample of 50 late audit workers’ compensation policies from data supplied by the Company to determine if audits were completed and billed within 120 days of policy expiration or if there was a permissive reason for the delay.

Field Size	362
Sample Size	50
Type of Sample	Random
Number of files in Error	20
Error Ratio	40.00%

The following errors were found in this review:

Finding 1: In 17 files, the Company failed to complete and bill audits or return premium within 120 days of policy expiration or cancellation and failed to provide evidence the audits were late due to a mutual agreement between the Company and the insured or due to the insured’s failure to respond to reasonable and timely audit requests.

Reference: §§287.955.1 and .3, RSMo, and NCCI Rule 3-A-13.b.

Finding 2: In three files, the Company did not notify the insured of the amount of the ANC that would be applied to the policy if the insured were uncooperative in the audit process. The Company's requests for information state the policy may be subject to a potential surcharge, but does not provide the specific amount of the ANC in accordance with NCCI rules.

Reference: §287.955.5, RSMo, and NCCI Basic Manual Rule 3.A.1.13

#### **IV. CRITICISMS AND FORMAL REQUESTS TIME STUDY**

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

##### **A. Criticism Time Study**

Number of Calendar Days to Respond	Number of Criticisms	Percentage of Total
0 to 10 days	30	83.00%
Over 10 days and beyond extension due date	5	14.00%
Over 10 days with no extension	1	3.00%
Totals	36	100.00%

Finding 1: The Company was late in responding to six criticisms.

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

**B. Formal Request Time Study**

Number of Calendar Days to Respond	Number of Requests	Percentage of Total
0 to 10 days	15	100.00%
Over 10 days and beyond extension due date	0	0.00%
Over 10 days with no extension	0	0.00%
Totals	15	100.00%

No errors were found in this review.

## **EXAMINATION REPORT SUBMISSION**

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of AmTrust Insurance Company of Kansas, Inc. (NAIC #15954), Examination Number 317134. This examination was conducted by Shelly Herzing, Dale Hobart, Darren Jordan and Tad Herin. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated December 8, 2020. 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.

11-02-2021

Date



Stewart Freilich  
Chief Market Conduct Examiner