

**IN THE DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION
STATE OF MISSOURI**

In Re:)	
)	
ACCIDENT FUND GENERAL INSURANCE COMPANY (NAIC #12304))	Market Conduct Exam No. 1401-01-TGT
)	
ACCIDENT FUND NATIONAL INSURANCE COMPANY (NAIC #12305))	Market Conduct Exam No. 1401-02-TGT
)	
ACCIDENT FUND INSURANCE COMPANY OF AMERICA (NAIC #10166))	Market Conduct Exam No. 1403-07-TGT
)	
UNITED WISCONSIN INSURANCE COMPANY (NAIC #29157))	Market Conduct Investigation No. 13113-29157-PC

ORDER OF THE DIRECTOR

NOW, on this 10th day of September, 2018, Director, Chlora Lindley-Myers, after consideration and review of the market conduct examination reports of Accident Fund General Insurance Company (NAIC #12304) (hereinafter “AFG”), report number 1401-01-TGT, Accident Fund National Insurance Company (NAIC #12305) (hereinafter “AFN”), report number 1401-02-TGT, and Accident Fund Insurance Company of America (NAIC #10166) (hereinafter “AFICA”), report number 1403-07-TGT, prepared and submitted by the Division of Insurance Market Regulation (hereinafter “Division”) pursuant to §374.205.3(3)(a)¹, and review of the market conduct investigation of United Wisconsin Insurance Company (NAIC #29157) (hereinafter “UWIC”), investigation number 13113-29157-PC, conducted by the Division pursuant to §374.190, and of the Stipulation of Settlement and Voluntary Forfeiture (hereinafter “Stipulation”), entered into by the Division, AFG, AFN, AFICA, and UWIC, does hereby adopt such reports as filed. After consideration and review of the Stipulation, report, relevant work papers, and any written submissions or rebuttals, the findings and conclusions of such reports are deemed to be the Director’s findings and conclusions accompanying this order pursuant to §374.205.3(4). 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 AFG, AFN, AFICA, UWIC, and the Division

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

having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that AFG, AFN, AFICA, and UWIC shall not engage in any of the violations of law and regulations set forth in the Stipulation, shall implement procedures to place each 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 AFG shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$5,000.00 payable to the Missouri State School Fund.

IT IS FURTHER ORDERED that AFN shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$5,000.00 payable to the Missouri State School Fund.

IT IS FURTHER ORDERED that AFICA shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$5,000.00 payable to the Missouri State School Fund.

IT IS FURTHER ORDERED that UWIC shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$5,000.00 payable to the Missouri State School Fund.

IT IS SO ORDERED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 10th day of September, 2018.



Chlora Lindley-Myers
Chlora Lindley-Myers
Director

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)	
UNITED WISCONSIN INSURANCE COMPANY (NAIC #29157))	Market Conduct Investigation No. 13113-29157-PC

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter “the Division”), and Accident Fund General Insurance Company (NAIC #12304) (hereinafter “AFG”), Accident Fund National Insurance Company (NAIC #12305) (hereinafter “AFN”), Accident Fund Insurance Company of America (NAIC #10166) (hereinafter “AFICA”), and United Wisconsin Insurance Company (NAIC #29157) (hereinafter “UWIC”), as follows:

WHEREAS, the Division is a unit of the Missouri Department of Insurance, Financial Institutions and Professional Registration (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 in Missouri;

WHEREAS, AFG, AFN, AFICA, and UWIC have been granted certificates of authority to transact the business of insurance in the State of Missouri;

WHEREAS, the Division conducted Market Conduct Examinations of AFG, AFN, and AFICA and prepared report numbers 1401-01-TGT, 1401-02-TGT, and 1403-07-TGT, and a Market Conduct Investigation of UWIC and prepared investigation findings 13113-29157-PC;

WHEREAS, based on the Market Conduct Examination of AFG, the Division alleges:

1. In three instances, AFG failed to include officer’s payroll in the final audit in

violation of §287.955.3¹.

2. In three instances, AFG failed to complete and bill the audit and return premiums within 120 days of policy expiration/cancellation in violation of §287.955.1, §287.310.10 and 20 CSR 500-6.500 (2) (A).

3. In seven instances, AFG failed to apply the Second Injury Fund (“SIF”) rate to the correct premium in violation of §287.715 and §287.310.9.

4. In four instances, AFG failed to correctly calculate the Administrative Surcharge (“AS”) in violation of §287.716.2 and §287.310.9.

5. In five instances, AFG failed to collect the AS at the same time as premium in violation of §287.717.1.

6. AFG issued both participating and non-participating policies in violation of §287.932.1 and 20 CSR 500-6.100 (8).

7. In two instances, AFG utilized unfiled deductible credit percentages in violation of §287.947.1 and 20 CSR 500-6.950 (7).

8. In seven instances, AFG failed to maintain evidence in the file justifying the reduction in the Schedule Modification Credit in violation of §287.950.2 and 20 CSR 500-4.100 (7) (D).

9. In four instances, AFG failed to apply 10% of the officer’s payroll in Class Code 8810 in violation of §287.955.3.

10. In 12 instances, AFG attached an incorrect premium discount rate endorsement to policies in violation of §287.955.1, §287.310.1 and 20 CSR 500-6.100 (1).

11. In eight instances, AFG failed to send a notice to the insured stating that the Schedule Modification Credit Factor had been reduced for the renewal policy period in violation of §379.888.3 and 20 CSR 500-4.100 (7) (D) 2.

12. In three instances, AFG failed to attach an endorsement to the policy excluding a member of an LLC from workers compensation coverage in violation of §287.037.

13. In one instance, AFG failed to maintain the application and NCCI Missouri Contractors Classification Adjustment Program Credit Worksheet in violation of §287.937.2, §287.955 and 20 CSR 100-8.040 (3) (A).

14. In three instances, AFG utilized a Terrorism rate not on file with the Department in

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

violation of §287.947.1 and 20 CSR 500-6.950 (7).

15. In seven instances, AFG failed to file the 1.25 rate applied to payroll for insured that failed to cooperate with the final audit process in violation of §287.947.1 and 20 CSR 500-6.950 (7).

16. In one instance, AFG failed to apply the correct officer payroll limit at audit in violation of §287.955.3.

17. In one instance, AFG failed to verify at audit information reported to the NCCI on a credit worksheet was accurate in violation of §287.955.3.

18. In 10 instances, AFG failed to send notification to the insured on an approved form that they might be eligible for a premium adjustment credit in violation of §287.955.3.

19. In 31 instances, AFG waived the final audit and failed to base final premium on actual payroll in violation of §287.955.2.

20. In two instances, AFG moved an insured to an affiliated insurer which move was not justified by claims experience or other schedule rating factors and resulted in a premium increase in violation of §379.889 and 20 CSR 500-4.100 (7) (C).

21. In one instance, AFG excluded an officer from workers compensation coverage in violation of §287.955.3.

22. In one instance, AFG sent an automated “notice of credit” when an outstanding premium balance was actually due implicating the provisions of §375.936 (6) (a).

23. In one instance, AFG failed to attach the Missouri Contracting Classification Premium Endorsement to the policy in violation of §287.955.3.

24. In one instance, AFG utilized a waiver of the right to recover rate that was not on file with the Department in violation of §287.947.1 and 20 CSR 500-6.950 (7).

25. In one instance, AFG added a higher rated classification code at audit then permitted by the NCCI manual in violation of §287.955.1.

WHEREAS, based on the Market Conduct Examination of AFN, the Division alleges:

1. In three instances, AFN failed to include officers’ payroll in violation of §287.020.1 and §287.955.3.

2. In two instances, AFN failed to attach the exclusion endorsement for members of an LLC in violation of §287.037.

3. In 39 instances, AFN failed to apply the Second Injury Fund rate to correct premium

in violation of §287.715.1 and §287.310.9.

4. AFN issued both participating and non-participating policies in violation of §287.932.1 and 20 CSR 500-6.100 (8).

5. In two instances, AFN failed to retain an NCCI MOCCPAP Credit Letter in the underwriting file in violation of §287.937.2 and 20 CSR 100-8.040 (3) (A).

6. In 28 instances, AFN changed schedule rating credits/debits at renewal without documenting the basis for the changes in violation of §287.950.2 and 20 CSR 500-4.100 (7) (D).

7. In three instances, AFN failed to apply 10% of officer payroll to Class Code 8810 in violation of §287.955.3.

8. In one instances, AFN failed to apply the correct experience modification factor to premium in violation of §287.955.1.

9. In 13 instances, AFN failed to send notice on the approved form that the policyholder was eligible for a MOCCPAP premium adjustment credit in violation of §287.955.3.

10. In one instance, AFN applied MOCCPAP credit from a prior policy in violation of §287.955.3.

11. In 33 instances, AFN waived final audits and failed to base final premiums on actual payroll in violation of §287.955.3.

12. In three instances, AFN moved an insured to an affiliated insurer resulting in premium increases that were not justified by claims experience or other schedule rating factors in violation of §379.889 and 20 CSR 500-4.100 (7) C.

13. In six instances, AFN failed to collect the Administrative Surcharge at the same time as premium in violation of §287.717.1.

14. In four instances, AFN failed to apply the correct deductible credit rate to policy premium in violation of §287.955.3.

15. In 33 instances, AFN failed to complete and bill audits and return premiums within 120 days of policy expiration or cancellation in violation of §287.955.1, §287.310.10 and 20 CSR 500-6.500 (2) (A).

WHEREAS, based on the Market Conduct Examination of AFICA, the Division alleges:

1. In 30 instances, AFICA failed to apply the Second Injury Fund rate to correct premium in violation of §287.715 and §287.310.9.

2. AFICA issued both participating and non-participating policies in violation of

§287.932.1 and 20 CSR 500-6.100 (8).

3. In eight instances, AFICA failed to apply 10% of the officers' payroll in Class Code 8810 in violation of §287.955.3.

4. In one instance, AFICA failed to adhere to the NCCI's experience rating factor in violation of §287.955.1.

5. In nine instances, AFICA changed schedule rating credits/debits at renewal without documenting the changes in violation of §287.950.2 and 20 CSR 500-4.100 (7) (D).

6. In nine instances, AFICA failed to send notice to the insured of changes to scheduled rating in violation of §379.888.3 and 20 CSR 500-4.100 (7) (D) 2.

7. In eight instances, AFICA failed to include the proper payroll amount for members of an LLC in violation of §287.955.3.

8. In 25 instances, AFICA waived the final audit and failed to base the final premiums on actual payroll in violation of §287.955.2.

9. In 13 instances, AFICA failed to maintain a copy of the MOCCPAP form 24-1 to support its delivery in violation of §287.955.3, §287.310.10 and 20 CSR 100-8.040 (3) (A).

10. In 49 instances, AFICA failed to complete the audit within 120 days of policy expiration/cancellation in violation of §287.955.1, §287.310.10 and 20 CSR 500-6.500 (2) (A).

11. In one instance, a file did not contain a copy of the NCCI experience modification factor in violation of §287.937.2 and 20 CSR 100-8.040 (3) (A).

12. In four instances, AFICA utilized unfiled deductible credit percentages in violation of §287.947.1 and 20 CSR 500-6.950 (7).

13. In six instances, AFICA failed to collect the Administrative Surcharge at the same time as premium in violation of §287.717.1.

14. In one instance, AFICA failed to calculate the Administrative Surcharge correctly in violation of §287.310.9 and §287.716.2.

15. In one instance, AFICA failed to include officers' payroll in violation of §287.020.1 and §287.955.3.

16. In three instances, AFICA used an unfiled rate to calculate final premium in violation of §287.947.1 and 20 CSR 500-6.950 (7).

17. In one instance, AFICA attached a waiver of subrogation to a construction risk policy in violation of §287.150.6.

18. In two instances, AFICA failed to follow the NCCI Basic Manual for changes/corrections to Class Codes in violation of §287.955.1.

19. In 100 instances, AFICA sent an automated “notice of credit”, when, in fact, an outstanding premium balance was still due in violation of §374.936 (6) (a) and §374.934.

WHEREAS, based on the Market Conduct Investigation of UWIC, the Division alleges that:

1. In one instance, UWIC calculated the Second Injury Fund surcharge by total premium reduced by the portion of the premium resulting from the deductible credit in violation of §287.715.1 and §287.310.9.

2. In one instance, UWIC did not collect Administrative Surcharge premium in violation of §287.716, §287.717 and §287.310.9.

3. In six (6) instances, UWIC offered both participating and non-participating plans to policyholders in violation of §287.932.1 and 20 CSR 500-6.100 (8).

4. In two (2) instances, a waiver of subrogation was applied to Missouri employers in construction lines in violation of §287.150.6.

WHEREAS, the Division, AFG, AFN, AFICA, and UWIC have agreed to resolve the issues raised in the Market Conduct Examinations and the Market Conduct Investigation through a voluntary settlement 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. AFG, AFN, AFICA, and UWIC agree to take remedial action bringing each into compliance with the statutes and regulations of Missouri and agree to maintain those remedial actions at all times, to reasonably assure that the alleged errors noted in the above-referenced market conduct examinations do not recur. Such remedial actions shall include, but not be limited to, the following:

1. AFG, AFN, and AFICA agree that audits on workers compensation insurance 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 caused by the mutual agreement of the policyholder and the Company, provided that the mutual agreement is adequately documented by the Company.

2. AFG, AFN, AFICA, and UWIC agree that they will not offer both participating and non-participating policies of workers' compensation insurance written in Missouri with Missouri as the primary risk state and will not switch policyholders between participating and non-participating plans.

3. AFG, AFN, and AFICA agree that they will not reduce schedule modification credits or increase schedule modification debits unless there is supporting evidence in the file justifying the reduction or the increase.

4. AFG, AFN, and AFICA agree that they will not increase premium for an insured by moving that insured to an affiliated insurer where the increase in premium is not justified by claims experience or other schedule rating factors.

5. AFG, AFN, and AFICA agree that they will not utilize unfiled rates in workers compensation insurance policies.

6. AFG, AFN, and AFICA agree to ensure that their procedures for determining final premium on workers compensation insurance policies with Missouri premium or exposure comply with NCCI Rule 02-MO-2013.

7. AFG agrees, that to the extent it has not already done so, it will remediate policyholders for any premium overcharges noted in Market Conduct Examination Report 1401-01-TGT together with interest at the rate prescribed in §374.191. A letter must be included with the payment, indicating that "as a result of a Missouri Market Conduct examination," it was found that a refund was due to the insured.

8. AFN agrees, that to the extent it has not already done so, it will remediate policyholders for any premium overcharges noted in Market Conduct Examination Report 1401-02-TGT together with interest at the rate prescribed in §374.191. A letter must be included with the payment, indicating that "as a result of a Missouri Market Conduct examination," it was found that a refund was due to the insured.

9. AFICA agrees, that to the extent it has not already done so, it will remediate policyholders for any premium overcharges noted in Market Conduct Examination Report 1403-07-TGT together with interest at the rate prescribed in §374.191. A letter must be included with

payment, indicating that “as a result of a Missouri Market Conduct examination,” it was found that a refund was due to the insured.

10. If it has not already done so, UWIC agrees to reimburse the Administrative Surcharge Fund for the underpayment to the fund on policy no. xxxxxx6313 with any applicable interest and penalties.

11. AFICA and UWIC agree to cease the practice of issuing a waiver of subrogation on policies that include a class code for construction contractors and further agree to include Missouri on the schedule of excluded states on its approved form when there is a construction code on the policy and there is Missouri premium or exposure.

12. AFG, AFN, AFICA, and UWIC agree to pay a total of \$582,630 in remediation and interest to the policyholders listed on the “Dividend Plan Remediation Chart”, which chart is part of the examination workpapers for Market Conduct Examinations #1401-01-TGT, #1401-02-TGT, and #1403-07-TGT and part of the investigation workpapers for Market Conduct Investigation #13113-29157-PC. A letter shall accompany the payment that includes language indicating that as a result of a Missouri Market Conduct Examination or Investigation, it was determined that an additional payment amount was owed to the policyholder.

C. **Compliance.** AFG, AFN, AFICA, and UWIC agree to file documentation with the Division within 120 days of the entry of a final order of all remedial action taken to implement compliance with the terms of this stipulation and to document the payment of any restitution required by this Stipulation. Such documentation is provided pursuant to §374.190 and §374.205.

D. **Voluntary Forfeiture.** AFG agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$5,000, such sum payable to the Missouri State School Fund in accordance with §374.049.11 and §374.280.2. AFN agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$5,000, such sum payable to the Missouri State School Fund in accordance with §374.049.11 and §374.280.2. AFICA agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$5,000, such sum payable to the Missouri State School Fund in accordance with §374.049.11 and §374.280.2. UWIC agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$5,000, such sum payable to the Missouri State School Fund in accordance with §374.049.11 and §374.280.2.

E. **Other Penalties.** The Division agrees that it will not seek penalties against AFG, AFN, AFICA, or UWIC other than those agreed to in this Stipulation, for the conduct found in

Market Conduct Examinations #1401-01-TGT, #1401-02-TGT, and #1403-07-TGT and Market Conduct Investigation #13113-29157-PC.

F. **Examination Fees.** AFG, AFN, AFICA, and UWIC agree to pay any reasonable examination or investigation fees expended by the Division in conducting its review of the documentation provided by the Companies pursuant to Paragraph C of this Stipulation.

G. **Waivers.** AFG, AFN, AFICA, and UWIC, after being advised by legal counsel, do 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 Examinations and Market Conduct Investigation.

H. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by AFG, AFN, AFICA, or UWIC, this Stipulation being part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above referenced market conduct examinations and investigation.

I. **Changes.** No changes to this Stipulation shall be effective unless made in writing and agreed to representatives of the Division and AFG, AFN, AFICA, and UWIC.

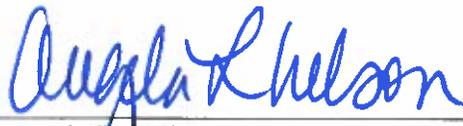
J. **Governing Law.** This Stipulation shall be governed and construed in accordance with the laws of the State of Missouri.

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

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

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

DATED: 9/5/2018



Angela L. Nelson
Director, Division of Insurance
Market Regulation

DATED: 9/5/2018



Stewart Freilich
Senior Regulatory Affairs Counsel
Division of Insurance Market Regulation

DATED: 8/29/18



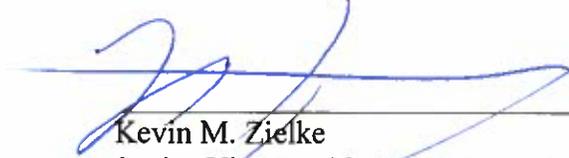
Kevin M. Zielke
Senior Vice President and General Counsel
Accident Fund General Insurance Company

DATED: 8/29/18



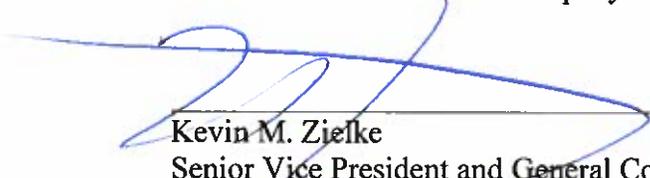
Kevin M. Zielke
Senior Vice President and General Counsel
Accident Fund National Insurance Company

DATED: 8/29/18



Kevin M. Zielke
Senior Vice President and General Counsel
Accident Fund Insurance Company of America

DATED: 8/29/18



Kevin M. Zielke
Senior Vice President and General Counsel
United Wisconsin Insurance Company