

REPORT OF

MARKET CONDUCT EXAMINATION

OF

ASSURANCEAMERICA INSURANCE COMPANY

ATLANTA, GEORGIA

AS OF

DECEMBER 31, 2009

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EXAMINER'S AFFIDAVIT

STATE OF GEORGIA
COUNTY OF COBB

Mary B. Packard, CPA, CFE, being duly sworn, states as follows:

1. I have authority to represent Alabama in a Market Conduct examination of AssuranceAmerica Insurance Company.
2. Alabama is accredited under the National Association of Insurance Commissioners Financial Regulation Standards and Accreditation.
3. I have reviewed the examination workpapers and examination report, and the examination of AssuranceAmerica Insurance Company was performed in a manner consistent with the standards and procedures required by the State of Alabama.

The affiant says nothing further.

Mary B. Packard
Examiner-in-Charge

Subscribed and sworn before me by [Signature] on this _____

31st day of March, 2010.



My Commission Ends 3/19/2013

(SEAL)



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GOVERNOR

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March 31, 2010

Jim L. Ridling, Commissioner
Alabama Department of Insurance
201 Monroe Street, Suite 1700
Montgomery, AL 36104

Dear Commissioner:

Pursuant to your authorizations and in compliance with statutory requirements of the State of Alabama and the resolutions adopted by the National Association of Insurance Commissioners (NAIC), a Market Conduct examination has been made of

AssuranceAmerica Insurance Company
Atlanta, Georgia

at its home office located at 5500 Interstate North Parkway, Suite 600, Atlanta, Georgia 30328, as of December 31, 2009. The report of examination is submitted herewith. Where the description "Company" or "AAIC" appears herein without qualification, it will be understood to indicate AssuranceAmerica Insurance Company.

SCOPE OF EXAMINATION

A market conduct examination was authorized pursuant to the instructions of the Alabama Insurance Commissioner and in accordance with the statutory requirements of the Alabama Insurance Code and the regulations and bulletins of the Alabama Department of Insurance (ALDOI); in accordance with the applicable guidelines and procedures promulgated by the National Association of Insurance Commissioners (NAIC); and in accordance with generally accepted examination standards.

The Company was last examined by the South Carolina Department of Insurance for the four year period ended December 31, 2007, which was a financial examination. This Market Conduct examination covers the period from January 1, 2005 through December 31, 2009, and was conducted by examiners from the Alabama Department of Insurance.

The examination included a general review of the Company's Market Conduct activities regarding claims, complaints and the managing general agent. The market conduct activities in this report have been confined to those items which indicated a violation of the Alabama Insurance Code, or the Insurance Department's rules and regulations.

ORGANIZATION AND HISTORY

The Company was incorporated under the laws of State of South Carolina on November 25, 2002 and commenced business on April 1, 2003. The Company writes both property and liability coverage for non-standard automobile policies with the addition of Accidental Death and Dismemberment coverage for automobile policyholders. An affiliate, AssuranceAmerica Managing General Agency, LLC (MGA), distributes its products mainly through independent agents in South Carolina, Alabama, Arizona, Georgia, Florida, Indiana, Louisiana, Mississippi and Texas.

The Company is a wholly-owned subsidiary of AssuranceAmerica Corporation (AAC), a Nevada corporation, which is focused on the non-standard automobile insurance markets. AAC was originally a Georgia corporation, AssuranceAmerica Georgia, and began business in 1998 through its subsidiary, AssetAmerica Insurance, LLC. It was comprised of 31 retail insurance agencies that sold non-standard personal automobile insurance policies in Florida and Georgia. In 1999,

the MGA was formed and provided a non-standard program for Gateway Insurance Company of St. Louis, Missouri until the Company commenced business in 2003. AAC became a public company through a merger with Brainworks Ventures, a Nevada public corporation, on April 1, 2003. Guy Millner, Director and Founder, and Lawrence Stumbaugh, Director and President, own the majority of AAC, with other shares owned by approximately 700 shareholders.

The Company began writing in Georgia and South Carolina in 2003 and in other states from 2005 through 2009. The authorized capital stock of the Company consists of 10,000,000 shares of authorized common stock with a \$15,000 a share par value. The 100 shares issued and outstanding are owned by the parent, AAC.

CLAIMS

The Company provided the examiners with a dataset that contained data on 6,146 paid claims for the years 2005-2009 which were reconciled to the Alabama State Pages of the corresponding Annual Statements. In addition, the Company provided a dataset of 1,541 denied Alabama claims and a dataset of 79 litigated Alabama claims.

Paid Claims

The examiners utilized ACL to compile the number of Alabama claims that took over sixty days from the date the claim was reported to the date the first payment was made, which equaled 1,889 claims. The examiner then referred to the NAIC's *2009 Market Regulation Handbook*, pages 194-196 "Acceptance Samples Table," to select the sample size. It was determined that for a population of 1,889, a sample size of 107 should be chosen.

In addition to the 107 items, the examiners utilized the ACL Stratify Command to stratify each line of coverage to make a determination which payment coverage lines took longer to issue the first payment from the date the claim was reported. The examiners then judgmentally selected the following coverage lines that were unusually delayed in issuing the first payment: Accidental Death and Dismemberment (AD&D), Other Than Collision (OTC), Physical Damage (PD), Rental (RENT), Underinsured Motorist Bodily Injury (UIMBI). The examiners utilized ACL to select the desired number of claims from each coverage lines for a sample of 59 claims as follows:

AD&D	=	1
OTC	=	2
PD	=	39
RENT	=	11
UIMBI	=	<u>6</u>
Total	=	<u>59</u>

Timeliness of Claims Payments

Of the 166 claims files reviewed, fifteen took longer than thirty days to issue payment which was not in accordance with ALA. ADMIN. CODE 482-1-125-.07 (2003) which states, "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."

Of the fifteen claims reviewed, the Company did not send notification of needing more time to issue payment for nine first party claimants. In addition, the Company did not issue notification to first party claimants within thirty days of acceptance or denial of the claim in accordance with ALA. ADMIN. CODE 482-1-125-.07(1)(2003), which states, "If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within thirty (30) days or the time period specified in the policy after receipt of the proofs of loss, giving the reasons more time is needed."

Initial Acknowledgement Time

Of the 166 claims files reviewed, the Company met the statutory requirements of ALA. ADMIN. CODE 482-1-125-.06 (1)(2003), which states, "Every insurer, upon receiving notification of a first party claim from a first party claimant shall, within fifteen (15) days, acknowledge the receipt of such notice unless payment is made within that period of time. If an acknowledgement is made by means other than writing, an appropriate notation of the acknowledgement shall be made in the claim file of the insurer and dated. Notification given to a producer of an insurer shall be notification to the insurer. Acknowledgement by a producer of an insurer as required above shall satisfy the requirements of this paragraph."

Completeness of Claims Documentation

Of the 166 paid claims files reviewed, the files appeared to have the appropriate claims documentation. The Company was in compliance with ALA. ADMIN. CODE 482-1-118-.03(1999), which states, "Every insurer, which term shall include every domestic insurer, foreign insurer,...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."

Company-Provided Claims Key Metrics, including data for claims, all states

The Company provided a matrix that included an analysis of its claims activities. The following statistics were deemed to be significant:

For bodily injury claims:

- As of January 1, 2008, only 2.26% were closed within sixty days
- As of December 31, 2009, 24.26% were closed within sixty days

For material damages claims:

- As of January 1, 2008, 13.85% were closed within fourteen days
- As of December 31, 2009, 22.69% were closed within fourteen days

For total loss claims:

- As of January 1, 2008, 1.88% were closed within thirty days
- As of December 31, 2009, 22.42% were closed within thirty days.

Company management attributed the improvement in claims processing to being more proactive in resolving claims quickly; to increasing the skills of the adjusters, especially in the physical damage and material damage area; and to opening the Florida office. The Company has a significant amount of business in Florida and experience has shown that the closer the adjusters are to the claims, the better. There was also a large pool of seasoned Florida adjusters available and interested in joining the Company.

As of December 31, 2009, the average experience of the claims staff was over 11 years, and the length of employment with the MGA was approximately one year.

Denied Claims

The examiner referred to the NAIC's *2009 Market Regulation Handbook*, pages 194-196 "Acceptance Samples Table," to select the sample size for a population of denied claims which totaled 1,541. The examiners determined a sample size of 105 should be chosen and utilized ACL to select the sample of denied claims.

Of the 105 Alabama denied claims reviewed, all appear to be appropriately denied. The Company's denial letters were in accordance with ALA. ADMIN. CODE 482-1-125.-07(1) (2003) which states, "...No insurer shall deny a first party claim on the grounds of a specific policy provision, condition or exclusion unless reference to such provision, condition, or exclusion is included in the denial."

Litigated Claims

For the period 2005 to 2009, the Company had 79 Alabama claims that resulted in litigation. The examiners reviewed all the files and found no indication of any problematic claims handling practices.

COMPLAINTS

Completeness of Complaints Register

The Company recorded ten complaints in its complaints register relating to Alabama consumers. The complaints register only listed complaints received from the ALDOI and none as being received directly from consumers. The Company's complaint register did not include two complaints it received from the ALDOI.

The Company did not track all the necessary information on complaints or document the same within the complaint registers. The Company's Claims Department and the Consumer Services Department maintained their own registers, which may or may not contain the same information. The Company responded that it will be implementing a more disciplined approach where all complaints (department of insurance or consumer and all functional departments) will be kept in a consolidated complaint register with more detail including date of the complaint, state, consumer, department, line of business, insured, third party, agent, nature of the complaint, resolution and date of resolution.

Maintaining of Complaint Documentation

For one complaint, the Company recorded in the "Activities Notes" of its "dot.Claims" administrative system, that a complaint was received from the ALDOI, but no further documentation was maintained on the complaint or the resolution of it. The Company was not in compliance with ALA. ADMIN. CODE 482-1-118-.03 (1999) which state, "Every insurer, which term shall include every domestic insurer, foreign insurer,...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." In addition, ALA. ADMIN. CODE 482-1-125-.04(a) (2003) states, "The insurer shall maintain claim files that are accessible and retrievable for examination. An insurer has to be able to provide the claim number, line of coverage, date of loss, and date and amount of payment. They shall also be able to provide the same information (except date and amount of payment) for all claims closed without payment. This data must be available for all open and closed files for the current year and the five (5) preceding years, in order to permit reconstruction of the insurer's activities relative to each claim."

Correspondence with ALDOI

The Company responded within the ten working days of receipt of the ALDOI complaints as required by Ala. Admin. Code 482-1-125-.06(2)(2003), which states, "Every insurer, upon receipt of any inquiry from the insurance department respecting a claim, shall within ten (10) working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry in duplicate. This response should be addressed to the department employee or representative making the request. Furthermore, the insurer shall furnish written notification to the department employee on the final outcome respecting this claim if it is not resolved at the time of the initial response." However, there were two complaints not resolved at the time of the initial response. The Company either did not notify the Department of the final resolution of the complaints or did not maintain evidence of notifying the ALDOI of the final resolution of the complaint as required by ALA. ADMIN. CODE 482-1-118.03 (1999) and ALA. ADMIN. CODE 482-1-125-.04(a) (2003) discussed in the prior paragraph.

MANAGING GENERAL AGENT

A review was conducted of the management agreement dated January 13, 2004 between AAIC and AssuranceAmerica Managing General Agency LLC (MGA). This review indicated that the South Carolina Department of Insurance had approved the agreement and all subsequent amendments, and that the agreement complied with all of Alabama's statutes, rules, and regulations. The agreement granted authority to the MGA for the following services:

- To receive, accept and bind applications for contracts of insurance;
- To cancel or non-renew policies issued for non-payment of premiums and for underwriting reasons conforming to character and quality practices of the Company;
- To render accounts to the Company detailing all transactions and remit funds due to the Company within thirty days;
- To handle, adjust and settle all claims on behalf of the Company; and
- To appoint independent agents on behalf of the Company.

The MGA shall not be authorized to do the following:

- Bind assumed reinsurance or retrocessions on behalf of the Company;
- Commit the insurer to participate in insurance and reinsurance syndicates;
- Appoint any producer without assuring he/she is lawfully licensed;
- Without prior approval, pay or commit the Company to pay a claim over \$5,000, net of reinsurance, or 1% of the Company's Policyholders' surplus as of December 31 of the last completed year, whichever is less;
- Without prior approval, collect any payments from a reinsurer or commit the Company to pay any claim settlement with a reinsurer;
- Permit any sub-producer to serve on the Company's Board of Directors;
- Jointly employ an individual who is an employee of the Company; and
- Appoint a substitute MGA.

The Company agreed to pay the MGA the following:

- A commission payable that is equal to the amount of ceding commission pursuant to its Reinsurance Agreements in effect from time to time;
- The loss adjustment expenses in an amount equal to the amount it received pursuant to its Reinsurance Agreements in effect from time to time; and
- All fees and payments which are not deemed to be policy level fees but instead optional service fees.

The MGA agreed to pay the Company a fronting fee equal to 3.5% of the premiums written by the MGA on behalf of the Company.

The Agreement may be terminated by either party with ninety days written notice; or immediately for cause, upon written notice to the MGA.

The Company utilized AssuranceAmerica Corporation's (AAC) Internal Audit Department to review the MGA's activities by functional area on a scheduled basis. Internal Audit reported its findings directly to AAC's Audit Committee, whose chairman reported to AAC's Board of Directors. In addition, the MGA's business activities were reviewed daily by management. Financials were reviewed monthly, claims activities more often, sales and customer service monthly and quarterly, all of which were reported to the Boards of the Company and of AAC.

COMMENTS AND RECOMMENDATIONS

Timeliness of Payment of Claims – Page 4

It is recommended that the Company pay claims within thirty days in accordance with ALA. ADMIN. CODE 482-1-125-.07(2003) requires that, "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 send to a first party claimant notification of delay of payment when a check is not issued within thirty days of receipt of proof of loss and the reason more time is need to issue payment in accordance with ALA ADMIN CODE 482-1-125-.07(1)(2003), which requires that, "If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within thirty (30) days or the time period specified in the policy after receipt of the proofs of loss, giving the reasons more time is needed."

Completeness of Complaints Register – Page 6

It is recommended that the Company include all complaints in its complaint register.

It is recommended that the Company maintain a complaint register for all complaints and at a minimum track direct consumer complaints, Departments

of Insurance complaints, line of business, business function, date received, and date of response.

Maintaining Complaint Documentation – Page 7

It is recommended that the Company maintain documentation as required by ALA. ADMIN. CODE 482-1-118-.03(1999) which states, “Every insurer, which term shall include every domestic insurer, foreign insurer,...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.”

It is recommended that the Company maintain documentation as required by ALA. ADMIN. CODE 482-1-125-.04(a)(2003) which states, “The insurer shall maintain claim files that are accessible and retrievable for examination. An insurer has been able to provide the claim number, line of coverage, date of loss, and date and amount of payment. They shall also be able to provide the same information (except date and amount of payment) for all claims closed without payment. This data must be available for all open and closed files for the current year and the five (5) preceding years, in order to permit reconstruction of the insurer’s activities relative to each claim.”

Correspondence with ALDOI – Page 7

It is recommended that the Company follow up with written correspondence to inquiries made by the ALDOI as required by ALA. ADMIN. CODE 482-1-125-.06(2)(2003) which states, “Every insurer, upon receipt of any inquiry from the insurance department respecting a claim, shall within ten (10) working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry in duplicate. This response should be addressed to the department employee or representative making the request. Furthermore, the insurer shall furnish written notification to the department employee on the final outcome respecting this claim if it is not resolved at the time of the initial response.”

CONCLUSION

Acknowledgement is hereby made of the courteous cooperation extended by the officers and employees of AssuranceAmerica Insurance Company and of AssuranceAmerica Managing General Agency, LLC during the course of this examination.

The customary insurance examination procedures, as recommended by the National Association of Insurance Commissioners, have been followed in connection with the verification of market conduct activities in this report.

In addition to the undersigned, Theo Goodin, MCM and Jennifer Haskell, AFE, examiners for the State of Alabama Department of Insurance, participated in this examination of AssuranceAmerica Insurance Company.

Respectfully submitted,



Mary B. Packard, CPA, CFE
Examiner-in-Charge
State of Alabama
Department of Insurance