

**SOUTH DAKOTA DIVISION OF INSURANCE**  
**MARKET CONDUCT EXAMINATION REPORT**

**OF**

**SENTRY INSURANCE GROUP**

(NAIC Group Code 169)

**SENTRY INSURANCE A MUTUAL COMPANY**

(NAIC COMPANY CODE 24988)

1800 North Point Drive

Stevens Point, WI 54481

**SENTRY SELECT INSURANCE COMPANY**

(NAIC COMPANY CODE 21180)

1800 North Point Drive

Stevens Point, WI 54481

**DAIRYLAND INSURANCE COMPANY**

(NAIC COMPANY CODE 21164)

1800 North Point Drive

Stevens Point, WI 54481

**VIKING INSURANCE COMPANY OF WISCONSIN**

(NAIC COMPANY CODE 13137)

1800 North Point Drive

Stevens Point, WI 54481

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## SALUTATION

May 7, 2015

Honorable Larry Deiter  
Insurance Director  
State of South Dakota  
124 South Euclid Ave., 2<sup>nd</sup> Floor  
Pierre, South Dakota 57501

Dear Director Deiter:

In compliance with the instructions contained in the Order for Examination, dated February 28, 2012 and pursuant to statutory provisions including SDCL Ch. 58-3, a Market Conduct Examination has been conducted of the affairs and practices of:

### **SENTRY INSURANCE GROUP.**

Sentry Insurance Group, hereinafter referred to as the "Companies" or "Group," is incorporated under the laws of the State of Wisconsin. The Group consists of Sentry Insurance a Mutual Company, Sentry Select Insurance Company, Dairyland Insurance Company, and Viking Insurance Company of Wisconsin. This examination consisted of two phases, an on-site phase and an off-site phase. The on-site phase of the examination was conducted at the following Group locations:

1800 North Point Drive, Stevens Point, WI 54481  
and  
1800 Deming Way, Suite 400, Middleton, WI 53562.

The off-site examination phase was performed at the offices of the South Dakota Division of Insurance, hereinafter referred to as the "Division" and other appropriate locations.

The report of examination thereon is respectfully submitted.

## **FOREWORD**

This examination reflects the insurance activities of Sentry Insurance Group in the State of South Dakota. This Market Conduct Examination Report is, in general, a report by exception. Some of the information reviewed by the examiners, however, may not be referenced in this written report regarding practices, procedures, or files that did not result in any errors or irregularities. Failure to comment on specific products, procedures or files does not constitute approval thereof by the South Dakota Division of Insurance.

In performing this examination, the Division selected a portion of the Group's operations for review. This report does not fully reflect a review of all of the practices and activities of the Group.

Where used in the report:

“Group” refers to Sentry Insurance Group

“Company” or “Companies” refer either collectively or individually to Sentry Insurance a Mutual Company, Sentry Select Insurance Company, Dairyland Insurance Company or Viking Insurance Company of Wisconsin.

“SDCL” refers to the Statutes of South Dakota

“ARSD” refers to South Dakota's Administrative Rules

“NAIC” refers to the National Association of Insurance Commissioners

## **SCOPE OF EXAMINATION**

The South Dakota Division of Insurance has authority to perform this examination pursuant to, but not limited to, SDCL Ch. 58-3. This examination of the Sentry Insurance Group began February 28, 2012 and covered the period of January 1, 2009 through December 31, 2011, unless otherwise noted. This examination focused on a review of the Group's Operations and Management, Complaint Handling, Underwriting and Rating, and Claims.

This examination was performed in accordance with Market Regulation standards established by the Division and examination procedures established by the NAIC. While the examiners provide a report on the errors found in individual files, the examination also reviewed general business practices of the Group.

## **EXECUTIVE SUMMARY**

This Market Conduct Examination focused on the business practices of Sentry Insurance Group. The Group writes both personal and commercial lines of business.

The examiners noted deficiencies in individual Company procedures and practices in the areas of Complaint Handling, Underwriting and Rating, and Claims. The details of these findings are provided in the respective Company chapters of the report.

In summary, the examiners noted the following:

### **CHAPTER 1: SENTRY INSURANCE A MUTUAL COMPANY**

- The Company failed to refund premium within the required 20 days after receipt of the cancellation request.

### **CHAPTER 2: SENTRY SELECT INSURANCE COMPANY**

- The Company failed to refund premium within the required 20 days after receipt of the cancellation request.
- The Company failed to provide appropriate disclosures for paintless dent repair.
- The Company failed to timely investigate and/or settle claims.

### **CHAPTER 3: DAIRYLAND INSURANCE COMPANY**

- The Company failed to provide permissible language in new business applications.
- The Company failed to timely investigate and/or settle claims.
- The Company failed to provide a reasonable explanation for the assessment of comparative negligence.
- The Company failed to provide reasonable explanations for the value of total loss vehicles.

### **CHAPTER 4: VIKING INSURANCE COMPANY OF WISCONSIN**

- The Company failed to make proper assessments of comparative negligence.
- The Company failed to provide permissible language in new business applications.
- The Company failed to properly cancel a policy by using an invalid reason.
- The Company failed to timely mail notice of cancellations.
- The Company failed to provide a valid notice of cancellation during the moratorium.
- The Company failed to provide reasonable explanations for the value of total loss vehicles.
- The Company failed to timely investigate and/or settle claims.
- The Company failed to provide a reasonable explanation for the denial of a claim.

## EXPLANATION OF THE EXAMINATION PROCESS

### COMPANY OPERATIONS AND MANAGEMENT

The examiners review the operations and management of the Group. The examiners also determine whether the Group facilitates the examination process by providing complete, accurate and timely records and data.

### COMPLAINT HANDLING

The examiners review the complaints that the Group received directly from consumers, the complaints submitted by the Division to the Group and the complaints received by the Division directly from consumers. The purpose of the review is to determine the accuracy of handling and the resolution of the complaints along with the timeliness of the responses.

### UNDERWRITING AND RATING

The examiners review the Group's and individual Company's underwriting and rating practices. This review includes the use of policy forms, adherence to underwriting guidelines and company manuals, assessment of premium and termination procedures to determine if they are in compliance with the statutes and administrative rules. The examiners determine if the procedures assist the Companies in meeting their compliance obligations, contractual obligations and business effectiveness. The examiners also review the oversight utilized by the Group to ensure its procedures are being followed and performing as intended.

The examiners review the Companies' policy forms and underwriting guidelines to determine compliance with filing requirements, to ensure the contract language is not ambiguous, and that the provisions of the policies adequately protect insureds. In addition, the examiners review active and terminated policy files to determine if the Companies are adhering to their own underwriting guidelines and procedures.

### CLAIMS

The examiners review the claim practices of the Group in order to determine efficiency of handling, accuracy of payment, adherence to contract provisions and compliance with South Dakota law.

The types of practices considered to be an error include, but are not limited to, the failure to timely investigate and settle claims; the failure of the company to correctly calculate claim benefits; and the failure of the Group to otherwise comply with South Dakota statutes and administrative rules regarding claim settlement practices.

### SAMPLING OF FILES

The examiners conduct a census review of the total population of files where practical. In instances where the total population of a specific set of files is prohibitive to conducting the



review in an expedient manner, the examiners use a scientific sampling of the universe of files. Samples may be selected by one of the following methods:

**Systematic** - a sample obtained by taking every *n*th unit from a list containing the total population. The size of the sample, *n*, is calculated by dividing the desired sample size into *N*, the population size. For example, if one wants 50 files drawn from 5,000 you may select every hundredth file after a random start number—say the third file. There are other methods for systematic sampling, such as changing the interval, so that, on average, every one-hundredth file is selected.

**Random** - selecting a sample for study from a population so that each unit is chosen entirely by chance; every member of the population has an equal probability of being included. No items or units have been “preselected” out of the field. One approaches “random” through many methods when developing a sample. Random selections may be attained through use of a random numbers table or a random numbers generator in computer software.

## **CHAPTER 1: SENTRY INSURANCE A MUTUAL COMPANY**

### **BACKGROUND INFORMATION**

#### **A. HISTORY**

Hardware Dealers Mutual Fire Insurance Company of Wisconsin was incorporated on June 10, 1903, and commenced business on April 8, 1904. In response to state licensing restrictions prohibiting a single company from writing both property and casualty risks, the Wisconsin Hardware Limited Mutual Liability Insurance Company was incorporated under the laws of the state of Wisconsin on December 19, 1913, and commenced business on August 15, 1914. The casualty company's name was changed to Wisconsin Hardware Casualty Company at a meeting of the policyholders on February 4, 1920.

In 1963, the companies adopted the trade name of "Sentry Insurance," together with the minuteman corporate logo. In September 1966, the companies acquired majority financial control of Dairyland Insurance Company (Dairyland) and its downstream subsidiaries. Effective September 30, 1970, Wisconsin Hardware Limited Mutual Liability Insurance Company was merged into Wisconsin Hardware Casualty Company. The company continued to be known as Hardware Mutual Casualty Company until July 1, 1971, when the name was changed to Sentry Insurance a Mutual Company.

#### **B. PROFILE**

The Company's operations are coordinated from its home office in Stevens Point, Wisconsin. Support services are provided through its own network of claim administration centers and marketing offices. The company is licensed in the 50 United States, the District of Columbia, Puerto Rico, and Canada. Business is primarily written through a sales force consisting of approximately 900 direct writers and 100 national and regional insurance brokerage firms. The company also acquires business through participation in residual markets.

The Company provides commercial insurance including workers' compensation, commercial automobile, general liability, commercial property and business owners packages in the State of South Dakota. Its total premium in 2011 was \$408,713,117 with South Dakota premium at \$716,791. The Company's marketing includes both the standard commercial market and national accounts.

## EXAMINATION FINDINGS

### **I. COMPANY OPERATIONS AND MANAGEMENT**

This examination focused on the Company's Complaint Handling, Underwriting and Rating, and Claims. A review of the Company's Operations and Management was also conducted including a review of the Company's practices and procedures for providing complete, accurate and timely data throughout the course of the examination in compliance with the South Dakota statutes and administrative rules.

The examiners requested and reviewed the following information:

- A. Current organizational charts outlining relationships of subsidiaries, branch offices and divisions/departments to the overall corporate management structure.
- B. Current organizational charts outlining the structure of South Dakota operations including any specialty operations conducted separately.
- C. Description of the management structure of the Company.
- D. Description of all fines, penalties and recommendations from any state for the last 5 years. Copies of all financial and market conduct examination reports conducted during the last 5 years.
- E. The Company's last annual report to the shareholders.
- F. The annual statements for the prior 3 years and any property and casualty related schedules or statements.
- G. All management and vendor agreements including agreements between affiliates and private contractors for the examination period. A list of all third party administrators (TPAs) contracted with the Company to process South Dakota business during the examination period was also requested with a copy of the contracts.
- H. Internal audits.
- I. The Company's South Dakota Certificate(s) of Authority for the period under examination.
- J. Anti-Fraud procedures and annual reports.
- K. Privacy procedures.

*Finding 1:* No exceptions were noted.

## **II. COMPLAINT HANDLING**

The examiners requested all complaints received by the Company. The Company reported none.

*Finding 2:* No exceptions were noted.

## **III. UNDERWRITING AND RATING**

The examiners reviewed the Company's underwriting and rating practices for compliance with the South Dakota statutes and administrative rules. In underwriting, the examiners reviewed the following files:

- A. Cancellations within 60 Days
- B. Midterm Cancellations
- C. Nonrenewals
- D. Declinations
- E. All Other Cancellations (Not Company Initiated)

In rating, the examiners review the following files:

- F. New Business- Other
- G. New Business -Workers Compensation
- H. Renewals- Other
- I. Renewals -Workers Compensation

Throughout the review of the Company's underwriting and rating practices, the emphasis was placed on adherence to underwriting guidelines/manuals, termination procedures, the risk characteristics, adherence with Company filings and the accuracy in the development of the policy premium.

### **A. Cancellations within 60 Days**

The examiners requested a listing of all cancellations within 60 days of new business issuance from the Company. The Company reported none.

*Finding 3:* No exceptions were noted.

### **B. Midterm Cancellations**

The examiners requested a listing of all midterm cancellations issued by the Company. The examiners were provided a universe of 3 midterm cancellations.

Field Size:	3
Sample Size:	3
Sample Type:	Census
Number of Files with Errors:	2

*Finding 4:* The Company failed to timely issue and mail the premium refund due the insured within 20 days after it received a request for cancellation in 2 files in violation of ARSD 20:06:29:03.

*Recommendation 4:* It is recommended that the Company adopt, adhere to, and periodically administer internal testing of the policies and procedures to ensure the timely refund of premium.

### **C. Nonrenewals**

The examiners requested a listing of all nonrenewals issued by the Company. The Company reported none.

*Finding 5:* No exceptions were noted.

### **D. Declinations**

The examiners requested a listing of all policies and applications that were declined by the Company. The Company provided a universe of 1 declination.

Field Size:	1
Sample Size:	1
Sample Type:	Census
Number of Files with Errors:	0

*Finding 6:* No exceptions were noted.

### **E. All Other Cancellations (not Company initiated)**

The examiners requested a listing of all other cancellations that had not been initiated by the Company. The Company provided a universe of 5 cancellations. These cancellations included insured requests.

Field Size:	5
Sample Size:	5
Sample Type:	Census
Number of Files with Errors:	0

*Finding 7:* No exceptions were noted

### **F. New Business- Other (Rating)**

The examiners requested a listing of all new business, other than workers' compensation, issued by the Company during the examination period. The Company provided a universe of 11 new business policies.

Field Size: 11  
Sample Size: 11  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 8:* No exceptions were noted.

#### **G. New Business- Workers' Compensation (Rating)**

The examiners requested a listing of all new workers' compensation business issued by the Company during the examination period. The Company provided a universe of 16 new business policies.

Field Size: 16  
Sample Size: 16  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 9:* No exceptions were noted.

#### **H. Renewals (Rating)**

The examiners requested a listing of all renewal policies, other than worker's compensation, issued by the Company during the examination period. The Company reported a universe of 119 policies.

Field Size: 119  
Sample Size: 119  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 10:* No exceptions were noted.

#### **I. Renewals- Workers' Compensation (Rating)**

The examiners requested a listing of all workers' compensation renewals issued by the Company during the examination period. The Company provided a universe of 224 policies.

Field Size: 224  
Sample Size: 80  
Sample Type: Random  
Number of Files with Errors: 0

*Finding 11:* No exceptions were noted.

#### **IV. CLAIMS**

The purpose of the review was to ascertain the Company's compliance with the statutes and administrative rules of South Dakota relating to claim settlement practices. The examiners reviewed the Company's commercial automobile claim practices in the following categories:

- A. Property Damage Liability
- B. Comprehensive
- C. Collision
- D. Total Loss
- E. First Party Medical Payment
- F. Bodily Injury/Uninsured Motorist Bodily Injury
- G. Closed Without Pay

Throughout the review, the emphasis was placed on items such as the timeliness of claim handling, file documentation and claim payment.

##### **A. Property Damage**

The examiners requested a listing of all commercial automobile property damage liability claims. The Company provided a universe of 2 property damage liability claims.

Field Size:	2
Sample Size:	2
Sample Type:	Census
Number of Files with Errors:	0

*Finding 12:* No exceptions were noted.

##### **B. Comprehensive**

The examiners requested a listing of all commercial automobile comprehensive claims. The Company provided a universe of 1 claim.

Field Size:	1
Sample Size:	1
Sample Type:	Census
Number of Files with Errors:	0

*Finding 13:* No exceptions were noted.

##### **C. Collision**

The examiners requested a listing of all commercial automobile collision claims. The Company provided a universe of 1 claim.

Field Size: 1  
Sample Size: 1  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 14:* No exceptions were noted.

**D. Total Loss**

The examiners requested a listing of all commercial automobile total loss claims. The Company reported none.

*Finding 15:* No exceptions were noted.

**E. First Party Medical Payment**

The examiners requested a listing of all commercial automobile first party medical payment claims. The Company reported none.

*Finding 16:* No exceptions were noted.

**F. Bodily Injury/Uninsured Motorist Bodily Injury**

The examiners requested a listing of all commercial automobile bodily injury/uninsured motorist bodily injury claims. The Company reported none.

*Finding 17:* No exceptions were noted.

**G. Closed Without Pay**

The examiners requested a listing of all commercial automobile claims closed without payment. The Company provided a universe of 1 claim.

Field Size: 1  
Sample Size: 1  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 18:* No exceptions were noted.



## **CHAPTER 2: SENTRY SELECT INSURANCE COMPANY**

### **BACKGROUND INFORMATION**

#### **A. HISTORY**

The company was originally incorporated as Fulton Fire Insurance Company under the laws of New York on August 1, 1929, and commenced business on August 30, 1929. On December 28, 1955, the company changed its name to Fulton Insurance Company. On May 8, 1969, Deere & Company acquired the company from Hanover Insurance Company of New York and changed the company's name to John Deere Insurance Company. The company redomiciled to the state of Illinois on December 31, 1982.

Sentry Insurance a Mutual Company acquired John Deere Insurance Company with the acquisition of Sentry Insurance Holding Company, f/k/a John Deere Insurance Group, Inc., on September 30, 1999, and changed the company's name to Sentry Select Insurance Company. On January 1, 2001, the company redomiciled to the state of Wisconsin.

#### **B. PROFILE**

The company is licensed in all states and the District of Columbia. Sentry Insurance classifies its insurance lines into business products and consumer products. The major business products marketed by the company include commercial auto and auto physical damage, and worker's compensation. While the Company offers personal lines, they are mostly contained in the state of New York as standard auto.

Sentry Select Insurance Company is authorized to provide commercial insurance including workers' compensation, commercial auto, general liability, property and inland marine in the State of South Dakota concentrating on the transportation business and dealer operations. Its total premium in 2011 was \$326,400,882 with South Dakota premium at \$3,018,030.

## EXAMINATION FINDINGS

### **I. COMPANY OPERATIONS AND MANAGEMENT**

This examination focused on the Company's Complaint Handling, Underwriting and Rating, and Claims. A review of the Company's Operations and Management was also conducted including a review of the Company's practices and procedures for providing complete, accurate and timely data throughout the course of the examination in compliance with the South Dakota statutes and administrative rules.

The examiners requested and reviewed the following information:

- A. Current organizational charts outlining relationships of subsidiaries, branch offices and divisions/departments to the overall corporate management structure.
- B. Current organizational charts outlining the structure of South Dakota operations including any specialty operations conducted separately.
- C. Description of the management structure of the Company.
- D. Description of all fines, penalties and recommendations from any state for the last 5 years. Copies of all financial and market conduct examination reports conducted during the last 5 years.
- E. The Company's last annual report to the shareholders.
- F. The annual statements for the prior 3 years and any property and casualty related schedules or statements.
- G. All management and vendor agreements including agreements between affiliates and private contractors for the examination period. A list of all third party administrators (TPAs) contracted with the Company to process South Dakota business during the examination period was also requested with a copy of the contracts.
- H. Internal audits.
- I. The Company's South Dakota Certificate(s) of Authority for the period under examination.
- J. Anti-Fraud procedures and annual reports.
- K. Privacy procedures.

*Finding 1:* No exceptions were noted.

## II. COMPLAINT HANDLING

The examiners requested all complaints received by the Company. The Company reported one.

Field Size:	1
Sample Size:	1
Sample Type:	Census
Number of Files with Errors:	0

*Finding 2:* No exceptions were noted.

## III. UNDERWRITING AND RATING

The examiners reviewed the Company's underwriting and rating practices for compliance with the South Dakota statutes and administrative rules. In underwriting, the examiners reviewed the following files:

- A. Cancellations within 60 Days
- B. Midterm Cancellations
- C. Nonrenewals
- D. Declinations
- E. All Other Cancellations (Not Company Initiated)

In rating, the examiners review the following files:

- F. New Business- Other
- G. New Business -Workers Compensation
- H. Renewals- Other
- I. Renewals -Workers Compensation

Throughout the review of the Company's underwriting and rating practices, the emphasis was placed on adherence to underwriting guidelines/manuals, termination procedures, the risk characteristics, adherence with Company filings and the accuracy in the development of the policy premium.

### A. Cancellations within 60 Days

The examiners requested a listing of all cancellations within 60 days of new business issuance from the Company. The Company provided a universe of 1 cancellation.

Field Size:	1
Sample Size:	1
Sample Type:	Census
Number of Files with Errors:	0

*Finding 3:* No exceptions were noted.

### **B. Midterm Cancellations**

The examiners requested a listing of all midterm cancellations issued by the Company. The examiners were provided a universe of 22 midterm cancellations.

Field Size:	22
Sample Size:	10
Sample Type:	Random
Number of Files with Errors:	0

*Finding 4:* No exceptions were noted.

### **C. Nonrenewals**

The examiners requested a listing of all nonrenewals issued by the Company. The Company reported none.

*Finding 5:* No exceptions were noted.

### **D. Declinations**

The examiners requested a listing of all policies and applications that were declined by the Company. The Company provided a universe of 104 declinations.

Field Size:	16 (104 lines reduced to 16 when duplicates were removed)
Sample Size:	16
Sample Type:	Census
Number of Files with Errors:	0

*Finding 6:* No exceptions were noted.

### **E. All Other Cancellations (not Company initiated)**

The examiners requested a listing of all other cancellations that had not been initiated by the Company. The Company provided a universe of 37 cancellations. These cancellations included insured requests.

Field Size:	37
Sample Size:	37
Sample Type:	Census
Number of Files with Errors:	3

*Finding 7:* The Company failed to timely issue and mail the premium refund due to the insured within 20 days after it received a request for cancellation in 3 files in violation of ARSD 20:06:29:03.

*Recommendation 7:* It is recommended that the Company adopt and adhere to policies and procedures to ensure the timely refund of premium.

#### **F. New Business- Other (Rating)**

The examiners requested a listing of all new business, other than workers' compensation, issued by the Company during the examination period. The Company provided a universe of 78 new business policies.

Field Size:	78
Sample Size:	78
Sample Type:	Census
Number of Files with Errors:	0

*Finding 8:* No exceptions were noted.

#### **G. New Business- Workers' Compensation (Rating)**

The examiners requested a listing of all new workers' compensation business issued by the Company during the examination period. The Company provided a universe of 2 new business policies.

Field Size:	2
Sample Size:	2
Sample Type:	Census
Number of Files with Errors:	0

*Finding 9:* No exceptions were noted.

#### **H. Renewals (Rating)**

The examiners requested a listing of all renewal policies, other than worker's compensation, issued by the Company during the examination period. The Company reported a universe of 52 policies.

Field Size:	52
Sample Size:	52
Sample Type:	Census
Number of Files with Errors:	0

*Finding 10:* No exceptions were noted.

## **I. Renewals- Workers' Compensation (Rating)**

The examiners requested a listing of all workers' compensation renewals issued by the Company during the examination period. The Company provided a universe of 573 policies.

Field Size: 573  
Sample Size: 91  
Sample Type: Random  
Number of Files with Errors: 0

*Finding 11:* No exceptions were noted.

## **IV. CLAIMS**

The purpose of the review was to ascertain the Company's compliance with the statutes and administrative rules of South Dakota relating to claim settlement practices. The examiners reviewed the Company's commercial automobile claim practices in the following categories:

- A. Property Damage Liability
- B. Comprehensive
- C. Collision
- D. Total Loss
- E. First Party Medical Payment
- F. Bodily Injury/Uninsured Motorist Bodily Injury
- G. Closed Without Pay

Throughout the review, the emphasis was placed on items such as the timeliness of claim handling, file documentation and claim payment.

### **A. Property Damage Liability**

The examiners requested a listing of all commercial automobile property damage liability claims. The Company provided a universe of 27 property damage claims.

Field Size: 27  
Sample Size: 27  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 12:* No exceptions were noted.

## **B. Comprehensive**

The examiners requested a listing of all non-hail commercial automobile comprehensive claims. The Company provided a universe of 44 claims.

Field Size:	44
Sample Size:	44
Sample Type:	Census
Number of Files with Errors:	0

*Finding 13:* No exceptions were noted.

The examiners requested a listing of all hail commercial automobile comprehensive claims. The Company provided a universe of 6 claims.

Field Size:	6
Sample Size:	6
Sample Type:	Census
Number of Files with Errors:	6

*Finding 14:* In all 6 files, the Company failed to have the appropriate disclosures on the estimates or repair guarantees for paintless dent repair in violation of SDCL §§ 58-12-16 and 58-12-18.

*Recommendation 14:* It is recommended that the Company adopt and adhere to policies and procedures for appropriate disclosures or guarantees for paintless dent repair.

## **C. Collision**

The examiners requested a listing of all commercial automobile collision claims. The Company provided a universe of 19 claims.

Field Size:	19
Sample Size:	19
Sample Type:	Census
Number of Files with Errors:	0

*Finding 15:* No exceptions were noted.

## **D. Total Loss**

The examiners requested a listing of all commercial automobile total loss claims. The Company provided a universe of 7 claims.

Field Size: 7  
Sample Size: 7  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 16:* No exceptions were noted.

#### **E. First Party Medical Payment**

The examiners requested a listing of all commercial automobile first party medical payment claims. The Company provided a universe of 1 claim.

Field Size: 1  
Sample Size: 1  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 17:* No exceptions were noted.

#### **F. Bodily Injury/Uninsured Motorist Bodily Injury**

The examiners requested a listing of all commercial automobile bodily injury/uninsured motorist bodily injury claims. The Company provided a universe of 2 claims.

Field Size: 2  
Sample Size: 2  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 18:* No exceptions were noted.

#### **G. Closed Without Pay**

The examiners requested a listing of all commercial automobile claims closed without payment. The Company provided a universe of 19 claims.

Field Size: 19  
Sample Size: 19  
Sample Type: Census  
Number of Files with Errors: 1

*Finding 19:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of a claim in 1 file in violation of SDCL § 58-33-67(1).

*Recommendation 19:* It is recommended that the Company adopt and adhere to policies and procedures to insure the prompt investigation and resolution of claims.



## **CHAPTER 3: DAIRYLAND INSURANCE COMPANY**

### **BACKGROUND INFORMATION**

#### **A. HISTORY**

Dairyland Insurance Company, a stock property and casualty company operating under Chapter 611, Wis. Stat., is the successor to the Dairyland Mutual Insurance Company (Dairyland Mutual). Dairyland Mutual was incorporated on January 8, 1953, and commenced business on February 27, 1953. Dairyland Mutual was dissolved upon approval of the reorganization and issuance of a certificate of authority by the Commissioner of Insurance to Dairyland. Accordingly, all assets and liabilities of the mutual company were transferred to Dairyland. Dairyland was incorporated on June 11, 1965, and commenced business on August 1, 1965.

Shares of the new corporation which were not purchased by the policyholders were purchased by the company's founder and chief executive officer, Stuart H. Struck. In 1966, The Sentry Corporation, a wholly owned holding company subsidiary of Sentry Insurance a Mutual Company (SIAMCO), acquired majority control of Dairyland through purchase of stock from Mr. Struck. The Sentry Corporation steadily increased its ownership interest until it became the sole shareholder in 1978. In 1986, ownership of Dairyland was transferred from the Sentry Corporation to SIAMCO, Dairyland's current parent, as part of an effort to separate insurance operations from non-insurance operations.

#### **B. PROFILE**

The home office for Dairyland Insurance Company is located within the Sentry Group of companies in Stevens Point, WI. The company is licensed in 44 states and is not licensed in California, Hawaii, Louisiana, New Hampshire, New Jersey, and Oklahoma. The company is also not licensed in the District of Columbia. Dairyland Insurance Company is distinguished within its holding company system by its specialization in nonstandard private passenger auto and in preferred/standard motorcycle coverages.

The 2011 total premium reported by Dairyland was \$183,486,733 with the amount of South Dakota premium at \$1,418,378.

## EXAMINATION FINDINGS

### **I. COMPANY OPERATIONS AND MANAGEMENT**

This examination focused on the Company's Complaint Handling, Underwriting and Rating, and Claims. A review of the Company's Operations and Management was also conducted including a review of the Company's practices and procedures for providing complete, accurate and timely data throughout the course of the examination in compliance with the South Dakota statutes and administrative rules.

The examiners requested and reviewed the following information:

- A. Current organizational charts outlining relationships of subsidiaries, branch offices and divisions/departments to the overall corporate management structure.
- B. Current organizational charts outlining the structure of South Dakota operations including any specialty operations conducted separately.
- C. Description of the management structure of the Company.
- D. Description of all fines, penalties and recommendations from any state for the last 5 years. Copies of all financial and market conduct examination reports conducted during the last 5 years.
- E. The Company's last annual report to the shareholders.
- F. The annual statements for the prior 3 years and any property and casualty related schedules or statements.
- G. All management and vendor agreements including agreements between affiliates and private contractors for the examination period. A list of all third party administrators (TPAs) contracted with the Company to process South Dakota business during the examination period was also requested with a copy of the contracts.
- H. Internal audits.
- I. The Company's South Dakota Certificate(s) of Authority for the period under examination.
- J. Anti-Fraud procedures and annual reports.
- K. Privacy procedures.

*Finding 1:* No exceptions were noted.

## II. COMPLAINT HANDLING

The examiners requested a listing of all complaints received by the Company. The Company provided a universe of 9 complaints.

Field Size:	9
Sample Size:	9
Sample Type:	Census
Number of Files with Errors:	1

Throughout the review, the emphasis was placed on the accuracy of handling and resolving the complaints with the timeliness of responses in compliance with South Dakota statutes and administrative rules. The error listed above arose from a complaint to the Division and therefore is reported in this section.

*Finding 2:* The Company failed to provide a reasonable explanation of the basis in the insurance policy for the offer of a compromise settlement in violation of SDCL § 58-33-67(3) by failing to value the vehicle based on comparable models and unreasonably depreciating the vehicle.

*Recommendation 2:* It is recommended that the Company ensure that a reasonable appraisal of the condition of vehicles is adhered to.

## III. UNDERWRITING AND RATING

The examiners reviewed the Company's underwriting and rating practices for compliance with the South Dakota statutes and administrative rules. In underwriting, the examiners reviewed the following files:

- A. Applications
- B. Cancellations within 60 Days
- C. Midterm Cancellations
- D. Nonrenewals
- E. All Other Cancellations (not Company initiated)

In rating, the examiners reviewed the following files:

- F. New Business with Surcharges
- G. New Business without Surcharges
- H. Renewals with Surcharges
- I. Renewals without Surcharges

Throughout the review of the Company's underwriting and rating practices, the emphasis was placed on adherence to underwriting guidelines/manuals, termination procedures, the risk characteristics, adherence with Company filings and the accuracy in the development of the policy premium.

## **A. Applications**

The Company was asked to provide a copy of all motorcycle and private passenger automobile applications used during the examination period.

*Finding 3:* The Company failed to provide proper private passenger automobile applications by including and requiring the applicants to initial the following language on the applications in violation of SDCL §§ 58-11-44 and 58-33-60 and in disregard of guidance provided by the Division in Bulletin 07-03:

I also fully understand and agree that if any premium remittance by me, or on my behalf, is not honored by the Payor (Bank), it will be deemed non-payment of premium and no coverage will have been bound, or afforded under this application and subsequent binder or policy.

By unbinding coverage for missing any premium payment, this language attempts to cancel the insurance policy without notice even after previous timely payments have been submitted. The company has stated that there were no rescissions based upon the application language.

*Recommendation 3:* It is recommended that the Company amend its applications to conform to South Dakota statutes. For any policies rescinded by the language above, it is recommended that the Company review the rescission for compliance with SDCL §§ 58-11-44 and 58-33-60 and Bulletin 07-03. Where the rescission was noncompliant, it is recommended that the company re-adjudicate any applicable denied claims.

## **B. Cancellations within 60 Days**

The examiners requested a listing of all cancellations within 60 days of new business issuance from the Company. The Company provided a universe of 10 cancellations.

Field Size:	10
Sample Size:	10
Sample Type:	Census
Number of Files with Errors:	0

*Finding 4:* No exceptions were noted.

## **C. Midterm Cancellations**

The examiners requested a listing of all midterm cancellations issued by the Company. The examiners were provided a universe of 1 midterm cancellation.

Field Size:	1
Sample Size:	1
Sample Type:	Census
Number of Files with Errors:	0

*Finding 5:* No exceptions were noted.

**D. Nonrenewals**

The examiners requested a listing of all nonrenewals issued by the Company. The Company provided a universe of 31 nonrenewals.

Field Size:	31
Sample Size:	31
Sample Type:	Census
Number of Files with Errors:	0

*Finding 6:* No exceptions were noted.

**E. All Other Cancellations (not Company initiated)**

The examiners requested a listing of all other cancellations that had not been initiated by the Company. The Company provided a universe of 2,470 cancellations. These cancellations included insured requests and non-payment of premium.

Field Size:	2,470
Sample Size:	114
Sample Type:	Random
Number of Files with Errors:	0

*Finding 7:* No exceptions were noted.

**F. New Business with Surcharges - (Rating)**

The examiners requested a listing of all new business with surcharges issued by the Company during the examination period. The Company provided a universe of 1 new business policy.

Field Size:	1
Sample Size:	1
Sample Type:	Census
Number of Files with Errors:	0

*Finding 8:* No exceptions were noted.

**G. New Business without Surcharges - (Rating)**

The examiners requested a listing of all new business without surcharges issued by the Company during the examination period. The Company provided a universe of 2,671 new business policies.

Field Size: 2,671  
Sample Size: 114  
Sample Type: Random  
Number of Files with Errors: 0

*Finding 9:* No exceptions were noted.

#### **H. Renewals with Surcharges - (Rating)**

The examiners requested a listing of all renewal policies with surcharges issued by the Company during the examination period. The Company reported a universe of 609 policies.

Field Size: 609  
Sample Size: 86  
Sample Type: Random  
Number of Files with Errors: 0

*Finding 10:* No exceptions were noted.

#### **I. Renewals without Surcharges - (Rating)**

The examiners requested a listing of all renewals without surcharges issued by the Company during the examination period. The Company provided a universe of 6,786 policies.

Field Size: 6,786  
Sample Size: 115  
Sample Type: Random  
Number of Files with Errors: 0

*Finding 11:* No exceptions were noted.

### **IV. CLAIMS**

The purpose of the review was to ascertain the Company's compliance with the statutes and administrative rules of South Dakota relating to claim settlement practices. The examiners reviewed the Company's private passenger automobile and motorcycle claim practices in the following categories:

- A. Property Damage Liability
- B. Comprehensive
- C. Collision
- D. Total Loss
- E. First Party Medical Payment
- F. Bodily Injury/Uninsured Motorist Bodily Injury
- G. Closed Without Pay

Throughout the review, the emphasis was placed on items such as the timeliness of claim handling, file documentation and claim payment.

The examiners specifically reviewed claim practices related to contributory negligence.

The claim samples contain 5 exceptions where the Company stated to the claimant that a specific numerical percentage of contributory negligence bars a claim. There is no specific numerical percentage that will bar a claim under South Dakota law. While not specifically communicated to insureds, a numerical percentage to bar a claim is also internally noted by the Company.

The examination of the claim samples in 4 categories (property damage, total loss, medical payments & closed without pay) revealed 6 files where contributory negligence was noted in some way. The fault against the claimant ranged from a low of 5% to 40% or more. In the higher percentages, the Company denied the claims. The samples contain exceptions where the Company did not have a sufficient basis to place a degree of fault on the claimant.

The Company uses a software program known as the "liability tool" or "Claim IQ" to assess negligence of the parties in the files. The adjuster will put information into the fields found in the tool. A recommended range of fault for the parties will then be calculated by the tool. The Company states that the adjusters use their discretion in reaching independent decisions.

#### **A. Property Damage**

The examiners requested a listing of all private passenger automobile and motorcycle property damage liability claims. The Company provided a universe of 168 property damage claims.

Field Size:	168
Sample Size:	50
Sample Type:	Random
Number of Files with Errors:	4

*Finding 12:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims in 2 files in violation of SDCL § 58-33-67(1) by failing to reach the claimant by telephone or correspondence from 7/1/2010 to 8/6/2010 and failing to move a file forward with inactivity from 7/13/2011 to 8/16/2011.

*Recommendation 12:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation of claims.

*Finding 13:* In 1 file, the Company failed to provide reasonable explanation for a claim denial because the explanation to claimants was based upon the erroneous assertion of law that 30% or greater is automatic legal bar to recovery in violation of SDCL §§ 58-33-67(3) and 58-33-6.

*Recommendation 13:* It is recommended that the Company cease asserting to claimants that any particular numerical percentage of fault bars recovery.

*Finding 14:* In 1 file, the Company failed to provide a reasonable explanation for claim denial by incorrectly asserting to the claimant that the CCC report methodology used in establishing the value of a vehicle is approved by the State of South Dakota in violation of SDCL §§ 58-33-67(3) and 58-33-6.

*Recommendation 14:* It is recommended that the Company cease making representations that the CCC report methodology has been approved by the State of South Dakota.

### **B. Comprehensive**

The examiners requested a listing of all private passenger automobile and motorcycle comprehensive claims. The Company provided a universe of 148 claims.

Field Size:	148
Sample Size:	50
Sample Type:	Random
Number of Files with Errors:	1

*Finding 15:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to maintain contact with the insured in 1 claim in violation of SDCL § 58-33-67(1) by failing to contact the insured from the initial telephone call leaving a voicemail and acknowledgment letter on 10/14/2011 until 12/8/2011 when a contact card was sent.

*Recommendation 15:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

### **C. Collision**

The examiners requested a listing of all private passenger automobile and motorcycle collision claims. The Company provided a universe of 105 claims.

Field Size:	105
Sample Size:	105
Sample Type:	Census
Number of Files with Errors:	1

*Finding 16:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to contact the claimant and/or provide a settlement in a timely manner in 1 claim in violation of SDCL § 58-33-67(1) and (4).

*Recommendation 16:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.



#### **D. Total Loss**

The examiners requested a listing of all private passenger automobile and motorcycle total loss claims. The Company provided a universe of 70 claims.

Field Size:	70
Sample Size:	70
Sample Type:	Census
Number of Files with Errors:	18

*Finding 17:* The Company failed to pay sales tax on total loss vehicles unless the claimants showed proof of replacement in 13 files in violation of SDCL § 58-33-67(3).

*Recommendation 17:* It is recommended that the Company pay state sales tax on all future total loss vehicles regardless of proof of replacement.

*Finding 18:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to contact the claimant and/or provide a settlement in a timely manner in 4 claims in violation of SDCL § 58-33-67(1).

*Recommendation 18:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

*Finding 19:* In 1 file, the Company failed to provide reasonable explanation for a claim denial because the explanation to claimants was based upon an erroneous assertion of law that 29% or greater is automatic legal bar to recovery in violation of SDCL §§ 58-33-67(3) and 58-33-6.

*Recommendation 19:* It is recommended that the Company cease asserting to claimants that any particular numerical percentage of fault bars recovery.

#### **E. First Party Medical Payment**

The examiners requested a listing of all private passenger automobile and motorcycle first party medical paid claims. The Company provided a universe of 70 claims.

Field Size:	70
Sample Size:	70
Sample Type:	Census
Number of Files with Errors:	1

*Finding 20:* The Company failed to act within 30 days upon a claim communication or to adopt and adhere to reasonable standards for the prompt investigation of a claim by not acting on a received medical bill for more than 30 days in 1 file in violation of SDCL § 58-33-67(1).

*Recommendation 20:* It is recommended that the Company adopt and adhere to policies and procedures to ensure that claim communications are acted upon within thirty days and reasonable standards for the prompt investigation of claims.

#### **F. Bodily Injury/Uninsured Motorist Bodily Injury**

The examiners requested a listing of all private passenger automobile and motorcycle bodily injury/uninsured motorist bodily injury claims. The Company provided a universe of 45 claims.

Field Size:	45
Sample Size:	45
Sample Type:	Census
Number of Files with Errors:	3

*Finding 21:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to timely contact the claimant in 3 files in violation of SDCL § 58-33-67(1).

*Recommendation 21:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

#### **G. Closed Without Pay**

The examiners requested a listing of all private passenger automobile and motorcycle claims closed without payment. The Company provided a universe of 115 claims.

Field Size:	115
Sample Size:	115
Sample Type:	Census
Number of Files with Errors:	4

*Finding 22:* By not using prompt and consistent contact methods, the Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims in 4 files by not promptly sending claim acknowledgement letters or providing timely status letters in violation of SDCL § 58-33-67(1).

*Recommendation 22:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

## **CHAPTER 4: VIKING INSURANCE COMPANY OF WISCONSIN**

### **BACKGROUND INFORMATION**

#### **A. HISTORY**

The Viking Insurance Company of Wisconsin was incorporated in Wisconsin on August 10, 1971, and commenced business on September 15, 1971. The Company redomesticated to Colorado in 1999, when it was owned by Orion Auto, Inc., a wholly owned subsidiary of Royal & SunAlliance USA, Inc. On November 1, 2005, the Company was acquired by Sentry Insurance a Mutual Company and was redomesticated to Wisconsin on December 15, 2006.

Under an administrative services agreement, Sentry Insurance Group furnishes the Company underwriting, policy issuance, financial reporting, tax compliance, customer service, agent support, marketing, legal, claims, actuarial and other services.

#### **B. PROFILE**

The home office for Viking Insurance Company of Wisconsin is located within the Sentry Group of companies in Stevens Point, WI. The Company writes non-standard private passenger auto insurance and motorcycle insurance. It is licensed in 34 states and distributes its products through an independent agency force.

The 2011 total premium reported by Viking Insurance Company of Wisconsin was \$306,843,828 with the amount of South Dakota premium at \$4,610,747.

## EXAMINATION FINDINGS

### **I. COMPANY OPERATIONS AND MANAGEMENT**

This examination focused on the Company's Complaint Handling, Underwriting and Rating, and Claims. A review of the Company's Operations and Management was also conducted including a review of the Company's practices and procedures for providing complete, accurate and timely data throughout the course of the examination in compliance with the South Dakota statutes and administrative rules.

The examiners requested and reviewed the following information:

- A. Current organizational charts outlining relationships of subsidiaries, branch offices and divisions/departments to the overall corporate management structure.
- B. Current organizational charts outlining the structure of South Dakota operations including any specialty operations conducted separately.
- C. Description of the management structure of the Company.
- D. Description of all fines, penalties and recommendations from any state for the last 5 years. Copies of all financial and market conduct examination reports conducted during the last 5 years.
- E. The Company's last annual report to the shareholders.
- F. The annual statements for the prior 3 years and any property and casualty related schedules or statements.
- G. All management and vendor agreements including agreements between affiliates and private contractors for the examination period. A list of all third party administrators (TPAs) contracted with the Company to process South Dakota business during the examination period was also requested with a copy of the contracts.
- H. Internal audits.
- I. The Company's South Dakota Certificate(s) of Authority for the period under examination.
- J. Anti-Fraud procedures and annual reports.
- K. Privacy procedures.

*Finding 1:* No exceptions were noted.

## II. COMPLAINT HANDLING

The examiners requested a listing of all complaints received by the Company. The Company provided a universe of 18 complaints.

Field Size:	18
Sample Size:	18
Sample Type:	Census
Number of Files with Errors:	2

Throughout the review, the emphasis was placed on the accuracy of handling and resolving the complaints with the timeliness of responses in compliance with South Dakota statutes and administrative rules. The errors listed above arose from a complaint to the Division and therefore are reported in this section.

*Finding 2:* In 2 files, the Company failed to make a proper assignment of the degree of comparative negligence in ascertaining the issue of liability in violation of SDCL § 58-33-67(3). Both files were complaints handled by the Division, and each claim was fully paid by the Company.

*Recommendation 2:* It is recommended that the Company adopt and adhere to policies and procedures to ensure practices for complaint and claim handling that properly assess degrees of fault.

## III. UNDERWRITING AND RATING

The examiners reviewed the Company's underwriting and rating practices for compliance with the South Dakota statutes and administrative rules. In underwriting, the examiners reviewed the following files:

- A. Applications
- B. Cancellations within 60 Days
- C. Midterm Cancellations
- D. Nonrenewals
- E. All Other Cancellations (not Company initiated).

In rating, the examiners reviewed the following files:

- F. New Business with Surcharges
- G. New Business without Surcharges
- H. Renewals with Surcharges
- I. Renewals without Surcharges.

Throughout the review of the Company's underwriting and rating practices, the emphasis was placed on adherence to underwriting guidelines/manuals, termination procedures, the risk characteristics, adherence with Company filings and the accuracy in the development of the policy premium.

### **A. Applications**

The Company was asked to provide a copy of all private passenger automobile and motorcycle applications used during the examination period.

*Finding 3:* The Company failed to provide proper private passenger automobile applications by including and requiring the applicants to initial the following language on the applications in violation of SDCL §§ 58-11-44 and 58-33-60 and in disregard of guidance provided by the Division in Bulletin 07-03:

I also fully understand and agree that if any premium remittance by me, or on my behalf, is not honored by the Payor (Bank), it will be deemed non-payment of premium and no coverage will have been bound, or afforded under this application and subsequent binder or policy.

By unbinding coverage for missing any premium payment, this language attempts to cancel the insurance policy without notice even after previous timely payments have been submitted. The company has stated that there were no rescissions based upon the application language.

*Recommendation 3:* It is recommended that the Company amend its applications to conform to South Dakota statutes and administrative rules. For any policies rescinded by the language above, it is recommended that the Company review the rescission for compliance with SDCL §§ 58-11-44 and 58-33-60 and Bulletin 07-03. Where the rescission was noncompliant, it is recommended that the company re-adjudicate any applicable denied claims.

*Finding 4:* The Company failed to provide proper applications by including and requiring applicants to initial a certification relative to questions concerning household members/vehicle operators and the garaging address in violation of SDCL § 58-11-44. The company removed this statement from the application in September 2010.

*Recommendation 4:* It is recommended that the Company amend its applications to conform to South Dakota statutes and administrative rules.

### **B. Cancellations within 60 Days**

The examiners requested a listing of all cancellations within 60 days of new business issuance from the Company. The Company provided a universe of 7 cancellations.

Field Size: 7  
Sample Size: 7  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 5:* No exceptions were note.

### **C. Midterm Cancellations**

The examiners requested a listing of all midterm cancellations issued by the Company. The examiners were provided a universe of 1 midterm cancellation.

Field Size: 1  
Sample Size: 1  
Sample Type: Census  
Number of Files with Errors: 1

*Finding 6:* The Company failed to properly cancel a policy that had been in effect greater than 60 days due to the invalid reason of the vehicle being garaged out of state in 1 file in violation of SDCL § 58-11-46.

*Recommendation 6:* It is recommended that the Company adopt and adhere to policies and procedures to ensure that insurance contracts are not improperly cancelled.

### **D. Nonrenewals**

The examiners requested a listing of all nonrenewals issued by the Company. The Company provided a universe of 32 nonrenewals.

Field Size: 32  
Sample Size: 32  
Sample Type: Census  
Number of Files with Errors: 0

*Finding 7:* No exceptions were noted.

### **E. All Other Cancellations (not Company initiated)**

The examiners requested all other cancellations that had not been initiated by the Company. The Company provided a universe of 27,167 cancellations. These cancellations included insured requests and non-payment of premium.

Field Size: 27,167  
Sample Size: 116  
Sample Type: Random  
Number of Files with Errors: 64

*Finding 8:* The Company failed to mail or deliver notice of cancellation at least 20 days before the effective cancellation date by using an installment notice to act also as a notice of cancellation in the event the insured did not remit the premium due in 63 files in violation of SDCL § 58-11-49.

*Recommendation 8:* It is recommended that the Company adopt and adhere to policies and procedures to ensure for timely notice of cancellations. Further, it is recommended that the Company review the 63 files to ensure that consumers were not adversely affected, and readjudicate claims as necessary.

*Finding 9:* The Company failed to provide a valid notice of cancellation to a policy holder who resided in Butte County during a moratorium period from June 1, 2011 – Sept. 1, 2011 in 1 file in disregard of guidance provided by the Division in Bulletin 11-05.

*Recommendation 9:* It is recommended that the Company adopt and adhere to policies and procedures to ensure proper issuance of notices of cancellation during a moratorium period.

#### **F. New Business with Surcharges - (Rating)**

The examiners requested a listing of all new business with surcharges issued by the Company during the examination period. The Company provided a universe of 8,800 new business policies.

Field Size:	8,800
Sample Size:	115
Sample Type:	Random
Number of Files with Errors:	0

*Finding 10:* No exceptions were noted.

#### **G. New Business without Surcharges - (Rating)**

The examiners requested a listing of all new business without surcharges issued by the Company during the examination period. The Company provided a universe of 12,032 new business policies.

Field Size:	12,032
Sample Size:	116
Sample Type:	Random
Number of Files with Errors:	0

*Finding 11:* No exceptions were noted.



#### **H. Renewals with Surcharges - (Rating)**

The examiners requested a listing of all renewal policies without surcharges issued by the Company during the examination period. The Company reported a universe of 7,491 policies.

Field Size: 7,491  
Sample Size: 115  
Sample Type: Random  
Number of Files with Errors: 0

*Finding 12:* No exceptions were noted.

#### **I. Renewals without Surcharges - (Rating)**

The examiners requested a listing of all renewals without surcharges issued by the Company during the examination period. The Company provided a universe of 11,321 policies.

Field Size: 11,321  
Sample Size: 116  
Sample Type: Random  
Number of Files with Errors: 0

*Finding 13:* No exceptions were noted.

### **IV. CLAIMS**

The purpose of the review was to ascertain the Company's compliance with the statutes and administrative rules of South Dakota relating to claim settlement practices. The examiners reviewed the Company's private passenger automobile and motorcycle claim practices in the following categories:

- A. Property Damage Liability
- B. Comprehensive
- C. Collision
- D. Total Loss
- E. First Party Medical Payment
- F. Bodily Injury/Uninsured Motorist Bodily Injury
- G. Closed Without Pay

Throughout the review, the emphasis was placed on items such as the timeliness of claim handling, file documentation and claim payment.

The examiners specifically reviewed claim practices related to contributory and comparative negligence.

The claim samples contain 5 exceptions where the Company stated to the claimant that a specific numerical percentage of contributory negligence bars a claim. There is no specific numerical percentage that will bar a claim under South Dakota regulations. While not specifically communicated to insureds, a numerical percentage to bar a claim is also internally noted by the Company.

The examination of the claim samples in 4 categories (property damage, total loss, medical payments & closed without pay) revealed 16 files where contributory negligence was noted in some way. The fault against the claimant ranged from a low of 5% to 40% or more. In the higher percentages, the Company denied the claims. The samples contain exceptions where the Company did not have a sufficient basis to place a degree of fault on the claimant.

The Company uses a software program known as the "liability tool" or "Claim IQ" to assess negligence of the parties in the files. The adjuster will put information into the fields found in the tool. A recommended range of fault for the parties will then be calculated by the tool. The Company states that the adjusters use their discretion in reaching independent decisions.

#### **A. Property Damage Liability**

The examiners requested a listing of all private passenger automobile and motorcycle property damage liability claims. The Company provided a universe of 1,052 property damage claims.

Field Size:	1,052
Sample Size:	105
Sample Type:	Random
Number of Files with Errors:	3

*Finding 14:* The Company failed to pay sales tax on total loss vehicles unless the claimants showed proof of replacement in 1 file in violation of SDCL §58-33-67(3).

*Recommendation 14:* It is recommended that the Company pay state sales tax on all future total loss vehicles regardless of proof of replacement.

*Finding 15:* In 1 file, the Company failed to provide a reasonable explanation for claim denial by incorrectly asserting to the claimant that the CCC report methodology for establishing the value of a vehicle is approved by the State of South Dakota in violation of SDCL §§ 58-33-67(3) and 58-33-6.

*Recommendation 15:* It is recommended that the Company cease making representations that the CCC report methodology has been approved by the State of South Dakota.

*Finding 16:* In 1 file, the Company failed to make a proper assignment for the degree of comparative negligence by assessing an unreasonable amount of fault in violation of SDCL § 58-33-67(3).

*Recommendation 16:* It is recommended that the Company adopt and adhere to policies and procedures to ensure that claim practices assess the proper degrees of fault.

### **B. Comprehensive**

The examiners requested a listing of all private passenger automobile and motorcycle comprehensive claims. The Company provided a universe of 238 claims.

Field Size:	238
Sample Size:	76
Sample Type:	Random
Number of Files with Errors:	2

*Finding 17:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims in 2 files in violation of SDCL § 58-33-67(1) by failing to promptly investigate the claim in one file with lack of any activity including contact with the insured from 5/13/2009 until 7/10/2009 and failing to promptly investigate the other claim with lack of contact with the insured from 12/1/2009 until 2/22/2010.

*Recommendation 17:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

### **C. Collision**

The examiners requested a listing of all private passenger automobile and motorcycle collision claims. The Company provided a universe of 270 claims.

Field Size:	270
Sample Size:	76
Sample Type:	Random
Number of Files with Errors:	5

*Finding 18:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to timely maintain contact with claimants in 5 files in violation of SDCL § 58-33-67(1).

*Recommendation 18:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

### **D. Total Loss**

The examiners requested a listing of all private passenger automobile and motorcycle total loss claims. The Company provided a universe of 270 claims.

Field Size: 270  
Sample Size: 76  
Sample Type: Random  
Number of Files with Errors: 13

*Finding 19:* The Company failed to pay sales tax on total loss vehicles unless the claimants showed proof of replacement in 9 files in violation of SDCL § 58-33-67(3).

*Recommendation 19:* It is recommended that the Company pay state sales tax on all future total loss vehicles regardless of proof of replacement.

*Finding 20:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to timely contact claimants and/or settle claims in 2 files in violation of SDCL § 58-33-67(1).

*Recommendation 20:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

*Finding 21:* In 2 files, the Company failed to make a proper assignment of the degree of comparative negligence by assessing an unreasonable amount of contributory negligence in violation of SDCL § 58-33-67(3).

*Recommendation 21:* It is recommended that the Company adopt and adhere to policies and procedures to ensure that claim practices assess the proper degrees of fault.

#### **E. First Party Medical Payments**

The examiners requested a listing of all private passenger automobile and motorcycle first party medical payment claims. The Company provided a universe of 210 claims.

Field Size: 210  
Sample Size: 76  
Sample Type: Random  
Number of Files with Errors: 5

*Finding 22:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to timely contact claimants and/or settle claims in 5 files in violation of SDCL § 58-33-67(1).

*Recommendation 22:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

#### **F. Bodily Injury/Uninsured Motorist Bodily Injury**

The examiners requested a listing of all private passenger automobile and motorcycle bodily injury/uninsured motorist bodily injury claims. The Company provided a universe of 238 claims.

Field Size: 238  
Sample Size: 76  
Sample Type: Random  
Number of Files with Errors: 4

*Finding 23:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to timely contact the claimant in 4 files in violation of SDCL § 58-33-67(1).

*Recommendation 23:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

### **G. Closed Without Pay**

The examiners requested a listing of all private passenger automobile and motorcycle claims closed without payment. The Company provided a universe of 709 claims.

Field Size: 709  
Sample Size: 83  
Sample Type: Random  
Number of Files with Errors: 4

*Finding 24:* The Company failed to adopt and adhere to reasonable standards for the prompt investigation of claims by failing to contact the claimant in a timely manner in 2 files in violation of SDCL § 58-33-67(1).

*Recommendation 24:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the prompt investigation and resolution of claims.

*Finding 25:* In 1 file, the Company failed to make a proper assignment for of the degree of comparative negligence by assessing an unreasonable amount of contributory negligence in violation of SDCL § 58-33-67(3).

*Recommendation 25:* It is recommended that the Company adopt and adhere to policies and procedures to ensure reasonable standards for the investigation and resolution of claims.


*Finding 26:* In 1 file, the Company failed to provide reasonable explanation for claim denial because the explanation to claimants was based upon erroneous assertion of law that a numerical percentage of legal liability will automatically bar recovery in violation of SDCL §§ 58-33-67(3) and 58-33-6.

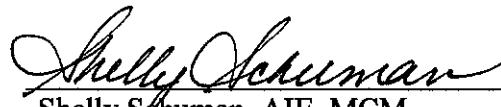
*Recommendation 26:* It is recommended that the Company cease asserting to claimants that any particular numerical percentage of fault bars recovery. It is recommended that the Company readjudicate the claim file.

**CONCLUSION**

This report is respectfully submitted to the South Dakota Division of Insurance. The courtesy and cooperation of the officers and employees of the Group is acknowledged.

The Examination was completed by examiners Jim Myers, Joe Cohen and Linda Miller.

  
James Myers, MCM  
Market Conduct Examiner-in-Charge  
INS Regulatory Insurance Services, Inc

  
Shelly Schuman, AIE, MCM  
Market Conduct Supervising Examiner  
INS Regulatory Insurance Services, Inc

Given to and subscribed before me  
this 2<sup>nd</sup> day of May 2015

