PROCEEDINGS BEFORE THE HONORABLE JANE L. CLINE
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

IN RE:

WEST VIRGINIA EMPLOYERS' MUTUAL INSURANCE COMPANY
dba
BRICKSTREET MUTUAL INSURANCE COMPANY
[NAIC #12372]

ADMINISTRATIVE PROCEEDING NUMBER: 08-AP-074

AGREED ORDER ADOPTING REPORT OF MARKET CONDUCT EXAMINATION AND DIRECTING REMEDIATION, CORRECTIVE ACTION AND PENALTIES

NOW COMES Jane L. Cline, Insurance Commissioner of the State of West Virginia, and issues this AGREED ORDER which adopts the Report of Market Conduct Examination for the examination of West Virginia Employers' Mutual Insurance Company dba BRICKSTREET MUTUAL INSURANCE COMPANY, hereinafter referred to as "BMIC" for the examination period ending December 31, 2007 based upon the following findings, to wit:

PARTIES

1. Jane L. Cline is the Insurance Commissioner of the State of West Virginia (the "Insurance Commissioner") and is charged with the duty of administering and enforcing the provisions of Chapter 33 and Chapter 23 of the West Virginia Code of 1931, as amended.

2. BMIC is a domestic private workers' compensation carrier authorized by the Insurance Commissioner to transact business in the State of West Virginia as permitted

and authorized under Chapter 33 and Chapter 23 of the West Virginia Code. During the examination period reviewed, BMIC was the only carrier in the State of West Virginia authorized to write workers' compensation insurance coverage.

FINDINGS OF FACT

1. A Market Conduct Examination of the methods of doing business of BMIC for the one year period ending December 31, 2007, was conducted in accordance with West Virginia Code Section 33-2-9(c) by examiners duly appointed by the Insurance Commissioner.

2. On February 20, 2009, the examiner filed with the Insurance Commissioner, pursuant to West Virginia Code Section 33-2-9(j)(2), a Report of Market Conduct Examination.

3. On February 20, 2009, a true copy of the Report of Market Conduct Examination (attached hereto as Exhibit A) was hand delivered to BMIC by Mark Hooker, Chief Market Examiner and was received by BMIC on February 20, 2009.

4. On February 20, 2009, BMIC was notified that, pursuant to West Virginia Code Section 33-2-9(j)(2), it had thirty (30) working days after receipt of the Report of Market Conduct Examination to file a submission or objection with the Insurance Commissioner.

5. On February 25, 2009, BMIC responded to the Report of Market Conduct Examination ("BMIC's Response") and is attached herein as Exhibit B.

6. BMIC's Response did not dispute any facts pertaining to findings, comments, results, observations, or recommendations contained in the Report of Market Conduct Examination unless so noted and attached with the Report of Market Conduct Examination.

7. The findings contained in the Report of Market Conduct Examination reveal the following violations of West Virginia Code and W.Va. Code of State Rules including: ***W. Va. Code §§ 33-20-1 et seq.; 23-2C-18; 23-2C-18a; W. Va. Code St. R §§ 85-8-10.; 85-8-11; W. Va. Code § 33-11-4(9); W. Va. Code §§ 23-2C-15, W.Va. Code §§ 23-2C-18, 23-2C-18a; W. Va. Code §§ 33-11-7; 33-20-1 et seq.; W. Va. Code St. R. § 85-8-11.3; W. Va. Code § 33-11-7; W. Va. Code St. R. § 85-8-5; W. Va. Code §23-2C-18a; W. Va. Code § 23-1-14; W. Va. Code § 33-12-25 & W. Va. Code St. R. §114-2-1, et. seq.***

8. BMIC has begun prior to the entry of this AGREED ORDER to correct some of the issues contained in the Market Conduct Examination report.

9. The Insurance Commissioner has determined that the violations of the West Virginia Code and Rule sections referenced in paragraph seven (7) above were unintentional.

10. By entering into this Agreed Order, BMIC does not admit to any factual or legal determinations made by the Commissioner; does not admit to any violation of Chapter 33 or Chapter 23 of the West Virginia Code that are set forth in the attached Report of Market Conduct Examination; and reserves all rights and defenses regarding liability or responsibility in any proceedings regarding BMIC other than current proceedings, administrative or civil, to enforce this Order.

11. BMIC waives notice of administrative hearing, any and all rights to an administrative hearing and to any judicial review of this matter.

12. Any Conclusion of Law that is more properly a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Insurance Commissioner has jurisdiction over the subject matter of, and the parties to, this proceeding.

2. This proceeding is pursuant to and in accordance with West Virginia Code Section 33-2-9.

3. Any Finding of Fact that is more properly a Conclusion of Law is hereby incorporated as such.

4. The violations of the code sections enumerated in Paragraph 7 of the Findings of Fact in this Agreed Order did occur such that substantial remediation to consumers and policyholders is necessary to remedy the violations.

5. Pursuant to the auspices of West Virginia Code Sections, 33-2-9, 33-2-11 and 33-3-11, the Insurance Commissioner has the authority to seek remediation of improper conduct of insurers to protect the consumers and policyholders of this State.

ORDER

Pursuant to West Virginia Code Section 33-2-9(j)(3)(A), following the review of the Report of Market Conduct Examination, the examination work papers, and BMIC's Response, the Insurance Commissioner and BMIC have agreed to enter into this Agreed Order adopting the Report of Market Conduct Examination. The Insurance Commissioner and BMIC have further agreed to the imposition of a detailed remediation and corrective action plan against BMIC.

It is accordingly **AGREED** and **ORDERED** as follows:

A. That the Report of Market Conduct Examination of BMIC is hereby **ADOPTED** and **APPROVED** by the Insurance Commissioner.

B. That, within thirty (30) days of the entry date of this Agreed Order, BMIC shall file with the Insurance Commissioner, in accordance with West Virginia Code Section 33-2-9(j)(4), affidavits executed by each of its directors stating under oath that they have received a copy of the adopted Report of Market Conduct Examination and a copy of this AGREED ORDER ADOPTING REPORT OF MARKET CONDUCT EXAMINATION AND DIRECTING REMEDIATION, CORRECTIVE ACTION AND PENALTIES.

C. That pursuant to the findings regarding rate and form filing scheduled rating issues, as detailed in the Report of Market Conduct Examination (pages 29 to 58) BMIC shall **remediate and refund** to its policyholders, present and past, any charges debited to those policyholders from the following scheduled rating characteristics: "Claims Characteristics: and "sales to employee ratios," and in addition any charges that negatively impacted a policyholder as a result of the use of demographic data (hereinafter collectively referred to as "Premium Refunds"), all as referred to in the Report of Market Conduct Examination F11 Recommendation C.. BMIC shall not be permitted to benefit from failing to find existing or prior policyholders for their refunds and as such shall detail in a corrective action plan how they will pool or deposit funds in trust for the attainment of policyholders and/or reversion to the Treasurer of the State of West Virginia Unclaimed Property collections or other such trust entity.

D. That BMIC shall also remediate and refund already paid Regulatory and Workers' Compensation Debt Reduction Fund **surcharges** pursuant to West Virginia Code Section 23-2C-3 associated with the Premium Refunds (Surcharge Refunds) to present and past affected policyholders.

E. That BMIC shall pay **interest** on the Premium Refunds and Surcharges Refunds to the affected policyholders, present and past, for the time value lost of the

monies improperly required to be deposited with BMIC from the date the policies became effective based on the Prime Rate of interest as follows: 8.25% for period January 1-December 31, 2007; 7.25% for period January 1-June 30, 2008; 5% for period July 1-December 31, 2008; and 3.25% for period January 1, 2009 and thereafter, as referenced in the Report of Market Conduct Examination F11, Recommendation (e). It is acknowledged and agreed herein that the interest rate attributed to the time value of the monies lost due to the conduct of BMIC is a fair, adequate, comprehensive and complete interest rate for the affected policyholders during the affected policy periods.

F. That BMIC may credit the Regulatory Surcharges refunded to policyholders pursuant to paragraph D herein above against future payments to be made by BMIC to the Fund. However, BMIC shall forfeit any Debt Reduction Fund Surcharges paid to the Fund in addition to the requirements of Paragraph D of this Agreed Order and shall not be entitled to any future credit for the same.

G. That of the **299 policies** mentioned during the examination concerning investigation or failure of BMIC to investigate alleged underwriting criteria, BMIC shall document in its corrective action plan a procedure for internal auditing of these policies to ensure compliance and report the results timely to Insurance Commissioner.

H. That BMIC shall not attempt to **recoup** any deficient rates so charged to policyholders, past or present, concerning the rating issues which form the basis of the findings in the Report of Market Conduct Examination.

I. That BMIC shall ensure compliance with the West Virginia Code and the Code of State Rules. BMIC shall specifically cure those violations and deficiencies identified in the Report of Market Conduct Examination. BMIC is hereby ordered to file a **Corrective Action Plan** which will be subject to the approval of the Insurance Commissioner. The Corrective Action Plan shall

detail BMIC's changes to its procedures and/or internal policies to ensure compliance with the West Virginia Code and the Code of State Rules and incorporate the recommendations of the Insurance Commissioner's examiners and address all violations specifically cited in the Report of Market Conduct Examination. Further, BMIC will detail in their Corrective Action Plan that appropriate customer contact personnel and relevant underwriting personnel are aware of the remedies Ordered herein and will be available and have the appropriate knowledge imputed to them such that agents and policyholder questions may be responded to in a timely and efficient manner. Additionally, any correspondence to affected policyholders concerning implementation of this Agreed Order shall clearly indicate that said refunds were a "result of a Market Conduct Examination conducted by the West Virginia Offices of the Insurance Commissioner."

J. That the Corrective Action Plan outlined in this Order must be submitted to the Insurance Commissioner for approval within thirty (30) days of the entry date of this Agreed Order. BMIC shall implement reasonable changes to the Corrective Action Plan if suggested by the Insurance Commissioner and the Insurance Commissioner will provide notice to BMIC when the Corrective Action Plan has been approved. BMIC shall thereafter file with the Insurance Commissioner a continuing detailed **update** on the progress of the Corrective Action Plan implementation every thirty (30) days for approximately one (1) year unless the Corrective Action Plan is fully implemented before the expiration of one (1) year's time. At the expiration of one (1) year of Corrective Action Plan reporting or before such time if all conditions are met with approval of the Insurance Commissioner, BMIC may petition the Insurance Commissioner for release from the Corrective Action Plan reporting. Such additional reporting, if necessary, will be addressed at that time.

K. All such issues not specifically addressed in this AGREED ORDER but mentioned as a deficiency, failure of a standard, or other recommendation in the Report of Market Conduct Examination shall still be addressed and corrected by BMIC.

L. BMIC agrees for violations enumerated herein and in the Report of Market Conduct Examination to pay an administrative penalty in addition to the previously discussed issues in Paragraphs A-M of this AGREED ORDER an amount of **Ten Thousand Dollars ($10,000.00)** to the Insurance Commissioner for other violations of the West Virginia Code as remarked in the Report of Market Conduct Examination.

Nothing Further is so Ordered at this Time

Dated this ~~25th~~ 26th day of February, 2009.

Jane L. Cline
Insurance Commissioner
State of West Virginia

THE PARTIES DO SO AGREE:

OFFICES OF THE INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

By: _____
Andrew. R. Pauley, Associate Counsel
Attorney Supervisor, APIR

2/26/09
Date

WEST VIRGINIA EMPLOYERS' MUTUAL INSURANCE COMPANY
dba
BRICKSTREET MUTUAL INSURANCE COMPANY

By: Thomas J. Obrokta, Jr.
[Print Name]

Signed: _____

Its: Senior Vice President & General Counsel

Dated: February 26, 2009

Report of Market Conduct Examination

As of December 31, 2007

WEST VIRGINIA EMPLOYERS' MUTUAL INSURANCE COMPANY

dba

BRICKSTREET MUTUAL INSURANCE COMPANY

400 Quarrier St
Charleston, WV 25339

NAIC COMPANY CODE 12372
Examination Number WV014-M11

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February 13, 2009

The Honorable Jane L. Cline
West Virginia Insurance Commissioner
1124 Smith Street
Charleston, West Virginia 25301

Dear Commissioner Cline:

Pursuant to your instructions and in accordance with W.Va. Code § 33-2-9, an examination has been made as of December 31, 2007 of the business affairs of

WEST VIRGINIA EMPLOYERS' MUTUAL INSURANCE COMPANY
DBA BRICKSTREET MUTUAL INSURANCE COMPANY
400 Quarrier St
Charleston, WV 25339

hereinafter referred to as the "Company" or "BrickStreet." The following report of the findings of this examination is herewith respectfully submitted.

PREVIOUS EXAMINATION FINDINGS

The examination performed was the first examination of the Company by West Virginia Offices of Insurance Commissioner ("WVOIC") since it commenced issuing policies on January 1, 2006.

EXECUTIVE SUMMARY

This examination is the first market conduct examination of the Company. The examination fieldwork began January 21, 2008 and concluded on November 5, 2008. It is important to emphasize that the Company had been operating as a private insurance carrier for just over two years when the examination began.

Because this examination was the first market conduct exam of the Company, the scope was comprehensive. The exam covered sixty-seven (67) standards from the 2007 NAIC Market Regulation Handbook. The Company passed fifty-nine (59) of these standards with eighteen (18) of the passed standards being accompanied by recommendations for actions that the Company should adopt to improve its operations. The remaining eight (8) standards examined fell short of the error tolerance standard established for this exam and as such were considered to have failed the standards. Six (6) of these eight (8) standards were associated with its underwriting and rating operations; the other two (2) standards were associated with producer licensing and Company Operations and Management.

It is logical that the underwriting and rating areas presented the Company with more challenges as the changes in these areas were the most dynamic since the privatization of workers' compensation, which began as a result of Senate Bill (SB) 1004. For 92 years under state management, insurance industry practices related to underwriting and rating were absent from the workers' compensation system in West Virginia. Upon incorporation in March, 2005, the Company had to transition the system from ninety-four (94) classifications codes, where only one class code was assigned per employer, to one with over five hundred and fifty (550) classification codes established by the national rating and classification system administered by the National Council on Compensation Insurance (NCCI). This transition was complicated by NCCI's assignment of multiple classifications to a single policy. It was further complicated by the Company being given only 16 months to complete the transition.

In addition to transitioning West Virginia's approximately 36,000 employers to the NCCI classification system, the Company was required to adopt industry-standard auditing practices. Under the state system, about 3,600 policies were audited annually compared to the industry practice of auditing all expiring policies The challenge of auditing all policies issued by the Company was further complicated by the fact that substantially all of the policies issued by the Company expired on January 1, 2007 and approximately half

of these policies expired again on July 1, 2007. BrickStreet audited nearly 72,000 policies during 2007.

Accordingly, it must be noted that the privatization of the West Virginia workers' compensation system and the regulation of that new system was a monumental task. During the transition period from January 1, 2006 through June 30, 2008, regulatory requirements have been constantly evolving. This evolution was necessary in order to examine industry best practices from across the country to prepare the West Virginia market for competition. Nevertheless, the fluid regulatory environment presented the Company with continuing challenges with respect to adapting to the regulatory structure. Finally it should be noted, that leadership and employees of BrickStreet had to undertake a cultural adjustment associated with transforming from a regulating agency into a regulated entity.

The following list summarizes some of the underwriting and rating issues that are raised in this report:

- The Company did not properly classify and thus charge its policyholders the appropriate amount of premium in twenty-nine percent of the policies tested. Policyholders were undercharged and overcharged as a result of this improper classification.
- The Company's application of its scheduled rating program was not in compliance with its filings because the Company did not properly document reasons for scheduled rating adjustments.
- The Company did not disclose certain germane aspects of its scheduled rating program, including the fact that scheduled rating adjustments would only be made on policies that met certain profitability indices, and the fact that it would largely be implemented via automation and partially dependent on demographic data.
- Certain aspects of the Company's scheduled rating program were unfairly discriminatory.
- The Company did not disclose the anticipated premium impact from scheduled rating adjustments in conjunction with its 2007 Loss Cost filings. It is acknowledged that the WVOIC was made aware of the net premium impact in January and July of 2007.
- The Company did not retain its declined applications violating W. Va. Code St. R § 114-15- 4.2 and 4.3b.
- The Company's premium audits were inaccurate for forty-five percent (45%) of the policies tested.
- The Company's premium audits were not performed timely for sixty-three percent (63%) of the policies tested.
- The Company did not obtain completed applications for twenty–five percent (25%) of the policies tested.

Although there were some sporadic errors with respect to claims handling, the error ratios for all of the claims standards were within the tolerance levels to warrant a "pass."

Further testing of the samples indicated that BrickStreet was one hundred percent (100%) compliant with respect to initial contact with claimants.

Various non-compliant practices were identified. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to the West Virginia insurance statutes and rules.

During the examination process the Company agreed to remediate certain errors to claimants and policyholders; 1) it had not paid TTD for three (3) claimants, where contractually those payments should have been provided; 2) the Company did not pay for medical expenses for one (1) claimant; 3) did not pay for an independent medical examination (IME) travel for one (1) claimant; 4) it failed to perform accurate premium audits, which led to an overcharge of earned premium for eighteen (18) employers; and 5) The Company also agreed to issue refunds including interest to over 6,000 policyholders for debits or increased premiums and surcharges charged to policyholders under certain aspects of BrickStreet's scheduled rating program,

SCOPE OF EXAMINATION

The basic business areas that were reviewed and tested under this examination were:

- Operations and Management
- Complaint Handling
- Producer Licensing
- Policyholder Services
- Underwriting and Rating
- Claims

Each business area has standards that the examination measured. Some standards have specific statutory guidance, others have specific Company guidelines, and/or yet others have contractual guidelines.

The focus of the examination is on the methods used by the Company to manage its operations for each of the business areas subject to this examination. This includes an analysis of how the Company communicates its instructions and intentions throughout its operations, how it measures and monitors the results of those communications, and how it reacts to and modifies its communications based on the resulting findings of the measurement and monitoring activities. The examination also determined whether this process is dynamic and results in enhanced compliance activities. Because of the predictive value of this form of analysis, focus is then made on those areas in which the process used by management does not appear to be achieving appropriate levels of statutory and regulatory compliance. Most areas are tested to verify the Company is in compliance with West Virginia statutes and rules.

This examination report is a report by test, rather than a report by exception; all standards tested are described and the results indicated. As this was the first official examination of the Company, the majority of the applicable standards from the NAIC Market Regulation Handbook were tested.

HISTORY AND PROFILE

In accordance with Senate Bill 1004, enacted in January of 2005, the West Virginia Employers' Mutual Insurance Company was incorporated on March 9, 2005. The bill privatized the former state-run monopolistic workers' compensation system, a process by which the former WV Workers' Compensation Commission novated into a private, non-stock mutual insurance company. The Company adopted BrickStreet Mutual Insurance Company (BMIC) as its trade name effective September 2, 2005, hereinafter referred to as the "Company." The Company commenced issuing new business as the state's first private workers' compensation carrier on January 1, 2006.

When the Company privatized, it was issued a Surplus Note from the State of West Virginia. In compliance with the contractual arrangements of that Note, the Company may not provide any other kind of insurance other than: (a) insurance for employers against liability for injuries and occupational diseases for which their employees may be entitled to benefits under Chapter twenty-three of the West Virginia Code or similar statutes in other states; (b) coal-workers' pneumoconiosis coverage, including coverage required by Title IV of the Federal Coal Mine Health and Safety Act of 1969; and (c) employers' excess liability coverage. BrickStreet is required to insure all applicants for these coverages until January 1, 2009.

The Company is governed by a Board of Directors comprised of seven members. Directors serving as of December 31, 2007, were as follows:

Name and Address	Business Affiliation	Board Member Since
Thomas Flaherty Charleston, West Virginia	Flaherty, Sensabaugh and Bonasso PLLC	2005
David Rader Charleston, West Virginia	West Virginia Physicians' Mutual Insurance Company	2005
Steve Roberts Charleston, West Virginia	West Virginia Chamber of Commerce	2005
H. Skip Tarasuk Fairmont, West Virginia	Davis and Tarasuk Insurance	2005
Steve White Charleston, West Virginia	Steven F. White, PLLC	2005
Greg Burton, President & CEO Charleston, West Virginia	BrickStreet Mutual Insurance Company	2005

Phillip Lynch Sr. Vice President	BrickStreet Mutual Insurance Company	2005

METHODOLOGY

This examination is based on the standards and tests for a market conduct examination of a property and casualty insurer found in Chapters 16 and 17 of the NAIC Market Regulation Handbook and on applicable West Virginia statutes and rules.

Some of the standards were measured using a single type of review, while others used a combination or all types of review. The types of review used in this examination fall into three general categories: "Generic," "Sample," and "Electronic."

A "Generic" review indicates that a standard was tested through an analysis of general data gathered by the examiner, or provided by the examinee in response to queries by the examiner.

A "Sample" review indicates that a standard was tested through direct review of a random sample of files selected using automated sampling software. The sampling techniques used are based on ninety-five percent (95%) confidence level with *Poisson* distribution-meaning sample sizes are generally the same without regard to population. For evaluation purposes, an error tolerance level of seven percent (7%) was used for claims and a ten percent (10%) tolerance was used for other types of review.

An "Electronic" review indicates that a standard was tested through use of a computer program or routine applied to a data extract of computer records provided by the examinee. This type of review typically reviews one hundred percent (100%) of the records of a particular type.

Standards were measured using tests designed to adequately measure how the Company met certain benchmarks. The various tests utilized are set forth in the NAIC Market Regulation Handbook for a property and casualty insurer. Each standard applied is described, and the result of testing is provided under the appropriate standard. The standard, its statutory authority under West Virginia law, and its source in the NAIC Market Regulation Handbook are stated and contained within a bold border.

Each standard is accompanied by a "Comment" describing the purpose or reason for the standard. "Results" are indicated, examiner's "Observations" are noted, and in some cases, a "Recommendation" is made. Comments, Results, Observations and Recommendations are maintained with the appropriate standard.

A. COMPANY OPERATIONS/MANAGEMENT

Comments: The evaluation of standards in this business area is based on a review of Company responses to information requests, questions, interviews, and presentations made to the examiner. This portion of the examination is designed to provide a view of what the Company is and how it operates and is not based on sampling techniques, but rather the Company's structure. This review is not intended to duplicate a financial examination review but is important in establishing an understanding of the examinee. Many troubled companies have become so because management has not been structured to adequately recognize and address the problems that can arise. Well-run companies generally have processes that are similar in structure. While these processes vary in detail and effectiveness from company to company, the absence or ineffective application of these processes is often reflected in failure of the various standards tested throughout the examination. The processes usually include:

- A planning function where direction, policy, objectives and goals are formulated;
- An execution or implementation of the planning function elements;
- A measurement function that considers the results of the planning and execution; and
- A reaction function that utilizes the results of measurement to take corrective action or to modify the process to develop more efficient and effective management of its operations.

Standard A 1	***NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 1***
The company has an up-to-date, valid internal or external audit program.	***W. Va. Code §§ 33-33-3 & 33-33-4***

Comments: The review methodology for this standard is generic. The standard has a direct statutory requirement as it pertains to annual audited financial statements. A company that has no audit function lacks the ready means to detect structural problems until problems have occurred. A valid internal or external audit function, and its use, is a key indicator of competency of management which the Commissioner may consider in the review of an insurer.

Results: **Pass with recommendation**

Observations: The Company's financial statements are audited annually in accordance with W. Va. Code § 33-3-14; the last such audit was conducted by Dixon Hughes for the year ending December 31, 2007. The Company's Board of Directors reviews the report on the annual audit and uses the report for the basis of business decisions.

The Company indicated it did not have an internal audit program during the period under examination. However, during January 2008, the Company hired an internal auditor to prepare an internal audit program. The Company plans to begin internal audits for underwriting, claims, premium audits and other internal departments during 2008.

Recommendations: It is recommended the Company implement the internal audit program it has developed.

Standard A 3	*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 3*
The company has antifraud initiatives which are reasonably calculated to detect, prosecute and prevent fraudulent acts	*W. Va. Code § 33-41-1, et seq.*

Comments: The review methodology for this standard is generic and sample. The standard has a direct statutory requirement. Written procedural manuals or guides and antifraud plans should provide sufficient detail to enable employees to perform their functions in accordance with the goals and direction of management. Appropriate antifraud activity is important for asset protection, as well as policyholder protection, and is an indicator of the competency of management, which the Commissioner may consider in the review of an insurer. Further, the insurer has an affirmative responsibility to report fraudulent activities of which it becomes aware.

Results: **Pass with recommendations**

Observations: The Company had an antifraud program in place during the period under examination, which allowed for investigations in compliance with W. Va. Code § 33-41-1.

A judgmental sample of ten (10) fraud files was tested to determine if the Company's fraud unit was acting in compliance with its antifraud plan and W. Va. Code § 33-41-1.

For two (2) of the ten (10) potential fraud files sampled, the Company did not report two (2) files to the WVOIC's Office of the Inspector General. It appeared for both files that the Company may have had knowledge or a reasonable belief that fraud or another crime related to the business of insurance had been committed. The Company agreed that these two (2) files should have been reported to the Office of Inspector General for informational purposes so that this information would be available for other investigations the OIC might conduct. Therefore, it did not appear the Company's actions were in full compliance with W. Va. Code § 33-41-5(a). However, the Company did report forty-nine (49) of the four hundred ninety (490) potential fraud files investigated during the period under examination to the WVOIC's Office of the Inspector General, which appeared to be all of the Company's investigations which generated the potential for prosecutable activities.

Recommendations: It is recommended the Company ensure that all investigations where the Company has knowledge or a reasonable belief that fraud or another crime related to the business of insurance has been committed are properly reported to the WVOIC Fraud Division.

Standard A 4 *NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 4*
The company has a valid disaster recovery plan.

Comments: The review methodology for this standard is generic. The standard does not have a direct statutory requirement. It is essential the Company have a formalized disaster recovery plan that details procedures for continuing operations in the event of any type of disaster. Appropriate disaster recovery planning is an indicator of the competency of management, which the Commissioner may consider in the review of an insurer.

Results: **Pass**

Observations: The Company had a disaster recovery plan which was deemed to be sufficient.

Recommendations: None

Standard A 5 *NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 5*
Contracts between the company and entities assuming a business function including but not limited to MGAs, GAs, & TPAs and management agreements must comply with applicable licensing requirements, statutes, rules and regulations.
W. Va. Code § 33-37-1, et seq

Comments: The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company utilizes subcontractors which are properly licensed and requires the subcontractors to comply with all applicable statutory authority.

Results: **Pass**

Observations: Although BrickStreet refers to "General Agencies" in its producer licensing policies, procedures and publications, these entities are not Managing General Agents (MGAs) as defined by W. Va. Code § 33-37-1 et. seq. The Company contracted with a TPA with respect to one (1) large deductible policyholder; the contract appeared to contain the appropriate controls and safeguards.

Recommendations: None

Standard A 6 *NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 6*
The company is adequately monitoring the activities of any entity that contractually assumes a business function or is acting on behalf of the company.

Comments: The review methodology for this standard is generic. The standard has no direct insurance statutory requirement. This standard is intended to assure that the Company using subcontractors engages in a realistic level of oversight. Contracts should

be reviewed to assure compliance with the MGA statutes governing contract content and oversight features. The focus is on the oversight impacting records and actions considered in a market conduct examination such as, but not limited to, trade practices, claim practices, policy selection and issuance, rating, complaint handling, etc. Particular emphasis is suggested concerning a subcontractor's dealings with policyholders and claimants.

Results: **Pass with recommendations**

Observations: The Company contracted with a firm to provide Independent Medical Examinations (IME) and a second firm to conduct medical bill processing. However, neither of these firms acts on behalf of the Company. The Company's producers did not have binding authority; however they did act on behalf of the Company. The Company's monitoring of its producers was not efficient as identified in Producer Licensing testing; see testing performed at Standards D 1 and D 2.

In addition, it appeared the Company only had limited oversight of its network providers. The BrickStreet managed care network was purchased from CompNet and has been rebranded as StreetSelect. The Company indicated providers were credentialed through StreetSelect's Medical Advisory Board and BrickStreet's Medical Director was a voting member. StreetSelect's Medical Advisory Board, oversaw the credentialing process. Additionally, BrickStreet's Vice-President of Claims Services attends StreetSelect's Medical Advisory Board meetings. Therefore, the Company's oversight of in network provider credentialing appeared to be limited.

Recommendations: The Company should provide efficient monitoring of its producers.

Standard A 7	***NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 7***
Records are adequate, accessible, consistent and orderly and comply with state record retention requirements.	***W. Va. Code St R. § 114-15-1 & W.Va. Code §§ 33-2-9 and 33-11-4.9***

Comments: The review methodology for this standard is generic. The standard does have a direct statutory requirement. This standard is intended to assure that an adequate and accessible record exists of the Company's transactions. The focus is on the records and actions considered in a market conduct examination such as, but not limited to, trade practices, claim practices, policy selection and issuance, rating, and complaint handling, etc. Inadequate, disorderly, inconsistent, and inaccessible records can lead to inappropriate rates and other issues, which can provide harm to the public.

Results: **Pass with recommendations**

Observations: The Company's files were orderly and generally all pertinent events could be reconstructed from the documents the Company maintained. However, not all files were retained in accordance with state record retention requirements as indicated during

testing of Complaints, Underwriting & Rating, and Claims testing of Standards G 5, F 7, F 11 and F 27, respectively.

Recommendations: The Company should maintain all records and documents in compliance with state record retention requirements.

Standard A 8	*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 8*
The company is licensed for the lines of business that are being written.	*W. Va. Code § 33-1-10*

Comments: The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is intended to assure that the Company operations are in conformance with the Company's certificate of authority.

Results: **Pass**

Observations: The Company's certificate of authority authorized it to only offer workers' compensation business. For the period under examination, the Company provided only workers' compensation coverage in compliance with its certificate of authority.

Recommendations: None

Standard A 9	*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 9*
The Company cooperates on a timely basis with examiners performing the examinations.	*W. Va. Code § 33-2-9 & W. Va. Code St. R. § 114-15-1, et seq.*

Comments: The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is aimed at assuring that the Company is cooperating with the state in the completion of an open and cogent review of the Company's operations in West Virginia. Cooperation with examiners in the conduct of an examination is not only required by statute, it is conducive to completing the examination in a timely fashion and minimizing cost.

Results: **Fail**

Observations: The Company's personnel were cooperative throughout the examination. However, the Company did not provide timely responses for fifty-seven (57) of the two hundred eighteen (218) Requests for Information (RFIs). W. Va. Code St. R. § 114-15-9.6(a) states:

As a means to facilitate the examination and to aid in the examination in accordance with W. Va. Code § 33-2-9, ***an insurer shall provide any requested document or written response to an inquiry submitted by an examiner within five (5) working days, or such other time period as mutually agreed upon by the examiner and the insurer****. It is a*

violation of this rule for an insurer to fail to produce a requested document within the specified time period unless the insurer can demonstrate to the satisfaction of the Commissioner that the requested record cannot reasonably be provided within the specified time period of the request."

The Company did not respond to the fifty-seven (57) RFIs within five (5) working days from the date of issue. In addition, twenty-three (23) of the RFIs were responded to ten (10) or more working days after issue, and thirteen (13) were responded to twenty (20) or more working days after issue.

Recommendations: The Company should respond to examination inquiries in compliance with the requirements of W. Va. Code St. R. § 114-15-4.9(a).

Standard A 11 *NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 11*
The company had developed and implemented written policies, General Standards and procedures for the management of insurance information.
W. Va. Code § §23-1-4 and 23-4-7, and W. Va. Code St R. § 114-57-1 and W. Va. Code St R. § 114-62-1

Comments: The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company has established adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the information pertaining to applicants, policyholders, and claimants.

Results: **Pass with recommendation**

Observations: The Company had developed and implemented written policies and procedures for managing its workers' compensation plans. However, as a result of the examination the Company either developed additional policies and procedures or updated existing procedures for more efficient management of its insurance business and for compliance with West Virginia statutes and rules. For several standards tested, the Company indicated it will develop and implement new procedures as a result of the examination.

Recommendations: It is recommended the Company adopt and implement the corrective actions it indicated would be adopted as a result of the market conduct examination for compliance with its guidelines and West Virginia statutes and rules.

Standard A 12 *NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 12*
The company has policies and procedures to protect the privacy of nonpublic personal information relating to its customers, former customers and consumers that are not customers.
W. Va. Code §§ 23-1-4 and 23-4-7; W. Va. Code § 33-11-4(12) et seq.; W. Va. Code St. R §§ 114-57-1 et seq. and 114-62-1

Comments: The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its

policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

Results: **Pass**

Observations: The Company had formal written procedures for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants, claimants and policyholders.

Recommendations: None

Standard A 13	*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 13*
If the company provides privacy notices to its customers and, if applicable, to its consumers who are not customers regarding the treatment of nonpublic financial information.	
	W. Va. Code St. R. § 114-57-1, et seq.

Comments: The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

Results: **Pass**

Observations: The Company did not provide privacy notices to its applicants or policyholders. However, the Company complied with applicable state laws governing the privacy of non-public information by requiring a claimant or policyholder to sign an authorization prior to releasing non-public information to a third party in compliance with W. Va. Code St. R. §§ 114-57-3 and 15.

Recommendations: None

Standard A 14	*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 14*
If the company discloses information subject to an opt out right, the regulated entity has the policies and procedures in place so that non public personal financial information will not be disclosed when a consumer who is not a customer has opted out, and the regulated entity provides opt out notices to its customers and affected consumers.	
	W. Va. Code St. R. § 114-57-1, et seq.

Comments: The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

Results: **Pass**

Observations: The Company was not required to have and does not have an opt out right.

Recommendations: None

Standard A 15	*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 15*
The company's use and disclosure of nonpublic personal financial information are in compliance with applicable statutes, rules, and regulation.	
	W. Va. Code §§ 23-1-4 and 23-4-7; W. Va. Code § 33-11-4(12) and W. Va. Code St. R. 114-57-1.

Comments: The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

Results: **Pass**

Observations: The Company had formal written procedures for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants, policyholders, and claimants.

Recommendations: None

Standard A 16	*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 16*
The company has policies and Procedures in place so that nonpublic personal health information will not be disclosed except as permitted by law unless a customer or a consumer who is not a customer has authorized the disclosure.	
	W. Va. Code St. R. § 114-57-1, et seq.

Comments: The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

Results: **Pass**

Observations: The Company had formal written procedures for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants and policyholders.

Recommendations: None

Standard A 17	*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 17*
Each Licensee shall implement a written information security program for the protection of nonpublic customer information.	
	W. Va. Code St. R. § 114-62-1, et seq.

Comments: The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

Results: **Pass**

Observations: The Company had formal written procedures respecting its licensees for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants, policyholders, and claimants

Recommendations: None

B. COMPLAINT HANDLING

Comments: Evaluations of the standards in this business area are based on Company responses to various information requests and the review of complaint files at the Company. In this business area, "complaints" include "grievances."

Standard B 1	*NAIC Market Regulation Handbook– Chapter XVI, § B, Standard 1*
All complaints are recorded in the required format on the company complaint register.	
	W. Va. Code § 33-11-4(10)

Comments: The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is concerned with whether the Company records and maintains complaints or grievances as required by statute. An insurer is required to maintain a complete record of all complaints received. The record must indicate the total number of complaints since the last examination, the classification of each complaint by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint.

Results: **Pass with Recommendations**

Table B 1 - Complaints Sample Results					
Type	Population	N/A	Pass	Fail	% Pass
Complaints	193	11	182	0	100%
Grievances	17		15	2	88%
Total	210	11	197	2	99%

Observations: The Company maintained an electronic log of complaints in accordance with the requirements of W. Va. Code § 33-11-4(10). W. Va. Code § 33-11-4(10) requires the Company to "...maintain a complete record of all the complaints which it has received since the date of its last examination." The statute also requires that, "This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint," the definition of a complaint is, "...any written communication primarily expressing a grievance."

- For two (2) claims files tested the Company failed to record and log grievances submitted by claimants. The Company acknowledged it had failed to log one of the grievances as required under W. Va. Code § 33-11-4(10). The fifteen (15) grievances provided for an annual period appeared to be very low considering the number of policyholders and claimants covered by the Company.

Recommendations: The Company should ensure it complies with W. Va. Code § 33-11-4(10), by logging and responding in writing to all written communication primarily expressing a grievance.

Standard B 2 *NAIC Market Regulation Handbook– Chapter XVI, § B, Standard 2*
The company has adequate complaint handling procedures in place and communicates such procedures to policyholders.
W. Va. Code § 33-11-4(10)

Comments: The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is concerned with whether the Company has an adequate complaint handling procedure and whether the Company communicates complaint handling procedures to its policyholders.

Results: **Pass**

Observations: The Company addressed its complaints to the proper internal departments to finalize and dispose of the complaints in compliance with W. Va. Code § 33-11-4(10).

Recommendations: None

Standard B 3 *NAIC Market Regulation Handbook– Chapter XVI, § B, Standard 3*
The company takes adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations, and contract language.
W. Va. Code § 33-11-4(10)

Comments: The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is concerned with whether the Company has an adequate complaint handling procedure and whether the Company takes adequate steps to resolve and finalize complaints.

Results: **Pass**

The entire population of WVOIC complaints and internal medical grievances were tested. The results of the testing are as follows:

Table B 3 - Complaints Sample Results					
Type	**Population**	**N/A**	**Pass**	**Fail**	**% Pass**
Complaints	193	11	182	0	100%
Grievances	15		15	0	100%
Total	208	11	197	0	100%

Observations: The Company provided its complaints to the proper internal departments to finalize and dispose of the complaints in compliance with W. Va. Code § 33-11-4(10).

Recommendations: None

Standard B 4 ***NAIC Market Regulation Handbook– Chapter XVI, § B, Standard 4***

The time frame within which the company responds to complaints is in accordance with applicable statutes, rules and regulations.

W. Va. Code § 33-11-4(10)

Comments: The review methodology for this standard is sample. The standard does not have a direct statutory requirement; however, timeliness is inferred. In the case of complaints concerning claims, direct time requirements are found in regulation. This standard is concerned with whether the Company responded to complaints timely. West Virginia's complaint handling section uses a fifteen (15) working day standard for responses to complaints.

Results: **Pass with recommendations**

The entire population of WVOIC complaints and internal medical grievances were tested. The results of the testing are as follows:

Type	Population	N/A	Pass	Fail	% Pass
Complaints	193	11	175	7	96%
Grievances	15	0	15	0	100%
Total	208	11	190	7	96%

Observations: The Company had written complaint handling procedures in place during the period under examination. However, the Company failed to provide seven (7) responses to the one hundred eighty-two (182) WVOIC complaints tested within fifteen (15) working days of receipt in violation of W. Va. Code § 33-11-4(10). Overall, the Company was timely in responding to the WVOIC complaints. None of its responses were provided later than twenty-six (26) working days. The Company agreed it did not meet the fifteen (15) days standard for the seven (7) files failed.

Recommendations: The Company should respond to WVOIC complaints in a timely manner and address all issues involved to ensure compliance with W. Va. Code § 33-11-4(10).

B 4(a) Other files failed in association with WVOIC Complaint files testing:

Results: **Pass with recommendations**

Claimants for workers' compensation are not always aware of how or what to complain about in order to receive the benefits they are entitled in compliance with the Company's contractual responsibilities. In some instances the Company's responses to the WVOIC concerning complaints were technically accurate, but failed to address other factors within the complainant's underwriting and/or claim file which revealed mistreatment of the complainant. During testing of complaints other issues concerning the Company's actions were identified, which were not in compliance with West Virginia statutes and rules. The results of testing and other observations are as follows:

Table Other Complaints Sample Results

Type	Population	N/A	Pass	Fail	% Pass
Complaints	193	11	172	10	94%
Grievances	15	0	15	0	100%
Total	208	11	187	10	95%

Observations:

- Six (6) WVOIC complaint files failed testing requirements because the underwriting of the employer's risk or the premium audit was not performed in compliance with the NCCI SCOPES Manual guidelines and the Company's underwriting and premium audit guidelines, as follows:

1. The Company misclassified the risk when underwritten and failed to classify the employer's risk properly at the time of audit. In addition, it did not comply with NCCI Basic Manual Rule 1-F when the audit was completed as it added a higher rated non-contractor class at audit. The Company agreed with this finding.
2. The Company failed to adequately underwrite the employer's exposure to risk by not using an adequate amount of estimated payroll. The Company agreed with this finding.

3. The Company failed to gather enough information at renewal and at audit to make an adequate determination that the employer's risk was properly classified. The Company agreed with this finding.
4. The Company's underwriting and audit departments failed to gather enough information from the employer to ensure the employer's risk was properly classified. The Company agreed with this finding.
5. The Company failed to provide a proper governing classification of the employer's risk at the time of underwriting and at audit, and it failed to have a standard exception classification for drivers in compliance with NCCI guidelines. The Company agreed with this finding.
6. The Company failed to classify an owner in compliance with NCCI guidelines. The Company disagreed but did not provide support that the owner was properly classified.

- The Company failed to pay Partial Permanent Disability (PPD) timely for one (1) WVOIC complaint file in violation of W. Va. Code St. R. § 85-1-9.6(a) and failed to rule timely for two (2) files in violation of W. Va. Code § 23-4-1d(a). The Company agreed two (2) files were not acted upon timely but disagreed the third file had failed.

- In addition, the Company failed to pay Temporary Total Disability (TTD) timely for one (1) WVOIC complaint file in violation of W. Va. Code St R. § 85-1-9.1. The Company agreed.

During the period under examination, the Company failed to retain paper medical bills and paper invoices in compliance with W. Va. Code St. R. §§ 114-15-1.1(b), 4.2(b) and 4.4. The Company's response stated, "The Company agrees that retention of medical invoices for only six months does not comply with the requirements of W. Va. Code St. R. § 114-15-4.2(b). The Company intends to begin imaging all medical invoices in February, 2008. Until the imaging process commences, the Company will retain the original medical invoices in accordance with the requirements of W. Va. Code St. R. § 114-15-4.2(b)."

Recommendations: It is recommended the Company implement corrective actions to properly classify risks, pay PPD and TTD timely, and retain documents to ensure compliance with W. Va. Code § 23-4-1d(a),W. Va. Code St. R. §§ 85-1-9.1, 85-1-9.6(a), 114-14-4.2(b), and 114-15-5.2(b); NCCI SCOPES and Basic Manual, and the Company underwriting and premium audit guidelines to preclude complaints filed with the WVOIC.

C. MARKETING AND SALES

Comments: The evaluation of standards in this business area is based on a review of Company responses to information requests, questions, interviews, and presentations made to the examiner. This portion of the examination is designed to evaluate the representations made by the Company about its products. It is not typically based on

sampling techniques but can be. The areas to be considered in this kind of review include all media, written and verbal advertising, and sales material.

Standard C 1 *NAIC Market Regulation Handbook– Chapter XVI, § C, Standard 1*
All advertising and sales materials are in compliance with applicable statutes, rules and regulations.
W. Va. Code § 33-11-1 et seq & W. Va. Code St. R. § 114-9-1 et seq.

Comments: Review methodology for this standard is sample and generic. The standard has a direct insurance statutory requirement. This standard is intended to assure compliance with the prohibitions on misrepresentation. It is concerned with all forms of media (print, radio, television, etc.).

Results: **Pass with recommendations**

As supplied by the Company, the entire population of forty (40) advertising and sales materials was tested. The results are as follows:

Table C 1 Advertising and Sales Results

Type	Population	N/A	Pass	Fail	% Pass
Marketing and Sales Materials	40	0	38	2	95%
Total	40	0	38	2	95%

Observations: The Company provided a copy of all advertising materials used during the period under examination. Advertising materials included brochures describing the different coverage the Company offered and television, radio and newspaper advertising, agency training materials and the Company's website.

- The Company's website stated in part, "BrickStreet prefers that incidents not be reported. . . . Frequency data provides more accurate projections of future loss potential than severity. For this reason, employers that are eligible for experience ratings should track incidents on their OSHA log as the *incidents may impact the frequency component of the NCCI experience rating formula if reported to BrickStreet.*" The italicized statement was not accurate. Therefore, the website provided information that was misleading and in violation of W. Va. Code § 33-11-4(2). The Company's response stated in part, "The Company agrees that the italicized statement in the following statement posted on the Company's website is not accurate: . . . The Company will remove these materials from the Company's website."

- The Company provided newspaper advertisements which stated in part, ". . . These include on-site doctors, return-to-work specialists, investigators, risk management professionals and legal advisors *who evaluate each claim from every angle.*" The statement was inaccurate as not all of the Company's staff mentioned, evaluate every claim. The Company disagreed the statement was misleading and represented the print advertisements were referring to Company-held staff meetings addressing lost time claims in which claims personnel could introduce any claims during those meetings for

review. Its response also indicated BrickStreet's new Business Team structure had discontinued the daily staff meetings, and therefore, the Company discontinued the print advertisements during December, 2007.

Recommendations: It is recommended the Company ensure all marketing materials are distributed without misleading or inaccurate information.

Standard C 2 *NAIC Market Regulation Handbook– Chapter XVI, § C, Standard 2*
Company internal producer training materials are in compliance with applicable statutes, rules and regulations. *W. Va. Code § 33-11-1 et seq & W. Va. Code St. R. § 114-9-1 et seq.*

Comments: Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. This standard is intended to assure compliance with the prohibitions on misrepresentation. It is concerned with training or instructional representations made by the Company to its producers.

Results: **Pass**

The population of one (1) internal producer training material was tested. The results are as follows:

Table C 2 Advertising and Sales Results

Type	Population	N/A	Pass	Fail	% Pass
Internal Producer Training	1	0	1	0	100%
Total	1	0	1	0	100%

Observations: The Company's producer training material was tested with no exceptions noted.

Recommendations: None

Standard C 3 *NAIC Market Regulation Handbook– Chapter XVI, § C, Standard 3*
Company communications to producers are in compliance with applicable statutes, rules and regulations.
W. Va. Code § 33-11-1 et seq & W. Va. Code St. R. § 114-9-1 et seq

Comments: Review methodology for this standard is generic and sample. The standard has a direct insurance statutory requirement. This standard is intended to assure compliance with the prohibitions on misrepresentations. It is concerned with representations made by the Company to its producers other than in a training mode.

Results: **Pass**

Observations: The Company did not identify any communications with its producers relating to sales and marketing for the period under examination, other than those presented in Standards C 1 and C 2.

Recommendations: None

Standard C 4	*NAIC Market Regulation Handbook– Chapter XVI, § C, Standard 4*
Company's mass marketing of worker' compensation insurance is in compliance with applicable statutes, rules and regulations.	
	W. Va. Code § 33-11-1 et seq and W. Va. Code St. R. § 114-9-1 et seq

Comments: Review methodology for this standard is generic and sample. The standard has a direct insurance statutory requirement. This standard is intended to assure compliance with the prohibitions on misrepresentations, fictitious arrangements, compulsory participation, and tie-in sales.

Results: **Pass**

Observations: The Company did not have a mass marketing program.

Recommendations: None

D. PRODUCER LICENSING

Comments: The evaluation of standards is based on a review of Insurance Commission records and Company responses to information requests, questions, interviews, and presentations made to the examiners. This portion of the examination is designed to test the Company's compliance with West Virginia producer licensing laws and rules.

Standard D 1	*NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 1*
Company records of licensed and appointed (if applicable) producers agree with department of insurance records.	
	W. Va. Code § 33-12-18.

Comments: Review methodology for this standard is generic and sample. This standard has a direct statutory requirement. This standard is aimed at assuring compliance with the requirement that producers be properly licensed and appointed. Such producers are presumed to be qualified, having met the test for such license. W. Va. Code § 33-12-3 states, "No person shall in West Virginia act as or hold himself out to be an agent, broker or solicitor nor shall any person in any manner solicit, negotiate, make or procure insurance covering subjects of insurance resident, located or to be performed in West Virginia, unless then licensed therefore pursuant to this article." The section further

states, "No insurer shall accept any business from any agent who does not then hold an appointment as agent for such insurer pursuant to this article."

Results: **Pass with recommendation**

The entire population was tested for this standard. The results are as follows:

Table D 1 Producer Licensing Sample Results					
Type	**Population**	**N/A**	**Pass**	**Fail**	**% Pass**
Prodcuers	1,370	0	1,368	2	99.9%
Total	1,370	0	1,368	2	99.9%

Observations: The Company provided a listing of one thousand three hundred seventy (1,370) producers that were appointed during the period under examination. Two (2) of the producer-submitted policy applications were accepted for new business even though the producers weren't properly licensed, which was a violation of W. Va. Code § 33-12-3, which is supported by W. Va. Code §§ 33-12-2(f) and (p) and W. Va. Code St. R. § 114-2-1. The Company's response indicated that both producers were not licensed at the time it accepted their applications.

Recommendations: It is recommended the Company adopt and implement procedures to record all producer appointments for reconciliation with the WVOIC listing and for underwriters to determine if the producers are appointed and licensed prior to acceptance of an application.

Standard D 2 ***NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 2.***
The producers are properly licensed and appointed (if required by state law) in the jurisdiction where the application was taken.
W. Va. Code § 33-12-18

Comments: Review methodology for this standard is sample. This standard has a direct statutory requirement, and it is file-specific. This standard is aimed at assuring compliance with the requirement that producers be properly licensed and appointed for business solicited in West Virginia. The Company must appoint the producer within fifteen (15) days of the date the producer submits their first application to the Company.

Results: **Pass with recommendation**

Testing for this standard was conducted in conjunction with underwriting testing on a sample of sixty (60) newly-issued policy files. The results of testing are as follows:

Table D 2 Producer Licensing Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	57	3	95%
Total	5,214	60	0	57	3	95%

Observations: The Company accepted applications and issued policies on business received from three (3) producers who were not appointed at the time of acceptance and who were not appointed within fifteen (15) days of the insurance application submission. Therefore, the Company's actions were a violation of W. Va. Code § 33-12-18. The Company agreed.

All the producer files were deficient because the Company was not making commission payments directly to producers and did not have an agreement with producers to pay another party as required by W. Va. Code § 33-12-23(b). Therefore, the Company's actions were not in compliance with W. Va. Code § 33-12-23(b). The Company's response indicated it disagreed by stating, "The Company pays commissions to agencies. The Company does not interpret West Virginia Code Section 33-12-23 to require an authorization from the agency or the individual agents prior to paying commissions to the agency."

Recommendations: The Company should adopt and implement procedures to ensure that all producers are appointed and licensed prior to the acceptance of an application and to pay commissions in compliance with W. Va. Code § 33-12-23(b).

Standard D 3 *NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 3.*
Termination of producers complies with statutes regarding notification to the producer and notification to the state if applicable.
W. Va. Code § 33-12-25 & W. Va. Code St. R. §114-2-1, et seq.

Comments: Review methodology for this standard is generic and sample. This standard has a direct statutory requirement. It is generally file-specific. This standard is aimed at both avoiding unlicensed placements of insurance as well as ensuring that producers are treated fairly with respect to terminations. W. Va. Code § 33-12-25 requires the Company to notify the Commissioner, on a form prescribed by the Commissioner, within thirty (30) days of terminating the producer's authority. The same code section further requires the producer to be notified simultaneously. Furthermore, W. Va. Code § 33-12-25 requires the Company to notify the Commissioner if the termination is for cause.

Results: **Fail**

A sample of sixty producers was tested and the results are as follows:

Table D 3 Producer Licensing Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Producer Terminations	98	60	0	0	60	0%
Total	98	60	0	0	60	0%

Observations:

- Testing of terminated producers indicated the Company did not send termination notices to agents as required by W. Va. Code § 33-12-25(d). The Company disagreed stating in part, "The Company did not send termination notices to agents whose appointment with the Company was terminated by the Company. The current form issued by the Insurance Commission to report terminations only requires that the Company report a reason for the termination if the termination was for cause as defined by West Virginia Code Section 33-12-25."

Recommendations: It is recommended the Company adopt and implement procedures to notify all producers upon termination in accordance with W. Va. Code § 33-12-25.

Standard D 4 *NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 4.*
The company's policy of producer appointments and terminations does not result in unfair discrimination against policyholders.
W. Va. Code § 33-11-4 et seq.

Comments: Review methodology for this standard is generic. This standard does not have a direct statutory requirement. It is generally not file-specific. This standard is concerned with potential geographical discrimination through the insurer's selection and instructions to its producers. The tests are intended to expose indicators of such practice but may not be conclusive.

Results: **Pass**

Observations: The Company's agents can be found throughout the State of West Virginia. No unfair discrimination against policyholders could be inferred from the Company's producer appointment and termination records.

Recommendations: None

Standard D 5 *NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 5.*
Records of terminated producers adequately document reasons for terminations.
W. Va. Code § 33-12-25 & W. Va. Code St. R. §§ 114-2-1, et seq and 114-15-1 et seq

Comments: Review methodology for this standard is generic. This standard has a direct statutory requirement. It is generally file-specific. This standard is intended to aid in the

identification of producers involved in unprofessional behavior, which is harmful to the public.

Results: **Pass**

Observations: Testing was conducted to verify the Company was notifying the WVOIC when producers were terminated and whether terminations were for cause. Testing indicated the Company provided termination reasons for its producers in the notices filed with the WVOIC. There were no producers terminated for cause during the period under examination. No failures were noted during testing of this standard.

Recommendations: None

Standard D 6	***NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 6.***
Producer accounts current (account balances) are in accordance with the producer's contract with the insurer.	

Comments: Review methodology for this standard is generic. This standard does not have a direct statutory requirement. It is generally file-specific. This standard is concerned with potential unfair practices in allowing producers to act outside the terms of the producer's contract with the Company.

Results: **Pass**

Observations: The Company indicated it did not maintain accounts current with any of its producers.

Recommendations: None

E. POLICYHOLDER SERVICE

Comments: The evaluation of standards in this business area is based on review of Company responses to information requests, questions, interviews, and presentations made to the examiner and file sampling during the examination process. The policyholder service portion of the examination is designed to test a Company's compliance with statutes regarding notice/billing, delays/no response, premium refund and coverage questions.

Standard E 1	***NAIC Market Conduct Examiners Handbook - Chapter XVI, § H, Standard 1***
Premium notices and billing notices are sent out with an adequate amount of advance notice.	
W. Va. Code §§ 23-2C-15, 33-11-7, and W. Va. Code St. R. §§ 85-8-9.	

Comments: Review methodology for this standard is generic and sample. There is an indirect statutory requirement. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

Results: **Pass**

For this standard, testing was performed in conjunction with sampled files from Underwriting and Rating testing. Testing included sixty (60) newly-issued policies and sixty (60) insured requested cancellations. The results of testing are as follows:

Table E 1 Policyholder Service Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Issued Policies	5,214	60	0	60	0	100%
Underwriting Renewals	65,535	60		60	0	100%
Total	70,749	120	0	120	0	100%

Observations: The Company provided premium notices and billing notices with an adequate amount of advance notice. No failures were noted during testing of newly-issued and underwriting renewal files.

Recommendations: None

Standard E 2 *NAIC Market Conduct Examiners Handbook - Chapter XVI, § H, Standard 2*
Policy issuance and insured-requested cancellations are timely.
W. Va. Code § 33-11- 7 & W. Va. Code St. R. § 85-8-9

Comments: Review methodology for this standard is generic and sample. There is no direct statutory requirement. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

Results: **Pass with recommendations**

For this standard, testing was performed in conjunction with sampled files from Underwriting and Rating testing. Testing included sixty (60) newly-issued policies and sixty (60) insured requested cancellations. The results of testing are as follows:

Table E 2 Policyholder Service Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Issued Policies	5,214	60	0	59	1	98%
Insured Requested Cancellations	2,549	60	0	60	0	100%
Total	7,763	120	0	119	1	99%

Observations: The Company failed to issue coverage timely for one (1) of the sixty (60) newly-issued policy files tested, which was not in compliance with its underwriting guidelines. The Company agreed.

Recommendations: The Company should ensure that all policies are issued timely.

Standard E 3 *NAIC Market Conduct Examiners Handbook - Chapter XVI, § H, Standard 3*
All correspondence directed to the regulated entity is answered in a timely and responsive manner by the appropriate department.

W. Va. Code § 33-11-7

Comments: Review methodology for this standard is generic and sample. There is no direct statutory requirement. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

Results: **Pass**

Observations: Testing of correspondence was conducted in association with files sampled for testing throughout the examination process. It was determined the Company accessed the appropriate departments and addressed the issues raised when formulating responses. However, as noted above, in a small number of instances, the Company was not always timely providing responses.

Recommendations: None

Standard E 5 *NAIC Market Conduct Examiners Handbook - Chapter XVI, § H, Standard 5*
Determine if policy transactions were processed accurately and completely.
W. Va. Code §23-2C-15, W. Va. Code § 33-11-7 and W. Va. Code St. R. § 85-8-9

Comments: Review methodology for this standard is generic and sample. There is no direct statutory requirement. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

Results: **Pass with recommendations**

For this standard, testing was performed in conjunction with sampled files from Underwriting and Rating testing. Testing included sixty (60) insured requested cancellations, sixty (60) Company cancellations and sixty (60) reinstated policies. The results of testing are as follows:

Table E 5 Policyholder Service Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Insured Requested Cancellations	2,549	60	0	53	7	88%
Company Cancellations	4,060	60	0	57	3	95%
Reinstated Policies	1,559	60	0	57	3	95%
Total	8,168	180	0	167	13	93%

Observations: The detail testing identified the failures of thirteen (13) files for this standard, as identified below:

- For two (2) insured requested cancellation files, the Company allowed coverage to become effective without receipt of premium from the employer. The Company terminated both policies for flat cancellation after the employers requested

cancellation. For one (1) file, the Company agreed the policy was issued in error. For the other file, the Company acknowledged the policy was put in force with no money received. Transactions for both of these policies were not accurate. As a result of the examination, the Company has represented it has changed its procedures and now will only allow coverage to become effective with adequate payment of premium.

- The Company did not retain four (4) insured requested cancellation forms. The files were failed because testing could not be performed on the files to determine if the Company's actions allowed for accurate and complete policy transactions.

- For one (1) insured requested cancellation file, the Company sent a notice of cancellation for a policy that had never been in force; the notice stated the cancellation date was after the initial policy cancellation date. The Company's response indicated the policy was never in effect and a cancellation notice should not have been issued. The Company also indicated its computer system was unable to process cancellations during the period under examination, which resulted in only manual processing of cancellations. However, as a result of the examination, the Company indicated the processing of cancellation notices will become a system process with appropriate new system changes to only allow for a termination notice to be generated for only a policy that is currently in force.

- For policies with black lung (pneumoconiosis) coverage, the Company was providing the mandated thirty (30) days notice for cancellation for nonpayment. However, it was also providing fifteen (15) days notice for cancellation of policies with an endorsement for black lung coverage. Policies with black lung coverage should have been provided thirty (30) days notice prior to cancelling coverage, because an endorsement for black lung coverage would not be in effect if the policy is terminated. Therefore, the one (1) file included in the sample selected did not meet this standard; it was also determined that the Company's procedures did not meet the standard. The Company agreed that its current practice of sending a fifteen-day (15) advance notice of cancellation and a separate thirty-day (30) advance notice of cancellation for black lung coverage should be discontinued. In addition, the Company indicated it will make the necessary system and process changes to have a single thirty-day (30) advance notice of cancellation for policies that carry a black lung endorsement.

- For one (1) cancellation file the Company did not provide a notice of pending cancellation in compliance with W. Va. Code § 23-2C-15 and W. Va. Code St. R. § 85-8-9.3. The Company agreed.

- For one (1) cancellation file the Company renewed coverage for an employer that had not paid premium for the initial coverage. The Company's underwriter had transferred unearned premium from a previous policy audit for the renewal without the authorization of the employer. Coverage should not have been renewed, and therefore, cancellation for nonpayment should not have occurred. The Company agreed the policy should not have been issued or renewed, and as a result of the market conduct examination the Company indicated it has changed its procedures to only allow for

transfers of unearned premium with the authorization of an employer. In addition, the Company indicated a premium audit for this employer would be expedited to return the unearned premium that had been withheld.

- For one (1) reinstated file the Company reinstated the policy by transferring money from a previous policy audit without the employer's authorization and disregarded the employer's request for cancellation. After the money was transferred the current policy was reinstated. The Company agreed the employer did not authorize the transfer of funds; that coverage should not have been issued and the unearned premium should have been refunded. Therefore, the Company charged the insured more premium than allowed in violation of W. Va. Code § 33-20-4.

- For one (1) reinstated file the Company did not cancel the employer on the correct date after it had reinstated the policy. As a result, the Company charged the insured more premium than allowed in violation of W. Va. Code § 33-20-4. The Company agreed.

- For one (1) reinstated file the Company issued a notice of pending cancellation for one date, a notice of cancellation for another date and then cancelled on a different date. The Company indicated the policy was cancelled in error. Therefore, the file was failed because reinstatement of the policy was not applicable.

Recommendations: It is recommended the Company complete transactions timely and accurately to ensure compliance with West Virginia statutes and rules, and within its guidelines. In addition, it is recommended the Company complete the processing changes it indicated will be made as a result of the examination.

Standard E 7 *NAIC Market Conduct Examiners Handbook - Chapter XVI, § H, Standard 7*
Unearned premiums are correctly calculated and returned to appropriate party in a timely manner, and in accordance with applicable W. Va. statutes and rules, and verify unearned premiums were returned timely
W. Va. Code § 33-11-7 & W. Va. Code § 33-20-4

Comments: Review methodology for this standard is generic and sample. There is no direct statutory requirement. This standard is intended to provide insureds with the proper amount of premium refund upon cancellation in a timely manner.

Results: **Pass with recommendation**

For this standard, testing was performed in conjunction with sampled files from Underwriting and Rating. Testing included sixty (60) insured requested cancellations, sixty (60) Company cancellations and sixty (60) reinstated policies. The results of testing are as follows:

Table E 7 Policyholder Service Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Insured Requested Cancellations	2,549	60	0	60	0	100%
Company Cancellations	4,060	60	0	60	0	100%
Reinstated Policies	1,559	60	0	58	2	97%
Total	8,168	180	0	178	2	99%

Observations: Two (2) of the reinstated files tested did not pass this standard. The Company did not provide the correct date when coverage should have been cancelled, and therefore, did not return the correct amount of unearned premium. The Company agreed. These transactions were processed in violation of W. Va. Code § 33-20-4.

Testing of the premium audits indicated the Company did not complete audits accurately, which potentially could have resulted in inaccurate calculations of unearned premium. However, there was no indication that the Company was not refunding proper amounts of unearned premium once the final invoice amount was calculated. See testing performed at Underwriting and Rating Standard F 18.

Recommendations: The Company should cancel coverage on the correct date to ensure the correct amount of premium is retained and the correct amount of unearned premium is returned to the employer.

F. UNDERWRITING AND RATING

Comments: The evaluation of standards in this business area is based on review of Company responses to information requests, questions, interviews, presentations made to the examiner, and file sampling. The underwriting and rating practices portion of the examination is designed to provide a view of how the Company treats the public and whether that treatment is in compliance with applicable statutes, rules and regulations. It is typically determined by testing a random sampling of files and applying various tests to the sampled files. Testing is concerned with compliance issues.

Standard F 1: Rating Practices ***NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 1***
The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the company rating plan.
W. Va. Code §§ 33-20-1 et seq.; 23-2C-18; 23-2C-18a; W. Va. Code St. R §§ 85-8-10.; 85-8-11

Comments: The methodology for this standard is sample and electronic. This standard has a direct statutory requirement and is file-specific. It is necessary to determine if the Company is in compliance with the rating modifiers to the NCCI rates; certain modifiers are required to be filed with and approved by the WVOIC. In compliance with W. Va. Code § 33-11-7, insurers must treat all policyholders the same within the same class to ensure no unfairly discriminatory practices occur. Insurers must consistently apply rating

factors on all applications and policies to ensure fair, nondiscriminatory charges are made to its insureds. Rates and modifiers should not be unfairly discriminatory.

Results: **Fail**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal policy files. The results of testing are as follows:

Table F 1 Underwriting and Rating Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Issued Policies	5,214	60	0	48	12	80%
Underwriting Renewals	65,535	60	0	37	23	62%
Total	70,749	120	0	85	35	71%

Observations:

- Testing of the newly-issued policy files indicated the Company misclassified employers' risks in twelve (12) files. Therefore, the Company did not properly underwrite and rate/code those files in violation of W. Va. Code §§ 33-20-3&4. The Company agreed.

- Testing of the renewal files indicated the Company misclassified employers' risks in twenty-three (23) files. Therefore, the Company did not properly underwrite and rate/code those files in violation of W. Va. Code §§ 33-20-3&4. The Company agreed.

Recommendations: It is recommended the Company take corrective steps to ensure that all coding related to classification of employer's risks for workers' compensation insurance coverage is accurate in compliance with NCCI SCOPES and Basic Manuals, and as required under West Virginia statutes and rules.

Standard F 2: Rating Practices ***NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 2.***
All mandated disclosures are documented in accordance with applicable statutes, rules and regulations. ***W.Va. Code § 33-6-8; W. Va. Code St. R. § 85-8-8***

***Comments*:** Review methodology for this standard is generic for workers' compensation business. This standard does not have a direct insurance statutory requirement. It is necessary to provide insureds with appropriate disclosures, both mandated and reasonable. Without appropriate disclosures, insureds find it difficult to make informed decisions.

Results: **Pass**

Observations: The Company was not mandated to make disclosures for workers' compensation in the State of West Virginia. However, because final premium may have been based on a premium audit, the Company policies under Part Five – Premium,

Section A stated, "All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance." Under Section E the policy stated in part, "The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy..." Under Section G the policy stated, "You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursements records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision." Therefore, the Company's contract language discloses that final premium may be determined based on a premium audit. Disclosures associated with scheduled rating filings with the WVOIC were provided at F 11 and F 19.

Recommendations: None

Standard F 3: Rating Practices ***NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 3.***
The Company entity does not permit illegal rebating, commission cutting or inducements.
W. Va. Code § 33-11-4(8)

***Comments*:** Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. W. Va. Code § 33-11-4(8) states an insurer shall not knowingly permit or offer to make an inducement rebating premiums payable, or any special favor or advantage in dividends, or anything of value not specified in the contract. Illegal rebating, commission cutting, and other illegal inducements are forms of unfair discrimination.

Results: **Pass**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal policy files. The results of testing are as follows:

Table F 3 Underwriting and Rating Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	60	0	100%
Renewals	65,535	60	0	60	0	100%
Total	70,749	120	0	120	0	100%

Observations: No direct evidence of rebating, commission cutting or inducements was identified during testing of newly-issued and underwriting renewal policies; however, the examiners observed several large scheduled credits that did not appear to be justified (refer to Standard F11).

Recommendations: None

Standard F 6: Rating Practices *NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 6*
Policies, riders and endorsements are issued or renewed accurately, timely and completely.
W. Va. Code § 33-11-7

Comments: Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. Insurers must provide the proper insurance coverage for which the insured requested in the application process and in a timely basis.

Results: **Pass**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal policy files. The results of testing are as follows:

Table F 6 Underwriting and Rating Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	59	1	98%
Underwriting Renewals	65,535	60	0	60	0	100%
Total	70,749	120	0	119	1	99.5%

Observations: Testing determined the Company failed to issue coverage timely for one (1) newly-issued policy file, which was not in compliance with W. Va. Code § 33-20-4, and with the Company's underwriting guidelines. The Company agreed.

Recommendations: None

Standard F 7: Rating Practices *NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 7*
Rejections and declinations are not unfairly discriminatory.
W. Va. Code § 33-11-4(9)W. Va. Code §§ 23-2C-15

Comments: Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. W. Va. Code St. R. § 114-15-4.3(b) states an insurer shall maintain all declined application files. Insurers must maintain copies of all communications associated with an application for insurance.

Results: **Fail**

Initial testing for this standard was performed based on a sampling of sixty (60) declined applications. However, because the Company failed to retain copies of the applications a cursory review of the entire population of one thousand three hundred and twenty-eight (1,328) declinations was also completed. The results of testing are as follows:

Table F 7 Underwriting and Rating Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Declined Applications	1,328	98	0	0	98	0%
Total	1,328	98	0	0	98	0%

Observations: Testing of the declined/rejected files was attempted to determine: 1) if there were valid reasons for declinations of workers' compensation coverage, 2) if the Company responded to applicants' inquiries, 3) if the Company followed its underwriting guidelines and 4) if the Company documented all communications associated with applications. However, the Company's initial response stated, "The sample of declined applications provided in response to RFI 92 contains data for quotations that were not generated as a result of a new application; these are identified as "New Quotes" in the Column labeled "Type". Quotations identified as "Agent Apps" or "New Apps" would be quotations resulting from a new application. The files provided in this data extract do not contain information about all applications received during the 2007 calendar year. *The Company is unable to produce a report or listing of all applications received in 2007.* In addition, until December, 2007, *the Company did not retain the application or other documentation relating to the application if the application did not result in the issuance of a policy.* The Company's procedures for handling applications were modified in December, 2007. All applications are now processed through a centralized dedicated staff of employees prior to routing to the underwriter assigned to review the application. *Applications and supporting documentation for applications that do not result in the issuance of a policy are now being retained in paper form in the application processing unit.*" (emphasis added)

The Company indicated there were times during the period under examination when a new application was submitted to an underwriter for which no record was established in the Company's quote system. This would have occurred when insufficient information was received with the application, for which the underwriter may have generated a letter to the agent or applicant. As a result, the Company had no record of those applications, and would not have included those applications on its listing provided for sampling.

Testing of the entire population revealed ninety-eight (98) applications were received for which the Company failed to retain the applications and all other documents associated with the Company's declination of coverage in violation of W. Va. Code St. R. §§ 114-15-4.2 and 4.3(b). However, the Company could not determine how many other applications had not been retained as a result of insufficient information, because the Company failed to establish receipt of declinations in its quote system.

In addition, one hundred percent (100%) of the ninety-eight (98) files also failed this standard, as testing could not be completed to verify the validity of the Company's reasons for its declinations and whether its underwriting guidelines were followed fairly for all applicants in compliance with W. Va. Code § 33-11-4(7)(c).

Recommendations: The Company should continue to develop, establish, and follow procedures to retain applications and other materials when it declines an employer's application for coverage. Such documentation should be readily available for review by the WVOIC representatives.

Standard F 8: Rating Practices *NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 8*
Cancellation/non-renewal, discontinuance and declination notices comply with policy provisions and state laws and the company's guidelines.
W. Va. Code § 23-2C-1); W. Va. Code St. R. § 85-8-9.

Comments: Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. W. Va. Code St. R. § 85-8-9.3 states an insurer may cancel a workers' compensation policy for failure of the policyholder to timely remit adequate consideration upon the issuance of advance written notification to the policyholder of no less than fifteen (15) calendar days. The refusal of a policyholder to: (a) permit a premium audit by a private carrier; or (b) to pay any applicable surcharge or assessment that the carrier is required to collect pursuant to Chapter twenty-three of the West Virginia Code, shall be considered "failure of the policyholder to timely remit adequate consideration" for purposes of this subsection. The effective date of cancellation shall be no earlier than the expiration of the fifteen (15) days of advance written notice. Insurers must properly disclose reasons for its actions to applicants and insureds. Such reasons must comply with policy provisions and state laws and not be discriminatory.

Results: **Pass with recommendation**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files, sixty (60) Company cancellations files, sixty (60) insured requested cancellation files, sixty (60) cancellation audit files and sixty (60) reinstated policy files. The results of the testing are as follows:

Table F 8 Underwriting and Rating Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	60	0	100%
Insured Requested Cancellations	2,549	60	0	53	7	88%
Company Cancellations	4,060	60	0	58	2	97%
Reinstated Policies	1,559	60	0	59	1	98%
Cancellation Audits	6,609	60	0	58	2	97%
Total	19,991	300	0	288	12	96%

Observations: The following observations were noted on the sampled policy files:

- For one (1) cancellation file the Company failed to provide a notice of pending cancellation in compliance with W. Va. Code St. R. § 85-8-9. The Company agreed.

- For one (1) cancellation file the Company renewed coverage for an employer that had never paid premium for the initial coverage. The Company's underwriter transferred unearned premium from a previous policy audit for the renewal without the authorization of the employer. The file was failed as coverage should not have been renewed, and therefore, cancellation for nonpayment should not have occurred. As a result of the market conduct examination, the Company changed its procedures to only allow for transfers of unearned premium with the authorization of an employer. In addition, the premium audit for this employer was expedited to return the unearned premium.

- For two (2) insured requested cancellations the Company mailed a notice of cancellation indicating the employers' policies had been cancelled as requested. However, the Company failed to provide a notice of termination when an insured requested cancellation for the remaining policies of the selected sample, a total of fifty-eight (58) files. By providing notices of cancellation for some employers and not for others, the Company's practices and procedures were not in compliance with W. Va. Code § 33-11-4(7)(c). In its response, the Company stated it generally did not send a confirming Notice of Cancellation when a policy was cancelled at the insured's request during the period under examination. However, as a result of the examination the Company indicated it has changed this policy; a confirming notice of cancellation is now sent for all employer requested cancellations.

- The Company failed to obtain or retain four (4) insured requested cancellation forms in violation of W. Va. Code St. R. § 114-15-4 and W. Va. Code § 33-2-9. Therefore, these files failed this standard because the Company's actions associated with the employers' cancellations could not be determined.

- For one (1) insured requested cancellation file the Company sent a notice of cancellation for a policy that had never been in force; the notice indicated the cancellation date was after the initial policy cancellation date. The notice provided inaccurate information to the employer. Therefore, the file failed this standard. As a result of the examination, the Company indicated it made modifications to its procedures, system and processing to only allow a termination notice to be generated for a policy that is in force.

- For two (2) cancellation audit files the Company failed to cancel coverage on the dates it stated in the Notices of Pending Cancellation. Both policies were cancelled after the dates indicated. Therefore, the *pro rata* return of unearned premium was less than the amount due to the employers, which was a violation of W. Va. Code §§33-20-3&4. It was noted the additional amounts due under each policy were less than $5 each. The Company agreed.

- For one (1) reinstated file the Company issued a notice of pending cancellation for one date, a notice of cancellation for another date, and then cancelled the policy on a

different date. The Company indicated the policy was cancelled in error. Therefore, the file was failed, as reinstatement of the policy should not have occurred.

Recommendations: The Company should only allow for cancellation or nonrenewal of policies after it has provided accurate notices of cancellations, and should retain all records associated with cancellations in compliance with West Virginia statutes and rules and within its guidelines. Additionally, the Company should complete the changes it has indicated will be made as a result of the examination.

Standard F 9: Rating Practices ***NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 9***
Rescissions are not made for non-material misrepresentation.
W. Va. Code §33-11-7.

***Comments*:** Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. The aim is to ensure rescission of coverage occurs only when it is determined that material information was not provided to the insurer for an underwriter to make an adequate assessment of risk when coverage was provided to the insured.

Results: **Pass**

Observations: For the period under examination, the Company had not rescinded coverage for any employers.

Recommendations: None

Standard F 11: Underwriting & Rating Practices ***NAIC Market Regulation Handbook – Chapter XVII, §F, Standard 2***
Scheduled rating or Individual Premium Risk modification plans, where permitted, are based on objective criteria with usage supported by appropriate documentation.
W. Va. Code §§ 23-2C-18, 23-2C-18a:W. Va. Code §§ 33-11-7; 33-20-1 et seq.; W. Va. Code St. R. § 85-8-11.3.

Comments: Review methodology for this standard is generic, sample, and electronic. This standard has a direct insurance statutory requirement. Property and Casualty Insurers are required to file and seek approval under the provision of W. Va. Code § 33-20-4 to include any scheduled rating or Individual Premium Risk Modification Plan. W. Va. Code § 33-20-3 further states rates can not be excessive, inadequate, or unfairly discriminatory. Inconsistent handling of rating or underwriting practices, including request for supplemental information, even if not intended, can result in unfair discrimination. Insurers must apply their filed schedules or rate credits and deviations on the basis that is not unfairly discriminatory.

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal files. Samples were selected using Audit Command Language (ACL). From a population of 5,214 newly-issued policies, 299 were schedule-rated, and from a population 65,535 underwriting renewal files, 21,466 were schedule-rated. The results of the testing are as follows:

Results: **Fail**

Table F 11 Underwriting and Rating Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Issued Policies	5,214	60	0	0	60	0%
Underwriting Renewals	65,535	60	0	0	60	0%
Total	70,749	120	0	0	120	0%

Observations: The initial review of the sampled files indicated certain practices with respect to BrickStreet's application of its scheduled rating program were problematic. The initial area of concern was the Company's inadequate documentation. Without exception, notepad entries on the Company's policy management system (APOLLO) were generic or "canned". Examples of this practice are as follows:

> *Overall pattern of medical and/or indemnity incurred loss frequency for this policy is exceptionally favorable and indicative of better than average expected loss experience going forward*
>
> *Better than average credit risk; fewer credit inquiries than average - indicates stronger than average financial condition*
>
> *Lack of a consistent and timely payment record is indicative of below average financial management*
>
> *Claim reporting pattern is slower relative to total policy population*
>
> *Lower sales-to-employee ratios have been identified as a negative business characteristic*

None of these notepad entries within the underwriting file made reference to supporting documentation that could provide actual loss frequency, the number of credit inquiries for the policyholder, the actual sales-to-employee ratio, or the claims reporting time. Additionally, there was no documentation in the underwriting files which indicated what the benchmark value was for each scheduled adjustment.

BrickStreet's scheduled rating filings state:

"At the time rating factor is applied the carrier must have documentation detailing the basis of the credit or debit. The documentation must be provided to the insured on request."

The Company was unable to provide the examiners with detailed reasons for the scheduled rating adjustments within seven (7) working days with respect to renewal files

and fifty-four (54) working days with respect to new business files, consequently the Company was unable to demonstrate compliance with this aspect of its filings. The examiners recognized that various information was available in BrickStreet's other systems that provided support or justification for these debits, however specific reasons were absent from the underwriting files.

A second area of concern was BrickStreet's application of its Claims Characteristics adjustment. Sixteen (16) of the newly-issued files and twenty (20) of the underwriting renewal files in the sample received this adjustment. The basis for these particular adjustments was loss experience.

- 5 Years medical claims frequency
- 5 Years indemnity claims frequency
- 5 Years indemnity loss ratio
- 5 Years medical loss ratio.

The documented reasons were either:

> *Overall pattern of medical and/or indemnity incurred loss frequency for this policy is exceptionally favorable and indicative of better than average expected loss experience going forward*
>
> *Overall pattern of medical and/or indemnity incurred loss frequency for this policy is exceptionally unfavorable and indicative of worse than average expected loss experience going forward*
>
> *Historical pattern of medical & indemnity frequency & loss ratios worse than average. High frequency and severity.*

Table F11a illustrates the premium impact of the claims characteristic adjustment on the Company's policyholders.

Table F11a Claims Characteristics Scheduled Adjustment1

	Number of Policies Affected	Adjustment Amount	Average Adjustment
Debits	6162	$11,564,453.06	1,876.74
Credits	5733	($5,401,532.62)	(942.18)
Total	11895	$6,162,920.44	518.11

Although the examination noted that BrickStreet used "low frequency and severity" as an example of a reason to give a credit in some of its filings with the WVOIC, each

1 Table F 11a represents values that were available on March 1, 2008; most of the policies in question were unaudited at that time.

scheduled rating plan filed with the WVOIC during the period under examination, included language to the effect, that scheduled rating will be used "*...to reflect characteristics not reflect experience rating modification.*" (emphasis added) The loss experience used for assessing the claims characteristic adjustment overlaps with the experience period used in calculating the experience modifier. The formula for calculating the experience modifier differed from the formula used in calculating the claims characteristic adjustment in many ways. For example, the experience modification formula discounts "medical only" claims at seventy percent (70%) and placed limitations on the amount of single loss used in the calculation, thereby stabilizing the effects of anomalous large losses on the policyholder's rate. No such limitations were present in the claims characteristic adjustment calculation, but under BrickStreet's plan no policyholder could receive more than a ten percent (10%) debit or credit for that adjustment. Fifteen (15) policies from the above one hundred twenty (120) sampled were given this adjustment even though the policies were experience rated, thus reflecting a characteristic already reflected in the policyholder's experience modifier. Each of these instances outlined in Table F 11a was considered to be a violation of BrickStreet's filed scheduled rating plan and by extension a violation of W. Va. Code § 33-20-4.

A third area of concern with BrickStreet's application of its scheduled rating plan was the fact that pertinent components of the plan were not disclosed to the Commissioner. The majority of BrickStreet's scheduled adjustments were implemented through a proprietary multivariate analysis algorithm known as Risk Based Underwriting (RBU). BrickStreet filed its scheduled rating plan; however it did not include a description of the RBU methodology in its filings. Failure to disclose the RBU rating methodology was problematic for several reasons. First, analysis of the RBU program revealed that loss experience is the principal driver of whether or not an individual policy will receive any scheduled rating adjustment, which would appear to be in violation of BrickStreet's filings.

The scheduled rating process began by segregating policies in groups of greater than $50,000 in premium and less than $50,000 in premium. The application of the scheduled rating for policies under $50,000 was designed to initially not require a review by an underwriter ("no touch"). Furthermore, policies with premiums under $750 were eliminated from scheduled rating. Each group was run through a level one analysis using thirty-nine (39) variables. Twenty-six (26) of those consisted of loss characteristics, which in part were based on data available through workers' compensation old fund data. They are as follows

- 5 years medical claims frequency
- 5 years indemnity claims frequency
- 3 years closed without payment frequency
- 5 years indemnity loss ratio
- 5 years medical loss ratio
- 3 years claims which occurred on weekends

Each of these years was freestanding creating a separate variable for each year analyzed. Therefore, loss experience was a factor in the application of any scheduled rating adjustment. The RBU tool combined these variables with policy age which was also available on BrickStreet's database. The next variable in the level one analysis was relative loss ratio by zip code, where three year loss ratios were calculated for each zip code and grouped into ten groups. The remaining 10 variables were demographic data based on zip code. These variables are as follows:

- Percentage of employees born in the state
- Employment rate between 16-64
- Median Household Income
- Median Gross Rent
- Value of Home
- Average Vehicles per household
- Education Index (based on 4 factors: student teacher ratio; revenue spent per student; education level of adult population; and number of educational workers)
- Percentage of population 25 and over with a college degree
- Percentage of population 25 and over who are not high school graduates
- Percentage of people working at home

Combining loss ratio by zip code with the demographic data by zip code had the effect of establishing rating territories within the State. This fact was not disclosed to the WVOIC in any rate filing. If a policy receives D&B information, six (6) more variables are applied—the following are the Level 2 variables:

- Number of inquiries
- Number of judgments
- Ratio of slow payment experiences to total payment experiences
- Sales per employee
- Operates from residence

Each policy was analyzed based on the aforementioned criteria (all policies Level One/Level Two, if it receives D & B information) and given a centile score.

Separate centiles were established for policies with less than $50,000 in premium and those with over $50,000 in premium. After this division, centiles were established by dividing the raw scores into equal groups of one hundred (100). The centiles were then converted into deciles, which was the primary factor in determining whether or not a policy was to be schedule-rated for each of the thirteen (13) scheduled rating categories, which BrickStreet filed in its scheduled rating plan. Once the decile was assigned, the policy ran through another algorithm which identified which scheduled rating factor applied based on business rules for each decile.

Among the documented reasons for scheduled rating adjustments implemented under the RBU program were debits for *Lower sales-to-employee ratios have been identified as a negative business characteristic.* (emphasis added) The conclusion as to whether an individual risks ratio was "lower" than that desired based on a comparison of the individual risks ratio to that of its entire book of business; in other words, the comparison gives no deference to the classification or type of business. Logic dictates that certain types of businesses would have lower sales-to-employee ratio than others; for example a retail store or insurance company may tend to have a "higher sales-to-employee ratio" than a saw mill or police department. Testing supported this conclusion, because an analysis of the types of businesses which received these debits indicated there were thirty-four (34) workers' compensation classifications which were at least twice as likely to receive debits for this reason. Testing found that this debit was implemented on seven hundred twenty-one (721) policies for a total premium impact of $487,653.03.

In contrast to the RBU methodology, other scheduled rating appeared to be applied solely on underwriter's discretion. Table F11b illustrates those findings:

Table F11b Underwriter Discretion Scheduled Rating Adjustments

Adjustment type	Number of Policyholders Affected	Combined Adjustment Amount	Average Adjustment
Premises/Work Environment/Maintenance	114	$ 481,955.85	$ 4,227.68
Return to Work Program Effectiveness	63	$ (33,196.36)	$ (526.93)
Hazard Level Within Classification	77	$ 277,181.34	$ 3,599.76
Drug Free Workplace Program Effectiveness	52	$ (65,678.91)	$ (1,263.06)
Employee Selection and Training	38	$ (52,868.38)	$ (1,391.27)
Wage Employee Benefit Levels	25	$ (59,212.13)	$ (2,368.49)
Risk Management	192	$ (1,519,406.44)	$ (7,913.58)
Medical Facilities	0	$ -	$ -
Total	**561**	**$ (971,225.03)**	**$ (5,635.88)**

Scheduled Debits

Adjustment type	Number of Policyholders Debited	Total Amount Debited	Average Debit
Premises/Work Environment/Maintenance	97	$ 940,890.00	$ 9,699.90
Return to Work Program Effectiveness	12	$ 129,790.67	$ 10,815.89
Hazard Level Within Classification	72	$ 300,494.14	$ 4,173.53
Drug Free Workplace Program Effectiveness	7	$ 23,490.00	$ 3,355.71
Employee Selection and Training	22	$ 109,697.88	$ 4,986.27

Wage Employee Benefit Levels	5	$ 13,340.42	$ 2,668.08
Risk Management	84	$ 914,206.99	$ 10,883.42
Medical Facilities	0	$ -	$ -
Total	**299**	**$ 2,431,910.10**	

Scheduled Credits

Adjustment type	Number of Policyholders Credited	Total Amount Credited	Average Credit
Premises/Work Environment/Maintenance	17	$ (458,934.15)	$ (26,996.13)
Return to Work Program Effectiveness	51	$ (162,987.03)	$ (3,195.82)
Hazard Level Within Classification	5	$ (23,312.80)	$ (4,662.56)
Drug Free Workplace Program Effectiveness	45	$ (89,168.91)	$ (1,981.53)
Employee Selection and Training	16	$ (162,566.26)	$ (10,160.39)
Wage Employee Benefit Levels	20	$ (72,552.55)	$ (3,627.63)
Risk Management	108	$ (2,433,613.43)	$ (22,533.46)
Medical Facilities	0	$ -	$ -
Total	**262**	**$ (3,403,135.13)**	

Eighteen (18) policies were selected, which were given scheduled rating adjustments under the "Risk Management" category to determine if there was reasonable nexus between comments on Safety and Loss Control reports and the amount of debit or credit applied to the policy. Seven (7) of the policies reviewed were given scheduled debits for either a lack of, or ineffective safety program. However, there was no evidence in the files that supported the employers ever had a Safety and Loss Control inspection for six (6) of the policies, and for the other policy, the employer's had a viable and working loss control program indicated in the Safety and Loss Control report. The Company's response to why the debit was applied for this employer stated, "The Company agrees that the Safety & Loss Control Report does not support the (5%) debit applied to this policy."

Conversely, one (1) of the eighteen (18) policies tested was given a substantial credit when the documented reason stated, "scheduled credit to get a net rate prior to adjusting EM (experience modifier)." The Company's response for this file stated in part, "The Loss Control Survey . . . that supports the 22.5% schedule credits assigned to the policy. The policy initially issued . . . was incorrectly written as a leasing policy. This was corrected . . . The underwriter did not allow for a rebate because the underwriter had documentation on file to support a 22.5% schedule credit. In applying the 22.5% credit . . . the underwriter took into account the error made when coverage was issued . . . and applied a credit on the upper range of the credit supported by the documentation on file for this insured." The audited premium determined a $58,537 credit for scheduled rating. However, at renewal the Company only allowed a ten percent (10%) scheduled credit with an estimated credit of $22,544, and the Company's response stated, "When the underwriter analyzed the risk for the renewal policy issued to the insured, the underwriter

reevaluated the risk and applied a credit at the lower range of the credit supported by the documentation on file for the insured." There was no documentation in the file to support that the employer's risk had changed. Therefore, it appeared the Company allowed for credits during one year that did not align within the industry standard "underwriter's discretion," thus creating the potential for a rebate.

Additionally, one (1) other policy was given an eight percent (8%) scheduled credit in the amount of $616,947 (the maximum is ten percent (10%)) even though the loss control report scored a 3.5, on a scale of 1 – 5. The underwriter's notes indicated that previously this employer was uncooperative with BrickStreet by not allowing BrickStreet's safety personnel to inspect the employer's risks. The underwriter's notepad entry indicated that credit was applied after a meeting with "Company executives." BrickStreet explained that it is Company procedure for the underwriter to solicit executive management approval on large credits.

Recommendations:

(a) It is recommended that the Company develop processes and procedures to effectively document its underwriting files regarding the underlying reasons for the debit or credit so that it can timely communicate the basis for the debit or credit to its policyholders.

(b) It is further recommended that the Company discontinue use of its filed schedule rating plan and comply with the NCCI scheduled rating plan.

(c) It is also recommended that BrickStreet immediately remediate all instances which the Company issued scheduled debits for West Virginia policyholders, for "claims characteristics", "low sales to employee ratio", as well as any instance that its use of demographic data negatively impacted policy holders. Said remediation should be conducted in consultation and under the supervision of Insurance Commissioner.

(d) It is further recommended that BrickStreet complete a one hundred percent (100%) audit of all scheduled rating adjustments conducted at underwriter's or other Company personnel's discretion (as itemized in table F11b. BrickStreet shall report to the West Virginia Offices of the Insurance Commissioner (WVOIC) as to whether each instance of judgmentally applied scheduled debits are both appropriate and documented in the underwriting files as they appeared as of the date of adoption of this Report of Market Conduct Examination. BrickStreet should provide the WVOIC verifiable progress reports detailing any reunderwriting and refunds issued to each policy period that the alleged inappropriate debits were charged.

(e) The remediation herein described shall be completed within six (6) months of adoption of this report of Market Conduct Examination. Remediated refunds shall include an interest rate applied from the date each debit was applied. The interest shall be 8.25% for January 1, 2007 through December 31, 2007, 7.25 % for January 1, 2008 through June

30, 2008, 5% from July 1, 2008 through December 31, 2008 and 3.25% beginning January 1, 2009 until such policies are fully remediated.

Standard F 12: Underwriting & Rating Practices *NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 3*
Verification and use of filed expense multipliers; the regulated entity should be using a combination of loss cost and expense multipliers filed with the Department of Insurance.
W. Va. Code §§ 33-20-4and 23-2C-1; W. Va. Code St. R. § 85-8-11.

Comments: Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. W. Va. Code § 33-20-3 states rates cannot be excessive, inadequate, or unfairly discriminatory. Inconsistent handling of rating or underwriting practices, including request for supplemental information, even if not intended, can result in unfair discrimination. In compliance with W. Va. Code § 33-11-7, insurers must treat all policyholders the same within the same class to ensure no unfairly discriminatory practices occur. Insurers must utilize loss cost and expense multipliers that have been properly filed and approved by the WVOIC.

Results: **Pass**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal files. The results of testing are as follows:

Table F 12 Underwriting and Rating Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	60	0	100%
Renewals	65,535	60	0	60	0	100%
Total	70,749	120	0	120	0	100%

Observations: It was determined the Company applied its filed and approved loss cost multiplier factor in compliance with its filing to the WVOIC and in accordance with West Virginia statutes and rules.

Recommendations: None

Standard F 13: Underwriting & Rating Practices *NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 5*
Verification of Experience modification factors.
W. Va. Code §§ 33-11-4(7) (c); 33-20-1 et seq.; W. Va. Code St. R. §§ 85-8-10.2 and 11.3.

Comments: Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. W. Va. Code § 33-20-3 states rates can not be excessive, inadequate, or unfairly discriminatory. Proper experience modification factors are required to ensure premium charges are proper for the risks covered and are consistently applied to all insureds.

Results: **Pass**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal files. The results of testing are as follows

Table F 13 Underwriting and Rating Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Issued Policies	5,214	60	0	60	0	100%
Underwriting Renewals	65,535	60	0	60	0	100%
Total	70,749	120	0	120	0	100%

Observations: It was determined the Company applied NCCI-approved experience modification factors in compliance with West Virginia statutes and rules, and the Company's underwriting guidelines.

Recommendations: None

Standard F 15: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 6***
Verification of Loss reporting.
W. Va. Code § 23-2C-18(c) (1); W. Va. Code St. R. § 85-8- 10.2.

***Comments*:** Review methodology for this standard is generic. This standard has a direct insurance statutory requirement. Insurers must provide accurate and timely loss reporting to ensure NCCI has appropriate data.

Results: **Pass**

Observations: The Company supplied a review of its loss reporting to the NCCI, which indicated the Company reported timely during the period under examination.

Recommendations: None

Standard F 16: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 7***
Verification of regulated entity data provided in response to NCCI call on deductibles.
W. Va. Code §23-2C-18(c) (1); W. Va. Code St. R. §85-8- 10.2.

***Comments*:** Review methodology for this standard is generic. This standard has a direct insurance statutory requirement. Insurers must provide accurate and timely data in response to NCCI calls on deductibles and other transactions.

Results: **Pass**

Observations: For the period under examination, the Company indicated it had not received an NCCI call on deductibles.

Recommendations: None

Standard F 17: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 8***
Verification of rating developed at or near the inception of the coverage rather than near expiration, or following a claim.
W. Va. Code §33-20-4 and W. Va. Code §33-11-7

***Comments*:** Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. Insurers must assess and rate risk during its underwriting of an application before accepting business and issuing a policy in compliance with W. Va. Code § 33-20-4, which states, "As to kinds of insurance other than life and accident and sickness, no person shall make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charge therefore. This paragraph shall not apply as to any premium or premium rate in effect pursuant to article twenty of this chapter."

Results: **Pass**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal files. The results of testing are as follows:

Table F 17 Underwriting and Rating Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	60	0	100%
Underwriting Renewals	65,535	60	0	60	0	100%
Total	70,749	120	0	120	0	100%

Observations: The Company's underwriting of newly-issued and renewal policies during the period under examination did not reveal a practice of not rating at or near inception of coverage. However, it was noted during testing of Standard F 26, that underwriting was not properly classifying employer's risk in the appropriate workers' compensation classification as provided in the NCCI SCOPES and Basic Manuals. This could lead to audits changing the classification of the employer's risk after expiration. In addition, the Company failed to complete premium audits accurately in compliance with the standards provided in the NCCI SCOPES and Basic Manuals; refer to the testing at Standard F 18.

Recommendations: None

Standard F 18: Underwriting & Rating Practices *NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 9*
Audits when required are conducted accurately and timely.
W. Va. Code § 33-11-7; W. Va. Code St. R. § 85-8-5

Comments: Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. Timely and accurate premium audits are required to ensure premium charges are proper for the risks covered, premium charges are consistently applied to all insureds, and accurate information is reported in the Company's financial statements and other reports. For compliance with W. Va. Code § 33-11-4(7) (c), which states, "As to kinds of insurance other than life and accident and sickness, no person shall make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charge therefore. This paragraph shall not apply as to any premium or premium rate in effect pursuant to article twenty of this chapter."

Results: **Fail**

Testing for this standard was performed based on sampling of sixty-three (63) renewal policy files, sixty (60) cancellation policy files and sixty (60) underwriting renewal policy files. The following table reports the results of testing for accuracy and timeliness of premium audits completed on the sampled files:

Table F 18 Underwriting and Rating Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Premium Audit Accuracy						
Renewals	65,535	123	0	77	46	63%
Cancellations	6,609	60	0	24	36	40%
Total	72,144	183	0	101	82	55%
Premium Audit Timeliness						
Renewals	65,535	123	45	41	37	53%
Cancellations	6,609	60	3	9	48	15%
Total	72,144	183	48	50	85	37%

Observations: The Company conducted approximately seventy-two thousand (72,000) audits during 2007. Because substantially all policies expired on January 1, 2007 and half of these polices expired again on July 1, 2007, the Company faced significant challenges in meeting the time standards for conducting audits following the expiration of the Company's policies. Testing determined certain files failed both accuracy and timeliness, while others only failed one of these tests.

- Testing of renewals determined the Company failed to complete premium audits accurately for forty-six (46) files of the total sample of one hundred twenty-three (123) files. Therefore, the Company failed to rate these workers' compensation policies in

compliance with W. Va. Code § 33-20-4 and failed to comply with NCCI SCOPES Manual and Basic Manual guidelines.

- Testing of cancellation audit files determined the Company failed to complete premium audits accurately for thirty-six (36) of the total sample of sixty (60) files. The Company failed to rate these workers' compensation policies in compliance with W. Va. Code §§33-20-3&4, and failed to comply with NCCI SCOPES Manual and Basic Manual guidelines.

The Company agreed it failed to complete the audits accurately.

- From the total sample of sixty (60) cancellation audit files, testing determined three (3) policies were cancelled flat and, therefore, were deemed to be not applicable for the timeliness standard. It was determined the Company failed to complete premium audits timely for forty-eight (48) of the sampled files.

- Testing of the renewal policies determined that forty-five (45) of the one hundred twenty-three (123) policy files sampled did not have current renewals expire during the period under examination, and therefore, were deemed not applicable for testing. Testing of the applicable audits determined that thirty-seven (37) audits were not completed timely from the seventy-eight (78) policy files tested.

The Company agreed it failed to complete the audits timely.

During the testing of premium audits, it was noted the Company's mail audit forms failed to provide an area for employers to document tips, which are excluded from payroll for determining the exposure base and final premium. In addition, the Company failed to provide an area for retail and wholesale risks to provide sales information, which is essential for determining the proper class code for an employer's risk. These omissions resulted in misclassification of employer's risks and an improper payroll base, which resulted in inappropriate premium charges for employers. Therefore, the Company's practices and procedures allowed for violations of W. Va. Code §§33-20-3&4. As a result of this examination, the Company indicated its premium audit contractor will be directed to make necessary modifications in its mail audit form.

Recommendations: The Company should complete premium audits timely and accurately in compliance with industry standards and the NCCI SCOPES and Basic Manual guidelines and classifications. In addition, the Company should correct its premium mail audit forms to allow its policyholders to deduct all remuneration that is not applicable for premium purposes, and for proper classification of an employer's risk.

Standard F 19: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 10***

The regulated entity's underwriting practices are not unfairly discriminatory. The entity adheres to applicable statutes rules and regulations in selection of risks.

W. Va. Code § 33-11-7

***Comments*:** Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. Insurers must treat all policyholders the same within the same class to ensure no unfairly discriminatory practices occur.

***Results:* Pass with recommendations**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) insured requested cancellation files. The results of testing are as follows:

Table F 19 Underwriting and Rating Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Issued Policies	5,214	60	0	60	0	100%
Insured Requested Cancellations	2,549	60	0	55	5	92%
Total	7,763	120	0	115	5	96%

Observations: The Company was the sole underwriter of workers' compensation in the State of West Virginia during the period under examination, and the Company was not allowed to decline employers with complete applications. Therefore, there were no failures noted for selection of risks for newly-issued policies.

However, testing of a sample of sixty (60) insured requested cancellations identified five (5) files where discriminatory practices occurred:

- For two (2) insured requested cancellation files the Company mailed a notice of cancellation indicating the employers policies had been cancelled as requested. However, for the remaining fifty-eight (58) files, the Company failed to provide such notice of termination. By providing notices of cancellation for some employers and not for others, the Company's practices and procedures were not in compliance with W. Va. Code § 33-11-4(7)(c). In its response, the Company stated it did not generally send a confirming Notice of Cancellation when a policy was cancelled at the insured's request. However, as a result of the examination, it was represented the practices and procedures were changed.

- For three (3) insured requested cancellation files the employer requests for cancellation were not signed, which was not allowed for other employers. For two (2) of the three (3) files, the Company allowed the employer's coverage to be back-dated for cancellation, which was not allowed for other employers tested. Therefore, the Company's actions were not in compliance with W. Va. Code § 33-11-7.

The Company provided a copy of a workflow diagram showing the Company's new process for handling insured requested cancellations and a copy of an Underwriting Bulletin Issued on May 5, 2008, which provided guidance to Company personnel for the

processes to follow when handling insured requested cancellations. The Company's practices and procedures were corrected as a result of the examination.

In addition to the testing performed on the sampled newly-issued and insured requested cancellations, testing of scheduled rating determined the Company's established practices and procedures for rating and underwriting involved unfairly discriminatory practices (refer to Standard F11)

Recommendations: It is recommended the Company ensure its modifications to practices and procedures on insured-requested cancellations are followed, which will result in the elimination of potential discriminatory practices.

Standard F 20: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 11***
All forms and endorsements forming a part of the contract are listed on the declarations page and should be filed with the Department of Insurance (if applicable).
W. Va. Code § 33-6-8

***Comments*:** Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. W. Va. Code § 33-6-8 states no insurance policy form shall be delivered or issued for delivery unless it has been filed with the Commissioner. Insurers must utilize forms and endorsements which have been filed with and approved by the WVOIC and list the applicable forms on the declaration page of the policy.

Results: **Pass**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal policy files. The results of testing are as follows:

Table F 20 Underwriting and Rating Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	60	0	100%
Renewals	65,535	60	0	60	0	100%
Total	70,749	120	0	120	0	100%

Observations: Testing determined the Company utilized forms and endorsements filed with and approved by the WVOIC, and properly listed forms and endorsements on the declaration pages in compliance with West Virginia statutes and rules.

Recommendations: None

Standard F 22: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 13***
The company does not engage in collusive or anticompetitive underwriting practices.
W. Va. Code § 33-20-3 W. Va. Code § 33-11-4(9)

***Comments*:** Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. W. Va. Code § 33-20-3 states rates can not be excessive, inadequate, or unfairly discriminatory. Inconsistent handling of rating or underwriting practices, including request for supplemental information, even if not intended, can result in unfair discrimination. The aim of this standard is to ensure insurers do not engage in practices which would result in a price-fixing environment, resulting in harm to policyholders.

***Results:* Pass**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal files. The results of testing are as follows:

Table F 22 Underwriting and Rating Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	60	0	100%
Renewals	65,535	60	0	60	0	100%
Total	70,749	120	0	120	0	100%

Observations: During testing of newly-issued and renewal files, there was no indication the Company had engaged in collusive or anticompetitive practices.

Recommendations: None

Standard F 25: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 16***

Cancellation/non-renewal/discontinuance notices comply with policy provisions and state laws, including the amount of advance notice provided to the insured and other parties to the contract.

W. Va. Code § 23-2C-15; W. Va. Code St. R. § 85-8-9

Comments: Review methodology for this standard is generic and sample. There is no direct statutory requirement. W. Va. Code St. R.§ 85-8-9.3 states an insurer may cancel a workers' compensation policy for failure of the policyholder to timely remit adequate consideration upon the issuance of advance written notification to the policyholder of no less than fifteen (15) days. The refusal of a policyholder to: (a) permit a premium audit by a private carrier; or (b) to pay any applicable surcharge or assessment that the carrier is required to collect pursuant to Chapter twenty-three of the West Virginia Code, shall be considered "failure of the policyholder to timely remit adequate consideration" for purposes of this subsection. The effective date of cancellation shall be no earlier than the expiration of the fifteen (15) days of advance written notice. Insurers must properly disclose reasons for its actions to applicants and insureds. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

Results: **Pass with recommendation**

Testing for this standard was performed based on sampling of sixty (60) Company cancellations files, sixty (60) cancellation for audit files, sixty (60) insured requested cancellation files and sixty (60) reinstated policy files. The results of the testing are as follows:

Table F 25 Underwriting and Rating Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Company Cancellations	4,060	60	0	59	1	98%
Cancellations for Audit	6,609	60	0	58	2	97%
Insured Requested Cancellations	2,549	60	0	56	4	93%
Reinstated Policies	1,559	60	2	55	3	95%
Total	14,777	240	2	228	10	96%

Observations: The policy files which failed this standard are as follows:

- For one (1) cancellation file it was noted that for policies with black lung (pneumoconiosis) coverage, the Company was providing the mandated thirty (30) days notice for cancellation for nonpayment. However, it was also providing fifteen (15) days notice for cancellation of the policies with an endorsement for black lung coverage. Policies with black lung coverage should have been provided thirty (30) days advance notice of coverage cancellation as the black lung coverage would not be in effect if the policy was terminated. Therefore, this file and the Company's practices and procedures failed. The Company agreed and represented its current practice of sending a fifteen (15) days advance notice of cancellation and a separate thirty (30) days advance notice of cancellation for black lung coverage should be discontinued. The Company represented it will make the necessary system and process changes to have a single thirty (30) days advance notice of cancellation sent on any policy that has a black lung endorsement.

- The Company failed to obtain or retain four (4) insured requested cancellation forms in violation of W. Va. Code St. R. § 114-15-4 and W. Va. Code § 33-2-9. Therefore, the four (4) files failed this standard because the Company's actions could not be determined.

- For two (2) cancellation audit files the Company failed to cancel coverage on the dates it indicated the policies were cancelled on its Notices of Pending Cancellation. Both policies were cancelled after the dates indicated. Therefore, the pro-rated return of unearned premium was less than the amount due to the employers, which was in violation of W. Va. Code § 33-11-7. It was noted the amounts owed were less than $5.00 for each file. The Company agreed.

- For one (1) reinstated file the Company failed to cancel the policy as requested by the employer on the correct date after it had reinstated the policy. The Company agreed. The Company's actions were in violation of W. Va. Code § 33-11-4.

- For one (1) reinstated file the Company reinstated the policy by transferring money from a previous policy audit without the employer's authorization; the employer had requested cancellation. After the money was transferred, the current policy was reinstated. The Company agreed the employer did not authorize the transfer of funds, coverage should not have been issued, and the unearned premium should have been refunded. The Company's actions were in violation of W. Va. Code § 33-11-7.

- For one (1) reinstated file the Company issued a notice of pending cancellation for one date, a notice of cancellation for another date, and then cancelled on a different date. The Company indicated the policy was cancelled in error. Therefore, the file was failed as reinstatement of the policy should not have occurred. The Company's actions were in violation of W. Va. Code § 33-11-4.

Recommendations: The Company should only allow for cancellation or nonrenewal of policies after issuing a valid notice of cancellation, and retain all records associated with cancellations in compliance with West Virginia Statutes and rules and within its guidelines.

Standard F 26: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard17***
All policies are correctly coded
W. Va. Code §23-2C-18a

Comments: Review methodology for this standard is sample and generic. This standard has an indirect insurance statutory requirement. Insurers must correctly code policies to ensure analyses for rates and other reporting criteria are proper and to ensure correct loss costs are developed by the WVOIC's designated statistical agent, NCCI. Inadequate statistical reporting not only affects the Company's rates, but all other Insurance Companies which write workers' compensation coverage. The duties of the statistical agent are as follows:

Develop and file manual rules, subject to the approval of the commissioner, that are reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan and the uniform classification plan; and

Assist the commissioner in gathering, compiling and reporting relevant statistical information on an aggregate basis;

Results: **Fail**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal policy files. The results of testing are as follows:

Table F 26 Underwriting and Rating Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Issued Policies	5,214	60	0	48	12	80%
Underwriting Renewals	65,535	60	0	37	23	62%
Total	70,749	120	0	85	35	71%

Observations:

- Testing of the newly-issued policy files indicated the Company misclassified employers' risks for twelve (12) files. Therefore, the Company failed to properly code those files. The Company agreed.

- Testing of the renewal files indicated the Company misclassified employers' risks in twenty-three (23) files which resulted in invalid statistical coding. The Company agreed.

Recommendations: It is recommended the Company take corrective steps to ensure that all coding related to classification of employer's risks for workers' compensation insurance coverage is accurate in compliance with NCCI SCOPES and Basic Manuals, and as required under West Virginia statutes and rules.

Standard F 27: Underwriting & Rating Practices ***NAIC Market Regulation Handbook– Chapter XVII, §F, Standard 18***

Application or enrollment forms are properly, accurately and fully completed including any required signatures, and file documentation supports the decisions made.

W. Va. Code § 23-1-14.

***Comments*:** Review methodology for this standard is sample and generic. This standard has a direct insurance statutory requirement. To avoid unfair discrimination among applicants an insurer must require that necessary information is mandated from all employers to ensure that risks are properly identified and assessed for proper premium charges.

Results: **Fail**

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files. The results of testing are as follows:

Table F 27 Underwriting and Rating Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	5,214	60	0	45	15	75%
Total	5,214	60	0	45	15	75%

Observations: Fifteen (15) of the sampled newly-issued policy files did not require a complete application, which was not in compliance with the Company's guidelines. The Company agreed. Additionally, for one (1) of those files the Company did not maintain a copy of the application in violation of W. Va. Code St. R. §§ 114-15-4.2 & 4.3(b). The Company agreed.

The Company's application did not allow it to properly determine the appropriate workers' compensation class code for local and long distance hauling truckers at the time of underwriting. As a result, the employer's risk could be misclassified, which would have allowed for discrimination between truckers in violation of W. Va. Code § 33-11-7 and W. Va. Code § 33-20-4. The Company agreed the application should be revised to conform to the NCCI definition of local hauling meaning 200 miles or less. The Company indicated the reference to 50 miles or less in the application form was the result of a trucking classification under the West Virginia classification system that was in effect when the Company commenced operations on January 1, 2006. The Company further represented it plans on utilizing ACORD applications in the near future and will either discontinue use of, or revise the current application form to conform the local hauling reference in the application to the NCCI local hauling definition.

Recommendations: The Company should mandate a complete application and ensure that all applications are retained. In addition, the Company should correct its application form to conform to the NCCI local hauling definitions as represented.

G. CLAIMS PRACTICES

Comments: The evaluation of standards in this business area is based on Company responses to information items requested by the examiner, discussions with Company staff, electronic testing of claim databases, and file sampling during the examination process. This portion of the examination is designed to provide a view of how the Company treats claimants and whether that treatment is in compliance with applicable statutes and rules.

Standard G 1 ***NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 1***
The initial contact by the company with the claimant is within the required time frame.
W. Va. Code § 33-11-4(9b); W.Va. Code St. R. § 85-1-9

Comments: Review methodology for this standard is generic, sample, and electronic. This standard derives directly from W. Va. Code § 33-11-4(9) (b) which prohibits, "failing to acknowledge and act reasonably upon communication with respect to claims

arising under insurance policies." West Virginia requires responses to claim communications within fifteen (15) working days of receipt of the communication.

***Results*: Pass**

A random sample of claim files was selected from thirteen (13) subsets for detail testing. The sample size for each category was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 1 Claims Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Paid Claims	29,125	60	0	60	0	100%
Employer's Liability Paid Claims	2	2	0	2	0	100%
Federal Black Lung Paid Claims	23	23	0	23	0	100%
Occupational Disease Paid Claims	614	60	0	60	0	100%
Denied Claims	5,571	60	0	60	0	100%
Employer's Liability Denied Claims	1	1	0	1	0	100%
Federal Black Lung Denied Claims	15	15	0	15	0	100%
Occupational Disease Denied Claims	297	64	0	64	0	100%
Protested Claims	1,953	61	0	61	0	100%
Claims Settlements	803	60	0	60	0	100%
Claims with Permanent Award	971	60	0	60	0	100%
Claims Reopened	454	60	0	60	0	100%
Denied Procedures	239,522	60	0	60	0	100%
Total	279,351	586	0	586	0	100%

Observations: Testing determined the Company's initial contact with claimants met with timeliness requirements for all files.

Recommendations: None

Standard G 2	***NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 2.***
Timely investigations are conducted.	***W. Va. Code §§ 23-4-16(b); 23-4-1c; 33-11-4(9)(c); W. Va. Code St. R. § 85-1-9***

Comments: Review methodology for this standard is generic and sample. This standard has a direct statutory requirement. W. Va. Code § 33-11-4(9)(c) states it is an unfair practice to fail to adopt and implement reasonable standards for the prompt investigation of claims. In addition, W. Va. Code St. R. § 85-1-9.1 and 9.2 provide that an insurer has fifteen (15) working days to rule on a claim, which shall toll while evidence for the claim is gathered.

Results: **Pass with recommendations**

A random sample of claim files was selected from thirteen (13) subsets for detail testing. The sample size for each category was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 2 Claims Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Paid Claims	29,125	60	0	60	0	100%
Employer's Liability Paid Claims	2	2	0	2	0	100%
Federal Black Lung Paid Claims	23	23	0	23	0	100%
Occupational Disease Paid Claims	614	60	0	60	0	100%
Denied Claims	5,571	60	0	60	0	100%
Employer's Liability Denied Claims	1	1	0	1	0	100%
Federal Black Lung Denied Claims	15	15	0	15	0	100%
Occupational Disease Denied Claims	297	64	0	63	1	98%
Protested Claims	1,953	61	0	58	3	95%
Claims Settlements	803	60	0	60	0	100%
Claims with Permanent Award	971	60	0	60	0	100%
Claims Reopened	454	60	0	57	3	95%
Denied Procedures	239,522	60	0	60	0	100%
Total	279,351	586	0	579	7	99%

***Observation*:** There were seven (7) files for which the Company did not meet the timeliness requirements for claim investigations, as follows:

- For one (1) occupational disease denied claim file the Company failed to rule timely in compliance with W. Va. Code St. R. § 85-1-9.1 and W. Va. Code § 33-11-4(9). The Company's response stated, "The Company agrees that the ruling in the file was not timely."

- For two (2) reopened claim files the Company failed to rule on reopening the claims for temporary total disability (TTD) within thirty (30) working days in violation of W. Va. Code §§ 23-4-16(b) and 33-11-4(9)(b), and its claims guidelines. The Company agreed both files were not reopened timely.

- For one (1) reopened claim file the Company failed to rule on reopening the claim for permanent partial disability (PPD) within thirty (30) days in violation of W. Va. Code St. R. § 85-1-9.7(b) and W. Va. Code §§ 23-4-16(b) and 33-11-4(9)(b), and its claims guidelines. The Company agreed.

- For one (1) protested claim file the Company failed to investigate the claim timely in violation of W. Va. Code St. R. § 85-1-9.6(a). The Company agreed.

- For one (1) protested claim file the Company failed to properly investigate the claim on a timely basis and failed to provide TTD benefits in violation of W. Va. Code § 33-11-4(9), and also failed to pay TTD benefits timely in violation of W. Va. Code §§23-4-1c and 23-4-5 as well as W. Va. Code St. R. § 85-1-9.6(a). The Company agreed that TTD benefits should have been paid and, as a result of the examination, the Company paid the unpaid benefits to the claimant.

- For one (1) protested claim file the Company failed to investigate and rule on a claim in violation of W. Va. Code St. R. § 85-1-9.6(b) and failed to notify a claimant timely of the Occupational Pneumoconiosis (OP) Board findings, which was a violation of W. Va. Code St. R. § 85-1-9.6(b). The Company's actions were not in compliance with its guidelines and, therefore, not in compliance with W. Va. Code § 33-11-4(9). The Company agreed.

Recommendations: It is recommended the Company take steps to ensure it is properly investigating claims in accordance with applicable West Virginia statutes and rules, and its guidelines.

Standard G 3	***NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 3***
Claims are resolved in a timely manner.	***W. Va. Code § 33-11-4(9)(l) and (m)***

Comments: Review methodology for this standard is generic, sample, and electronic. This standard has a direct statutory requirement. W. Va. Code § 33-11-4(9) states an insurer shall not commit or perform by failing to acknowledge and act reasonably promptly upon communications with respect to claims.

Results: **Pass with recommendations**

A random sample of claim files was selected from thirteen (13) subsets for detail testing. The sample size for each category was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 3 Claims Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	29,125	60	0	58	2	97%
Employer's Liability Paid Claims	2	2	0	2	0	100%
Federal Black Lung Paid Claims	23	23	0	23	0	100%
Occupational Disease Paid Claims	614	60	0	59	1	98%
Denied Claims	5,571	60	0	60	0	100%
Employer's Liability Denied Claims	1	1	0	1	0	100%
Federal Black Lung Denied Claims	15	15	0	15	0	100%
Occupational Disease Denied Claims	297	64	0	63	1	98%
Protested Claims	1,953	61	0	58	3	95%
Claims Settlements	803	60	0	60	0	100%
Claims with Permanent Award	971	60	0	53	7	88%
Claims Reopened	454	60	0	57	3	95%
Denied Procedures	239,522	60	0	59	1	100%
Total	279,351	586	0	568	18	97%

Observations: There were eighteen (18) files for which the Company did not meet the timeliness requirements for claim investigations, as follows:

- For one (1) paid claim file tested the Company failed to pay TTD in compliance with W. Va. Code § 23-4-1c. The Company agreed and, as a result of examination testing, compensated the claimant for the four (4) weeks of outstanding TTD.

- For one (1) paid claim file the Company had approved a medical procedure for payment. However, it failed to issue a payment for the medical procedure in violation of W. Va. Code §§ 23-4-3 and 33-11-4(9) (f) and (h) and its internal claims guidelines. The Company agreed it failed to pay for a covered procedure.

- For one (1) occupational disease paid claim file the Company underpaid the claimant's TTD benefits, which was not in compliance with W. Va. Code §§ 23-4-1c and 23-4-6(b). The Company agreed TTD had not been calculated correctly and, as a result of the examination, paid the claimant the additional TTD benefits due under the policy provisions.

- For one (1) occupational disease denied claim file the Company failed to rule timely in compliance with W. Va. Code St. R. § 85-1-9.1 and W. Va. Code § 33-11-4(9). The Company agreed the ruling in the file was not timely.

- For one (1) denied procedure file the Company improperly denied the claimant's IME travel expenses, which resulted in the determination the claim was not paid timely in compliance with W. Va. Code § 23-4-1c and W. Va. Code St. R. § 85-1-15.1. The Company agreed it failed to pay the travel expenses.

- For two (2) reopened claim files the Company failed to rule on reopening the claims for temporary total disability (TTD) within thirty (30) working days in violation of W. Va. Code §§ 23-4-16(b) and 33-11-4(9)(b).

- For one (1) reopened claim file the Company failed to rule on reopening the claim for PPD within thirty (30) days in violation of W. Va. Code St. R. § 85-1-9.7(b), W. Va. Code §§ 33-11-4(9)(b) and 23-4-16(b), and its internal claims guidelines. The Company agreed.

- For one (1) permanent award claim file tested the Company overpaid TTD benefits which resulted in a failure to pay TTD in compliance with its guidelines and W. Va. Code § 33-11-4(9). On this file, the Company also failed to pay the claimant's TTD timely in violation of W. Va. Code § 23-4-6(b) and W. Va. Code St. R. § 85-1-9.1. The Company agreed it overpaid TTD but disagreed that it failed to pay TTD timely.

- The Company failed to rule timely for one (1) permanent award claim file, which is in violation of W. Va. Code St. R. § 85-1-9.6(a), The Company agreed.

- Testing of four (4) permanent award claim files determined the Company failed to pay PPD timely after its ruling in violation of W. Va. Code § 23-4-1d(a). The Company agreed with the finding on three (3) of the four (4) untimely PPD payment files. However, it disagreed it had not acted in compliance with W. Va. Code § 23-4-1d (a) for one (1) file.

- For one (1) permanent award claim file the Company failed to pay the non-awarded partial (NAP) benefits timely, which was not in compliance with W. Va. Code St. R. § 85-1-8.1. In addition, the Company failed to rule within thirty (30) days after receipt of an IME in violation of W. Va. Code § 23-4-1d and W. Va. Code St. R. § 85-1-9.6(b). The Company's response indicated it agreed that NAP benefits were paid late but did not agree that its actions were a violation of W. Va. Code § 23-4-1d.

- For one (1) protested claim file the Company failed to investigate the claim timely in violation of W. Va. Code St. R. § 85-1-9.6(a), which resulted in an untimely resolution of the claim. The Company agreed.

- For one (1) protested claim file the Company failed to provide TTD benefits in violation of W. Va. Code § 33-11-4(9) and also failed to pay TTD benefits timely in violation of W. Va. Code § 23-4-6(b) and W. Va. Code St. R. § 85-1-9.6(a). The Company agreed that TTD benefits should have been paid, and as a result of the examination paid the unpaid TTD benefits to the claimant.

- For one (1) protested claim file the Company failed to investigate and rule on a claim in violation of W. Va. Code St. R. § 85-1-9.6(b) and failed to notify a claimant timely after OP Board findings in violation of W. Va. Code St. R. § 85-1-9.6(b). The

Company's actions were not in compliance with its guidelines and, therefore, not in compliance with W. Va. Code § 33-11-4(9). The Company agreed.

Recommendations: It is recommended the Company take steps to ensure it is properly resolving claims in accordance with applicable West Virginia statutes and rules, and its guidelines.

Standard G 4 *NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 4.*
The Company responds to claim correspondence in a timely manner.
W. Va. Code § 33-11-4(9)(b); W. Va. Code St. R. § 85-1-1 et seq.

Comments: Review methodology for this standard is generic and sample. This standard has a direct statutory requirement. W. Va. Code § 33-11-4(9) states an insurer shall not commit or perform by failing to acknowledge and act reasonably promptly upon communications with respect to claims.

Results: Pass with recommendations

A random sample of claim files was selected from thirteen (13) subsets for detail testing. The sample size for each category was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 4 Claims Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	29,125	60	0	59	1	98%
Employer's Liability Paid Claims	2	2	0	2	0	100%
Federal Black Lung Paid Claims	23	23	0	23	0	100%
Occupational Disease Paid Claims	614	60	0	56	4	93%
Denied Claims	5,571	60	0	60	0	100%
Employer's Liability Denied Claims	1	1	0	1	0	100%
Federal Black Lung Denied Claims	15	15	0	15	0	100%
Occupational Disease Denied Claims	297	64	0	64	0	100%
Protested Claims	1,953	61	0	61	0	100%
Claims Settlements	803	60	0	60	0	100%
Claims with Permanent Award	971	60	0	60	0	100%
Claims Reopened	454	60	0	60	0	100%
Denied Procedures	239,522	60	0	60	0	100%
Total	279,351	586	0	581	5	99%

Observations: There were five (5) files which failed this standard, as follows:

- For one (1) paid claim file the Company failed to pay for a medical procedure it had previously approved as covered. This action was in violation of W. Va. Code §§ 23-4-3 and 33-11-4(9) (f) and (h) and its claims guidelines. The Company agreed it failed to pay for a covered procedure.

- For two (2) occupational disease paid claim files the Company failed to rule timely. One (1) of these claims involved occupational pneumoconiosis; therefore, its actions were in violation of W. Va. Code St. R. § 85-1-9.2. The other claim involved benefits for an occupational disease/injury claim; therefore, the Company's actions were in violation of W. Va. Code St. R. § 85-1-9.1. The Company agreed it had not ruled timely on both claims.

- For one (1) occupational disease paid claim file the Company failed to act upon receipt of a permanent disability evaluation report within thirty (30) days in compliance with W. Va. Code St. R. § 85-1-9.6(a). The Company agreed.

- For one (1) occupational pneumoconiosis paid claim file the Company did not notify the claimant of the OP Board decision until seventy (70) days after the decision was reached in violation of W. Va. Code St. R. § 85-1-9.6(b). Therefore, the Company failed to timely notify the claimants of his/her right to protest within thirty (30) days of the OP Board finding with the Office of Judges. Therefore, the Company failed to act reasonably promptly upon communications with respect to a claim in violation of W. Va. Code § 33-11-4(9)(b), and the claimant was not provided their protest rights in compliance with W. Va. Code § 23-5-1(b). The Company agreed.

Recommendations: It is recommended the Company take steps to ensure it responds to all correspondence regarding claims in accordance with applicable West Virginia statutes and rules, and its guidelines.

Standard G 5	***NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 5***
Claim files are adequately documented.	***W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4; 85-1-9. 1, 9.2, 9.3; W. Va. Code § 23-4-1c***

Comments: Review methodology for this standard is generic, sample, and electronic. This standard has a direct statutory requirement. W. Va. Code St. R. § 114-15-4.4 states an insurer shall maintained claim files for the calendar year in which the claim is closed plus additional years as set forth in subsection 4.2. Without adequate documentation, the various time frames required by statute and/or regulation cannot be demonstrated. West Virginia requires an insurer to maintain claim files where all notes and work papers pertaining to a claim are retained in sufficient detail that pertinent events and dates of such events can be reconstructed.

***Results*: Pass with recommendations**

A random sample of claim files was selected from thirteen (13) subsets for detail testing. The sample size for each category was determined by whether there were sixty (60) files

or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 5 Claims Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	29,125	60	0	59	1	98%
Employer's Liability Paid Claims	2	2	0	2	0	100%
Federal Black Lung Paid Claims	23	23	0	22	1	96%
Occupational Disease Paid Claims	614	60	0	59	1	98%
Denied Claims	5,571	60	0	58	2	97%
Employer's Liability Denied Claims	1	1	0	0	1	0%
Federal Black Lung Denied Claims	15	15	0	11	4	73%
Occupational Disease Denied Claims	297	64	0	63	1	98%
Protested Claims	1,953	61	0	60	1	98%
Claims Settlements	803	60	0	59	1	98%
Claims with Permanent Award	971	60	0	60	0	100%
Claims Reopened	454	60	0	59	1	98%
Denied Procedures	239,522	60	0	60	0	100%
Total	279,351	586	0	572	14	98%

Observations: Testing of sampled files determined fourteen (14) files were not maintained in compliance with W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4, as follows:

- For one (1) paid claim file, the Company failed to retain the Employer's Report of Injury. Therefore, the Company failed to retain documentation associated with the claim file in compliance with W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed.

- For one (1) federal black lung paid claim file the Company failed to retain all the documents associated with the claim file in violation of W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed.

- For one (1) occupational disease paid claim file the Company failed to retain all the documents associated with the claim file in violation of W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed.

- For two (2) denied claim files the Company failed to retain adequate documentation to support the claim decision made. These failures were in violation of W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed.

- For the one (1) employer liability (EL) denied claim file the Company failed to adequately document the Company's decision on the claim file in violation of W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed.

- For four (4) federal black lung (FBL) closed without payment claim files the Company incorrectly coded the claims files. Through testing, it was determined the claims were not associated with black lung disease. Therefore, the Company failed to maintain the documentation for these four (4) files in compliance with W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed the files had been miscoded.

- For one (1) occupational disease denied claim file the Company failed to document the diagnosis code for the claimant in compliance with W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed it had miscoded the file.

- For one (1) reopened claim file the Company failed to retain adequate documentation regarding the reason for the reopening of the claim; this was a violation of W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed.

- For one (1) settlement claim file the Company failed to retain adequate documentation for its decisions relating to the claim in violation of W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed.

- For one (1) protested claim file the Company failed to adequately document the file in violation of W. Va. Code St. R. §§ 114-15-1.1(b) and 4.4. The Company agreed.

Recommendations: It is recommended the Company take steps to ensure all claim files are sufficiently documented to support all decisions and actions taken by the Company in accordance with applicable West Virginia statutes and rules, and Company guidelines.

Standard G 6	***NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 6***
Claims are properly handled in accordance with policy provisions and applicable statutes, rules and regulations.	***W. Va. Code §§ 33-11-4(9), 23-4-1c, 23-4-1,23-4-7 and W. Va. Code § 23-5-1(b)***

Comments: Review methodology for this standard is generic and sample. This standard has a direct statutory requirement. W. Va. Code § 33-11-4(9) states in part, "No person shall commit or perform with such frequency as to indicate a general business practice any of the following: (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue; (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (d) Refusing to pay claims without conducting a reasonable investigation based upon all available information; (e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; (f) Not attempting in good faith to effectuate prompt, fair and equitable

settlements of claims in which liability has become reasonably clear; (g) Compelling insureds to institute litigation . . ." The aim is to ensure no unfair trade practices are occurring through the verification that claim handling meets West Virginia statutes and rules as applied to claim payments, correct payees, improper release of claims and proper payment of non-disputed claims, proper application of policy provisions and coverage, and proper disclosures are given.

Results: **Pass with recommendations**

A random sample of claim files was selected from six (6) subsets for detail testing. The sample size for each category's was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 6 Claims Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	29,125	60	0	58	2	97%
Federal Black Lung Paid Claims	23	23	0	23	0	100%
Occupational Disease Paid Claims	614	60	0	55	5	92%
Claims Settlements	803	60	0	60	0	100%
Claims with Permanent Award	971	60	0	53	7	88%
Claims Reopened	454	60	0	57	3	98%
Total	31,990	323	0	306	17	95%

Observations: Testing of paid claim files indicated the Company failed to properly handle claims in accordance with applicable West Virginia statutes and/or rules, and/or failed to act in compliance with its claims handling procedures on seventeen (17) claims, as follows:

- For one (1) paid claims file the Company failed to pay TTD in compliance with W. Va. Code § 23-4-1c. The Company agreed and, as a result of examination, compensated the claimant for the four weeks of outstanding TTD.

- For one (1) paid claim file the Company failed to pay for a medical procedure it had approved as covered in violation of W. Va. Code §§ 23-4-3 and 33-11-4(9) (f) and (h), and its claims guidelines. The Company agreed it failed to pay for a covered procedure.

- For two (2) occupational disease paid claim files the Company failed to rule timely. One (1) of these claims involved occupational pneumoconiosis; therefore, its actions were in violation of W. Va. Code St. R. § 85-1-9.2. The other claim involved benefits for an occupational disease/injury claim; therefore, the Company's actions were

in violation of W. Va. Code St. R. § 85-1-9.1. The Company agreed it had not ruled timely on both claims.

- For one (1) occupational disease paid claim file the Company failed to act upon receipt of a permanent disability evaluation report within thirty (30) days, which was not in compliance with W. Va. Code St. R. § 85-1-9.6(a). The Company agreed.

- For one (1) occupational pneumoconiosis paid claim the Company did not notify the claimant of the OP Board decision until seventy (70) days after the decision was reached. Therefore, the Company failed to timely notify the claimants of his/her right to protest within thirty (30) days of the OP Board finding with the Office of Judges. Therefore, the Company failed to act reasonably promptly upon communications with respect to a claim in violation of W. Va. Code § 33-11-4(9)(b), and the claimant was not provided their protest rights in compliance with W. Va. Code § 23-5-1(b). The Company agreed.

- For one (1) occupational disease paid claim file the Company underpaid the claimant's TTD benefits, which was not in compliance with W. Va. Code § 23-4-1c. The Company agreed TTD was not calculated correctly and, as a result of the examination, paid the claimant the additional TTD benefits pursuant to policy provisions.

- For two (2) reopened claim files the Company failed to rule on reopening the claims for TTD within thirty (30) working days in violation of W. Va. Code St. R. § 85-1-9.7(a), W. Va. Code § 33-11-4(9)(b), and its claims guidelines. The Company agreed both files were not reopened timely.

- For one (1) reopened claim file the Company failed to rule on reopening the claim for PPD within thirty (30) days in violation of W. Va. Code St. R. § 85-1-9.7(b), W. Va. Code § 33-11-4(9)(b), and its claims guidelines. The Company agreed.

- For one (1) permanent award claim file the Company overpaid TTD benefits which resulted in a failure to comply with its guidelines and W. Va. Code § 33-11-4(9) and failed to pay the claimant's TTD timely in violation of W. Va. Code St. R. § 85-1-9.1. The Company agreed it overpaid TTD but disagreed that it failed to pay TTD timely.

- For one (1) permanent award claim file the Company failed to rule for PPD timely for one (1) of the files in violation of W. Va. Code St. R. § 85-1-9.6(a). The Company agreed with this finding.

- For four (4) permanent award claim files the Company failed to pay PPD timely after ruling for four (4) files in violation W. Va. Code § 23-4-1d(a). The Company agreed it failed to rule timely on three (3) of the four (4) untimely PPD payment files in violation of W. Va. Code St. R. § 85-1-9.6.a. However, it disagreed it had not acted in compliance with W. Va. Code § 23-4-1d(a) for one (1) file.

- For one (1) permanent award file the Company failed to pay the non-awarded partial (NAP) benefits timely, which was not in compliance with W.Va. Code § 23-4-7a and W.Va. Code St. R. § 85-1-8.1. In addition, the Company failed to rule within thirty (30) days after receipt of an IME in violation of W.Va. Code § 23-4-1d. The Company's response indicated it agreed that NAP benefits were paid late but did not agree that its actions were a violation of W. Va. Code § 23-4-1d.

- For one (1) settlement claim file the Company's actions and settlement with the claimant did not result in a failure; however, an explanatory comment was deemed appropriate. The contractual settlement agreement stated, "It is the intention of the parties to this Agreement to settle on a full and final basis any and all issues and claims between the parties resulting from Claimant's application for workers' compensation benefits." After the settlement was reached, the Company sent a letter advising the claimant of the Company's intent to exercise its subrogation rights under W. Va. Code § 23-2A-1. When questioned the Company stated in part; ". . . in the absence of such a specific statement of intention, subrogation rights cannot be considered to be included in a "full and final settlement" governed by W. Va. Code § 23-5-7." However, the Company also indicated it would modify its procedures as a result of the market conduct examination when it stated, "In order to avoid the potential for confusion on the issue of whether subrogation is waived, the company will commence specifically addressing whether subrogation is waived or not in each settlement agreement."

Recommendations: It is recommended the Company take steps to ensure settlements of claims comply with applicable West Virginia statutes and rules, and Company guidelines.

Standard G 7	***NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 9.***
Company claim forms are appropriate for the type of product.	***W. Va. Code §§ 33-11-4(9) and 23-1-14 ; W. Va. Code St. R. § 85-1-1***

Comments: Review methodology for this standard is generic and sample. This standard does not have a direct statutory requirement.

Results: **Pass**

A random sample of claim files was selected from thirteen (13) subsets for detail testing. The sample size for each category was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 7 Claims Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	29,125	60	0	60	0	100%
Employer's Liability Paid Claims	2	2	0	2	0	100%
Federal Black Lung Paid Claims	23	23	0	23	0	100%
Occupational Disease Paid Claims	614	60	0	60	0	100%
Denied Claims	5,571	60	0	60	0	100%
Employer's Liability Denied Claims	1	1	0	1	0	100%
Federal Black Lung Denied Claims	15	15	0	15	0	100%
Occupational Disease Denied Claims	297	64	0	64	0	100%
Protested Claims	1,953	61	0	61	0	100%
Claims Settlements	803	60	0	60	0	100%
Claims with Permanent Award	971	60	0	60	0	100%
Claims Reopened	454	60	0	60	0	100%
Denied Procedures	239,522	60	0	60	0	100%
Total	279,351	586	0	586	0	100%

Observations: Testing of the sampled files indicated there were no inappropriate claim forms used during the period under examination.

Recommendations: **None**

Standard G 9 *NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 9.*
Denied and closed without payment claims are handled in accordance with policy provisions and state law.
W. Va. Code §§ 33-11-4(9) and 23-4-22; W. Va. Code St. R. § 85-1-1

Comments: Review methodology for this standard is generic and sample. This standard does not have a direct statutory requirement. W. Va. Code § 33-11-4(9) states in part, "No person shall commit or perform with such frequency as to indicate a general business practice any of the following: (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue; (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (d) Refusing to pay claims without conducting a reasonable investigation based upon all available information; (e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; (f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; (g) Compelling insureds to institute litigation . . ." The aim is to ensure no unfair trade practices are occurring through the verification that claim handling meets West Virginia statutes and rules as applied to claim denials, closing of claims with no benefit payments, proper application of policy provisions and coverage, and whether notices of claim denials reference specific policy provisions or exclusions.

Results: **Pass with recommendations**

A random sample of claim files was selected from four (4) subsets for detail testing. The sample size for each category was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 9 Claims Sample Results						
Type	**Population**	**Sample**	**N/A**	**Pass**	**Fail**	**% Pass**
Claims Denied	5,571	60	0	57	3	95%
Federal Black Lung Denied Claims	15	15	0	15	0	100%
Occupational Disease Denied Claims	297	64	0	61	3	95%
Denied Procedures	239,522	60	0	57	3	95%
Total	245,405	199	0	190	9	95%

Observations: Testing of the sampled claim files determined nine (9) files failed this standard, as follows:

- For two (2) denied claim files the Company failed to notify the claimants of their rights to protest to the Office of Judges or the contact information for the West Virginia Insurance Commission's Claim Services Division. Therefore, the Company's actions were a violation of W. Va. Code § 33-11-4(9) and not in compliance with its guidelines. The Company agreed the letter was not appropriate.

- For one (1) denied claim file the Company failed to include all required disclosures in its claim denial letter as required by its guidelines and, therefore, was not in compliance with W. Va. Code § 33-11-4(9). The Company agreed the letter was not appropriate.

- For one (1) occupational disease denied claim file the Company failed to rule timely in compliance with W. Va. Code St. R. § 85-1-9.1 and W. Va. Code § 33-11-4(9). The Company agreed the ruling in the file was not timely.

- For two (2) occupational disease denied claim files the Company failed to include all necessary disclosures in its claim denial letters in compliance with its guidelines and, therefore, was not in compliance with W. Va. Code § 33-11-4(9). The Company agreed the letters were not appropriate.

- For one (1) denied procedure file the Company failed to provide a written response to the claimant's protest letter. The Company failed to handle the claimant's letter as a grievance in violation of W. Va. Code St. R. § 85-21-10.2(c). The Company agreed.

- For one (1) denied procedure file the Company paid a claim after the claimant had reached maximum medical improvement, which was not in compliance with the Company's claim handling guidelines. Other claimants were not provided with the same treatment or benefits as this claimant received, therefore, the Company's actions were a violation of W. Va. Code 33-11-4(9). The Company agreed it should not have paid the claim.

- For one (1) denied procedure file the Company improperly denied the claimant's IME travel expenses, which resulted in untimely payment of benefits in violation of W. Va. Code St. R. § 85-1-9. The Company's actions were also a violation of W. Va. Code § 33-11-4(9), and its claims guidelines. The Company agreed it failed to pay the travel expenses.

Recommendations: It is recommended the Company take steps to ensure settlements of claims comply with applicable West Virginia statutes and rules, and Company guidelines.

Standard G 10 *NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 9.*
Canceled benefit checks and drafts reflect appropriate claim handling practices.
W. Va. Code § 23-3-4

Comments: Review methodology for this standard is generic and sample. This standard does not have a direct statutory requirement. The aim is to verify payments are made to the proper payee and in the proper amount through the review of canceled benefit checks and drafts. It is also the aim to ensure such documents do not result in an improper settlement of benefits owed pursuant to policy provisions.

Results: **Pass**

Observations: During testing of claims files the Company's system provided a check number, payment approval date, and pay date. Considering that there were no grievances or WVOIC complaints associated with receipt of payment by a claimant or provider, other than the amount paid, a time study of cancelled claim checks was not deemed necessary.

Recommendations: None

Standard G 11 *NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 11*
Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.
W. Va. Code §§ 33-11-4(9)(e); 23-2-6; 23-2C-21. 23-5-1 and W. Va. Code St. R. § 85-1-1

Comments: Review methodology for this standard is generic and sample. This standard has direct statutory requirements. Generally, immunity from civil litigation with respect to workers' compensation is provided to employers that maintain workers' compensation

insurance coverage, under the provisions of W. Va. Code § 23-2-6. Therefore, *true litigation* (emphasis added) of workers' compensation claims rarely occurs. W. Va. Code § 23-2C-21, precludes suits against insurers and prohibits violations of Chapter twenty-three and Chapter thirty-three of the West Virginia Code. However, pursuant to the provisions of Article 5 of Chapter 23 of the West Virginia Code, a claimant, if he or she disagrees with a decision of the carrier, can protest the decision to the Workers' Compensation Office of Judges. Those decisions can be appealed to the Workers' Compensation Board of Review (BOR), and BOR decisions can be appealed to the West Virginia Supreme Court of Appeals. Furthermore, W. Va. Code § 23-2C-21(c) also provides administrative relief (as determined by the Office of Judges) in the form of attorneys' fees and "other costs," which are associated expenses incurred while pursuing remedies for protested claims. Additionally, W. Va. Code § 33-11-4(9) enables the Insurance Commissioner to pursue other administrative remedies against insurers that violate the "Unfair Trade Practices Act" with such frequency to indicate an established business practice. Thus, the State of West Virginia recognizes that improper handling of claims, which compel litigation on the part of the claimant, would be unfair trade practice and potentially result in penalties assessed to the insurer.

Results: **Pass with recommendations**

A random sample of claim files was selected from three (3) subsets for detail testing. The sample size for each category's was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 11 Claims Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Employer's Liability Paid Claims	2	2	0	2	0	100%
Employer's Liability Denied Claims	1	1	0	1	0	100%
Protested Claims	1,953	61	0	61	0	100%
Total	1,956	64	0	64	0	100%

Observations: Sixty-four (64) claims met the definition of litigation for this standard. The examiner's concluded, that none of the files indicated any action or inaction on the part of the Company which would compel the claimants to litigate; however, testing of these files determined improper claims handling for four (4) protested claims. The results of testing are as follows:

- For one (1) protested claim file the Company failed to investigate the claim timely in violation of W. Va. Code St. R. § 85-1-9.6(a). The Company agreed.

- For one (1) protested claim file the Company failed to provide TTD benefits in violation of W. Va. Code § 33-11-4(9), and also failed to pay TTD benefits timely in violation W. Va. Code St. R. § 85-1-9.6(a). The Company agreed that TTD benefits

should have been paid and, as a result of the examination, paid the unpaid TTD benefits to the claimant.

- For one (1) protested claim file the Company failed to investigate and rule on a claim in violation of W. Va. Code St. R. § 85-1-9.6(b) and failed to notify a claimant timely after OP Board findings, which was a violation of W. Va. Code St. R. § 85-1-9.6(b). The Company's actions were not in compliance with its guidelines and therefore, not in compliance with W. Va. Code § 33-11-4(9). The Company agreed.

- For one (1) protested claim file the Company agreed it failed to perform an adequate claims investigation in violation of W. Va. Code § 33-11-4(9) and its guidelines. The Company agreed.

Recommendations: It is recommended the Company take corrective actions to ensure all claim handling processes comply with West Virginia statutes and rules, and Company guidelines.

Standard G 12	***NAIC Market Regulation Handbook– Chapter XVII, § G, Standard 1***
Company uses reservation of rights letters or excess of loss letters where appropriate.	***W. Va. Code § 33-11-4(9)***

Comments: Review methodology for this standard is generic. This standard has no direct statutory requirement. W. Va. Code § 33-11-4(9) states in part, "No person shall commit or perform with such frequency as to indicate a general business practice any of the following: (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue; . . .(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information; (e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; (f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear . . ." The aim is to ensure full disclosure of Company rights are properly made to its policyholders and claimants. Generally, excess of loss letters are not used in ordinary (Part 1) workers' compensation claims as there is no defined policy limit. Excess of loss letters may however, be appropriate for Employers' Liability claims.

Results: **Pass**

Observations: The Company used reservation of rights letters for claims appropriately during the period under examination. The Company also had a boiler plate excess of loss letter. However, testing of files did not derive a specific instance when the Company would have been required to issue this type of letter. No exceptions were noted during testing of this standard.

Recommendations: None

Standard G 13 *NAIC Market Regulation Handbook– Chapter XVII, § G, Standard 2*
Deductible reimbursements to insureds upon subrogation are made in a timely and accurate manner.
W. Va. Code § 23-2A-1

Comments: Review methodology for this standard is generic and sample. This standard has no direct statutory requirement. The aim is to ensure full disclosure of Company rights are properly made to its policyholders with regard to reimbursements due to insured should the Company pursue a subrogation action against a third party. Although, W. Va. Code § 23-2A-1 addresses subrogation and provides for a statutory subrogation lien until the full amount subrogated is paid, the Code is silent on deductible reimbursement. Deductible reimbursement is endorsement WC 99 06 07 of the Company's Workers' Compensation policy; this endorsement states that any recoveries will first be applied to amounts paid by the Company in excess of the deductible and any remainder will be reimbursed to the policyholder.

Results: **Pass**

A random sample of claim files was selected from thirteen (13) subsets for detail testing. The sample size for each category was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The results of testing are as follows:

Table G 13 Claims Sample Results

Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	29,125	60	0	60	0	100%
Employer's Liability Paid Claims	2	2	0	2	0	100%
Federal Black Lung Paid Claims	23	23	0	23	0	100%
Occupational Disease Paid Claims	614	60	0	60	0	100%
Denied Claims	5,571	60	0	60	0	100%
Employer's Liability Denied Claims	1	1	0	1	0	100%
Federal Black Lung Denied Claims	15	15	0	15	0	100%
Occupational Disease Denied Claims	297	64	0	64	0	100%
Protested Claims	1,953	61	0	61	0	100%
Claims Settlements	803	60	0	60	0	100%
Claims with Permanent Award	971	60	0	60	0	100%
Claims Reopened	454	60	0	60	0	100%
Procedure Claims	239,522	60	0	60	0	100%
Total	279,351	586	0	586	0	100%

Observations: Testing of sampled paid and denied claims did not provide an instance where the Company would have made deductible reimbursements to insured's upon subrogation.

Recommendation: None

Standard G 14	***NAIC Market Regulation Handbook– Chapter XVII, § G, Standard 3***
Loss statistical coding is timely and accurate.	***W. Va. Code § 23-2C-15; W. Va. Code St. R. § 85-8-10***

Comments: Review methodology for this standard is generic and sample. This standard has no direct statutory requirement. Accurate records are necessary for statistical reporting, rating, and consideration of underwriting concerns.

Results: **Pass**

Observations: The Company was timely reporting to the NCCI, and when its reporting did not appear to be accurate the NCCI notified the WVOIC and the Company was required to provide an updated report in a time period set by the NCCI. Therefore, no exceptions were noted for this standard.

Recommendations: None

SUMMARY OF RECOMMENDATIONS

Recommendation A-1
It is recommended the Company implement the internal audit program it has developed.

Recommendation A-3
It is recommended the Company ensure that all investigations where the Company has knowledge or a reasonable belief that fraud or another crime related to the business of insurance has been committed are properly reported to the WVOIC Fraud Division.

Recommendation A-6
The Company should provide efficient monitoring of its producers.

Recommendation A-7
The Company should maintain all records and documents in compliance with state record retention requirements.

Recommendation A-9
The Company should respond to examination inquiries in compliance with the requirements of W. Va. Code St. R. § 114-15-4.9(a).

Recommendation A-11
It is recommended the Company adopt and implement the corrective actions it indicated would be adopted as a result of the market conduct examination for compliance with its guidelines and West Virginia statutes and rules.

Recommendation B-1
The Company should ensure it complies with W. Va. Code § 33-11-4(10), by logging and responding in writing to all written communication primarily expressing a grievance.

Recommendation B-4
The Company should respond to WVOIC complaints in a timely manner and address all issues involved to ensure compliance with W. Va. Code § 33-11-4(10).

Recommendation B-4(a)
It is recommended the Company implement corrective actions to properly classify risks, pay PPD and TTD timely, and retain documents to ensure compliance with W. Va. Code § 23-4-1d(a),W. Va. Code St. R. §§ 85-1-9.1, 85-1-9.6(a), 114-14-4.2(b), and 114-15-5.2(b); NCCI SCOPES and Basic Manual, and the Company underwriting and premium audit guidelines to preclude complaints filed with the WVOIC.

Recommendation C-1
It is recommended the Company ensure all marketing materials are distributed without misleading or inaccurate information.

Recommendation D-1
It is recommended the Company adopt and implement procedures to record all producer appointments for reconciliation with the WVOIC listing and for underwriters to determine if the producers are appointed and licensed prior to acceptance of an application.

Recommendation D-2
The Company should adopt and implement procedures to ensure that all producers are appointed and licensed prior to the acceptance of an application and to pay commissions in compliance with W. Va. Code § 33-12-23(b). .

Recommendation D-3
It is recommended the Company adopt and implement procedures to notify all producers upon termination in accordance with W. Va. Code § 33-12-25.

Recommendation E-2
The Company should ensure that all policies are issued timely.

Recommendation E-5
It is recommended the Company complete transactions timely and accurately to ensure compliance with West Virginia statutes and rules, and within its guidelines. In addition, it is recommended the Company complete the processing changes it indicated will be made as a result of the examination.

Recommendation E-7
The Company should cancel coverage on the correct date to ensure the correct amount of premium is retained and the correct amount of unearned premium is returned to the employer.

Recommendation F-1
It is recommended the Company take corrective steps to ensure that all coding related to classification of employer's risks for workers' compensation insurance coverage is accurate in compliance with NCCI SCOPES and Basic Manuals, and as required under West Virginia statutes and rules.

Recommendation F-7
The Company should continue to develop, establish, and follow procedures to retain applications and other materials when it declines an employer's application for coverage. Such documentation should be readily available for review by the WVOIC representatives.

Recommendation F-8
The Company should only allow for cancellation or nonrenewal of policies after it has provided accurate notices of cancellations, and should retain all records associated with cancellations in compliance with West Virginia statutes and rules and within its guidelines. Additionally, the Company should complete the changes it has indicated will be made as a result of the examination.

Recommendation F-11

(a) It is recommended that the Company develop processes and procedures to effectively document its underwriting files regarding the underlying reasons for the debit or credit so that it can timely communicate the basis for the debit or credit to its policyholders.

(b) It is further recommended that the Company discontinue use of its filed schedule rating plan and comply with the NCCI scheduled rating plan.

(c) It is also recommended that BrickStreet immediately remediate all instances which the Company issued scheduled debits for West Virginia policyholders, for "claims characteristics", "low sales to employee ratio", as well as any instance that its use of demographic data negatively impacted policy holders. Said remediation should be conducted in consultation and under the supervision of Insurance Commissioner.

(d) It is further recommended that BrickStreet complete a one hundred percent (100%) audit of all scheduled rating adjustments conducted at underwriter's or other Company personnel's discretion (as itemized in table F11b. BrickStreet shall report to the West Virginia Offices of the Insurance Commissioner (WVOIC) as to whether each instance of judgmentally applied scheduled debits are both appropriate and documented in the underwriting files as they appeared as of the date of adoption of this Report of Market Conduct Examination. BrickStreet should provide the WVOIC verifiable progress reports detailing any reunderwriting and refunds issued to each policy period that the alleged inappropriate debits were charged.

(e) The remediation herein described shall be completed within six (6) months of adoption of this report of Market Conduct Examination. Remediated refunds shall include an interest rate applied from the date each debit was applied. The interest shall be 8.25% for January 1, 2007 through December 31, 2007, 7.25 % for January 1, 2008 through June 30, 2008, 5% from July 1, 2008 through December 31, 2008 and 3.25% beginning January 1, 2009 until such policies are fully remediated.

Recommendation F-18

The Company should complete premium audits timely and accurately in compliance with industry standards and the NCCI SCOPES and Basic Manual guidelines and classifications. In addition, the Company should correct its premium mail audit forms to allow its policyholders to deduct all remuneration that is not applicable for premium purposes, and for proper classification of an employer's risk.

Recommendation F-19
It is recommended the Company ensure its modifications to its practices and procedures on insured-requested cancellations are followed, which will result in the elimination of potential discriminatory practices.

Recommendation F-25
The Company should only allow for cancellation or nonrenewal of policies after issuing a valid notice of cancellation, and retain all records associated with cancellations in compliance with West Virginia statutes and rules and within its guidelines.

Recommendation F-26
It is recommended the Company take corrective steps to ensure that all coding related to classification of employer's risks for workers' compensation insurance coverage is accurate in compliance with NCCI SCOPES and Basic Manuals, and as required under West Virginia statutes and rules.

Recommendation F-27
The Company should mandate a complete application and ensure that all applications are retained. In addition, the Company should correct its application form to conform to the NCCI local hauling definitions as represented.

Recommendation G-2
It is recommended the Company take steps to ensure it is properly investigating claims in accordance with applicable West Virginia statutes and rules, and Company guidelines.

Recommendation G-3
It is recommended the Company take steps to ensure it is properly resolving claims in accordance with applicable West Virginia statutes and rules, and Company guidelines.

Recommendation G-4
It is recommended the Company take steps to ensure it responds to all correspondence regarding claims in accordance with applicable West Virginia statutes and rules, and Company guidelines.

Recommendation G-5
It is recommended the Company take steps to ensure all claim files are sufficiently documented to support all decisions and actions taken by the Company in accordance with applicable West Virginia statutes and rules, and Company guidelines.

Recommendation G-6
It is recommended the Company take steps to ensure settlements of claims comply with West Virginia statutes and rules, and Company guidelines

Recommendation G-9

It is recommended the Company take steps to ensure settlements of claims comply with West Virginia statutes and rules, and Company guidelines.

Recommendation G-11

It is recommended the Company take corrective actions to ensure all claim handling processes comply with West Virginia statutes and rules, and Company guidelines.

EXAMINER'S SIGNATURE AND ACKNOWLEDGMENT

The examiner would like to acknowledge the cooperation and assistance extended by the Company during the course of the examination.

In addition to the undersigned, Thomas D. McIntyre, CIE, MCM, CPCU, FLMI, AIRC, APA, ACS, ARA of Huff Thomas and Company acted as the Examiner in Charge. Wanda M. LaPrath, CIE, CFE, MCM, FLMI, ARC; Darla Lyon; Charles Simon, CFE, AIE; Charles L. Swanson and JoAnn Wheaton, CFE (Fraud); also participated in the examination.

Mark A. Hooker, CIE, CPCU, MCM, CWCP, AAI, AU, AIS, LUTCF
Chief Market Conduct Examiner
State of West Virginia
Offices of the Insurance Commissioner

EXAMINER'S AFFIDAVIT

State of West Virginia

County of Kanawha

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES USED IN AN EXAMINATION

I, Mark. A. Hooker, being duly sworn, state as follows:

1. I have the authority to represent West Virginia in the examination of West Virginia Employers' Mutual Insurance Company dba BrickStreet Mutual Insurance Company.

2. I have reviewed the examination work papers and examination report, and the examination of BrickStreet Mutual Insurance Company was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.

Mark A. Hooker, CIE, CPCU, MCM, CWCP, AAI, AU, AIS, LUTCF
Chief Market Conduct Examiner
State of West Virginia
Offices of the Insurance Commissioner

Subscribed and sworn before me by Mark A. Hooker on this 13th day of February, 2009.

Patricia A. Thompson
Notary Public

My commission expires Oct 17, 2016

OFFICIAL SEAL
Notary Public, State Of West Virginia
PATRICIA A. THOMPSON
Rt. 1, Box 66ee
Poca, WV 25159
My Commission Expires Oct. 17, 2016

Gregory A. Burton
President and CEO

Executive Office

February 25, 2009

VIA HAND-DELIVERY
Jane L. Cline, Insurance Commissioner
West Virginia Insurance Commission
1124 Smith Street, Greenbrooke Building
Room 413
Charleston, WV 25301

RE: Report of Market Conduct Exam

Dear Commissioner Cline:

We are in receipt of and thank you for your Report of Market Conduct Exam dated February 20, 2009 ("Report"). Your staff should be commended for the professionalism and thoroughness they exhibited during the examination period.

As you are well aware, the privatization of West Virginia's workers' compensation system embarked upon by Governor Manchin and the Legislature has been a monumental task and a remarkable success. In just three short years, West Virginia's workers' compensation system has gone from an economic development hindrance to a system offering some of the most competitive rates in the country. Governor Manchin and you should be applauded for overseeing this success story.

With regard to the Report, BrickStreet readily accepts its findings and recommendations. In short, given that we had just over nine months from incorporation to build this Company, we are encouraged to have passed 88% of the standards on which we were examined (59 out of 67). We are even more encouraged by the fact that we passed all examination standards related to claims. Providing unparalleled service to the injured workers of our State is a top priority for BrickStreet and our passing of all standards related to claims management is extremely gratifying.

With regard to underwriting and particularly schedule rating, as expressed in the Report, this was by far the most dynamic change related to the privatization process. The archaic and antiquated rate making practices that developed in West Virginia during the 92 years preceding privatization had to be quickly disposed of so that our State could offer a workers' compensation marketplace resembling other states. We are pleased to know only a small percentage of our written premium was found to be in need of correction in the Report.

Obviously, the clear purpose of the 2-½ year monopolistic period was, in part, to introduce, validate and adjust as appropriate rate making practices such as schedule

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rating. Accordingly, while we believe that all elements of the approved schedule rating plan, and the data utilized to implement the plan, were appropriate and actuarially justified, we nevertheless understand your Office's position and accept the findings of the Report. We feel that your remedial findings are reasonable and consistent with the goal of quickly implementing new rate making tools and then reconciling any discrepancies.

In conclusion, BrickStreet again wants to express its appreciation for the leadership you have exhibited during this transition process and for the manner in which your Office conducted this examination. Your findings will be implemented by BrickStreet and BrickStreet will ultimately be a better carrier as a result.

Very truly yours,

Gregory A. Burton
President and CEO

GAB:ld

cc: Andrew Pauley, West Virginia Insurance Commission
Mark Hooker, West Virginia Insurance Commission