

**AMERICAN STANDARD INSURANCE COMPANY
OF WISCONSIN**

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6000 AMERICAN PKY
MADISON, WISCONSIN 53783

NAIC COMPANY # 19283

MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 1998

**Prepared by independent contractors for the
Colorado Department of Regulatory Agencies
Division of Insurance**

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**AMERICAN STANDARD INSURANCE COMPANY
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EXAMINATION REPORT
as of
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December 8, 1999

The Honorable William J. Kirven III
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner:

In accordance with Sections 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting and claims practices of the private passenger automobile insurance business of American Standard Insurance Company of Wisconsin, hereinafter referred to as the "Company", has been conducted. The Company's records were examined at its regional offices located at 9110 E. Nichols Ave., Suite 310, and 9510 So Meridian Blvd., Englewood, Colorado 80112.

The examination covered the period from January 1, 1998 to December 31, 1998.

A report of the examination is herein respectfully submitted.

Larry N. Campbell, CIE.
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Independent Market Conduct Examiners

**MARKET CONDUCT
EXAMINATION REPORT
OF
AMERICAN STANDARD INSURANCE COMPANY
OF WISCONSIN**

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COMPANY PROFILE

The Company began as Farmer's Mutual Insurance Company and was founded on October 3, 1927, in Madison, Wisconsin. The name changed to American Family Insurance in 1963. The Company began marketing auto insurance in Colorado in 1966.

Eight companies now comprise the American Family Insurance Group: American Family Mutual Insurance Company (the Parent Company), American Standard Insurance Company of Wisconsin, American Family Life Insurance Company, American Family Financial Services, Am Fam, Incorporated, American Standard Insurance Company of Ohio, American Family Brokerage, Inc. A number of insurance products are written in the following 14 states: Ohio, Indiana, Illinois, Iowa, Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Missouri, Colorado, Arizona, Oregon.

The Company bases its sales and services on a network of approximately 4000 full-time Independent agents located in communities throughout 14 states of operation.

In the State of Colorado, the Company markets private passenger automobile insurance and according to the NAIC, the Company reported \$ 34,365,000. in total written premiums in 1998. This volume represented a 1.67% market share of all private passenger automobile insurance written in the State of Colorado.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This examination is in accordance with Colorado Insurance Law § 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct exams. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The market conduct examination covered by this report was performed on a routine basis to assist the Colorado Commissioner of Insurance to meet statutory requirements, by determining Company compliance with the Colorado Insurance Law and generally accepted operating principles. Additionally, findings of a market conduct examination serve as an aid to the Division of Insurance's early warning system. The intent of the information contained in this report is to serve only those purposes.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered the period from January 1, 1998 to December 31, 1998.

File sampling was based on review of systematically selected samples of underwriting and claim files by category. Sample sizes were chosen based on guidance from procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms. These comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise support the Company's noted action. At the conclusion of each sample, the Company was provided a summary of the findings for that sample. The report of the examination is a report by exception. Material reviewed as to practices, procedures, or files which manifested no errors, will not be contained in this written report.

An error tolerance level of plus or minus \$10.00 was allowed in most cases where monetary values were involved; however, in cases where monetary values were generated by computer or other system, a \$0 tolerance level was applied in order to identify possible system errors. Additionally, a \$0 tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's rates on file with the Colorado Division of Insurance.

This report contains information regarding exceptions to the Colorado Insurance Laws. The examination included review of the following six (6) Company operations:

1. Marketing, Sales & Advertising
2. Complaint Handling
3. Agent Licensing and Appointments
4. Underwriting Practices
5. Rating Practices
6. Claims Settlement Issues

All unacceptable or non-complying practices may not have been discovered throughout the course of this examination. Additionally, findings may not be material to all areas which would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance of such practices by the Colorado Division of Insurance. This report should not be construed to endorse nor discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination findings may result in administrative action by the Division of Insurance.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of eight (8) issues arising from the Company's apparent noncompliance with Colorado statutes and regulations relating to private passenger automobile insurance, complaints, agent licensing / appointments, underwriting, and claim issues.

Marketing, Sales & Advertising

Issues can arise from review of the Company's Advertising materials not in compliance with applicable Colorado statutory and regulatory requirements dealing with misrepresentation and /or misleading statements, unfair comparisons, and identification of any documentation which points to restraint of trade or monopolistic practices.

In the area of Marketing, Sales & Advertising, no issues were noted.

Complaint Handling

Issues can arise from the handling and maintenance of the Company's complaint record system, the timeliness of response and proper disposition of individual complaints by line of insurance.

In the area of complaint handling, one (1) issue involving the delay of response to Division of Insurance inquiries (complaints) is addressed in this report.

Agent Licensing and Appointments

Issues can arise from the use of unappointed and/or unlicensed agents to produce business for the Company. New Business applications submitted by agents during the period under examination were compared to the Division of Insurance listing for licensing and appointments.

In the area of Agent Licensing and Appointments, no issues were noted.

Underwriting Practices

In the area of underwriting, four (4) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements, which must be followed whenever policies are issued, canceled, or non-renewed or the premiums increased or decreased. The incidence of noncompliance in the area of underwriting exhibits a frequency range of error between 1% to 10%. With regard to these four (4) underwriting practices, it is recommended that the Company review its

underwriting procedures and make the necessary changes to ensure future compliance with applicable statutes and regulations.

Rate Application

In the area of rating, no issues are addressed in this report.

Claims Settlement Issues

In the area of claim practices, three (3) compliance issues are addressed. These issues arise from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claim checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and delay of claims. The incidence of noncompliance in the area of claims practices shows a frequency range of error between 1% and 32%. In regard to the three (3) compliance issues in this area, it is recommended that the Company reviews its claims handling procedures and make the necessary changes to ensure future compliance with applicable statutes and regulations.

***AMERICAN STANDARD INSURANCE COMPANY OF
WISCONSIN***

PERTINENT FACTUAL FINDINGS

PRIVATE PASSENGER AUTOMOBILE INSURANCE

PERTINENT FACTUAL FINDINGS

for

COMPLAINT HANDLING

Issue A: Failure to respond to Division inquiries regarding complaints within the prescribed 20 calendar days.

Colorado Regulation 6-2-2, Responses to Division inquiries regarding complaints, written under the authority of Section 10-1-109, C.R.S., states in part:

IV. Rules

A. Every insurer shall submit a full and complete response to any inquiry from the Division regarding a complaint within twenty (20) calendar days of the date of the inquiry.

B. In circumstances where additional time is required by an insurer to prepare a full and complete response, the insurer shall request an extension, by letter, detailing the reasons for the request, or by a telephone call to the Division analyst or investigator assigned to the case. When a request for an extension is granted, the insurer shall respond to the Division inquiry within the time period specified by the person granting the request.

The examiners reviewed all private passenger automobile complaints for the period under examination (a total of 61 complaints). It was noted that three (3) Division of Insurance complaints were not responded to within the prescribed 20 calendar days.

The following chart illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE
COMPLAINTS IN 1998**

Population	Sample Size	Number of Exceptions	Percentage to Sample
61	61	3	5%

An examination of 61 complaints against the Company, from January 1, 1998 to December 31, 1998, representing 100% of all private passenger automobile insurance complaints, showed 3 instances (5% of the sample) wherein the Company failed to respond to Division of Insurance inquiries (complaints) within the prescribed 20 calendar day requirement.

Recommendation # 1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 6-2-2, written under the authority of Section 10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence and documentation demonstrating that it has addressed its procedure for timely complaint responses to the Division of Insurance in order to ensure compliance with the requirements of Colorado Insurance Law.

PERTINENT FACTUAL FINDINGS

for

UNDERWRITING PRACTICES

Issue B: Failure to file an annual certification of forms.

Section 10-3-1104(1), C.R.S., states, the following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(u) Certifying pursuant to section 10-4-725 or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

Section 10-4-725(1), C.R.S., - Certification of policy and notice forms, states in part:

All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted by July 15, 1993, and not later than July 1 of each subsequent year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

The Company could not provide the examiners with the 1998 annual certification of forms report as required by the above-captioned law.

Also, the Company was using Form U-334 (7/92 Ed) , Colorado Uninsured Motorist Coverage, Exclusion of work loss under PIP coverage, (acknowledgment of coverage selection or Rejection). This form was not listed on the last annual certification submitted by the Company (1996) and there was no further evidence indicating it had ever been certified by the Colorado Division of Insurance. The above-captioned Colorado Insurance Law prescribes that the annual certification should list all forms currently being used by the Company as well as any new forms which should be submitted prior to use.

Recommendation # 2:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-725(1), and 10-3-1104(1)(u), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence and documentation demonstrating that it has immediately filed an annual certification report of its forms and endorsements for 1999 with the Rates & Forms section of the Division of Insurance and provide documentation of the annual certification to the Market Conduct section when responding to this report.

Upon successful completion of the certification, the Company should provide documentation of the Division of Insurance stamped certification to the Market Conduct section of the Division of Insurance for final resolution of this requirement.

Issue C: Failure to provide the reason for nonrenewal.

Section 10-4-720(2)(c), C.R.S., Cancellation – renewal – reclassification, states:

(2) An insurer intending to take an action subject to the provisions of this section shall, on or before thirty (30) days prior to the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at his last known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form which has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules or regulations promulgated by the commissioner.

(c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).

Additionally, Colorado Regulation (Amended) 5-2-3 III (E)(2)(a), states:

2. Notice of proposed actions.

a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by 10-4-720(2), C.R.S. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy, or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

The following chart illustrates the significance of error versus the population and sample examined

**PRIVATE PASSENGER AUTOMOBILE
POLICIES NONRENEWED IN 1998**

Population	Sample Size	Number of Exceptions	Percentage to Sample
432	50	5	10%

An examination of 50 systematically selected policies nonrenewed, representing 11.6% of all private passenger automobile policies nonrenewed by the Company in 1998, showed five (5) instances (10% of the sample) in which the Company failed to provide a reason for its nonrenewal action.

In five (5) instances, the Company did not complete the underwriting reason for the non-renewal action. In these instances, the MVR information, which the Company was basing its decision and actions on, was shown below the blank reason space but did not constitute a complying reason according to the above-captioned Insurance Law.

Recommendation # 3:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-720(2)(c), C.R.S., and Colorado Regulation (Amended) 5-2-3 III(E)(2)(a), written under the authority of Section 10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence and documentation demonstrating that it will complete the reasons for nonrenewal with a statement that clearly describes its underwriting rule, policy, or guideline, which was the basis for the proposed action in order to ensure compliance with the requirements of Colorado Insurance Law.

Issue D: Failure to provide minimum coverage for rehabilitation expense.

Section 10-4-706, C.R.S. (No Fault) Required coverages - complying policies.

(1) Subject to the limitations and exclusions authorized by this part 7, the minimum coverage required for compliance with this part 7 are as follows:

(c) (I) Compensation without regard to fault up to a limit of fifty thousand dollars per person for any one accident within ten years after such accident for payment of the cost off rehabilitation procedures or treatment and rehabilitative occupational training necessary because off bodily injury arising out of the use or operation of a motor vehicle.

The Company's Forms:

(1) END 05-107 (Ed. 8/91), Colorado Automed Savings Option Coverage Endorsement, (2) END. 05-106 (Ed.7.91), Colorado Personal Injury Protection (PIP) Endorsement,

did not contain the most recent change regarding Rehabilitation expenses. Both forms were 1991 editions. For the period under examination, the forms should have contained the wording "for any one accident within ten years", in lieu of "for any one accident within five years".

Recommendation # 4:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-706, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence and documentation demonstrating that it will amend its endorsements 05-107 (Ed. 8/91), Colorado Automed Savings Option Coverage Endorsement, and 05-106 (Ed. 7/91), Colorado Personal Injury Protection (PIP), and certify these with the Rates & Forms section of the Division of Insurance and provide documentation of the certification to the Market Conduct section when responding to this report. Upon successful completion of the certification, the Company should provide documentation of the Division of Insurance stamped filing certification to the Market Conduct section of the Division of Insurance for final resolution of this requirement.

PERTINENT FACTUAL FINDINGS

for

CLAIMS SETTLEMENT ISSUES

Issue E: Delay in paying PIP benefits.

Section 10-4-708(1), C.R.S., requires:

Payment of benefits under the coverage enumerated in section 10-4-706 shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that the insurer fails to pay such benefits when due, the person entitled to such benefits may bring action in contract to recover the same.

Colorado Regulation 5-2-8(III), Timely Payment of Personal Injury Benefits, (A)(B), Rules, states:

A. Section 10-4-708(1), C.R.S., provides that benefits under the coverages enumerated in Section 10-4-706 are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred.

B. In the usual case, for purposes of triggering the thirty-day time period in section 10-4-708(1), C.R.S., the following documents are sufficient to establish reasonable proof of the fact and amount of the expenses incurred:

1. A properly executed application for benefits from the PIP claimant;
2. A notice to an insurer which meets the requirements of Section 10-4-708.7, C.R.S.; and
3. A billing statement for a procedure or treatment, which is subject to the obligations of Section 10-4-708.6, C.R.S.

The following charts illustrate the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE
PIP PAID CLAIM FILES
IN 1998**

Population	Sample Size	Number of Exceptions	Percentage to Sample
1626	50	14	28%

An examination of 50 systematically selected files, representing 3.1% of all personal injury protection benefit claim files paid by the Company, from January 1, 1998 to December 31, 1998, showed fourteen files (14 exceptions and 28% of the sample) wherein the Company failed to pay all PIP claims within the statutory standard of 30 days.

**PRIVATE PASSENGER AUTOMOBILE
CANCELLED PIP DRAFTS
IN 1998**

Population	Sample Size	Number of Exceptions	Percentage to Sample
9696	100	2	2%

An examination of 100 systematically selected drafts, representing 1% of all personal injury protection benefit drafts paid by the Company, from January 1, 1998 to December 31, 1998, showed two drafts (2 exceptions and 2% of the sample) wherein the Company failed to pay PIP claims within the statutory standard of 30 days.

Recommendation # 5:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of Section 10-4-708(1), C.R.S., and Colorado Regulation 5-2-8(III). In the event the Company is unable to provide such documentation, it should be required to provide evidence and documentation that it has reviewed its PIP claims handling procedures with all Colorado branch claims offices regarding the correct procedures pertaining to timely handling of PIP benefit payments, situations that define a qualifying accumulation period, and the proper documentation as to what constitutes the received date which triggers the 30 day time period, in order to ensure future compliance with the Colorado Insurance Law.

Issue F: Failure to pay insurance claims in accordance with standard Company claims handling practices.

Section 10-3-1104(1)(h)(VI), C.R.S., defines an unfair claims settlement practice :

Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

The following charts illustrate the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE
TOTAL LOSS
CLAIMS PAID IN 1998**

Population	Sample Size	Number of Exceptions	Percentage to Sample
135	50	16	32%

An examination of 50 files, representing 37% of the total loss claims handled by the Company, from January 1, 1998 to December 31, 1998, showed sixteen (16) exceptions (32% of the sample) wherein the Company failed to pay claims in accordance with standard Company claims handling practices.

In three (3) instances, the Company made overpayments by paying a title fee not due on total losses which were not in accordance with the Company's standard claim procedures.

In eleven (11) instances, the Company made overpayments of sales tax on total losses where the owners retained the salvage.

In two (2) instances, the Company made underpayments of the total loss by failing to readjust the sales tax on revised actual cash value amounts.

**PRIVATE PASSENGER AUTOMOBILE
1ST PARTY COMP AND COLLISION
CLAIMS PAID IN 1998**

Population	Sample Size	Number of Exceptions	Percentage to Sample
3046	50	1	2%

An examination of 50 files, representing 1.6% of the 1st party comprehensive and collision claims handled by the Company, from January 1, 1998 to December 31, 1998, showed one (1) exception

(2% of the sample) wherein the Company failed to pay claims in accordance with standard Company claims handling practices.

In the one (1) instance, the Company made an underpayment of \$2611.25 on a total loss settlement, based on a difference in the ACV determination on a lease payoff amount, using a wholesale value in lieu of a retail value.

Recommendation # 6:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered to be in violation of Section 10-3-1104(1)(h)(VI), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence and documentation that it has instituted refresher training procedures to reaffirm its handling of total loss claims by all Claims branches, and provide copies of all letters regarding underpayments dispersed on the instances cited, to the Division of Insurance, Market conduct section, in order to ensure compliance with the Colorado Insurance Law.

Issue G: Failure to retain records.

Colorado Regulation 1-1-7(B)(3), Record Retention, written under the authority of Section 10-1-109, C.R.S., states in part:

3. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar years.

The following charts illustrates the significance of error versus the population and sample examined:

**PRIVATE PASSENGER AUTOMOBILE
TOTAL LOSS
CLAIMS PAID IN 1998**

Population	Sample Size	Number of Exceptions	Percentage to Sample
135	50	3	6%

An examination of 50 files, representing 37% of the total loss claims handled by the Company, from January 1, 1998 to December 31, 1998, showed three (3) instances (6% of the sample) wherein the Company failed to retain records in order to document its payments.

In two (2) instances, the total loss file did not contain sufficient documentation to establish how the Company determined the actual cash value used in the final settlement.

In one (1) instance, the total loss file lacked documentation as to why the Company underpaid the final settlement in the amount \$25 from the original book evaluation.

**PRIVATE PASSENGER AUTOMOBILE
PIP DRAFTS PAID IN 1998**

Population	Sample Size	Number of Exceptions	Percentage to Sample
9696	100	1	1%

An examination of 100 drafts, representing 1% of the PIP drafts paid by the Company, from January 1, 1998 to December 31, 1998, showed one (1) instance (1% of the sample) wherein the Company failed to retain records in order to document its payment.

In this one(1) instance, the Company failed to provide evidence of a copy of the medical billing in order to substantiate compliance with the 30 day payment requirement.

Recommendation # 7:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered to be in violation of Section 10-3-1104(1)(h)(VI), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence and documentation that it has instituted a procedure ensuring that its records are properly retained to document all claim payments made to ensure compliance with the Colorado Insurance Law.

SUMMARY OF RECOMMENDATIONS LOCATOR**EXAMINATION REPORT ON*****AMERICAN STANDARD INSURANCE COMPANY
OF WISCONSIN***

ISSUE	RECOMMENDATIO N	PAGE #
A Failure to respond to Division inquiries regarding complaints within the prescribed 20 calendar days.	1	14
B Failure to file an annual certification of forms.	2	16
C Failure to provide the reason for nonrenewal.	3	19
D Failure to comply with the Colorado Insurance Law regarding rehabilitation expense.	4	20
E Delay in paying PIP benefits.	5	23
F Failure to pay insurance claims in accordance with standard Company claims handling practices	6	25
G Failure to retain records.	7	27

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participated in this examination and in the preparation of this report.