

**REPORT OF MARKET CONDUCT EXAMINATION**

**BENCHMARK INSURANCE COMPANY**

**6701 W. 64<sup>th</sup> ST.**

**SHAWNEE MISSION, KS 66202**

**AS OF**

**JUNE 30, 2003**

**BY**

**KANSAS INSURANCE DEPARTMENT**

## TABLE OF CONTENTS

<b><u>SUBJECT</u></b>	<b><u>PAGE NO.</u></b>
<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>SALUTATION</b>	<b>5</b>
<b>SCOPE OF REVIEW</b>	<b>6</b>
<b>SUMMARY OF REVIEW</b>	<b>7</b>
<b>DESK EXAMINATION/ON SITE EXAMINATION</b>	<b>7</b>
<b>COMPANY OVERVIEW</b>	<b>7</b>
<b>COMPLAINT HANDLING</b>	<b>13</b>
<b>MARKETING AND SALES</b>	<b>15</b>
<b>PRODUCER LICENSING</b>	<b>16</b>
<b>POLICYHOLDER SERVICE</b>	<b>16</b>
<b>UNDERWRITING</b>	<b>17</b>
<b>CLAIM PROCESSING</b>	<b>23</b>
<b>GENERAL COMMENTS</b>	<b>30</b>
<b>CONCLUSION</b>	<b>31</b>
<b>APPENDIX I</b>	

## EXECUTIVE SUMMARY

The Kansas Insurance Department performed a market conduct examination of Benchmark Insurance Co. (Benchmark). The examination was conducted by reviewing the company general operations in their home office in Overland Park, Kansas. A series of meetings were held with staff that focused on their current operations.

MedJames (MJ) is the managing general agent who administers their non-standard auto program. The exam team reviewed complaint, claims, rating and underwriting manuals for this program were reviewed. Along with underwriting, claim, and complaint files the testing and file review consisted of sampling this business at the general agent's office in Overland Park, KS.

Corporate Benefit Services of America (CBSA) is the third party administrator who handles their accident and health program in Kansas. CBSA copied the claims from their Minnesota office and sent them to Benchmark's corporate office in Shawnee Mission, KS for the exam team to review.

General topics were covered in Interrogatories submitted to Benchmark for their written response. Subjects covered were Company Operations, Policyholder Service and Complaints, Agency Appointments and Terminations, Sales and Marketing, Underwriting and Claims. The responses received adequately addressed the issues presented.

The company passed most tests. The exam team has made recommendations on several issues.

### LIST OF RECOMMENDATIONS

#### A. Company Operations/Management

1. Formalize an audit program of the operations of the non-stand auto program and accident and health program. This would include a review of their processing, underwriting and claim operations. There should be a written report summarizing the findings of the review.
2. Benchmark has been sold to another company since the exam team was on site. Written agreements need to be completed with all companies who will provide physical space and electronic storage and recovery services.
3. Follow up with the General Agent to finalize the MJ disaster recovery plan.

#### B. Complaint Handling

Benchmark should put in to place procedures to insure all KID complaints are recorded in their complaint registry. Per K.S.A. 40-2404, (10).

C. Underwriting and Rating

1. Re-file the auto non-standard rating plan to reflect the calculation for each line of coverage that has a term other than 30 days is calculated on ratio to the 30-day term rater than a per day basis. Per K.S.A. 40-955.

2. Must give notice and reason for cancellation per K.S.A. 40-2,112 and K.A.R. 40-3-15 before canceling active, in-force and paid policies at the request of an agent due to the insured's premium check to the agent being returned as NSF.

3. Recommendation: Companies should allow three days for mail time on all notices of cancellation and nonrenewal in the interest of consistency.

D. Claim Processing

1. Claim investigations should be completed within 30 days per K.A.R. 40-1-34, 7. When the company needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. And every forty-five days thereafter, the company should send to such claimant a letter setting forth the reasons additional time is needed for investigation. Per K.A.R. 40-1-34, 8(c). Letters should be sent on all denied claims per K.A.R. 40-1-34, 8(a).

2. The Company needs to make sure they pay auto claims per policy contract and state statutes for total losses including applicable taxes. Per K.A.R 40-1-34, Sections 9(a)(2) and 9(h).

Honorable Sandy Praeger  
Insurance Commissioner  
Kansas Insurance Department  
420 SW Ninth Street  
Topeka, KS 66612

Dear Commissioner Praeger:

In accordance with your respective authorization, and pursuant to K.S.A. 40-222, a market conduct examination has been conducted on the business affairs of:

Benchmark Insurance Company

6701 W. 64th St.

Shawnee Mission, KS 66202

hereafter referred to as “Benchmark” or the “Company”, and the following report as such examination is respectfully submitted,

Lyle Behrens, CPCU, CIE, ARM, ARe  
Market Conduct Supervisor  
Examiner in Charge

## **SCOPE OF REVIEW**

A market conduct examination of Benchmark operation was completed to determine compliance with applicable statutes, regulations and bulletins of the state of Kansas. The exam focused on the Company's general operations, their non-standard auto program and the claim processing on their group accident and health business.

The examination was conducted according to the guidelines and procedures recommended in the NAIC Market Conduct Examiners Handbook.

The examination included, but was **not limited to the following:**

### **COMPANY OVERVIEW**

- History and Profile
- Territory and Plan of Operation
- Prior Market Conduct Examination Report
- Reinsurance
- Fines and/or Penalties
- Company Operations and Management
- Certificates of Authority
- Internal Audit Procedures
- Computer Systems
- Anti-Fraud Program
- Disaster Recovery Procedures

### **COMPLAINT HANDLING**

- Record Keeping
- Timely Response

### **MARKETING AND SALES**

- Advertising
- Training
- Communication

### **PRODUCER LICENSING**

- Appointment/Termination
- Training
- Communication

### **POLICYHOLDER SERVICE**

- Processing
- Communication

### **UNDERWRITING & RATING**

- Proper Rating
- Underwriting Acceptance/Termination

Use of Appropriate Forms  
Promptness of Policy Issuance  
Proper Maintenance of Underwriting Files

## **CLAIMS**

Claim Processing  
Use of Outside Pricing Entities  
Timeliness and Accuracy of Claim Payment  
Proper Maintenance of Claim Files

## **SUMMARY OF REVIEW**

The market conduct examination focused on Benchmark. The examination included a review of the Company's underwriting and settled claim files from January 1, 2001 to June 30, 2003.

MJ is the managing general agent who administers their non-standard auto program. The testing and file review consisted of sampling this business at MJ office in Overland Park, KS.

The claim processing for the non-standard auto program is also handled by MJ at their location in Overland Park. The exam team reviewed a sample of paid and non-paid claims.

CBSA is the third party administrator who handles their accident and health program in Kansas. CBSA copied the claims from their Minnesota office and sent them to Benchmark's corporate office in Shawnee Mission, KS for the exam team to review.

General topics were covered in Interrogatories submitted to Benchmark for their written response. Subjects covered were Policyholder Service and Complaints, Sales and Marketing, Underwriting and Claims. The responses received adequately addressed the issues presented.

## **DESK EXAMINATION/ON-SITE EXAMINATION**

### **COMPANY OVERVIEW**

#### **History**

Benchmark Insurance Company was initially incorporated on March 6, 1991 in the state of Kansas and subsequently began business in Kansas on April 5, 1991. During 1992, Benchmark was also licensed in Arkansas and Missouri and commenced business there.

Prior to and separate from the above history, The Western Indemnity Company, Inc. was incorporated in Kansas on May 1, 1964 and commenced business on May 5, 1964. On February 1, 1989, the name was changed to National Colonial Insurance Company (NCIC). On July 16, 1993, NCIC was declared insolvent and was placed into liquidation by the Kansas Commissioner of Insurance.

On January 31, 1994, the separate companies joined together and declared the successful Benchmark's parent company, Supermarket Insurance Agency, In. (SIA), as bidder on the charter and licenses of NCIC. The charter and licenses were purchased free and clear of all claims of NCIC pursuant to Kansas' liquidation law. The purchase of NCIC by SIA was closed on May 26, 1994, and, on June 10, 1994, the existing Benchmark Insurance Company was merged with and into NCIC. NCIC was the surviving entity of the merger and simultaneously changed its name to Benchmark Insurance Company. As a result of the transaction, Benchmark acquired the licenses and charter of NCIC; however, it retained the Benchmark name, NAIC number and successful business history it had built since 1991. Following the merger, Benchmark successfully obtained reinstatement of all 30 of the former NCIC licenses and gradually secured additional licenses. As of April 2003, Benchmark is licensed in 41 states plus the District of Columbia.

Benchmark's immediate parent, SIA, acts as a risk manager and insurance brokerage for retail grocers. They currently manage accounts generating over \$100 million in premium with many insurers. Associated Wholesale Grocers, Inc. (AWG) supplies many of the grocers served by SIA.

Benchmark initially wrote only group A&H insurance for the grocers, it subsequently issued group health for associations and then entered the property/casualty market for grocers in 1996 and 1997 with workers compensation and commercial coverages. The company added several "affinity" programs for non-AWG business from 1998 through 2002. Currently, the company writes the lines of business shown in the annual statement.

The company's management is located entirely at the home office in Kansas. It consists of a President/CEO, Vice President/Secretary/COO, Treasurer/Controller, Director of Affinity Programs and Regulatory Relations, and various operational directors, managers and staff that have duties shared between Benchmark and SIA.

#### Territory and Operation

The company currently is licensed in 41 states and writes a variety of health benefits, workers compensation coverage, property and liability for a number of associations and co-operative health care funds. In 2002 Benchmark wrote \$100,602 887 in direct written premium through these lines.



## Kansas Lines of Insurance and Premiums Written

Line	Direct W/P	Direct E/P	Direct Losses Pd (Deducting Salvage)	Direct Losses Incurred	Direct Losses Unpaid
Allied Lines	928,090	831,673	668,840	718,840	58,360
Group A&H	1,582,036	1,582,036	1,239,801	1,222,070	187,138
Workers' Comp	833,066	828,674	491,836	1,039,402	1,162,844
Other Liability	580,392	542,574	49,923	349,923	618,006
Other PPA Liab	5,966,835	5,773,209	2,012,881	2,587,814	1,138,123
PPA Phy Damage	2,860,655	2,794,484	1,892,271	1,953,776	267,745
Surety	796	5,895	0	0	0
Burglary & Theft	63,770	59,339	61,676	61,676	2,700
Totals	12,815,640	12,417,884	6,417,228	7,933,501	3,434,916

The company out sourced its group accident and health administration in 1999 to Corporate CBSA. Benchmark entered into an agreement in 2001 with a managing general agent, MJ, to produce and manage its non-standard auto business in Arizona, Kansas and Nevada.

### Prior Market Conduct Examination Report(s)

The Kansas Insurance Department's Financial Surveillance Division filed a report in spring of 2002 reviewing the current financial condition of the Company. There were no recommendations in that report that required a follow up by the market conduct unit. The Financial Surveillance Division is currently conducting its bi-annual review of this Kansas domestic company.

### Reinsurance

The Financial Surveillance Division is reviewing the Reinsurance program as part of its report.

### Fines and/or Penalties

The NAIC I-Site database was reviewed to see what regulatory actions had been taken against Benchmark in the past 5 years. There was nothing noted in the NAIC Regulatory Actions that warranted follow-up by this exam team.

## **Tests for Company Operations/Management**

### **Standard 1**

The company has an up-to-date, valid internal or external audit program.

The company does not produce written audit reports for the business that is serviced by MJ or CBSA. The Director of Infinity Programs and the Treasurer periodically visit

both sites to monitor their operations as they relate to Benchmark business. The company reviews the comments of the reinsurers as they conduct their audits of these programs.

### **Standard 2**

The company has appropriate controls, safeguards and procedures for protecting the integrity of computer information.

Benchmark uses a variety of TPA's and general agents to handle their different programs through out the 41 states. They rely on these entities to manage the data for these programs. Consequently they do not retain the individual data files on the insureds covered by the numerous plans.

MJ provided a copy of their IT security plan to the audit team.

### **Standard 3**

The company has a valid disaster recovery plan.

#### **- The Disaster Recovery Plan**

The company currently enjoys access to the facilities of its "ultimate parent", Associated Wholesale, Grocers Inc. to store the company's operational software and backup tapes and to provide physical space for a temporary company headquarters. Additional resources and support services personnel would be available to assist in recovery of electronic data. Notification and instructions will be sent to the Kansas Insurance Commissioner, TPA's, MGA's and outside property and casualty producers as well as policyholders and third party claimants.

The company does not have a written agreement for use of these facilities but relies upon the goodwill of the parent to provide them. However, the company is in the process of being sold to a business based in Minnesota that might create a need to formalize the agreement with the current parent or establish an agreement with a new provider.

The company uses a file server with several personal computers rather than a mainframe system that should assist in an easier recovery, transfer and set-up needed after an emergency. Backup tapes are sent home with the IT manager each night and historical tapes are stored in safe deposit boxes at a local bank. Essential paper files are stored in fireproof file cabinets while at the company and later stored off-site with Iron Mountain on an as-needed schedule.

#### **- The Emergency Plan and Fire Prevention Plan**

An Emergency Plan was developed by Benchmark to emphasize procedures needed during a fire, windstorm or earthquake. The Plan generally provides for the safety and security of personnel. Evacuation procedures, employee safety, medical assistance, 911

procedures and duties of the Person in Charge and the Response Team are outlined in detail.

MJ is in the process of finalizing their disaster recovery program.

**Standard 4**

The company adequately monitors the activities of the MGA.

Med James, Inc., a managing general agency, performs the underwriting, processing and claims services for the Benchmark Non-Standard Automobile program.

Benchmark monitors their performance through regular contact and on-site visits with the key staff and ownership of MJ. Formal reports are not generated from these on-site visits.

**Standard 5**

Company contracts with MGA's comply with applicable statutes, rules and regulations.

The audit team reviewed the agreements between the Company and MJ and CBSA.

**Standard 6**

Records are adequate, accessible, consistent and orderly and comply with state record retention requirements.

The company provided the exam team with the necessary records and documents in a timely fashion.

**Standard 7**

The company is licensed for the lines of business that are being written.

The Certificate of Authority was reviewed and found to be in order and the company was complying with it.

**Standard 8**

The company cooperates on a timely basis with examiners performing the examinations.

The company was very cooperative and provided the exam team with the items requested within the time frames established for this exam.

**Standard 9**

The company has procedures for the 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.

Personal information is collected only it when necessary to conduct the business of insurance. Access to this information is restricted to those employees who need it to provide products and services to the customer.

**Standard 10**

The company had developed and implemented written policies, standards and procedures for the management of insurance information.

A company has a written privacy statement, the Third Party Administrator has a written privacy statement and a separate privacy notice is included with each new or renewal policy.

**Standard 11**

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

The company has its own policy statement and also has prepared a joint policy statement with its Third Party Administrator. Both statements include references to customers and former customers and their interaction with agents, actuaries, insurance regulators, contracted parties, contracted affiliates and law enforcement or other government agencies.

**Standard 12**

The company provides privacy notices to its customers and, if applicable, to its consumers who are not customers regarding treatment of nonpublic personal financial information

A privacy notice is sent with each new and renewal policy. Vendors, and other nonaffiliated third parties to whom the company legally provides personal information while conducting the business of insurance, are advised about the company's privacy policy.

**Standard 13**

If the company discloses information subject to an opt out right, the company has policies and procedures in place so that nonpublic personal financial information will not be disclosed when a consumer who is not a customer has opted out, and the company provides opt out notices to its customers and other affected consumers

There were not any references to opt out policies or practices in the company privacy policy statement.

**Standard 14**

The company's collection, use and disclosure of nonpublic personal financial information are in compliance with applicable statutes, rules and regulations

The company's policies include the personal financial criteria outlined in K.A.R. 40-1-46.

**Standard 15**

In states promulgating the health information provisions of the NAIC model regulation, or providing equivalent protection through other substantially similar laws under the jurisdiction

of the Department of Insurance, 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.

Customers can review their personal information by writing to the company and providing their full name, address and policy numbers. Each request must be notarized to ensure the identity of the person requesting the information. The company will honor this request within 30 business days and the customer can see the information in person or receive a copy via mail. Customers will not receive information collected for a claim, or a civil or criminal proceeding involving the customer. The company will send medical information to a designated medical professional.

### **Standard 16**

Each licensee shall implement a comprehensive written information security program for the protection of nonpublic customer information.

The company uses a variety of tools to maintain physical, electronic and procedural safeguards (password protected computer access, computer “firewalls”, locking file drawers, division of work process, etc.) that comply with applicable regulations. Personal information access is restricted to employees who need that information to provide products or services. Information that is stored off site is in secured quarters with bonded vendors. Information that is to be destroyed is shredded or incinerated.

### **Recommendations**

1. Formalize an audit program of the operations of the non-stand auto program and accident and health program. This would include a review of their processing, underwriting and claim operation. There should be a written report summarizing the findings of the review.
2. Benchmark has been sold to another company since the exam team was on site. Written agreements need to be completed with all companies who will provide physical space and electronic storage and recovery services.
3. Follow up with the General Agent to finalize MJ disaster recovery plan.

## **COMPLAINTS**

### **Benchmark’s Complaint Handling Procedures**

Benchmark adheres to the Kansas definition of complaint from K.S.A. 40-2404, (10): A "complaint" is any written communication primarily expressing a grievance related to the acts and practices of the company. The Company does not consider routine questions or disagreements regarding premium, coverage, claims settlement or similar issues in the due course of business as complaints.

When the Director of Regulatory relations receives a complaint, he reviews it, opens a file, contacts the appropriate party and maintains the file in his possession until resolved. When closed, the actual complaint file remains on site at Benchmark for 5 years. Complaint logs are developed from the actual complaint files.

Should the company directly receive a complaint from a customer or regulatory entity, the complaint is immediately forwarded to the Director of Regulatory Relations. The Director will involve the appropriate staff of the company or any affinity program managers or administrators to prepare a response and bring the complaint to resolution. The Director may delegate the responsibility of sending the complaint response to company staff or the company's affinity program managers or administrators when deemed more expedient.

Should the company's affinity program managers or administrators directly receive a complaint from a customer or regulatory entity, the complaint is immediately forwarded to the Director of Regulatory Relations with the information needed for response. The Director will communicate with the appropriate staff of the company or any affinity program managers or administrators to prepare a response and bring the complaint to resolution. In such cases, the affinity program managers or administrators will respond to the complaint on behalf of the company after the response is approved by the Director. The Director may assume the responsibility of sending the complaint response at his discretion.

## **Tests for Complaint Handling**

### **Standard 1**

All complaints are recorded in the required format on the company complaint register. K.S.A. 40-2404, (10).

The Companies did provide a complaint register. Eight Department complaint files were requested. Five were on the complaint log. The Company produced two additional complaints but they were not on the log.

### **Standard 2**

The company has adequate complaint handling procedures in place and communicates such procedures to policyholders. K.A.R. 40-1-34, Sections 5(a), 6.

The exam team reviewed the Company's complaint handling procedures.

### **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.

The Company takes the necessary steps to finalize and respond to KID within the timeframes required by Kansas Regulations and Department time frames.

**Standard 4**

The time frame within which the company responds to complaints is in accordance with applicable statutes, rules and regulations. K.A.R. 40-1-34, Sections 6, 8(a)(c) & K.S.A. 40-2,125.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Complaints	7	0	100%

Out of the eight files requested, only seven were provided to the exam team to verify the time frames involved in handling the complaints.

**Recommendations**

1. Benchmark should put into place procedures to insure all KID complaints are recorded in their complaint registry. K.S.A. 40-2404, (10).

**MARKETING AND SALES - Benchmark's Non-standard Auto Program**

Regarding the non-standard auto program that is written though their general agent, there are no specific advertising and sales materials that are used by MJ to promote their program. The only publication that the general agent uses is a catalog that lists the different programs that they write and introduces the employees of the different departments within the MJ organization.

**Tests for Marketing and Sales Of Benchmark's Non-standard Auto Program****Standard 1**

All advertising and sales materials are in compliance with applicable statutes, rules and regulations.

Not Applicable

**Standard 2**

Company internal producer training materials are in compliance with applicable statutes, rules and regulations.

The only training materials that MJ uses for the non-standard auto program is their underwriting and rating manual which was filed with KID.

**Standard 3**

Company communications to producers are in compliance with applicable statutes, rules and regulations.

Not Applicable

## **AGENT LICENSING – Benchmark’s non-standard Auto Program**

All of the Kansas non-standard auto business produced for Benchmark is under the managing general agency appointment of MJ. That appointment form was completed 9/21/99 and submitted to the KID on 9/23/99 when the program initially began. The Company updates the MGA information annually through their annual statement filings.

Regarding the non-standard auto program, MJ holds the appointment from Benchmark. The individual agencies that place this non-standard auto business through the managing general agent hold a valid producer agreement with MJ but are not required to be appointed by Benchmark. 50 policies were reviewed to see that the originating agencies had a valid producer agreement with MJ. The signing agent was also reviewed to verify that he/she held a valid Kansas agents license.

## **POLICYHOLDER SERVICE – Benchmark’s Non-standard Auto Program**

### **Tests for Policyholder Service**

#### **Standard 1**

Premium notices and billing notices are sent out with an adequate amount of advance notice.

Passed – 50 new business policies that were written prior to the 11/2002 rate change and 50 new business auto policies that were written with the current rate filings (11/2002 eff. date) were reviewed. There was no indication of any delays in issuing billing notices.

#### **Standard 2**

Policy issuance and insured-requested cancellations are timely.

Passed - 100 new business applications and 44 cancellations that were cancelled for non-payment or insured’s request were reviewed. All were processed in a timely fashion.

#### **Standard 3**

All correspondence directed to the company is answered in a timely and responsive manner by the appropriate department.

Passed – The team did not specifically test this standard. Any correspondence in a file being reviewed by exam team was examined for timely handling.



## **UNDERWRITING**

### Non-Standard Auto

MJ solicits business from independent agents licensed to transact insurance in the State of Kansas. These agents are contracted with MJ and are granted limited binding authority in the non-standard automobile program.

Upon acceptance of an application by the independent agent, the application is submitted to MJ to underwrite and issue a policy. When MJ receives the application, a motor vehicle driving record is ordered on each disclosed driver. The information, contained on the application and developed from the motor vehicle record, is input into an automated system. The policy is then issued as underwritten, and the contract is mailed directly to the insured. In the event the underwriter determines the risk to be unacceptable, the policy is cancelled in writing with the required 30 days notice.

While policies are available for one, three, and six month periods, most are typically one month in duration. A renewal is mailed offering to renew the policy beyond the current expiration date. Payment must be postmarked to MJ on or before the day before expiration in order for the policy to continue with no lapse in coverage. In the event the payment is postmarked after the due date, the policy automatically expires on the expiration date and is reinstated the day following the postmark date on the envelope containing the payment.

### **Tests for Underwriting and Rating**

#### **Standard 1: Rating Practices**

The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the company rating plan.

The 4th paragraph on the 2<sup>nd</sup> page of Benchmark Non-standard Automobile – Kansas Manual, filed eff. 12/1/02 under New Business reads: "A policy is issued promptly based on the premium submitted and the surcharges determined from the application and the motor vehicle record. If additional accidents and/or violations results from the MVR or other variables cause the premium to differ from the quoted premium, the policy term will be adjusted to the exact number of days covered by the premium submitted."

In reviewing the calculation of the policy, the term premium is determined based on the money submitted by the insured compared to the 30-day premium for the risk. The policy premium is determined as a percentage of the 30-day rate. It appears that the calculation for each line of coverage that has a term other than 30 days is not in compliance with Benchmark's filing because it is not calculated on a per day basis but rather on a ratio to the 30-day term. This is violation of K.S.A. 40-955.

#### **Standard 2: Rating Practices**

Disclosures to insureds concerning rates and coverage are accurate and timely.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Auto eff. Prior 12/02	50	0	100%
Auto eff. After 12/02	50	0	100%

Passed

**Standard 3: Rating Practices**

Company does not permit illegal rebating, commission cutting or inducements.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Auto eff. Prior12/02	50	0	100%
Auto eff. After12/02	50	0	100%

Passed

**Standard 4: Rating Practices**

Credits and deviations are consistently applied on a non-discriminatory basis.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Auto eff. Prior 12/02	50	0	100%
Auto eff. After 12/02	50	0	100%

Passed

**Standard 5: Underwriting Practices**

The company underwriting practices are not unfairly discriminatory. The company adheres to applicable statutes, rules and regulations and company guidelines in the selection of risks.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Auto eff. Prior 12/02	50	0	100%
Auto eff. After 12/02	50	0	100%

Passed

**Standard 6: Underwriting Practices**

All forms and endorsements forming a part of the contract are listed on the declaration page and should be filed with the department of insurance (if applicable).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Auto eff. Prior 12/02	50	0	100%
Auto eff. After 12/02	50	0	100%

Passed

**Standard 7: Underwriting Practices**

The producers are properly licensed and appointed (if required) in the jurisdiction where the application was taken.

Passed

**Standard 8: Underwriting Practices**

Underwriting, rating and classification are based on adequate information developed at or near inception of the coverage rather than near expiration, or following a claim.

This standard was not specifically tested for. In the regular file review for the other standards any activity of this nature would have been observed. There were no deficiencies noted.

**Standard 9: Underwriting Practices**

File documentation adequately supports decisions made.

This standard was not specifically tested for. In the regular file review for the other standards file documentation would have been observed. There were no deficiencies noted.

**Standard 10: Underwriting Practices**

Policies and endorsements are issued or renewed accurately, timely and completely.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Auto eff. Prior 12/02	50	0	100%
Auto eff. After 12/02	50	2	96%

Passed

-2 policies were rated correctly based on the filed rates, the deck page showed the current rating information incorrectly. This is a violation of K.S.A. 40-955, (a)(f).

**Standard 11: Underwriting Practices**

Company verifies that VIN number submitted with application is valid and that the correct symbol is utilized.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Auto eff. Prior 12/02	50	1	98%
Auto eff. After 12/02	50	0	100%

Passed

There was one auto that had the wrong symbol assigned per the VIN description. This is a violation of K.S.A. 40-955, (a)(f).

**Standard 12: Underwriting Practices**

The company does not engage in collusive or anti-competitive underwriting practices.

This standard was not specifically tested for. In the regular file review for the other standards any activity of this nature would have been observed. There was not and collusive or anti-competitive underwriting practices noted

**Standard 13: Rejections/Declinations**

Rejections and declinations are not unfairly discriminatory.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Canc. for Underwriting	45	0	100%
Canc. for No-pay	44	0	100%

Passed

**Standard 14: Termination Practices**

Cancellation/non-renewal and Declination notices comply with policy provisions and state laws and company guidelines.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Canc. for Underwriting	45	0	100%
Canc. for No-pay	44	4	91%

Passed

Canc. for No-pay

- 3 Policies - An agent requested the policy be flat cancelled and the premium refunded back to the agency. The reason was the insured’s check was returned to the agency “Insufficient Funds”. A cancellation notice was issued terminating coverage for an NSF Check. A return premium check was issued to the producer in the amount of the term premium. The documentation provided by the agency was a photocopy of check returned by the insured’s bank to the producer.

MJ records show that they received a valid payment for each of these policies, and there is no documentation that the insured’s payment to MJ was returned by the bank to MJ as NSF. The termination of this policy back to the inception date is violation of the policy contract.

Because the MJ records show that the premium was paid in full, there is a valid contract between the insured and MJ, and the cancellation is in violation of K.S.A. 40-2,112 & K.A.R. 40-3-15.

- 1 policy - The current term policy was issued after receipt of the renewal payment. A mid-term endorsement and installment payment was received. The check was returned for insufficient funds. A cancellation notice was effective back to the inception date of the policy term. Here was no indication that the initial term premium was ever refunded to the insured.

Because the MJ records show that there was some valid consideration between the insured and MJ and MJ has not returned the initial payment, there was a valid contract; and the cancellation is in violation of K.S.A. 40-2,112 & KAR 40-3-15.

**Standard 15: Termination Practices**

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

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>Pass</u>
Canc. for Underwriting	45	2	96%
Canc for No-pay	44	2	95%

Passed. While the company passed this standard, the exam team felt a comment was warranted because of the similarity of the errors and the Company needs to note these issues.

Canc. for Underwriting

- 2 Policies – The Company did not allow enough time for the effective date of termination. The company needs to allow 30 days advance notice plus 3 days mailing time.

K.S.A. 40-276a. Automobile insurance; denial of renewal; conditions and exceptions

Any insurance company that denies renewal of an automobile liability insurance policy in this state shall give at least thirty (30) days written notice to the named insured, ...

K.S.A. 40-3118. Financial security requirement; termination

Except as otherwise provided in K.S.A. 40-276, K.S.A. 40-276a and K.S.A. 40-277, and amendments thereto, and except for termination of insurance resulting from nonpayment of premium or upon the request for cancellation by the insured, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by cancellation or failure to renew by the insurer until at least 30 days after mailing a notice of termination, by certified or registered mail or United States post office certificate of mailing, to the named insured at the latest address filed with the insurer by or on behalf of the insured.

K.A.R. 40-3-15. Fire and casualty insurance contracts; cancellation at option of insurer; notice required

(a) Each policy or contract, that is issued by fire or casualty insurers within the state of Kansas, and that provides for cancellation at the option of the insurer, shall contain a provision within the policy, or at the discretion of the commissioner, within an amending rider, that the insured will be notified in writing at least 30 days in advance of the effective date of the cancellation.

Canc. for Non-pay

- For 2 items, the Company issued a policy, and sent an offer of renewal to the insured. The Company received the renewal payment and issued an offer for the subsequent renewal. The insured paid the second renewal. The bank returned the check from the first renewal as NSF. Company flat canceled the second renewal policy back to the inception of that term and applied that premium toward the previous renewal.

In both of these situations the Company had determined that the NSF check was “non payment” of premium and that there was no coverage in force. KID’s position is that the subsequent payment by the insured indicates the individual’s intent to renew their policy. MJ can not flat cancel the subsequent renewal term for an earlier NSF check when in fact they had received valid consideration for that term from the customer. The Company has to send notice with the proper number of days of advance notice to the insured per K.S.A.40-276(a) and K.S.A. 40-277.

**Standard 16: Termination Practices**

Unearned premiums are correctly calculated and returned to appropriate party in a timely manner and in accordance with applicable statutes, rules and regulations.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Canc. for Underwriting	45	0	100%
Canc. for No-pay	44	1	98%

Passed

- 1 policy - The current term policy was issued after receipt of the renewal payment. A midterm endorsement and installment payment was received. The check was returned for insufficient funds. A cancellation notice was effective back to the inception date of the policy term.

Because the MJ records show that the insured’s account was paid in full for the policy term and MJ has not returned the initial payment, there was a valid contract; and the cancellation is in violation of K.S.A. 40-2,112 & K.A.R. 40-3-15.

**Standard 17: Terminations**

Recessions are not made for non-material misrepresentation.

This standard was not specifically tested for. In the regular file review for the other standards any activity of this nature would have been observed. There were no deficiencies noted.

**Standard 18: Statistical Coding**

All policies are correctly coded.

This standard was not specifically tested for. In the regular file review for the other standards any activity of this nature would have been observed. There were no deficiencies noted.

### **Recommendations**

1. Re-file the auto non-standard rating plan to reflect the calculation for each line of coverage that has a term other than 30 days is calculated on ratio to the 30-day term rater than a per day basis. Per K.S.A. 40-955.
2. Must give notice and reason for cancellation per K.S.A. 40-2,112 and K.A.R. 40-3-15 before canceling active, in-force and paid policies at the request of an agent due to the insured's premium check being returned as NSF.
3. Recommendation: Companies should allow three days for mail time on all notices of cancellation and nonrenewal in the interest of consistency.

### **CLAIM PROCESSING**

The company's claims procedure guidelines are spelled out as follows:

#### Non-Standard Auto

Med James, Inc handles all the claim processing. Benchmark monitors their performance through regular contact and on site visits with the key staff of Med James, Inc.

When a customer calls to report a claim, the claim is set up in the computer system by a clerical support system. At that time the caller is provided with a claim number and the adjuster name and phone extension. The caller and the electronic claim file are then forwarded to the adjuster. Investigations are performed based on the severity and particulars of a claim file. Reserves are established within 30 days.

A simple claim file, with clear liability, and minor property damage, may be handled entirely by phone. A more complex case may entail assignments to an independent appraiser and/or an independent adjuster for statements and scene inspections or to a medical bill/peer review.

Coverage denials are cleared through the claim manager, who will approve, disapprove, or assign additional investigation. Depending on the complexity of the case, the General Counsel or outside counsel may be consulted.

Controls in place include biannual file audits with an emphasis on prompt, proactive handling, and claim database queries.

## Tests for Non-Standard Auto Claims

### Standard 1

The initial contact by the company with the claimant is within the required time frame. K.A.R. 40-1-34, 6 (a)(d).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	4	94%
Paid Auto	50	3	94%

Passed

### Standard 2

Timely investigations are conducted. K.A.R. 40-1-34, 7.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	4	94%
Paid Auto	50	1	98%

Passed

### Standard 3

Claims are resolved in a timely manner. K.A.R. 40-1-34, 8(a)(c).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	4	94%
Paid Auto	50	1	98%

Passed

### Standard 4

The company responds to claim correspondence in a timely manner. K.A.R. 40-1-34, 6(b)(c).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	4	92%

Denied Auto Claims - Passed

Paid Auto Claims – Failed. Company failed to promptly follow up on receipt of additional documentation.

### Standard 5

Claim files are adequately documented. K.A.R.40-1-34, Sections 4, 8(f).



<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	2	97%
Paid Auto	50	2	96%

Passed

### **Standard 6**

Claims are properly handled in accordance with policy provisions and applicable statutes, rules and regulations. K.A.R. 40 –1-34, Sections 5, 8, &9, K.S.A. 40-3110, & K.S.A. 40-2,126.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	1	99%
Paid Auto	50	11	78%

Denied Auto Claims - Passed

Paid Auto Claims - Failed. The issues for non compliance of Standard 6 concern 2 - late payment of P.I.P. benefits, 4 - lack of local market values obtained, 3 - lack of sales tax added on salvage value when owner retains salvage, 1 – use of appearance allowance, and 1 – errors in addition/subtraction in determining value.

### **Standard 7**

Company uses the reservation of rights and excess of loss letters, when appropriate.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	0	100%

Passed

### **Standard 8**

Deductible reimbursement to insureds upon subrogation recovery is made in a timely and accurate manner. K.A.R. 40-1-34, 9(d).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	0	100%

Passed

### **Standard 9**

Company claim forms are appropriate for the type of product.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	0	100%

Passed

**Standard 10**

Claim files are reserved in accordance with the company's established procedures.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	0	100%

Passed

**Standard 11**

Denied and closed-without-payment claims are handled in accordance with policy provisions and state law.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	0	100%

Passed

**Standard 12**

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. K.A.R. 40-1-34, 5(f).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	0	100%

Passed

**Standard 13**

Claim handling practices do not compel claimants to institute litigation, in clear cases of liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy. K.S.A. 40-2404, 9(g).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	0	100%

Passed

**Standard 14**

Loss statistical coding is complete and accurate.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	71	0	100%
Paid Auto	50	0	100%

Passed

**Tests for A&H Claims****Standard 1**

The initial contact by the company with the claimant is within the required time frame. K.A.R. 40-1-34, 6a.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
No Pay Health	49	0	100%
Paid Health	50	2	96%

Passed

**Standard 2**

Investigations are conducted in a timely manner. K.A.R. 40-1-34, 7 & KSA 40-2442, (a)(1)(2) (b).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
No Pay Health	49	0	100%
Paid Health	50	1	98%

Passed.

**Standard 3**

Claimant not notified when more time is needed to investigate. K.A.R. 40-1-34, 8(c).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
No Pay Health	49	0	100%
Paid Health	50	3	94%

Passed

**Standard 4**

The company responds to claim correspondence in a timely manner. K.A.R. 40-1-34, 6(d) & KSA 40-2442, (a)(1)(2) (b).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
No Pay Health	49	0	100%
Paid Health	50	0	100%

Passed

**Standard 5**

Claim files are adequately documented. K.A.R.40-1-34 4, 8(f) & K.S.A. 40-2442, (a)(1)(2) (b).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
No Pay Health	49	0	100%
Paid Health	50	0	100%

Passed

**Standard 6**

Claims are properly handled in accordance with policy provisions HIPPA and state law. K.A.R. 40-1-34, 4, 5(a-f), 6(a-d), 7, 8(a-i), K.S.A. 40-2,126 & K.S.A. 40-2442, (a)(1)(2) (b).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
No Pay Health	49	0	100%
Paid Health	50	0	100%

Passed

**Standard 7**

Company claim forms are appropriate for the type of product.

Passed

**Standard 8**

Claim files are reserved in accordance with the company's established procedures.

The exam team did not specifically test for this standard.

**Standard 9**

Denied and closed-without-payment claims are handled in accordance with policy provisions, HIPPA and state law. K.A.R. 40-1-34, 8(a).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
No Pay Health	49	0	100%

Passed

**Standard 10**

Cancelled benefit checks and drafts reflect appropriate claim handling practices.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Paid Health	25	0	100%

Passed

**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. K.S.A. 40-2404, 9(f)(g).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
No Pay Health	49	0	100%
Paid Health	50	0	100%

Passed

**Standard 12**

The company complies with the requirements of The Newborns' and Mothers' Health Protection Act of 1996. K.S.A. 40-2,102.

The exam team did not specifically test for this standard. In the normal review of the 49 paid and 50 no pay claims, any maternity claims would have been reviewed and violations noted.

**Standard 13**

The group health plan complies with the requirements of the Mental Health Parity Act of 1996 (MHPA). K.S.A. 40-2,105(a)

The exam team did not specifically test for this standard. In the normal review of the 49 paid and 50 no pay claims, any mental health claims would have been reviewed and violations noted.

**Recommendations**

1. Claim investigations should be completed within 30 days per K.A.R. 40-1-34, 7. When the company needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. And every forty-five days thereafter, the company should send to such claimant a letter setting forth the reasons additional time is needed for investigation. Per K.A.R. 40-1-34, 8(c).

2. The Company needs to make sure they pay auto claims per policy contract and state statutes for total losses including applicable taxes. Per K.A.R. 40-1-34, Sections 9(a)(2) and 9(h).

## **GENERAL COMMENTS**

### **LIST OF RECOMMENDATIONS**

#### **A. Company Operations/Management**

1. Formalize an audit program of the operations of the non-stand auto program and Accident and Health program. This would include a review of their processing, underwriting and claim operation. There should be a written report summarizing the finding of the review.
2. Benchmark has been sold to another company since the exam team was on site, Formalize agreements with all companies who will provide physical space and electronic storage and recovery services.
3. Follow up with the General Agent on the finalizing of MJ disaster recovery plan.

#### **B. Complaint Handling**

1. Benchmark should put in to place procedures to insure all KID complaints are recorded in their complaint registry. Per K.S.A. 40-2404, (10).

#### **C. Underwriting and Rating**

3. 1. Re-file the auto non-standard rating plan to reflect the calculation for each line of coverage that has a term other than 30 days is calculated on ratio to the 30-day term rater than a per day basis. Per K.S.A. 40-955.
2. Must give notice and reason for cancellation per K.S.A. 40-2,112 and K.A.R. 40-3-15 before canceling active, in-force and paid policies at the request of an agent due to the insured's premium check being returned as NSF.
3. Recommendation: Companies should allow three days for mail time on all notices of cancellation and nonrenewal in the interest of consistency.

D. Claim Processing

Claim investigations should be completed within 30 days per K.A.R. 40-1-34, 7. When the company needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. And every forty-five days thereafter, the company should send to such claimant a letter setting forth the reasons additional time is needed for investigation. Per K.A.R. 40-1-34, 8(c).

2. The Company needs to make sure they pay auto claims per policy contract and state statutes for total losses including applicable taxes. Per K.A.R 40-1-34, Sections 9(a)(2) and 9(h).

**CONCLUSION**

I would like to acknowledge the cooperation and courtesy extended to the examination team by the Director of Affinity Programs for Benchmark and the staff of MJ. The following examiners of the Office of the Commissioner of Insurance in the State of Kansas participated in the review:

**Market Conduct Division**

Lyle Behrens  
Supervisor

Michael Grover  
Market Conduct Examiner

Mary Lou Maritt  
Market Conduct Examiner

**Fire And Casualty Division**

Larry Fenske  
Auto Forms Examiner

Respectfully submitted,

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Lyle Behrens, CPCU, CIE, ARM, Are