

FINANCIAL SERVICES COMMISSION

**OFFICE OF INSURANCE REGULATION
MARKET INVESTIGATIONS**

TARGET MARKET CONDUCT FINAL EXAMINATION REPORT

OF

QBE INSURANCE CORPORATION

AS OF

July 20, 2007

NAIC COMPANY CODE: 39217



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PURPOSE AND SCOPE OF EXAMINATION

Under authorization of the Financial Services Commission, Office of Insurance Regulation, Market Investigations (Office), pursuant to Section 624.3161, Florida Statutes, a target market conduct examination of QBE Insurance Corporation (Company) was performed by Examination Resources, LLC from August 21, 2006 until October 12, 2006 and Greenfield Consultants, LLC from May 21, 2007 until July 20, 2007. The scope of this examination was July 1, 2004 to July 20, 2007.

The purpose of this examination was to review the Company's underwriting practices related to new and renewal business of Commercial Multi-Peril and Fire and Allied Lines, Cancellations/Non-Renewals, Complaints and Claims in an effort to determine compliance with the Florida Insurance Code. The Company records were examined at the offices of the Company's appointed Managing General Agent (MGA), Florida Intracoastal Underwriters (FIU), 1600 Sawgrass Corporate Parkway, Sunrise, Florida 33323.

This Final Report is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Company. The files examined were selected systematically from data files provided by the Company using Microsoft Excel's "random sample" selection process in addition to specifically requested files. Procedures and conduct of the examination were in accordance with the Market Regulation Handbook produced by the National Association of Insurance Commissioners.

Error tolerance levels applied are as follows: monetary returns under \$5.00 were waived; zero tolerance levels were applied to all improprieties by the Company which were in violation of Florida Statutes and Rules.

COMPANY OPERATIONS

QBE Insurance Corporation is a foreign property and casualty insurer licensed to conduct business in the State of Florida. The Company and FIU entered into an agency agreement effective December 20, 2002, that continues in force until terminated. The Company appointed FIU as an agent for the production, underwriting, servicing and administration of business. FIU is authorized to market and underwrite commercial policies on behalf of the Company in the state of Florida. This examination focused primarily on commercial property policies written by the Company, covering condominium associations and apartment buildings in the state of Florida.

Total written premiums during the scope of the examination are broken down as follows:

Year	Total Written Premium (Florida)
2004	\$ 87,510,852
2005	\$151,806,021
2006	\$ 173,693,641
2007*	\$ 55,629,333

*January 1, 2007 through May 31, 2007

COMMERCIAL RESIDENTIAL PROPERTY POLICY REVIEW

QBE Insurance Corporation is a member/subscriber of Insurance Services Office (ISO). The Company files adopted ISO rules and rates and some independent rules and rates in accordance with Section 627.062, Florida Statutes. Additionally, ISO and some independent forms are filed in accordance with Section 627.410, Florida Statutes.

Findings

The Company had 1,849 policies in force as of March 31, 2006, which represents the last quarterly filing prior to the onset of the examination and the population from which the sample was drawn. Fifty (50) policies were reviewed, of which 8 were new business policies and 42 were renewal policies.

Forty-five (45) errors were found.

Errors affecting premium resulted in 6 undercharges totaling \$20,678.

The errors are broken down as follows:

1. Eleven (11) errors were due to the Company using modified premiums (manual premium plus 25% debit) in lieu of manual premiums on consent to excess rate forms, as required by Section 627.171(1), Florida Statutes.

Corrective Action: The Company should implement procedures to ensure that unmodified manual premiums are shown on consent to excess rate forms. Also, the Company should include both filed and consented rates on consent to excess rate forms.

Company Response: The use of modified premiums in lieu of manual premiums on the consent to excess rate forms had no effect on the premium that was charged to the consumer. The Company has indicated it will establish and implement the necessary procedures prospectively.

2. One (1) error was due to the Company's failure to obtain the insured's written consent to excess rate a policy, as required by Section 627.171(1), Florida Statutes. There was no consent to excess rate form in the file, but the policy was included in the Fourth Quarter 2005 Report of Individually Rated Risks the Company submitted to the Office.

Corrective Action: The Company should implement procedures to ensure that consent to excess rate forms are signed by the insured.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

3. Two (2) errors were due to the Company's failure to obtain the insured's written consent on a consent to excess rate form before the policy inception date, as required by Section 627.171(1), Florida Statutes.

Corrective Action: The Company should implement procedures to ensure that consent to excess rate forms are signed before the policy inception date.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

4. One (1) error was due to the Company's failure to comply with the consent to rate requirements in Section 627.171(2), Florida Statutes. The Company used excess rates for more than 10% of its monoline commercial property policies in 2005. In the sample of 50 policies, 13 were monoline commercial property policies (line of business 010) and 37 were commercial package policies (line of business 050). The Company used excess rates in 8 of 13 (62%) monoline commercial property policies, and 3 of 37 (8%) commercial package policies. While the sample review indicates the use of excess rates for the commercial package policy line was within acceptable limits, the use of excess rates in 62% of monoline commercial property policies was in excess of acceptable limits.

Corrective Action: The Company should implement procedures to ensure that it does not use excess rates for more than 10% of its commercial policies in any calendar year for any line of commercial insurance.

5. Nine (9) errors were due to the Company's failure to maintain documentation to justify rate modification changes, as required by Rule 69O-170.004 (5)(a), Florida Administrative Code.

Corrective Action: The Company should implement procedures to ensure that records are maintained to support all rate modification changes.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

6. One (1) error was due to the Company's failure to maintain documentation to support a rate modification of a 25% debit, as required by Rule 69O-170.004 (5)(a), Florida Administrative Code.

Corrective Action: The Company should implement procedures to ensure that all premium modifications are supported by appropriate documentation.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

7. Five (5) errors were due to the Company's failure to report all individually rated risks. The Company failed to include all excess rated policies in quarterly reports of individually rated risks submitted to the Office for 2005 and 2006, as required by Rule 69O-137.008 (2), Florida Administrative Code.

Corrective Action: The Company should implement procedures to ensure that all individually rated policies are included in quarterly reports to the Office.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

8. One (1) error was due to the Company's failure to determine and maintain for each policy year and line of business: 1) A loss ratio for all policies that received a premium debit under a subjective modification plan; 2) A loss ratio for all policies that received a premium credit under a subjective modification plan; and, 3) A loss ratio for all policies that did not receive a debit or credit under a subjective modification plan. Accordingly, the Company was unable to demonstrate that its subjective rating plan bears a reasonable relationship among the loss ratios for these groups and is not unfairly discriminatory, as required by Rule 69O-170.004 (6), Florida Administrative Code.

Corrective Action: The Company should implement procedures to ensure that loss ratios for each policy year and line of business are determined and maintained relative to its subjective rating plan, and that there is a reasonable relationship among the loss ratios for these groups to demonstrate the rates are not unfairly discriminatory.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

9. Four (4) errors were due to the Company's use of an unfiled rating plan, rating schedule or rating rule, in violation of Section 627.062 (2)(a), Florida Statutes. The Company used an unfiled property loss cost multiplier. The errors resulted in undercharges totaling \$7,989.

Corrective Action: The Company should implement procedures to ensure that rating factors have been filed and approved and should not attempt to collect the undercharges.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

10. Two (2) errors were due to the Company's failure to follow its filed rating plan, rating schedule or rating rule, as required by Section 627.062 (2)(a), Florida Statutes. The Company used an obsolete package modification factor. The errors resulted in undercharges totaling \$12,689.

Corrective Action: The Company should implement procedures to ensure that currently applicable package modification factors are used and should not attempt to collect the undercharges.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

11. One (1) error was due to the Company's failure to document an individually rated risk. The Company failed to properly document an individually rated risk, as required by Section 627.062 (3)(a), Florida Statutes.

Corrective Action: The Company should implement procedures to ensure that documentation is maintained supporting the reason for a risk being individually risk rated.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

12. Six (6) errors were due to the Company's failure to provide timely notice of renewal premium. The Company failed to provide the insured with 45 days advance written notice of the renewal premium, as required by Section 627.4133 (2)(a), Florida Statutes.

Corrective Action: The Company should implement procedures to ensure that all renewal premium notices are provided timely.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

13. One (1) error was due to the Company's failure to attach a mandatory form or endorsement to a policy, as required by Section 627.412 (1), Florida Statutes. The Company failed to attach mandatory terrorism form IL0952 (11/02), Cap on Losses from Certified Acts of Terrorism.

Corrective Action: The Company should furnish the form to the insured and implement procedures to ensure that all applicable mandatory forms are included with policies.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

COMPLAINTS REVIEW

It is unknown how many complaints the Company received during the scope of the examination as the Company did not maintain a complete and accurate record of complaints, as required by Section 626.9541 (1)(j), Florida Statutes.

Findings

Twenty-nine (29) complaints were reviewed; 25 were claims related and 4 were underwriting related.

Five (5) errors were found.

The errors are broken down as follows:

1. Two (2) errors were due to the Company's failure to provide a timely response to the Department of Financial Services (DFS). Section 20.121(2)(h)2., Florida Statutes, states that an insurer shall within 20 days furnish DFS with a written response to DFS inquiries concerning a consumer complaint. The Company failed to respond within the required timeframe.

Corrective Action: The Company should implement procedures to assure timely responses to requests for information from DFS regarding consumer complaints.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

2. One (1) error was due to the Company's failure to comply with Rule 69O-166.024, Florida Administrative Code, as it did not respond timely to a written communication from an insured with respect to a claim.

Corrective Action: The Company should implement standards to ensure prompt and responsive communications with respect to claims.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

3. One (1) error was due to the Company's failure to adjust a claim in compliance with the contract, as required by Section 626.877, Florida Statutes. The insured sent a written request for a proof of loss form to which the Company did not respond. The insured's policy stated the Company would provide the claim forms.

Corrective Action: The Company should implement procedures to assure that adjusters adhere to the contract language.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

4. One (1) error was due to the Company's failure to comply with Section 626.9541(1)(j), Florida Statutes, Failure to Maintain Complaint Handling Procedures or Records. The Company's complaint log was incomplete as it did not include Department of Financial Services or E-Storm complaints.

Corrective Action: The Company should implement procedures to assure that complete records of all complaints are maintained.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

CANCELLATION / NONRENEWAL REVIEW

Two (2) separate sample sets were selected and were reviewed independently by two different examiners.

Sample Set #1

In the first sample set selected, 50 cancellations/nonrenewals were selected at random and 1 referral was received from the Office. Ten (10) represented cancellations and 41 were nonrenewals.

Findings

Eighteen (18) errors were found.

The errors are broken down as follows:

1. One (1) error was due to the Company's failure to provide timely notice of nonrenewal, as required by Section 627.4133(2)(b), Florida Statutes. The Company issued the policy nonrenewal notice 88 days prior to the nonrenewal effective date.

Corrective Action: The Company should implement procedures to ensure that notices of nonrenewal are provided to the insured timely.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

2. Nine (9) errors were due to the Company's improper nonrenewal of policies covering commercial residential properties that were damaged as a result of a hurricane. The policy nonrenewals appeared to be prior to the properties being repaired, without noting any apparent statutory exception to the prohibition against nonrenewal, thereby failing to comply with Section 627.4133(2)(d)1., Florida Statutes.

Corrective Action: The Company should implement procedures to ensure that policies covering residential properties damaged as a result of a hurricane subject to a declaration of emergency are only nonrenewed in compliance with Florida Statutes.

3. Seven (7) errors were due to the Company's failure to offer comparable renewals on policies covering commercial residential properties that had unrepaired damages as a result of a hurricane, without noting any eligible statutory exceptions. The Company first issued nonrenewal notices, then offered renewals either excluding wind coverage, expanding wind exclusions or substantially increasing hurricane deductibles for the policies, thereby failing to comply with Section 627.4133(2)(d)1., Florida Statutes.

Corrective Action: The Company should implement procedures to ensure that coverage on policies covering residential properties damaged as a result of a hurricane subject to a declaration of emergency are either continued with comparable coverage or nonrenewed in compliance with Florida Statutes.

4. One (1) error was due to the Company's failure to provide timely notice of renewal premium. The Company first issued a nonrenewal notice, then offered renewal but failed to provide 45 days advance written notice of the renewal premium, as required by Section 627.4133(2)(a), Florida Statutes.

Corrective Action: The Company should implement procedures to ensure that all renewal premium notices are provided timely.

Sample Set #2

In the second sample selection, 97 cancellations/nonrenewals were reviewed. Fifty (50) cancellations/nonrenewals were selected at random and 47 were referrals from the Office.

Findings

Seventy-eight (78) errors were found.

The errors are broken down as follows:

1. Fourteen (14) errors were due to the Company's improper nonrenewal of commercial residential properties that were damaged as a result of a hurricane or failure to offer renewal on comparable terms. The Company nonrenewed commercial residential properties damaged as a result of hurricane or wind losses before the properties had been repaired. The reason that accompanied the nonrenewal notice was, "Wind Capacity Restrictions", which was not a valid reason for nonrenewal of these unrepaired properties per Section 627.4133(2)(d)2., Florida Statutes.

Corrective Action: The Company should implement procedures to ensure that policies covering residential properties damaged as a result of a hurricane subject to a declaration of emergency are either continued with comparable coverage or nonrenewed in compliance with Florida Statutes.

2. One (1) error was due to the Company's failure to provide notice of nonrenewal at least 90 days prior to the effective date of the nonrenewal per Section 627.4133(2)(b), Florida Statutes. The Company provided notice of nonrenewal only 88 days prior to the effective date of nonrenewal.

Corrective Action: The Company should implement procedures to ensure that notices of nonrenewal are provided to the insured timely.

3. Sixty-three (63) errors were due to the Company's failure to provide the named insured at least 45 days advance written notice of renewal premium, per Section 627.4133(2)(a), Florida Statutes. Ambiguous language included in the Company's

nonrenewal notices implied that renewal offers were forthcoming and subsequent renewal premium notifications failed to provide insureds with at least 45 days advance notice of renewal premium. Renewal offer language should not be incorporated in a nonrenewal notice without providing at least 45 days advance notice of the renewal premium.

Corrective Action: The Company should implement procedures to ensure that all renewal premium notices are provided timely and that the language appearing on nonrenewal notices is not ambiguous.

CLAIMS REVIEW

Two (2) separate sample sets were selected and were reviewed independently by two different examiners.

Sample Set #1

In the first sample selected, 56 catastrophic commercial residential property hurricane insurance claims were reviewed. Fifty (50) claims with incurred losses in excess of \$100,000 were selected at random and 6 were referrals from DFS. Thirty-two (32) claims involved a dispute or denial and 28 were mediated or eligible for mediation. The disputed claim referrals were large and complex, involved public adjusters who were frequently from out-of-state, and included significant differences of opinion regarding the cause of loss and the damages attributable to it. The 28 claims are now in various stages of adjustment; 6 are closed, 8 are in litigation, 4 are pending receipt of additional documentation, 5 are being negotiated, 2 are subject to additional investigation after mediation, 1 has been referred to the Division of Insurance Fraud, and 2 involve suspicions of fraud.

Findings

Four (4) errors were found.

The errors are broken down as follows:

1. Three (3) errors were due to the Company's failure to respond within 14 calendar days to written communication from an insured with respect to claims, as required by Rule 69O-166.024, Florida Administrative Code.

Corrective Action: The Company should implement procedures to ensure responses to claims communications within 14 calendar days as required.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

2. One (1) error was due to the Company's failure to notify the insured of their right to participate in a mediation program on a disputed claim, as required by Section 627.7015, Florida Statutes and Rule 69J-2.002, Florida Administrative Code.

Corrective Action: The Company should implement standards to ensure that insureds are notified of their right to mediate disputes.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

Twenty-five (25) non-catastrophic claims with incurred losses in excess of \$25,000 were also selected at random for review.

Findings

No errors were found.

Sample Set #2

In the second sample selected, 129 claims were reviewed. Fifty (50) claims were selected at random and 79 were referrals from the Office. Sixty-one (61) claims, or 47%, involved the retention of Public Adjusters (PAs). Civil Remedy Notices were filed in 30% of the 129 claims reviewed and 71% of those claims involved PAs. Litigation ensued in 21% of the claims reviewed, with 79% of those involving PAs. The principal cause of delay in the resolution of open claims appeared to be significant differences of opinion regarding the estimated cost of repairs and determining which repairs were attributable to an event covered by the insurance policy. In more than 50% of claims involving PAs the estimate presented by the PA exceeded the estimate provided by the Independent Adjuster (IA) hired by the Company by more than 300%.

Findings

Twenty-two (22) errors were found.

The errors are broken down as follows:

1. Five (5) errors were due to the Company's failure to acknowledge the insured or the insured's agent's claim communication within 14 calendar days pursuant to Rule 69O-166.024(1), Florida Administrative Code. This Rule applies to errors before June 1, 2005.

Corrective Action: The Company should implement procedures to ensure the acknowledgement of claims communications within 14 calendar days as required.

2. Sixteen (16) errors were due to the Company's failure to acknowledge the insured or the insured's agent's claim communication within 14 calendar days pursuant to Section 627.4261(1), Florida Statutes, for errors occurring from June 1, 2005 to January 25, 2007, and Section 627.70131, Florida Statutes, for errors occurring on or after January 25, 2007.

Corrective Action: The Company should implement procedures to ensure the acknowledgement of claims communications within 14 calendar days as required.

3. One (1) error was due to the Company's failure to adjust a claim with dispatch and due diligence pursuant to Rule 69O-220.201(4)(f), Florida Administrative Code. The adjuster failed to act with dispatch and due diligence in handling the claim.

Corrective Action: The Company should establish procedures to adjust claims with dispatch and due diligence.

Company Response: The Company has indicated it will establish and implement the necessary procedures prospectively.

REPORT SUMMARIZATION

A total of 437 files were reviewed for this Company. One hundred seventy-two (172) errors were found. The following represents general findings, however, specific details are found in each section of the report.

Files Reviewed – 437 Files

- Policy Review – 50 files
- Complaints – 29 files
- Cancellations/Nonrenewals – 148 files
- Claims – 210 files

Findings

- Policy Review – 45 errors – pages 2 through 5 of the report
 - Failure to comply with consent to rate requirements
 - Failure to document/substantiate Individual Risk Premium Modification (IRPM) debit/credit factor changes
 - Failure to document an IRPM debit.
 - Failure to include five policies with excess rates in the quarterly reports of individually rated and excess rate policies
 - Failure to determine and maintain for each policy year for each line of business the following: 1) A loss ratio for all policies that received a premium debit under the subjective modification plan; 2) A loss ratio for all policies that received a premium credit under a subjective modification plan; and, 3) A loss ratio for all policies that did not receive a debit or credit under a subjective modification plan
 - Use of an unfiled property loss cost multiplier
 - Use of an unfiled package modification factor
 - Failure to properly document an individually rated policy
 - Failure to provide the insured 45 days advance written notice of the renewal premium
 - Failure to attach a mandatory terrorism form
- Complaints – 5 errors – pages 5 through 6 of the report
 - Failure to timely provide the Division an appropriate response
 - Failure to properly adjust claim

- Failure to maintain complaint handling procedures
- Cancellations – 96 errors – pages 7 through 9 of the report
 - Failure to provide timely notice of nonrenewal
 - Improper nonrenewal of property damaged as a result of a hurricane
 - Improper nonrenewal, failure to offer a comparable renewal policy
 - Failure to provide timely notice of renewal premium
- Claims – 26 errors – pages 9 through 11 of the report
 - Failure to acknowledge communications and act promptly with respect to claims
 - Failure to notify an insured of the right to mediate a disputed claim
 - Failure to act with dispatch and due diligence adjusting a claim

EXAMINATION FINAL REPORT

The Office hereby issues this report as the Final Report, which is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Company.