

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

MAR 3 1997

DEPT. OF INSURANCE  
BY CB

In the Matter of	)	Docket No. 97A-037
HEARTLAND INSURANCE COMPANY OF AMERICA	)	CONSENT ORDER
Respondent.	)	
_____	)	

Market Conduct Examiners (the "Examiners") for the Arizona Department of Insurance (the "Department") conducted a market conduct examination of Heartland Insurance Company of America ("Heartland"). The Report of Market Conduct Examination (the "Report"), prepared by the Examiners alleges that Heartland violated A.R.S. §§ 20-288, 20-301.01, 20-357, 20-385, 20-400.01, 20-1116, 23-906, and 23-961.

Heartland wishes to resolve this matter without formal adjudicative proceedings and hereby agree to a Consent Order.

The Arizona Director of Insurance (the "Director") enters the following Findings of Fact, and Conclusions of Law, which are neither admitted nor denied by Heartland, and the following Order.

FINDINGS OF FACT

1. Heartland is authorized to transact property and casualty insurance, including workers' compensation ("WC") in Arizona pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct an examination of Heartland. The on-site examination was concluded as of August 9, 1994 and a Report of Examination was written.

1           3. The National Council on Compensation Insurance ("the  
2 NCCI"), a duly-licensed rating organization in Arizona, makes  
3 rate filings on behalf of its members with the Department. WC  
4 insurers are required by statute to belong to a WC rating  
5 organization and to adhere to its rates unless the insurer has  
6 filed deviations from these rates. Heartland is a member of the  
7 NCCI. Any reference to Heartland's filings, or to its "filed  
8 rates and rules" means rates and rules filed with the ADOI by  
9 Heartland or by the NCCI on its behalf.

10           4. The NCCI's Schedule Rating Plan ("Plan") was approved  
11 for use in Arizona July 8, 1982 by the Director. Effective  
12 October 1, 1988, The Plan was amended to require insurers to  
13 include within each WC file a completed schedule rating ("SR")  
14 worksheet and loss prevention survey. Heartland adopted the  
15 Plan on January 13, 1993.

16           5. The Examiners reviewed 71 WC underwriting and rating  
17 files, and found that Heartland developed premiums for WC  
18 policies in a manner not consistent with its filed rates and  
19 rules, by failing to:

20           a. collect a deposit premium of 10% on two of the  
21 policies reviewed (3%).

22           b. apply schedule credits/debits in a multiplicative  
23 manner on two policies (3%), as required by its filings.

24           c. apply schedule rating to four policies (6%) which  
25 were eligible for schedule rating.

26           d. include any documentation in support of the  
27 Schedule/IRPM credits given on five policies (7%).  
28

1 e. send completed schedule rating worksheets to the  
2 NCCI on ten policies (14%).

3 f. maintain loss prevention surveys in 13 WC policy  
4 files (18%) within 90 days of the effective dates of the  
5 policies, as required by Section 7 of the Plan.

6 g. obtain signed rejection forms of individuals  
7 excluded from coverage on seven WC policies (10%).

8 h. apply its filed premium discount to fifteen WC  
9 policy files (21%).

10 i. include a final NCCI experience modification  
11 worksheet in nine WC policy files (13%).

12 j. document in the files of two policies (3%) which  
13 appeared to meet the premium size requirements for experience  
14 rating that no experience modification was promulgated by the  
15 NCCI.

16 k. include the NCCI risk identification number on  
17 the information pages of six WC policies (8%).

18 l. credit deposit premiums in the calculation of  
19 final earned premiums on 13 WC policies (18%).

20 m. charge the expense constant as a part of the  
21 premium on 16 WC policies (23%).

22 6. Heartland failed to execute 13 WC policies (18%) by an  
23 officer, attorney-at-fact, employer or duly authorized  
24 representative.

25 7. Heartland failed to give at least 30 days' notice of  
26 cancellation to employers on 15 of the 71 WC policy  
27 cancellations reviewed (21%).

28 . . . . .



1           8. Heartland failed to give at least 30 days' notice of  
2 cancellation to the Industrial Commission of Arizona ("ICA") on  
3 45 of the 71 WC policy cancellations reviewed (63%).

4           9. Heartland is a member of the Insurance Services Office  
5 ("ISO"), a property and casualty (P&C) rating organization duly  
6 licensed by the ADOI to file rates on behalf of its members.  
7 ISO has filed rates on behalf of Heartland, and Heartland has  
8 also filed certain rates on its own. Both the rates filed by  
9 ISO and rates and rules filed by Heartland are referred to as  
10 Heartland's "filed rates and rules".

11           10. The Examiners reviewed 103 commercial package ("CP")  
12 policies issued by Heartland and their cancellations, and found  
13 that Heartland developed premiums for CP policies, and cancelled  
14 policies, in a manner not consistent with its filed rates and  
15 rules, by:

16           a. failing to execute 103 CP policies (100%) by its  
17 officer, attorney-at-fact, employer or duly authorized  
18 representative.

19           b. charging an unfiled \$100 policy initiation fee on  
20 103 CP policies (100%).

21           c. failing to adequately document adjustments to  
22 manual premium on 19 CP policy files (27%).

23           d. issuing four policies (4%) for which it had not  
24 filed rates with the Department.

25           e. misclassifying the risk of one policy.

26           f. calculating premium refunds on 101 CP policies  
27 (97%) based on a cancellation date other than the actual date of  
28 cancellation, developing earned premiums in excess of the

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amounts which should have been charged for the period of time that the policies were in force.

g. calculating premium refunds on 2 CP policies (3%) where cancellation was requested by the insureds, on the basis of a cancellation date other than the actual date of cancellation, developing earned premiums in excess of the amounts which should have been charged for the period of time that the policies were in force. As a result, these insureds were overcharged by a total of \$177.00.

11. The Examiners reviewed the cancellations of 103 commercial package ("CP") policies, and found that Heartland developed cancelled CP policies in a manner not consistent with Arizona law, by failing to return all of the unearned premium with 48 CP cancellation notices (68%) sent to insureds. Instead, Heartland sent the amount of unearned premium net of agents' commission with the notices of cancellation and notified the insureds that they would have to collect the remainder from the agents.

12. During calendar year 1993, Genetian of Idaho, Inc. ("Genetian") acted as a managing general agent for Heartland by producing gross written premium in excess of five percent of Heartland's policyholder surplus for that year and by engaging in the adjustment and payment of Heartland's claims. As an insurer represented by a managing general agent, Heartland:

a. failed to apply for an Arizona managing general agent's license for Genetian.

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1           2. By developing premiums for WC policies other than in  
2 accordance with its filed rates and rules, Heartland violated  
3 A.R.S. § 20-400.01(A).

4           3. By making adjustments to full manual premiums  
5 developed for WC policies without adequate justification for the  
6 adjustments, Heartland violated A.R.S. § 20-400.01(B). By  
7 developing premiums for WC risks based on adjustments made  
8 without adequate justification, Heartland violated A.R.S. §  
9 20-400.01(A).

10          4. By failing to maintain reasonable records of  
11 information used in developing the premiums charged for WC  
12 risks. Heartland violated A.R.S. § 20-400.01(D).

13          5. By failing to maintain signed notice of rejections of  
14 WC coverage, Heartland violated A.R.S. § 23-906(B).

15          6. By issuing WC policies which were not executed by an  
16 officer, attorney-at-fact, employee or duly authorized  
17 representative, Heartland violated A.R.S. § 20-1116(A).

18          7. By failing to send notices of WC policy cancellation  
19 to the insureds and to the ICA at least 30 days prior to  
20 cancellation, Heartland violated A.R.S. § 23-961(F).

21          8. By issuing CP policies which were not executed by an  
22 officer, attorney-at-fact, employee or duly authorized  
23 representative, Heartland violated A.R.S. § 20-1116(A).

24          9. By failing to file its \$100 CP policy fee and its  
25 rates for CP risks other than taverns and restaurants with the  
26 Department, Heartland violated A.R.S. § 20-385(A). By issuing  
27 policies of insurance subject to these unfiled fees, Heartland  
28 violated A.R.S. § 20-400.01(A).

1           10. By calculating CP policy return premiums other than on  
2 the basis of the actual or requested cancellation dates,  
3 according to its rates and rules filed pursuant to A.R.S. §  
4 20-385(A), Heartland violated A.R.S. § 20-400.01(A).

5           11. By adjusting the full manual premiums of CP policies  
6 without adequate justification of the adjustments, Heartland  
7 violated of A.R.S. § 20-400.01(B). By developing a premiums for  
8 the risks based on an adjustment made without adequate  
9 justification, Heartland violated A.R.S. § 20-400.01(A).

10           12. By failing to return unearned premium with CP policy  
11 notices of cancellation, Heartland violated A.R.S. § 20-1674(B).

12           13. By calculating CP policy return premiums net of  
13 agents' commission, Heartland charged these premiums of these  
14 insureds in excess of those determined pursuant to its filed  
15 rates, in violation of A.R.S. § 20-400.01(A).

16           14. By authorizing Genetian to supervise its CP business  
17 in Arizona, but failing to apply for a managing general agent's  
18 license for Genetian, Heartland violated A.R.S. § 20-288(A).

19           15. By failing to have a written contract with Genetian in  
20 effect at the time that Genetian was acting as its managing  
21 general agent, Heartland violated A.R.S. § 20-301.01(A).

22           16. By failing to file an independent financial  
23 examination of Genetian with the Department, Heartland violated  
24 A.R.S. § 20-301.01(B)(1).

25           17. By failing to provide the Director with written  
26 notification of the appointment of Genetian as its managing  
27 general agent, Heartland violated A.R.S. § 20-301.01(B)(5).

28           . . . . .





1 Heartland to the date of each refund, to the insured of Policy  
2 No. 00284-93-0293, who was overcharged as the result of  
3 Heartland's failure to determine the policy premium on the basis  
4 of the final experience modification promulgated by the NCCI.

5 b. pay the amount of \$23,644.15, plus interest at  
6 the rate of 10% per annum from the date the premium was paid by  
7 the insured to the date the premium discount amount is refunded  
8 to each insured, to the 13 insureds listed in Exhibit 9 of the  
9 Report (attached to this Order as Exhibit A) who were eligible  
10 for WC premium discount but were not given this discount.

11 c. pay the amount of \$7,689.22 plus interest at the  
12 rate of 10% per annum from the date the balance of each premium  
13 was paid to Heartland, to the date the deposit premium amount is  
14 refunded to each insured, to the 13 insureds listed in Exhibit  
15 10 of the Report (attached to this Order as Exhibit B) who were  
16 not credited for deposit premiums.

17 d. pay the amount of \$177.00, plus interest at the  
18 rate of 10% per annum from the date the policy fee was paid by  
19 the insured to the date of the payment, to the two insureds  
20 listed in Exhibit 17 of the Report (attached to this Order as  
21 Exhibit C), who were charged premiums in excess of those due  
22 through the dates of policy cancellation.

23 3. All payments made pursuant to Paragraph 2 of this  
24 Order shall be accompanied by a letter previously approved by  
25 the Director. A list of payments, giving the name and address  
26 of each party paid, the amount of the payment, the amount of  
27 interest paid, and the date of payment, shall be furnished to  
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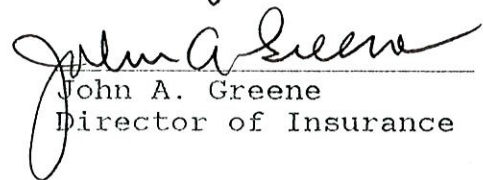
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the Market Conduct Examinations Division of the Department within 30 days of the date the payments are mailed.

4. The Department shall be permitted, through authorized representatives, to verify that Heartland has fully complied with all requirements of this Order.

5. The August 9, 1994 Report of Examination, and any objections to the Report filed by Heartland, shall be filed with the Department after issuance of this Order.

DATED at Phoenix, Arizona this 28 day of February, 1997.

  
John A. Greene  
Director of Insurance





1 COPY of the foregoing mailed/delivered  
2 this 3rd day of March , 1997, to:

3 Charles R. Cohen  
4 Deputy Director  
5 Gregory Y. Harris  
6 Executive Assistant Director  
7 Erin H. Klug  
8 Chief Market Conduct Examiner  
9 Mary Butterfield  
10 Assistant Director  
11 Life & Health Division  
12 Deloris E. Williamson  
13 Assistant Director  
14 Rates & Regulations Division  
15 Gary Torticill  
16 Assistant Director and Chief Financial Examiner  
17 Corporate & Financial Affairs Division  
18 Cathy O'Neil  
19 Assistant Director  
20 Consumer Services Division  
21 John Gagne  
22 Assistant Director  
23 Investigations Division  
24 Terry Cooper  
25 Fraud Unit Chief  
26 Maureen Catalioto  
27 Supervisor  
28 Licensing Section

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*Carey Burt*

HEARTLAND INSURANCE COMPANY OF AMERICA

REFUNDS TO INSURED

Item 2a: Final Experience Modification Not Applied

<u>Name of Insured</u>	<u>Policy Number</u>	<u>Amount</u>
Prescott Moving & Storage	00284-93-0293	\$69.15

Item 2b: Premium Discount Not Applied

<u>Name of Insured</u>	<u>Policy Number</u>	<u>Amount</u>
Woodesign A Corporation	00140-93-0293	\$2,559.16
Wickenburg Tire & Auto	00316-93-0293	139.84
Valley Transportation and Warehouse	00336-93-0293	7,109.30
Skidmore Contracting Corporation	00166-93-0293	3,413.95
Lucky Seven Transfer and Storage	00313-93-0293	763.32
Kachina Automotive II	00328-93-0193	374.81
Kachina Automotive I	00327-93-0193	472.50
Fitness Management	00123-93-0193	2,085.13
J & B Sales Co.	00380-93-0293	297.29
Creative Hands Flooring	00389-93-0493	533.24
G.F. Snyder Transfer and Storage	00081-93-0293	2,654.67
AARO Moving Systems	00350-93-0293	3,058.35
2 Bar O Country Store	00258-93-0293	182.59

Item 2c: Deposit Premiums Not Credited

<u>Name of Insured</u>	<u>Policy Number</u>	<u>Amount</u>
U.S. Aquatec, Inc.	00222-93-0393	\$ 290.31
Thiel Plastering	00326-93-0493	1,229.15
Facial Surgery Center	00135-93-0493	100.00
Payless Auto Sales	06002-93-0793	567.90
Pearson Gordon Jones	00238-93-0293	200.00
NESCO Manufacturing Co.	00324-93-0293	2,550.00
Health Staffing Alternatives	00362-93-0193	98.15
CJM Electric	00255-93-0493	277.96
Fred Bair Design	00359-93-0493	179.92
Best Wishes	00278-93-0293	100.00
American Innovative Mfg. Ind.	00383-93-0393	1,274.93
Beaton's, Inc.	00315-93-0293	783.17
Accty Computer Resource Corp.	00366-93-0293	37.73

Item 2d: Excess Premiums Charged

<u>Name of Insured</u>	<u>Policy Number</u>	<u>Amount</u>
Sandwich Senders	SMP-03-00025-00	\$ 27.00
Millie's Family Restaurant	SMP-36-00019-00	150.00

EXHIBIT A



HEARTLAND INSURANCE COMPANY OF AMERICA  
 WORKERS' COMPENSATION POLICIES  
 FAILURE TO APPLY PREMIUM DISCOUNT

<u>POLICY NUMBER (WC)</u>	<u>AMOUNT DUE INSURED</u>	
	\$	
00140-93-0293	2,559.16	
00316-93-0293	139.84	
00336-93-0293	7,109.30	
00166-93-0293	3,413.95	
<del>00356-93-0193</del>	<del>9,853.00</del>	
00313-93-0293	763.32	
00328-93-0193	<del>557.47</del>	374.81
00327-93-0193	<del>755.29</del>	472.50
00123-93-0193	2,085.13	
00380-93-0293	297.29	
00389-93-0493	533.24	
00081-93-0293	2,654.67	
00350-93-0293	3,058.35	
00258-93-0293	<del>1,051.00</del>	182.59
00383-93-0393	<u>-0-</u>	
 TOTAL DUE INSUREDS	 <del>34,831.01</del> <del>33,497.15</del> 23,644.15	

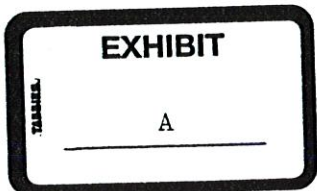


EXHIBIT 9

AMENDED: 1/18/96  
 11/26/96

HEARTLAND INSURANCE COMPANY OF AMERICA  
WORKERS' COMPENSATION POLICIES  
FAILURE TO CREDIT DEPOSIT PREMIUM

<u>POLICY NUMBER (WC)</u>	<u>AMOUNT DUE INSURED</u>
	\$
00222-93-0393	290.31
00326-93-0493	1,229.15
00135-93-0493	100.00
06002-93-0793	567.90
00238-93-0293	200.00
00324-93-0293	2,550.00
00362-93-0193	98.15
00255-93-0493	277.96
00359-93-0493	179.92
00278-93-0293	100.00
00383-93-0393	1,274.93
00315-93-0293	<del>750.09</del> 783.17
00366-93-0293	<u>37.73</u>
TOTAL DUE INSUREDS	<del>7,656.14</del> 7,689.22

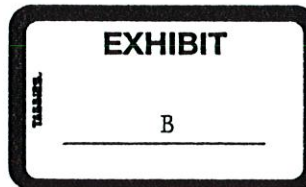


EXHIBIT 10

AMENDED: 1/18/96

HEARTLAND INSURANCE COMPANY OF AMERICA  
VIOLATIONS OF A.R.S. § 20-400.01(A)

<u>POLICY NUMBER</u>	<u>AMOUNT DUE INSURED</u>
	§
SMP-03-00025-00	27.00
SMP-36-00019-00	150.00

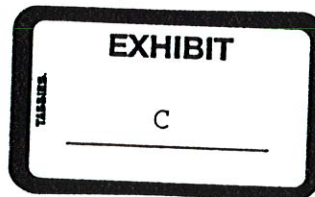


EXHIBIT 17