

**COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR
STATE OF MONTANA**

IN THE MATTER OF THE REPORT OF THE MARKET CONDUCT EXAMINATION OF BIG SKY FARM MUTUAL INSURANCE, COMPANY, Respondent.	CASE NO. INS-2010-09 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ADOPTING THE MARKET CONDUCT EXAMINATION REPORT OF DECEMBER 31, 2008
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Having fully considered the proposed Report of Market Conduct Examination of Big Sky Farm Mutual Insurance Company dated February 5, 2009, the Commissioner of Securities and Insurance, Office of the State Auditor, hereby makes the following findings of fact, conclusions of law and order adopting the market conduct examination report:

FINDINGS OF FACT

1. David Drynan and Kimberlee Hewitt, the Examiners representing the Montana Commissioner of Securities and Insurance, Office of the State Auditor, (CSI) conducted an examination of the affairs, transactions, and records of Big Sky Farm Mutual Insurance Company and prepared a Market Conduct Examination Report (Report) covering the period from January 1, 2005, through December 31, 2008.
2. The verified written Report was completed and served on February 5, 2010, together with a notice giving Big Sky Farm Mutual Insurance Company 30 days to make written submission or rebuttal with respect to any matters contained in the Report.
3. No written submissions or rebuttals were received from Big Sky Farm Mutual Insurance Company within the 30 day period.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-311, which charges the Commissioner with the duty of administering and enforcing the Montana Insurance Code, and pursuant to sections in Title 33, Chapter 1, Part 4, Mont. Code Ann. which govern examination of insurers by the CSI and Mont. Code Ann. § 33-4-315 which governs examination of farm mutual insurers.
2. Pursuant to Mont. Code Ann. § 33-1-409, the CSI has authority to issue a final agency determination with respect to this Report.

ORDER

Having carefully and thoroughly reviewed and considered the examination report, relevant examiner workpapers, and any written submissions and rebuttals in this matter, IT IS ORDERED:

1. The Market Conduct Examination Report of Big Sky Farm Mutual Insurance Company as of December 31, 2008, attached hereto as Exhibit A, is hereby adopted in full.
2. Big Sky Farm Mutual Insurance Company shall correct the deficiencies noted in the Summary of Significant Findings in the adopted Report (Exhibit A) by April 30, 2010.
3. Big Sky Farm Mutual Insurance Company shall also comply with the list of recommendations provided with the verified written Report and correspondence dated February 5, 2010, or shall otherwise address and rectify the issues raised in the list of recommendations. By October 1, 2010, Big Sky Farm Mutual Insurance Company shall file with CSI a letter regarding the actions taken to comply with the list of recommendations or to otherwise rectify the issues raised in the list of recommendations.

4. Within 30 days of the mailing of this Order, each of Big Sky Farm Mutual Insurance Company's directors shall file affidavits with the CSI stating under oath that they have received a copy of the adopted Report and related Order.
5. Pursuant to Mont. Code Ann. § 33-1-409(5), this Order and the adopted Market Conduct Examination Report (Exhibit A) shall remain confidential for 30 days following the issuance of the same.

DATED this 22nd day of March, 2010.

MONICA J. LINDEEN
Commissioner of Securities and Insurance
Office of the Montana State Auditor

By: 

WALTER SCHWEITZER
Deputy State Auditor

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2010, I served a true and accurate copy of the foregoing Findings of Fact, Conclusions of Law and Order Adopting the Market Conduct Examination Report as of December 31, 2008, by certified U.S. mail, postage prepaid, to the following address:

Naomi Wold
Secretary/Treasurer
Big Sky Farm Mutual Insurance Company
PO Box 53
Bozeman, MT 59715


Montana State Auditor's Office



Proposed Market Conduct Examination

of

Big Sky Farm Mutual Insurance Company

Bozeman, Montana

as of December 31, 2008

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Scope of Examination

The Montana Insurance Department conducted a market conduct examination of Big Sky Farm Mutual Insurance Company, (hereinafter also referred to as the Company), that covered a four-year period from January 1, 2005, through December 31, 2008.

The examination was conducted pursuant to the provisions of Mont. Code Ann. §§ 33-1-401 *et seq.* and 33-4-316, and in accordance with the procedures and guidelines outlined in the Market Conduct Examiners Handbook as adopted by the National Association of Insurance Commissioners and the Montana State Auditor's Office.

The examination was conducted at the Company's home office located at 234 East Babcock, Bozeman, MT 59715. The report of examination is respectfully submitted as follows:

Operations and Management

Big Sky Farm Mutual Insurance Company originally incorporated and was licensed to do business as Mutual Rural Insurance Company of Gallatin County, a county farm mutual insurer, on May 1, 1936. Effective July 18, 1996, the Company amended its Articles of Incorporation to change its status from a county mutual insurer to a state mutual insurer and to effect a name change to Big Sky Farm Mutual Insurance Company in order to reflect the change in operations.

Big Sky Farm Mutual Insurance Company writes Fire and Liability Insurance policies. The Company has the ability to write Extended Coverage and provides limited coverage for the perils of Theft & Vandalism on property risks as a part of the fire policy. Liability insurance is written as a separate policy and is contingent upon issuance and continuation of a Fire Insurance policy on the same risk.

The Company is managed by a nine-member Board of Directors serving staggered three-year terms. Three directors are elected at each annual membership meeting. The President and Vice President are elected from within the Board members at a meeting following the annual membership meeting. The President and Vice President each serve annual terms. The Company employs Naomi Wold in the capacity of Secretary/Treasurer, Manager and Licensed Producer to facilitate the daily operations of the Company. Leona Gibson is employed as needed to assist Ms. Wold and provide monthly balancing of bank accounts. The Company uses a local CPA firm to prepare its annual report.

The Directors and terms served during the examination time frame are as follows:

<u>Director Name</u>	<u>Term Expiring</u>	<u>Additional Term(s)</u>
Sid Kamps*	2007	2008 through 2010
Bert Otis	2007	2008 through 2010
Sam Wagner	2007	2008 through 2010
Pat Gibson*	2006	2007 through 2009
Robert Queen	2006	2007 through 2009
Robert Davis	2006	2007 through 2009
Gerry Dusenberry	2005	2006 through 2008
Frank Morgan	2005	2006 through 2008
Allen Nelson	2005	2006 through 2008

* Sid Kamps and Pat Gibson have served as President and Vice President, respectively, during the entire time period covered by the examination.

The Company has no procedures in place aimed at detecting or preventing fraud.

Big Sky Farm Mutual Insurance Company provides a written Notice of Privacy Policy to member/policyholders at the time of policy delivery and each ensuing year accompanying the Annual Meeting Notice.

During the time period covered by the examination, the adopted minutes of the Board of Director's meetings include the names of members/insureds making claims, the amount of any claim payments made to or on behalf of those members/insureds, and the coverages under which the payments were made. Additionally, the adopted minutes include occasional discussions regarding the circumstances of the losses.

Under § 33-19-306, Mont. Code Ann., the disclosure of personal or privileged information received in connection with an insurance transaction, without the written authorization of the individual, is generally prohibited. Personal information includes an individual's name and address and any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. § 33-19-104(21), Mont. Code Ann. Additionally, engaging in an insurance

transaction, such as making a claim, does not constitute authorization by that individual to disclose his personal information. § 33-19-206(5), Mont. Code Ann.

The adopted minutes of the Board of Directors meetings are open to inspection by all members/insureds of the Company. Further, the actions of the Board of Directors, as set out in the adopted minutes of their meetings, are ratified by the members/insureds at the annual meeting.

Accordingly, including personal information about members/claimants and their claims in the adopted minutes of the Board of Directors meetings appears to have violated § 33-19-306, MCA, which prohibits unauthorized disclosures of personal information.

Complaint Handling

Big Sky Farm Mutual Insurance Company has never been presented with a complaint. Company management is aware a log must be instituted and maintained pursuant to § 33-18-1001, Mont. Code Ann., should the need arise.

Marketing and Sales

Big Sky Farm Mutual Insurance Company does not participate in formal advertising. The Company does make available a brochure entitled "Big Sky Farm Mutual Insurance Company", (BSFMIS Brochure 2006). The brochure provides a brief explanation of the concept of a Mutual Insurance Company, a brief history of Big Sky Farm Mutual Insurance Company and an overview of the Company's rates, coverages and deductibles. The contents of the brochure were found to be in compliance with all applicable statutes, rules, and regulations.

Producer Licensing

The Directors of Big Sky Farm Mutual Insurance Company act as producers. Each of the nine Directors produce Property Insurance business. The Secretary/Treasurer/Manager and three of the nine Directors are licensed to transact Liability Insurance pursuant to § 33-4-312, Mont. Code Ann. All applications for Liability Insurance contained within the sample were signed by a licensed producer.

Policyholder Service

Policyholder Service is provided by Naomi Wold in her capacity as Manager. Servicing requests, whether written or verbal, are routed to the Manager via the producer or are received directly by the Manager.

Big Sky Farm Mutual Insurance Company uses policy forms supplied by and filed on its behalf by the American Association of Insurance Services (AAIS), forms of its own design, and forms generated by the APPS system for farm mutual insurers.

The Company provides Property Insurance on the basis of a five-year policy term. The premium is billed annually and is due at the policy anniversary. Property policies expire at the end of the five-year policy period. The insured must submit a new application to continue coverage with the Company.

During the time frame covered by the exam, it has been the practice of Big Sky Farm Mutual Insurance Company to prepare five-year, "re-application" notices approximately two months prior to the policy expiration. The notices are then mailed at the beginning of the month prior to the policy expiration. This notice practice does not ensure compliance with the **Cancellation and Nonrenewal** provisions found within the AAIS form titled *Amendatory Endorsement Montana*, which states, in part, "If 'we' decide not to renew this policy, 'we' will mail or deliver 'our' notice of nonrenewal to 'you' and 'your' agent at least 45 days before the expiration date."

Big Sky Farm Mutual Insurance Company provides Liability Insurance on the basis of an annual policy term. The Liability Insurance policy is continuously renewable as long as a Property Insurance policy issued by the Company is in force on the risk. Liability Insurance policies are issued on AAIS forms containing the identical **Cancellation and Nonrenewal** provisions referenced above. The current notice practice does not ensure compliance with these contract provisions (requiring 45 days notice) if the Property Insurance policy is being canceled, non-renewed or expiring. This adversely affects the insured's ability to continue the Liability Insurance policy.

A sampling of the Company's policyholder files were reviewed for timeliness in processing applications, endorsements, cancellation requests and miscellaneous policy transactions. Applications and endorsements are processed in a timely manner.

Big Sky Farm Mutual Insurance Company uses a CANCELLATION REQUEST/POLICY RELEASE form which, when completed in its entirety, is designed to provide the information necessary to ensure cancellation requests and refunds are processed pursuant to the Company's guidelines and policy provisions. The completed forms in the sample lacked the information necessary to demonstrate compliance.

Policyholder files lacked documentation of policyholder correspondence.

Underwriting and Rating

All policies in the sample were accurately rated in accordance with the Company's published rating plan. Big Sky Farm Mutual Insurance Company does not use credit scoring in its underwriting or rating process. There were no Company-initiated mid-term cancellations, non-renewals or rescissions during the time period covered by the Examination.

Applications are incomplete, lack information and signatures necessary to support underwriting decisions. The Company could not rely on the majority of applications as an accurate representation of the risk. Further, policy change request forms are not used to process and document changes requested by insureds. Instead, the original applications are altered by the

Company including changing the coverage amounts, adding or deleting mortgagee information, and making calculations illustrating reinsurance distributions.

Under § 33-4-509, Mont. Code Ann., all forms of applications for insurance and all forms of policies proposed to be used by an insurer must be filed with the Commissioner at least 30 days in advance of use. The Policy Declarations page created by APPS has not been filed for use.

Additionally, the Policy Declaration Page generated by APPS indicates a one-year **policy period** for both Property and Liability Policies. Beneath the **policy period** provision, there is also a reference to a five-year time period. This creates an ambiguity as to the actual term of the policy and in the case of Property policies the **policy period** set forth in the Declarations page conflicts with the marketing brochure used by the company (BSFMIS 2006), which contains the statement, "All policies are written for a 5-year period with premiums paid annually."

A similar conflict of language exists between the **policy period** provision on the Property policy Declarations page and the Policy Jacket (BS:pj 100-97) which contains the statement, "THIS IS A 5-YEAR POLICY WITH PAYMENTS TO BE MADE ANNUALLY." Further ambiguity is created by the Property Application form (BS: fecap 200-07) which states, "Please understand that premium rates may change on or at **annual renewal date.**" (Emphasis added.)

The representations regarding five-year policy terms in forms BSFMIS 2006 and BS:pj 100-97 conflict with the actual Company practice of writing Liability Insurance on an annual policy term.

The Property Application Form (BS: fecap 200-07) states, in part, "...for Insurance against loss or damage by fire or other casualty *for continuous renewal coverage . . .*" (Emphasis added.) This statement on the application does not accurately reflect the Company's practice of issuing a policy that expires at the end of a five-year term nor does it explain that expiration will adversely affect the insured's ability to continue a Liability Insurance policy.

Claims

All claims reported or paid within the time frame of the exam were reviewed for timely response, investigation and resolution in accordance with policy provisions and applicable statutes.

The Company promptly responds to policyholders when notified of a loss. Inspection and resolution of reported losses is conducted in a timely manner.

Claims are adjusted in several different manners. A portion of claims were adjusted by the producing agent / Company Director, sometimes accompanied by another Company Director. For some claims, an independent adjuster was used to evaluate the scope of the loss and reach an agreed upon cost of repair. For other claims, restoration services or building contractors established the scope of loss and cost to repair.

Big Sky Farm Mutual Insurance Company has substituted a "Sworn Statement and Proof of Loss" in place of a Loss Reporting Form. The Company's claim files do not contain an accurate, complete "Proof of Loss" that have been signed by the insured and notarized.

Big Sky Farm Mutual Insurance Company provides coverage on an Actual Cash Value basis. The depreciation guidelines used by the Company are quite liberal; however, claim files are not well documented to support the basis for the Company's application of depreciation. Additionally, depreciation was improperly applied to labor, instead of just materials, in claims that were adjusted directly by the Company without an independent adjuster.

In one claim file examined, the actual cash value damages of a wind/hail loss was established and reported to the Company by the independent adjuster assigned to the loss. In calculating payment to the insured, the Company applied depreciation to the actual cash value of the damages and then applied the deductible. This resulted in an underpayment to the insured in the amount of \$901.26. The Company made additional payment to the insured in this amount during the time the examiners were on site.

In other claim files examined, the examiners found insufficient information to support payments made to third-party claimants on behalf of insureds under Liability policies. Additionally, the Company does not obtain releases from third-party claimants.

Claim payment checks do not always include the insured as a payee in addition to a contractor and/or mortgagee. Further, claim files do not contain signed authorizations from insureds allowing the Company to make direct payment (to a contractor or mortgagee) on their behalf.

Claim files involving total losses did not contain documentation, such as personal property inventory forms, necessary to support the payments made under the policy.

Application forms in use by the Company contain the statement, "*Having other insurance will void your policy unless you have asked that an endorsement be attached.*" Policy Jacket (BS: pj 100-97) contains an "Other Insurance" clause stating:

"Other insurance coverage on any property (except insurance perils not covered by this policy) is prohibited unless otherwise provided in writing added hereto. If during the term of this policy, the insured shall have any such other prohibited insurance, whether collectible or not, the insurance under this policy shall be suspended and of no effect."

These statements conflict with the AAIS policy contract forms used by the Company. The AAIS forms address insurance under more than one policy by providing:

"If there is other insurance that applies to the loss, we pay our share of the loss. Our share is that part of the loss that the limit of this policy bears to the total amount of insurance that applies to the loss. When a loss is also covered by the master policy of an association or corporation of property owners, this insurance is excess."

During the time period covered by the exam, the Company did not rely on more restrictive language in either the Application or Policy Jacket to the detriment of an insured.

The Amended By-Laws of Big Sky Farm Mutual Insurance Company (BS: blaw 500-97) Section 2, Part D provide for arbitration "in accordance with the appropriate provisions of the Montana Insurance Code." In § 33-4-411, Mont. Code Ann., the arbitration process, if arbitration is provided for the insurer's by-laws, for resolving disagreements concerning the amount of insured loss or damage between a farm mutual insurer and a claimant is set forth. The AAIS policy forms used by the Company have an "Appraisal" clause containing language that conflicts with § 33-4-411, Mont. Code Ann. During the time frame covered by the examination, there were no claims resolved by assertion of the contractual appraisal process or the codified arbitration provisions by either the Company or claimants.

Summary of Significant Findings

During the time period covered by this examination, the following were found:

- Recording individually identifiable information (personal information) in the adopted minutes of the Board of Directors meetings violates § 33-19-306, Mont. Code Ann.
- The (APPS) Policy Declarations page being used has not been filed with and approved by the Commissioner in violation of § 33-4-509, Mont. Code Ann.
- Applications submitted to the Company lack necessary signatures and information to portray an accurate representation of the risk to be insured.
- Conflicting language in policy forms creates ambiguity and is not an accurate reflection of the Company's underwriting practices. This pertains to the policy term (one year vs. five years), the other insurance clauses, and the arbitration process.
- The Company did not consistently provide timely notice (45 day notice) to policyholders in accordance with the Cancellation and Nonrenewal provisions of its contracts.
- Claim files do not contain an accurate, complete, signed and notarized "Proof of Loss" and lack documentation necessary to support payments made.

Conclusion

The Market Conduct Examination Report of Big Sky Farm Mutual Insurance Company is respectfully submitted to the Honorable Monica J. Lindeen, State Auditor and Commissioner of Insurance and Securities of the state of Montana.

The examiners wish to express their appreciation for the courteous and prompt cooperation and assistance of the officers and employees of the Company during the course of the examination.

AFFIDAVIT OF EXAMINERS

STATE OF MONTANA)
) ss.
COUNTY OF LEWIS AND CLARK)

David Drynan, AIE, and Kimberlee Hewitt, being first duly sworn, depose and say:

That they are examiners representing the State Auditor and Commissioner of Securities and Insurance, state of Montana;

That pursuant to authority vested in them by the Commissioner, they examined the market conduct of Big Sky Farmer Mutual Insurance Company of Bozeman, Montana, for the period from January 1, 2005, to December 31, 2008;


That to the best of their information, knowledge and belief, the attached report of the examination is a true and correct report of the proposed market conduct affairs and operations of Big Sky Farm Mutual Insurance Company as of December 31, 2008.

DATED this 5 day of February, 2010.


David Drynan, AIE


Kimberlee Hewitt

SUBSCRIBED AND SWORN to before me this 5 day of February, 2010.


Printed Name PAULA SAUTTER
Notary Public for the state of Montana
Residing at Helena, Montana
My Commission expires 4/14/2010