

Date: 3/9/22

*Virtual Meeting*

**MARKET CONDUCT ANNUAL STATEMENT BLANKS (D) WORKING GROUP**

Thursday, March 17, 2022

11:00 a.m. – 12:00 p.m. ET / 10:00 – 11:00 a.m. CT / 9:00 – 10:00 a.m. MT / 8:00 – 9:00 a.m. PT

**ROLL CALL**

Erica Weyhenmeyer, Chair	Illinois	Jennifer Hopper/Teresa Kroll	Missouri
Rebecca Rebholz, Vice Chair	Wisconsin	Martin Swanson	Nebraska
Maria Ailor	Arizona	Hermoliva Abejar	Nevada
Crystal Phelps/Teri Ann Mecca	Arkansas	Leatrice Geckler	New Mexico
Scott Woods	Florida	Guy Self	Ohio
Scott Sanders/Elizabeth Nunes	Georgia	Gary Jones/August Hall/Jeff Arnold	Pennsylvania
October Nickel	Idaho	Michael Bailes/Rachel Moore	South Carolina
Tate Flott	Kansas	Maggie Dell	South Dakota
Lori Cunningham	Kentucky	Shelli Isiminger	Tennessee
Dawna Kokosinski	Maryland	Shelley Wiseman	Utah
Mary Lou Moran	Massachusetts	Melissa Gerachis/Will Felvey	Virginia
Jill Huisken	Michigan	John Haworth/Jason Carr	Washington
Paul Hanson	Minnesota	Letha Tate	West Virginia

NAIC Support Staff: Teresa Cooper/Beth Bentley

**AGENDA**

1. Consider Adoption of its Nov. 22 Minutes—*Erica Weyhenmeyer (IL)* Attachment 1
2. Receive an Update on the Draft Life Market Conduct Annual Statement (MCAS) Edits on Accelerated Underwriting (AU)—*Erica Weyhenmeyer (IL)*
3. Receive an Update on the Other Health Drafting Group—*Randy Helder (NAIC)*
4. Consider Proposal for Digital Claims Interrogatories for the Homeowner and PPA MCAS Lines of Business—*Erica Weyhenmeyer (IL)* Attachment 2
5. Consider Proposal and Receive Comments from the American Property Casualty Insurance Association (APCIA) on Lawsuit Definitions and the Placement of the Lawsuit Data Elements for the Homeowner and Private Passenger Auto (PPA) MCAS Lines of Business—*Erica Weyhenmeyer (IL)* Attachment 3  
Attachment 4



6. Present Guidance Regarding the New “Number of lawsuits closed with consideration for the consumer” Data Element for the Homeowner and PPA MCAS Lines of Business—*Erica Weyhenmeyer (IL)* Attachment 5
7. Discuss Any Other Matters Brought Before the Working Group—*Erica Weyhenmeyer (IL)*
8. Adjournment

SharePoint/NAIC Support Staff Hub - Member Meetings/Spring 2022 National Meeting/Committee Meetings/D/MCAS WG/0317 Meeting/MCAS Blanks WG Agenda 0317.docx

Draft: 11/30/21

Market Conduct Annual Statement Blanks (D) Working Group  
Virtual Meeting  
November 22, 2021

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Nov. 22, 2021. The following Working Group members participated: Rebecca Rebholz, Chair (WI); Tate Flott, Vice Chair (KS); Sarah Borunda (AZ); Janice Davis (FL); Erica Weyhenmeyer (IL); Lori Cunningham (KY); Mary Lou Moran (MA); Salama Karim-Camara (MD); Jill Huisken (MI); Jo LeDuc (MO); Reva Vandevoorde (NE); Leatrice Geckler (NM); Glynda Daniels (SC); Maggie Dell (SD); Shelli Isiminger (TN); Shelley Wiseman (UT); and John Haworth (WA).

1. Adopted its July 28 Minutes

The Working Group met July 28 and took the following action: 1) adopted its June 30 minutes; 2) received an update on the life Market Conduct Annual Statement (MCAS) draft edits for accelerated underwriting (AU); 3) received an update on the Other Health Drafting Group; 4) discussed the lawsuit definitions and placement of the lawsuit data elements for the homeowners and private passenger auto (PPA) MCAS; and 5) requested submission of suggested edits to existing MCAS blanks and data call and definitions.

Mr. Haworth made a motion, seconded by Mr. Flott, to adopt the Working Group's July 28 minutes (Attachment   ). The motion passed unanimously.

2. Received an Update on the Life MCAS Draft Edits for AU

Ms. Rebholz stated that earlier this year, the Accelerated Underwriting (A) Working Group worked to add AU data elements to the life MCAS reporting, but the Working Group decided it would be best to wait for the Accelerated Underwriting (A) Working Group to adopt a definition of AU for the sake of consistency between the two working groups. She stated that the Accelerated Underwriting (A) Working Group has exposed a draft document for a public comment period ending Dec. 3, which will be discussed during the Working Group's Dec. 6 meeting. Ms. Rebholz stated that once the Accelerated Underwriting (A) Working Group adopts its definition of AU, then the Market Conduct Annual Statement Blanks (D) Working Group can continue its work to add AU data elements and definitions to the life MCAS.

Rikki Pelta (American Council of Life Insurers—ACLI) asked if the list of subject matter expert (SME) group volunteers that participated previously would be contacted for additional information. Teresa Cooper (NAIC) stated they would be contacted and that anyone else who would like to join the SME group should let her know so they can be added.

3. Received an Update on the Other Health Drafting Group

Randy Helder (NAIC) stated the Other Health Drafting Group has not met recently. Mr. Helder stated the new chair of this Drafting Group is Mary Kay Rodriguez (WI), and the people that previously participated in the blank discussions for the short-term, limited-duration insurance (STLDI) would be contacted about meeting soon. He stated that anyone else who would like to join the Drafting Group should contact him.

4. Received a Proposal from the SME Group on Lawsuit Definitions and Placement of the Lawsuit Data Elements for the Homeowners and PPA MCAS

Ms. Rebholz stated that this proposal is part of the meeting materials and that a comment period is open, so no decisions need to be made today as the proposal will be considered at a later meeting. She stated Ms. Weyhenmeyer led the SME group discussions.

Ms. Weyhenmeyer stated the SME group worked to provide a proposal that simplifies the lawsuit reporting and its definition as much as possible. She stated the SME group proposes the following for the homeowners and PPA MCAS lawsuit reporting: 1) removing the lawsuit data elements from the claims reporting section; 2) creating a new reporting section for the lawsuit data elements; 3) reporting the lawsuit data elements by claims coverage type as has been done in the past; 4) adding reporting for "non-claim-related lawsuits"; and 5) updates to the definition of "lawsuits" to accommodate the new

reporting structure. Ms. Weyhenmeyer stated the proposed definition is similar to the definition used for other MCAS lines of business, which was done for consistency. She stated a few of the simplifications to the definition could be made to the definition in other lines of business if the Working Group finds that it would be useful. She stated that additionally noted while preparing items for this meeting is the need to add an interrogatory to capture comments for the newly added lawsuit section, which is not an item showing in the meeting materials. She stated this would need to be added because the definition of “class-action lawsuits” requires an explanatory note.

Ms. Rebholz asked that everyone review the draft proposal and provide any comments to Ms. Cooper by Dec. 17.

#### 5. Received a Proposal from the SME Group on Reporting of the Digital Claims Interrogatory Question

Ms. Rebholz stated that this proposal is included in the meeting materials and that there is a comment period open for the digital claims interrogatory question proposal, so a decision does not need to be made today as it will be considered in a later meeting.

Ms. Weyhenmeyer stated that during the Working Group’s June 30 meeting, it was voted to include an interrogatory to capture third-party vendors providing third-party data and algorithms used in the digital claims process. She stated the wording approved during that meeting included “and for each vendor, identify the vendor’s specific role in the digital claims process” to address concern of whether a third-party vendor is being used appropriately. The SME group was tasked to revisit this interrogatory and make a recommendation of how third-party vendor data would be reported. She stated that in this proposal, the requirement to identify vendor roles is removed, allowing for the single element capture of names of third-party vendors, similar to the capture of names of managing general agents (MGAs) and third-party administrators (TPAs).

Ms. Rebholz asked that any comments on the digital claims interrogatory question proposal be provided to Ms. Cooper by Dec. 17

#### 6. Discussed Other Matters

Ms. Rebholz stated she and Mr. Flott would not be the chair and vice chair of this Working Group in 2022.

Having no further business, the Market Conduct Annual Statement Blanks (D) Working Group adjourned.

[Nov 22 MCAS WG Minutes](#)



## Homeowners (2023 - Digital Claims Single Element Explanation)

### Homeowners Interrogatories

		Yes No Response	Explanation
1 ... 14 ...		----	
15	Does the company use Managing General Agents (MGAs)?		----
16	If yes, list the names of the MGAs.	----	
17	Does the company use Third Party Administrators (TPAs)?		----
18	If yes, list the names of the TPAs.	----	
19	Does the company use digital claim settlement?		----
20	If yes, list the names of the the vendors providing third-party data and algorithms used in the digital clam settlement process.	----	
21	Additional state specific Claims comments (optional):	----	
22	Additional state specific Underwriting comments (optional):	----	

During the 6/30 WG meeting it was voted to include an interrogatory to capture third-party vendors. The SME group was tasked with review and determining the details of how it would be reported. Above is the wording proposed by the SME group. This proposal applies to both the Homeowner and Private Passenger Auto MCAS lines of business.

This proposal removes the requirement to identify vendor roles.

The Subject Matter Expert group proposes the following for the Home and Private Passenger Auto MCAS Lawsuit reporting:

- Remove the Lawsuit data elements from the claims reporting section
- Create a new reporting section for the Lawsuit data elements
- Report the Lawsuit data elements by claims coverage type and add reporting for "Non-claim Related Lawsuits"
- Update the definition of Lawsuits to accommodate the new reporting structure

Below for your review, you'll find:

- A redline version of showing the Homeowner line of business Data Call and Definitions updates
- A clean version of the proposed updates

#### Schedule 2 – Homeowners Claims Activity, Counts Reported by Claimant and by Coverage

ID	Description
<del>2-39</del>	<del>Number of lawsuits open at beginning of the period</del>
<del>2-40</del>	<del>Number of lawsuits opened during the period</del>
<del>2-41</del>	<del>Number of lawsuits closed during the period</del>
<del>2-42</del>	<del>Number of lawsuits open at end of period</del>
<del>2-43</del>	<del>Number of lawsuits closed with consideration for the consumer.</del>

#### Schedule 4 – Lawsuit Activity

##### Reporting Breakdown

Dwelling (includes – Other Structures)	Claim related lawsuits
Personal Property	
Liability	
Medical Payments	
Loss of Use	
Non-claim Related Lawsuits	Non-claim related lawsuits

ID	Description
<del>4-53</del>	<del>Number of lawsuits open at beginning of the period</del>
<del>4-54</del>	<del>Number of lawsuits opened during the period</del>
<del>4-55</del>	<del>Number of lawsuits closed during the period</del>
<del>4-56</del>	<del>Number of lawsuits open at end of period</del>
<del>4-57</del>	<del>Number of lawsuits closed with consideration for the consumer</del>

**Definitions:**

In determining what business to report for a particular state, unless otherwise indicated in these instructions, all companies should follow the same methodology/definitions used to file the Financial Annual Statement (FAS) and its corresponding state pages. Exclude lender-placed or creditor-placed policies.

**Lawsuit** – ~~A court proceeding to recover a right to a claim, including lawsuits for arbitration cases.~~ An action brought in a court of law in which one party, the plaintiff, claims to have incurred a loss as a result of the action of another party, the defendant.

**Exclude:**

- Subrogation claims where lawsuit is filed by the company against the tortfeasor.
- Non-lawsuit legal activity or litigation filed by an insurer, including, but not limited to: request to compel an independent medical examination, an examination under oath, and declaratory judgment actions filed by an insurer.
- Arbitrations, mediation, appraisal, or any other form of dispute resolution not brought in a court of law.

For purposes of reporting lawsuit for Homeowner / Private Passenger Auto products:

- Include only lawsuits brought by an applicant for insurance, a policyholder or claimant as a plaintiff against the reporting insurer or its agent as a defendant.
- Include all lawsuits, whether or not a hearing or proceeding before the court occurred.
- If one lawsuit seeks damages under two or more policies, count the number of policies involved as the number of lawsuits. For example, if one lawsuit seeks damages under three policies, count the action as three lawsuits.
- With the exception of class action lawsuits, report a lawsuit with two or more complainants as one lawsuit.
- With the exception of class action lawsuits, report a lawsuit in the jurisdiction in which the policy was issued.
- Report claim related lawsuits broken out by coverage as outlined in the schedule.
- Report non-claim related lawsuits in aggregate as outlined in the schedule.

**Calculation Clarification:**

- ~~Lawsuits should be reported on the same basis as claims. One lawsuit should be reported for each / claimant / coverage combination, regardless of the number of actual suits filed.~~
- ~~One lawsuit with two claimants would be reported as two lawsuits as any awards/payments made would be made to the claimants individually.~~
- ~~One lawsuit filed seeking damages for multiple coverages should be reported as one lawsuit for each applicable coverage.~~
- ~~Lawsuits should be reported in the state in which the claim was reported on this statement.~~
- 

Treatment of ~~class action lawsuits~~ **Class Action Lawsuits:**

- Report the opening and closing of a class action lawsuit once in each state in which a potential class member resides.

- Include an explanatory note with your submission state the number of class action lawsuits included in the data and the general cause of the action.



## **Schedule 4 – Lawsuit Activity**

### **Reporting Breakdown**

Dwelling (includes – Other Structures)	Claim related lawsuits
Personal Property	
Liability	
Medical Payments	
Loss of Use	
Non-claim Related Lawsuits	Non-claim related lawsuits

<b>ID</b>	<b>Description</b>
4-53	Number of lawsuits open at beginning of the period
4-54	Number of lawsuits opened during the period
4-55	Number of lawsuits closed during the period
4-56	Number of lawsuits open at end of period
4-57	Number of lawsuits closed with consideration for the consumer

### **Definitions:**

In determining what business to report for a particular state, unless otherwise indicated in these instructions, all companies should follow the same methodology/definitions used to file the Financial Annual Statement (FAS) and its corresponding state pages. Exclude lender-placed or creditor-placed policies.

**Lawsuit** – An action brought in a court of law in which one party, the plaintiff, claims to have incurred a loss as a result of the action of another party, the defendant.

Exclude:

- Subrogation claims where lawsuit is filed by the company against the tortfeasor.
- Non-lawsuit legal activity or litigation filed by an insurer, including, but not limited to: request to compel an independent medical examination, an examination under oath, and declaratory judgment actions filed by an insurer.
- Arbitrations, mediation, appraisal, or any other form of dispute resolution not brought in a court of law.

For purposes of reporting lawsuit for Homeowner / Private Passenger Auto products:

- Include only lawsuits brought by an applicant for insurance, a policyholder or claimant as a plaintiff against the reporting insurer or its agent as a defendant.
- Include all lawsuits, whether or not a hearing or proceeding before the court occurred.
- If one lawsuit seeks damages under two or more policies, count the number of policies involved as the number of lawsuits. For example, if one lawsuit seeks damages under three policies, count the action as three lawsuits.

- With the exception of class action lawsuits, report a lawsuit with two or more complainants as one lawsuit.
- With the exception of class action lawsuits, report a lawsuit in the jurisdiction in which the policy was issued.
- Report claim related lawsuits broken out by coverage as outlined in the schedule.
- Report non-claim related lawsuits in aggregate as outlined in the schedule.

Treatment of Class Action Lawsuits:

- Report the opening and closing of a class action lawsuit once in each state in which a potential class member resides.
- Include an explanatory note with your submission state the number of class action lawsuits included in the data and the general cause of the action.



December 17, 2021

Teresa Cooper  
Market Analysis Manager  
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VIA Electronic Mail: [tcooper@naic.org](mailto:tcooper@naic.org); [Rebecca.Rebholz@wisconsin.gov](mailto:Rebecca.Rebholz@wisconsin.gov)

RE: MCAS – Proposed Expansion of Lawsuit Data to be Collected for Private Passenger Auto and Homeowners Insurance

Dear Ms. Cooper:

The American Property Casualty Insurance Association (APCIA)<sup>1</sup> appreciates the opportunity to provide comments on proposed new data elements for the collection of lawsuit-related information for both the private passenger automobile (PPA) and homeowners (HO) insurance Market Conduct Annual Statement (MCAS).

#### Proposed Lawsuit Definition

The proposed definition states, “Include only lawsuits brought by an applicant for insurance, a policyholder or claimant as a plaintiff against the reporting insurer or its agent as a defendant.” APCIA suggests that “agent” be defined. The definition goes on to say, “If one lawsuit seeks damages under two or more policies, count the number of policies involved as the number of lawsuits. For example, if one lawsuit seeks damages under three policies, count the action as three lawsuits.” APCIA requests that this language be clarified to account for instances where the multiple policies involved are issued by different insurers.

The proposed definition provides for the exclusion of “[a]rbitrations, mediation, appraisal, or any other form of dispute resolution not brought in a court of law.” APCIA supports this exclusion, but request that it be amended to exclude homeowners and private passenger appraisal matters filed in a court of law and interpleader actions filed by an insurance company.

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<sup>1</sup> The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions-protecting families, communities, and businesses in the U.S. and across the globe.



In addition, APCIA has two state-specific questions:

- For Michigan, should lawsuits filed by a medical provider for payment under MI PIP continue to be counted as the medical provider may not fit the definition of applicant for insurance, policy holder or claimant?
- Would a Pennsylvania writ of summons be considered a lawsuit under the new definition, if so at what point should the matter be counted? When the summons is served or only when the complaint is filed?

#### Collection of New Lawsuit Data

APCIA recognizes the need to expand the collection of lawsuit data for both claims-related and non-claims-related lawsuits and understand that other MCAS lines of business collect both. However, not only is the data for other lines of business not broken out by claim-related and non-claims-related suits, it is certainly not required to be reported by coverage, as is proposed for claims-related suits for both private passenger auto and homeowners. APCIA respectfully requests that the coverage breakout for claims-related lawsuit data be deleted.

APCIA members have provided consistent feedback indicating that data on lawsuits may not be captured in internal systems as claims-related vs. non-claims related. Further, the reporting of claims-related lawsuit data by coverage will be a resource-intensive undertaking. Companies do not typically maintain lawsuit data by coverage and systems changes will absolutely be necessary to be able to automate the collection and reporting of this data by coverage.

Should the Working Group determine that there is a strong regulatory need for data by coverage type for claims-related lawsuits, APCIA trusts that Working Group recognizes the programming and process changes that companies would have to undertake in order to comply. Industry is best equipped to provide requested data to regulators when given the most generous possible lead time to develop internal procedures and make necessary systems changes required to ensure complete and accurate data is indeed reported. A delay of at least a year in collecting the claims lawsuit data by coverage will afford insurers more time to assess their internal systems and make programming changes, or changes to internal processes, to ensure they are accurately reporting the data necessary.

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Thank you for the opportunity to provide comments. If you have any questions or would like to discuss any of our comments further, please let us know.

Respectfully Submitted,

Lisa Brown  
Sr. Director, Market Conduct and Counsel

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## Lawsuit and Deductible FAQ's

### Lawsuits Closed with Consideration to the Consumer:

Which pre-litigation offer should be compared to the final post-litigation court order, jury verdict or settlement?

Per the definition, the comparison is to be made to an amount offered by the reporting insurer before the lawsuit was brought. No other considerations are listed. A company should use the largest amount offered prior to litigation.

In assessing pre-litigation offers vs. post-litigation resolution, is it presumed or expected that the post-litigation resolution amount will exceed the pre-litigation offer?

No, there are no presumptions regarding the final post-litigation court order, jury verdict or settlement.

If a lawsuit is filed for the purpose of tolling the statute of limitations while negotiations continue resulting in a post litigation resolution of the claim are these reportable in the same manner?

Yes, any post-litigation settlement needs to be compared to the highest pre-litigation offer. If the post-litigation settlement amount is higher than the pre-litigation offer, it should be reported as a lawsuit closed with consideration to the consumer.

In reporting the post litigation resolution amount in comparison to the last pre-litigation offer, would any consideration be given the last pre-litigation demand in comparison to the outcome?

The only consideration is a straight comparison of the highest pre-litigation offer to the post-litigation settlement amount. If the post-litigation amount is higher, it is reported as a lawsuit closed with consideration to the consumer.

If the post-litigation resolution amount is based on new information that was not available prior to litigation, is that reportable in the same manner?

Yes. Even with new information, if the post-litigation court order, jury verdict or settlement amount is higher than the highest pre-litigation offer, it is reported as a lawsuit closed with consideration to the consumer.

If new legislation or a legal precedent ruling occurs after litigation is initiated, and that new legislation or legal precedent changes the evaluation of the claim, would the lawsuit still need to be reported as a lawsuit closed with consideration to the consumer?

Yes, the only consideration is a straight comparison of the highest pre-litigation offer to the post-litigation settlement amount. If the post-litigation amount is higher, it is reported as a lawsuit closed with consideration to the consumer.

If the new legislation or legal precedent ruling affected a significant number of lawsuit settlements, the company is encouraged to use the interrogatory comment section to explain how the reporting was impacted.

What if no offers are made prior to litigation?

This would be treated as an offer of \$0. Any post-litigation settlement of any value more than that amount would be reported as a lawsuit closed with consideration to the consumer.

How should verdicts and judgements that include values that are not based on the actual indemnity be considered? For example, are interest and expenses, or extra-contractual awards settlements included?

The definition states the if the post-litigation settlement results in payment, benefits or other things of value in an amount greater than offered by the reporting insuring it should be reported as a lawsuit closed with consideration to the consumer. As long as the settlement value relates to the valuation of the claim being litigated, and the amount due to the consumer arising from the claim, it should be counted.

Should litigation initiated by the insurer (such as declaratory judgement actions, examinations under oath, court required minor's compromise settlements) be included in lawsuits closed with consideration to the consumer?

The definitions define a lawsuit as "a court proceeding to recover a right to a claim". The lawsuits specified in the question are not initiated by the insurer to recover a right to a claim and would not be reported as lawsuits closed with consideration to the consumer.

**Claims closed with or without payment:**

If a claim is withdrawn because the damage will be below or close to the deductible and an estimate is never completed, would it still be reported as a claim closed without payment?

If you can establish that the claim is below the deductible (*whether by estimate or verbally by the claimant*), then it should be reported as a claim closed without payment. If you feel you have a lot of claims that are withdrawn and you do not have documentation regarding the claimed amount, the reporting insurer is encouraged to use the comment section of the interrogatories to explain.