

**CIC SECTION 12938 REPORT OF THE MARKET CONDUCT EXAMINATION
OF THE CLAIMS PRACTICES OF THE
UNUM LIFE INSURANCE COMPANY OF AMERICA
NAIC # 62235 CDI # 2039-6
PROVIDENT LIFE AND ACCIDENT INSURANCE
COMPANY
NAIC # 68195 CDI # 0950-6
PAUL REVERE LIFE INSURANCE COMPANY (THE)
NAIC # 67598 CDI # 1083-5**

**AS OF JULY 31, 2007
Adopted March 28, 2008**

[Made available in accordance with CIC Section 12938]

STATE OF CALIFORNIA



**DEPARTMENT OF INSURANCE
MARKET CONDUCT DIVISION
FIELD CLAIMS BUREAU**

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DEPARTMENT OF INSURANCE

Consumer Services and Market Conduct Branch
Field Claims Bureau, 11th Floor
300 South Spring Street
Los Angeles, CA 90013



March 28, 2008

The Honorable Steve Poizner
Insurance Commissioner
State of California
45 Fremont Street
San Francisco, California 94105

Honorable Commissioner:

Pursuant to instructions, and under the authority granted under Part 2, Chapter 1, Article 4, Sections 730, 733, 736, and Article 6.5, Section 790.04 of the California Insurance Code; and Title 10, Chapter 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, an examination was made of the claims practices and procedures in California of:

UNUM Life Insurance Company of America

NAIC # 62235

Provident Life and Accident Insurance Company

NAIC # 68195

Paul Revere Life Insurance Company (The)

NAIC# 67598

Hereinafter, the Companies listed above also will be referred to as UNUM.

This report is made available for public inspection and is published on the California Department of Insurance web site (www.insurance.ca.gov) pursuant to California Insurance Code section 12938.

FOREWARD

The examination covered the claims handling practices of the reassessment of claims arising out of the **California Settlement Agreement (CSA)** and claims subject to and closed after the California Settlement Agreement. The CDI reviewed 191 reassessed claims that went through the reassessment process. The CDI reviewed 30 Post-CSA claims closed between 12/1/05 and 05/1/06 and 60 Post-CSA claim files closed between 08/01/06 and 07/31/07. The Post-CSA claim files were selected on a targeted basis. The examination was made to discover, in general, if these and other operating procedures of UNUM conform to the California Settlement Agreement as well as the contractual obligations in the policy forms and provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR) and case law. This report contains alleged violations of the California Settlement Agreement as well as alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al. Violations of other relevant laws were not found in this examination.

The report is written in a “report by exception” format. The report does not present a comprehensive overview of the subject insurer’s practices. The Report does include a summary of findings in relation to the California Settlement Agreement. The report contains a summary of pertinent information about the lines of business examined, details of the non-compliant or problematic activities that were discovered during the course of the examination and the insurer’s proposals for correcting the deficiencies. When a violation that resulted in an underpayment to the claimant is discovered and the insurer corrects the underpayment, the additional amount paid is identified as a recovery in this report. All unacceptable or non-compliant activities may not have been discovered. Failure to identify, comment upon or criticize non-compliant practices in this state or other jurisdictions does not constitute acceptance of such practices.

Alleged violations identified in this report, any criticisms of practices and the Company’s responses, if any, have not undergone a formal administrative or judicial process.

SCOPE OF THE EXAMINATION

To accomplish the foregoing, the examination included:

1. A review of the guidelines, procedures, training plans and forms adopted by UNUM for use in California including any documentation maintained by UNUM in support of positions or interpretations of fair claims settlement practices. This included review of training materials and written directives provided to the California Settlement Agreement Claims Reassessment Unit as well as ongoing claims staff. This included both claims adjustment staff and vocational assessment personnel.
2. A review of the application of such guidelines, procedures, and forms.
3. A linear review of the actions taken by UNUM to comply with the California Settlement Agreement.

The claim file review was conducted at the offices of UNUM in Glendale, California and Portland, Maine.

EXECUTIVE SUMMARY OF CLAIMS SAMPLE REVIEWED

The claims reviewed were reassessed between July 1, 2006 and March 31, 2007, commonly referred to as the “review period”. The examiner reviewed 191 reassessed claim files. The Reassessment samples included files from all four reassessment locations (Portland, Maine; Chattanooga, Tennessee; Worcester, Massachusetts and Glendale, California). This included 137 Group Long Term Disability Claims and 54 Individual Disability Income Claims. Of the 191 claims reviewed 28 had gone through the CSA Independent Review process. The examiners cited seven alleged claim handling violations of the California Settlement Agreement or California Insurance Code Section 790.03. Seven violations in a population of 191 claims reviewed does not trigger additional regulatory penalties in accordance with the California Settlement Agreement for reassessed claims (consistent with the 7% threshold in the Multi-State Regulatory Settlement Agreement).

In addition, examiners reviewed 90 post-CSA claims. Of these claims 30 were closed between 12/1/05 and 05/1/06. The balance of 60 claims the examiners reviewed were closed between 08/01/06 and 07/31/07. The CDI was not able to identify any alleged violations of the California Settlement Agreement or California Insurance Code Section 790.03 in these 90 files.

DEFINITIONS

California Settlement Agreement (CSA): Settlement agreement between the Department of Insurance of the State of California and UNUM (Unum Life Insurance Company of America, Provident Life and Accident Insurance Company and The Paul Revere Life Insurance Company) effective November 1, 2005.

California Department of Insurance (CDI)

Claims Reassessment Unit (CRU): UNUM employees who reviewed and reassessed claims per the California Settlement Agreement.

Independent Review (IR): Independent file review process as prescribed in the California Settlement Agreement.

Notice Files: Folders containing notices sent in relation to the California Reassessment. No claims information is contained in these files.

UNUM: Group of insurers including UNUM Life Insurance Company of America, Provident Life and Accident Insurance Company, Paul Revere Life Insurance Company.

RIF: Reassessment Information Form

LTD: Long Term Disability

SUMMARY OF EXAMINATION AND COMPANY ACTIONS

UNUM took a series of actions as required by the California Settlement Agreement. Following is a summary of the actions taken by UNUM and the steps taken by the California Department of Insurance to assure oversight of the Reassessment Process and compliance with the California Settlement Agreement.

UNUM provided written instructions and training to implement the administrative changes required by the CSA.

As a part of the Market Conduct Examination, the CDI reviewed written instructions and training materials provided to the claims handling personnel. These included administrative changes in claims handling as outlined in the CSA. This included both “online” as well as written instructions provided to the adjusters. These instructions were provided to the California Reassessment claims examiners as well as the claims examiners handling ongoing claims. The materials reflected adherence with the administrative changes outlined in the California Settlement Agreement. These instruction materials remain available to UNUM adjusters as an online reference tool.

Prior to the commencement of the California Reassessment process, the CDI performed a review of thirty group LTD claims closed after the California Settlement Agreement to assure compliance with the CSA in relation to ongoing claims. No exceptions were identified in this targeted review. The CDI subsequently reviewed an additional 45 group LTD claims and 15 Individual Disability Income claims closed between 08/01/06 and 07/31/07. No alleged instances of noncompliance with the California Settlement Agreement or California Statutes were identified in these files.

UNUM maintained a separate call center designed specifically for questions regarding the reassessment process. Reassessment claimants calling any of the departments at UNUM were directed to the Reassessment call center. The call center employees were provided with instructions regarding the notice and participation requirements of the California Reassessment.

The CSA required UNUM to send various notices to potential claimants of the California Reassessment. The CDI was provided a list of 11,071 eligible claimants to the California Reassessment. The CDI extracted and reviewed 40 random “notice” files from the eligible claimant list. Documents reviewed included the initial notices of reassessment eligibility sent claimants, “opt in” notices that were returned, and request for information forms that were sent out and returned. The Request for Information Forms included the appropriate authorization and anti-fraud statements per the CSA. The appropriate reassessment forms were also identified in the 191 files reviewed by the CDI that were included in the California Reassessment.

The CDI also reviewed 10 of 51 “notice” files where viable addresses could not be determined. Of the 10 “notice” files reviewed there was one exception. One form had been sent to the correct street but the incorrect apartment number. It was

noted that UNUM had taken adequate measures to identify viable addresses for claimants where mail was returned as undeliverable. UNUM agreed to review the 50 files to verify any additional errors, with no additional errors found.

The examiner in charge reviewed training materials regarding the UNUM Business and Ethics Hotline, which is staffed by an external vendor and monitored by the UNUM Chief Ethics Officer. In the training materials, employees are encouraged to report any wrongdoings relating to UNUM employees' business practices. All employees are required to take ethics training. Callers to the Ethics Hotline may remain anonymous if they choose to do so. Unethical activities in claims handling are subject to these Ethics standards.

As required by the CSA, UNUM performed internal audits during the course of the CSA Reassessment process. The CDI discussed in general terms the results of these audits and their results were similar, in terms of the exceptions identified, as this CDI exam.

One area focused upon was the appropriate use of Independent Medical Examinations, Functional Capacity Examinations, and Medical Records Reviews. The CDI had discussed with UNUM the importance of reviewing medical records of all attending physicians and having the appropriate level of expertise involved in the review and evaluation of those medical records. In claims where a potentially disabling diagnosis has been documented but appropriate functional testing has not been performed, the Company has agreed to consider an appropriate functional test. The Company has indicated that on a companywide basis, the combined number of functional tests and medical record reviews (Independent Medical Examinations, Functional Capacity Examinations and Medical Record Reviews) has increased significantly from 2003 to 2006. The Post CSA files do reflect that claimants are notified of their right to request an IME and given the option of an IME when there is a medical difference in opinion between the claimant's physicians and the UNUM medical consultants.

The CSA Reassessment exam included the review of 191 claims that had gone through the reassessment process. During the reassessment review, the CDI identified seven alleged violations in the population reviewed. Five of these are specific exceptions to the CSA and 2 were violations of the California Insurance Code. Three general areas of concern were also identified during the course of the review and the CDI sent an interim correspondence to UNUM regarding continued compliance with the CSA. UNUM acknowledged our concerns and in response, provided written refresher training to the CRU examiners, reiterating the need for the CRU examiners to comply with the CSA. It was noted that the UNUM training materials and written instructions provided to the CRU adjusters prior to the start of the reassessment process addressed the issues identified in the exceptions. The compliance unit reiterated to the claims reassessment unit the need to comply. UNUM provided us with copies of the written refresher materials it sent to members of the reassessment unit as well as the staff handling ongoing claims after we had presented our concerns.

The CDI assigned two dedicated complaint handlers in the Consumer Services Division to handle Complaints regarding the UNUM reassessment process. There were no procedural patterns or practices that were identified in the complaint handling process that reflected non-compliance with the CSA.

Ongoing UNUM complaints were also tracked on the CDI internal tracking system. There were 195 complaints to the CDI pertaining to UNUM ongoing claims for the period 08/01/03 to 08/01/04. During the post CSA period of 08/01/06 to 08/01/07 the CDI processed 89 complaints for ongoing claims. This reflected a 54% drop in complaints after the Companies had performed the changes required in the CSA.

UNUM sent out 33,566 notices to California Claimants allowing them to “opt in” to the CSA Reassessment. UNUM received 11,098 responses indicating the claimant’s wished to have their claims reassessed. UNUM sent the Reassessment Information Form (RIF) packets to all 11,098 respondents. The California claimants returned 2,654 RIF packets and these claims were reassessed. Of the 2,654 claims that were reassessed, 1,376 denials were upheld, 123 were unchanged due an incomplete RIF, 611 were reopened and an additional payment was made, and 544 were opened and ongoing payments continue today.

Of the 2,654 claims that were reassessed, 298 California claimants requested a second opinion via the Independent Review process. Of the 298 files that were reviewed, the Independent Reviewer indicated in agreement with UNUM by upholding the denial in the reassessment in 278 instances.

Of the twenty files where the Independent reviewer was not in agreement with UNUM reassessment decision, 17 were paid by UNUM. Two files went unpaid as UNUM continues to be in disagreement and one claim is pending. It is noted that, of the 17 paid, two claims involved clerical errors made during the reassessment process and did not involve UNUM reassessment decisions relating to the claimant’s eligibility status in relation to their disabling conditions and additional payment as required by the insuring contract and the CSA. Three claims involved additional information being received in the IR process after the initial UNUM reassessment decision had been made. The CDI has forwarded the two unpaid files to the California Department of Insurance legal staff for further review.

As of December 31, 2007, the monies paid or reserved for California consumers as a result of the California Settlement Agreement and Reassessment process totaled \$112,046,062. Also, as of February 29, 2008, 2,654 claims have gone through the California Reassessment process and 1,155 California consumers have received additional payment of disability benefits.

The CDI continues to monitor UNUM’s compliance with the CSA via the CDI complaint process. In the event that any pattern or trend of non-compliance is identified, additional Market Conduct Examinations will be performed.

DETAILS OF THE EXAMINATION

Further details with respect to the examination and alleged violations are provided in the following tables and summaries:

UNUM CSA REASSESSMENT FILES REVIEWED			
LINE OF BUSINESS / CATEGORY	Denials Upheld	Claims Paid	Totals
Group Long Term Disability Claims	113	24	137
Individual Disability Income Claims	53	1	54
TOTALS	166	25	191

TABLE OF TOTAL CITATIONS CSA REASSESSMENT CLAIMS REVIEWED			
Citation	Description	Group LTD	Individual Disability Income
Failure to comply with the California Settlement Agreement	Company failed to apply the California definition of Total Disability as: as a disability that renders one unable to perform with reasonable continuity the substantial and material acts necessary to pursue his or her usual occupation in the usual and customary way.	5	0
CIC §790.03(h)(5)	The Company failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear.	2	0
Total Citations		7	0

UNUM LINE OF BUSINESS / CATEGORY	CALIFORNIA REASSESSMENT FILES REVIEWED	FILES WITH ALLEGED VIOLATIONS	PERCENTAGE FILES WITH ALLEGED VIOLATIONS IN RELATION TO THE TOTAL NUMBER OF FILES REVIEWED
Group Long Term Disability Claims (reassessment)	137	7	5.11%
Individual Disability Income Claim (reassessment)	54	0	0
TOTALS	191	7	3.66%

UNUM (POST CSA CLOSURES)			
LINE OF BUSINESS / CATEGORY	CLAIMS FOR REVIEW PERIOD	REVIEWED	CITATIONS
Group Long Term Disability (12/01/05 to 05/01/06)	999	30	0
Group Long Term Disability (08/01/06 to 07/31/07)	1443	45	0
Individual Disability Income (08/01/06 to 07/31/07)	457	15	0
TOTALS	2899	90	0

SUMMARY OF EXAMINATION RESULTS

The following is a brief summary of the criticisms that were developed during the course of this examination related to the violations alleged in this report. This report contains only alleged violations of the California Settlement Agreement as well as Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al. In response to each criticism, the Company is required to identify remedial or corrective action that has been or will be taken to correct the deficiency. The Company is obligated to ensure that compliance is achieved. Any noncompliant practices identified in this report may extend to other jurisdictions. The Company was asked to take appropriate corrective action in all jurisdictions where applicable. The Company has agreed to take appropriate corrective actions in all jurisdictions. The total monies paid or reserved in relation to the seven alleged violations was \$1,605,700.10.

ACCIDENT AND DISABILITY- CSA REASSESSMENT CLAIMS

1. In five instances, the Companies failed to comply with the California Settlement Agreement in its application of the CSA Definition of Total Disability. The Company failed to apply a guidepost of Total Disability as a disability that renders one unable to perform with reasonable continuity the substantial and material acts necessary to pursue his or her occupation in the usual and customary way. In four of these instances, the Pre-CSA claims handler identified a similar occupation that did not include the substantial and material acts necessary to pursue the claimant's own occupation. The similar occupation was then utilized as the guidepost in evaluation of the claim. The UNUM Reassessment Adjuster did not recognize the inappropriate application of the wrong occupational descriptions. In one instance, the Pre-CSA medical assessment failed to evaluate the intermittent disabling condition in relation to performing an occupation with reasonable continuity. The medical evaluation had indicated the claimant could operate at a baseline functional level required of their occupation. The UNUM Reassessment Adjuster failed to recognize that a baseline functional assessment does not address an intermittent disabling condition. The Department alleges these acts are in violation of the California Settlement Agreement.

Summary of Companies' Response: UNUM acknowledges that these isolated instances regrettably occurred during the unprecedented, complex and recently completed process of reassessing older disability claims under the California Settlement Agreement ("CSA"). After a thorough review of the subject files, it was determined that additional investigation was required. In one instance, further vocational analysis confirmed that our original decision was correct. In the remaining instances, further analysis resulted in additional payments being issued. These isolated instances were limited to our recently completed claims reassessment. The companies noted that the examiners had no criticisms of post-CSA claims closures.

2. **In two instances, the Companies failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear.** In one instance, the UNUM Reassessment Adjuster failed to recognize a provision in a rehabilitation agreement that UNUM had agreed to consider additional disability benefits when the claimant attempted to perform a new occupation for a new employer. Benefits during this period were not taken into consideration during the reassessment of the claim. In one instance, the claim uphold letter of the UNUM Claim Reassessment Unit reflects that the UNUM Reassessment adjuster failed to adequately integrate into their decision key medical records contained in the claim file. This appears to be an isolated incidence. The Department alleges these acts are in violation of CIC §790.03(h) (5).

Summary of Companies' Response: UNUM acknowledges that these isolated instances regrettably occurred during the unprecedented, complex and recently completed process of reassessing older disability claims under the California Settlement Agreement ("CSA"). Further analysis of each of these two claims resulted in additional payments being issued. These isolated instances were limited to our recently completed claims reassessment. The companies noted that the examiners had no criticisms of post-CSA claims closures.