

PUBLIC REPORT OF THE MARKET CONDUCT EXAMINATION

OF THE CLAIMS PRACTICES OF THE

LINCOLN GENERAL INSURANCE COMPANY
NAIC # 33855 CDI # 4679-7

AS OF OCTOBER 31, 2002

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



January 22, 2004

The Honorable John Garamendi
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:

Lincoln General Insurance Company

NAIC #33855

Hereinafter referred to as the Company.

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.

SCOPE OF THE EXAMINATION

The examination covered the claims handling practices of the aforementioned Company during the mutually agreed upon period of August 20, 2001 through October 31, 2002. The examination was made to discover, in general, if these and other operating procedures of the Company conform with the contractual obligations in the policy forms, to provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR), the California Vehicle Code (CVC) and case law. This report contains only alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al.

To accomplish the foregoing, the examination included:

1. A review of the guidelines, procedures, training plans and forms adopted by the Company for use in California including any documentation maintained by the Company in support of positions or interpretations of fair claims settlement practices.
2. A review of the application of such guidelines, procedures, and forms, by means of an examination of claims files and related records.
3. A review of consumer complaints received by the California Department of Insurance (CDI) in the most recent year prior to the start of the examination.

The examination was conducted at the offices of the Lincoln General Insurance Company in San Diego, California.

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 contains only a summary of pertinent information about the lines of business examined and details of the non-compliant or problematic activities or results that were discovered during the course of the examination along with the insurer’s proposals for correcting the deficiencies. When a violation is discovered that results in an underpayment to the claimant, the insurer corrects the underpayment and the additional amount paid is identified as a recovery in this report. All unacceptable or non-compliant activities may not have been discovered, however, and failure to identify, comment on or criticize activities does not constitute acceptance of such activities.

Any alleged violations identified in this report and any criticisms of practices have not undergone a formal administrative or judicial process.

CLAIM SAMPLE REVIEWED AND OVERVIEW OF FINDINGS

The examiners reviewed files drawn from the category of Closed Claims for the stipulated period of August 20, 2001 through October 31, 2002, commonly referred to as the “review period.” The examiners reviewed 367 Lincoln General claim files. The examiners cited 136 claims handling violations of the Fair Claims Settlement Practices Regulations and/or California Insurance Code Section 790.03 within the scope of this report. Further details with respect to the files reviewed and alleged violations are provided in the following table and summary.

Lincoln General Insurance Company			
CATEGORY	CLAIMS FOR REVIEW PERIOD	REVIEWED	CITATIONS
Collision	5,057	67	17
Comprehensive	923	63	40
Property Damage	5,876	70	31
Bodily Injury	1,086	64	15
Uninsured Motorist Property Damage	108	44	15
Uninsured Motorist Bodily Injury	67	34	10
Medical Payment	53	30	8
TOTALS	13,170	372	136

TABLE OF TOTAL CITATIONS		
Citation	Description	Lincoln General Insurance Company
CCR §2695.3(a)	The Company's claim file failed to contain all documents, notes, and work papers which pertain to the claim.	38
CCR §2695.7(b)(3)	The Company failed to include a statement in their claim denial that, if the claimant believes the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance.	17
CCR §2695.8(b)(1)	The Company failed to include, in the settlement, all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the comparable automobile.	17
CCR §2695.7(b)(1)	The Company failed to provide written basis for the denial of the claim.	11
CCR §2695.5(e)(3)	The Company failed to begin investigation of the claim within fifteen calendar days.	8
CCR §2695.5(e)(2)	The Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days.	8
CCR §2695.5(e)(1)	The Company failed to acknowledge notice of claim within fifteen calendar days.	8
CIC §790.03(h)(3)	The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under its insurance policies. The Company failed to conduct an adequate investigation.	8
CCR §2695.7(b)	The Company failed, upon receiving proof of claim, to accept or deny the claim within forty calendar days.	3
CCR §2695.7(c)(1)	The Company failed to provide written notice of the need for additional time every thirty-calendar days.	3
CCR §2695.8(g)(3)	The Company failed to warrant that non-original equipment manufacturer replacement crash parts were of like, kind, quality, safety, fit and performance as original equipment manufacturer replacement crash parts	3
CCR §2695.7(d)	The Company persisted in seeking information not reasonably required for or material to the resolution of a claim dispute.	3
CCR §2695.8(b)(1)(c)	The Company failed to document the determination of value. Any deductions from value, including deduction for salvage, must be discernible, measurable, itemized, and specified as well as be appropriate in dollar amount.	2
CCR §2695.7(h)	Upon acceptance of the claim the Company failed to tender payment within thirty-calendar days. The	2
CCR §2695.5(b)	The Company failed to respond to communications within fifteen calendar days.	2
CCR §2695.8(i)	The Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation.	2
CCR §2695.7(g)	The Company attempted to settle a claim by making a settlement offer that was unreasonably low.	1
Total Citations		136

SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS AND TOTAL RECOVERIES

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 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. Regardless of the remedial actions taken or proposed by the Company, it is the Company's obligation to ensure that compliance is achieved. Money recovered as a direct result of files reviewed within the scope of this report was \$1735.87. Following the findings of the examination, a closed claim survey was conducted by the Company, which resulted in additional payments of \$1094.86. Thus, as a result of the examination, the total amount of money returned to claimants was \$2880.23.

1. The Company failed to properly document claim files. In 38 instances, the Company failed to maintain claim data that was accessible, legible and retrievable for examination. The Department alleges these acts to be in violation of CCR §2695.3(a).

Summary of Company Response: The Company acknowledges that it failed to document within the claim file that a policyholder was being provided an auto body repair bill of rights document. The Company states that the proper mailing of the consumer bill of rights document had been a clerical duty, but has modified its procedure such that the file examiner will mail the vehicle owner a copy of the auto body bill of rights with a notation placed within the claim file. The Company has submitted documentation to evidence this procedural modification for the Department's records.

2. The Company failed to advise the claimant that he or she may have the claim denial reviewed by the California Department of Insurance. In 17 instances, the Company failed to include a statement in their claim denial that should the claimant believe that the claim had been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance. The Department alleges these acts to be in violation of CCR §2695.7(b)(3).

Summary of Company Response: The Company acknowledges that all denials of coverage and/or benefits to policyholders and/or claimants must reference the California Department of Insurance, its address and telephone number. The Company has modified its general form and specific denial correspondence to include the California Department of Insurance reference, its address and telephone number to comply with the subject regulation. The Department has reviewed this modified form to ensure compliance. Additionally, the modified procedure and forms have been added to the Company's training manual.

3. The Company failed to include, in the settlement, all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the comparable automobile.

In seventeen instances, the Company failed to include in the settlement, all applicable taxes, license fees and any other fees incident to transfer of evidence of ownership of the comparable automobile. The Department alleges these acts to be in violation of CCR §2695.8(b)(1).

Summary of Company Response: The Company acknowledges that a new total loss notification procedure was needed to communicate all itemized deductions to policyholders and claimants. The Company has implemented the following corrective procedures:

A. In the event of a determined total loss, a modified form will be sent to the insured regarding the return of, if appropriate, vehicle license fees or VLF fees. The name of the owner of the vehicle will be shown as the party to whom the return should be directed. When the signed form is received from the owner, it will be sent to the DMV for them to return any monies due. A copy of the signed form will be placed in the claim file. Language confirming this procedure shall be included in the form correspondence to the vehicle owner. The Department has reviewed this form for accuracy and to ensure that it is in compliance with the subject regulation.

B. Following this examination, the Company commenced a file by file review of all prior total loss settlements. On those files where the transfer or tag fee was allowed at \$10.00, as opposed to \$15.00, the difference has been returned to the vehicle owner. Any other variances inuring to the benefit of the vehicle owner have also been returned. Further, on any files not showing a VLF request form, the forms are being filled out and sent to the DMV for reimbursement. The accurate payment of sales tax had been reviewed and corrected prior to this examination by Company to ensure that sales tax was not paid twice and that the proper tax rate was utilized. Accordingly, Company is paying sales tax at 8.5% on all vehicular total losses. The Department has reviewed the aforementioned forms for accuracy and to ensure that each is in compliance with the subject regulation.

4. The Company failed to provide a written basis for the denial of the claim. In 12 instances, the Company failed to provide a written basis for the denial of the claim. The Department alleges these acts to be in violation of CCR §2695.7(b)(1).

Summary of Company Response: The Company acknowledges that it failed to state, in writing, a factual basis for the denial. The Company has developed and implemented a modified form to be utilized by staff for all denials of coverage and/or benefits to policyholders and/or claimants. Further, the staff is being trained to provide a denial communication, in writing, which offers a clear and concise basis for the denial. In cases where specific policy language is applicable, a copy of the policy evidencing the subject language will be included in the denial.

5. The Company failed to begin investigation of the claim within fifteen calendar days. In eight instances, the Company failed to begin investigation of the claim within fifteen calendar days. The Department alleges these acts to be in violation of CCR §2695.5(e)(3).

Summary of Company Response: The Company acknowledges that it failed to begin investigation in a timely manner. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims

Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim.

6. The Company failed to provide necessary forms, instructions and reasonable assistance within fifteen calendar days. In eight instances, the Company failed to provide the necessary forms, instructions and reasonable assistance within fifteen calendar days. The Department alleges these acts to be in violation of CCR §2695.5(e)(2).

Summary of Company Response: The Company acknowledges that it failed to provide the necessary forms, instruction and reasonable assistance to the claimant within a timely manner. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California unfair claim practices document has been given to each examiner for their reference when handling a California claim.

7. The Company failed to acknowledge notice of claim within fifteen calendar days. In eight instances, the Company failed to acknowledge notice of claim within fifteen calendar days. The Department alleges these acts to be in violation of CCR §2695.5(e)(1).

Summary of Company Response: The Company acknowledges that it failed to acknowledge notice of claim within a timely manner. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim.

8. The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims. The Company failed to issue notices or issue notices timely or issue notices that included all required benefit information. In eight instances, the Company failed to adhere to standard of prompt investigation and processing of claims. The Department alleges these acts to be in violation of CIC. §790.03(h)(3).

Summary of Company Response: The Company acknowledges that in the above-cited matters its investigation, processing and/or payment of an insured's claim was severely delinquent. Training and seminar sessions now include a greater emphasis on prompt

investigations, processing and payments of claims. Regular file reviews by management is also designed to ensure claim handling quality and compliance.

9. The Company failed to accept or deny the claim within forty calendar days. In three instances, the Company failed upon receiving proof of claim, to accept or deny the claim within forty calendar days. The Department alleges these acts to be in violation of CCR §2695.7(b).

Summary of Company Response: The Company acknowledges that it failed upon receipt of proof of claim to accept or deny the claim within forty calendar days. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim.

10. The Company failed to provide written notice of the need for additional time ever thirty calendar days. In three instances, the Company failed to provide written notice of the need for additional time every thirty-calendar days. The Department alleges these acts to be in violation of CCR §2695.7(c)(1).

Summary of Company Response: The Company acknowledges that it failed to provide written notice to the claimant to request additional time to evaluate the matter. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim.

11. The Company required the use of non-original equipment manufacture replacement crash parts. In three instances, the Company required the use of non-original equipment manufacture replacement crash parts. The Department alleges these acts to be in violation of CCR §2695.8(g)(3).

Summary of Company Response: The Company acknowledges that it failed to warrant that non-original equipment manufacturer replacement crash parts were of like, kind, quality, safety, fit, and performance as original replacement crash parts. In an effort to ensure that its staff is in compliance with the subject regulation, it has forwarded correspondence to all licensed California independent appraisers who are currently being employed by the Company. The subject correspondence mandates that all of the appraiser's estimate forms must list all part

variances as required by the subject regulation. The Department has reviewed the Company's offered correspondence for accuracy and compliance with the subject regulation.

12. The Company persisted in seeking unnecessary information. In three instances, the Company persisted in seeking information not reasonably required for or material to the resolution of a claim dispute. The Department alleges these acts to be in violation of CCR §2695.7(d).

Summary of Company Response: The Company acknowledges that it failed to request additional time, in writing, from the subject claimants to evaluate the matter. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim.

13. The Company failed to document the determination of value. In two instances, the Company failed to document the determination of value. Any deductions from value, including deductions for salvage, must be discernible, measurable itemized, and specified as well as be appropriate in dollar amount. The Department alleges these acts to be in violation of CCR §2695.8(b)(1)(C).

Summary of Company Response: The Company acknowledges that a new total loss notification procedure was needed to communicate all itemized deductions to policyholders and claimants. The Company has implemented the following corrective procedures:

A. In the event of a determined total loss, a modified form will be sent to the insured regarding the return of, if appropriate, vehicle license fees or VLF fees. The name of the owner of the vehicle will be shown as the party to whom the return should be directed. When the signed form is received from the owner, it will be sent to the DMV for them to return any monies due. A copy of the signed form will be placed in the claim file. Language confirming this procedure shall be included in the form correspondence to the vehicle owner. The Department has reviewed this form for accuracy and to ensure that it is in compliance with the subject regulation.

B. Following this examination, the Company commenced a file by file review of all prior total loss settlements. On those files where the transfer or tag fee was allowed at \$10.00, as opposed to \$15.00, the difference has been returned to the vehicle owner. Any other variances inuring to the benefit of the vehicle owner have also been returned. Further, on any files not showing a VLF request form, those forms are being filled out and sent to the DMV for reimbursement. The accurate payment of sales tax had been reviewed and corrected prior to this examination by the Company to ensure that sales tax was not paid twice and that the proper tax rate was utilized. Accordingly, the Company is

paying sales tax at 8.5% on all vehicular total losses. The Department has reviewed the aforementioned forms for accuracy and to ensure that it is in compliance with the subject regulation.

14. Upon acceptance of the claim the Company failed to tender payment within thirty calendar days. In two instances, upon acceptance of the claim the Company failed to tender payment within thirty calendar days. The Department alleges these acts to be in violation of CCR §2695.7(h).

Summary of Company Response: The Company acknowledges that it failed to tender payment to the claimant within thirty calendar days upon acceptance of the claim. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim.

15. The Company failed to respond to communications within fifteen calendar days. In two instances, the Company failed to respond to communications within fifteen calendar days. The Department alleges these acts to be in violation of CCR §2695.5(b).

Summary of Company Response: The Company acknowledges that it failed to respond to communications from the claimant within fifteen calendar days. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim.

16. The Company failed to provide written notification to first party claimant as to whether the insurer intends to pursue subrogation. In two instances, the Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation of the claim. The Department alleges these acts to be in violation of CCR §2695.8(i).

Summary of Company Response: The Company acknowledges that it failed to provide written notification to a first party claimant that it would pursue the subrogation of the subject claim. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also

established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim.

17. The Company attempted to settle a claim by making a settlement offer that was unreasonably low. In one instance, the Company attempted to settle a claim by making settlement offer that was unreasonably low. The Department alleges this act to be in violation of CCR §2695.7(g).

Summary of Company Response: The Company acknowledges that it attempted to effectuate an unreasonably low settlement based on unsubstantiated deductions, which have been reimbursed to the insured. In an effort to ensure that its staff is more familiar with California regulations, the Company began a California specific training seminar in November 2002 for its Georgia claims staff. All participating staff received California Fair Claims Settlement Practices Certification. Moreover, during the first quarter of 2003, the Company has hired new supervisors and examiners in addition to a new Senior Vice President of Claims. The Company has also established a new Special Investigations Unit (SIU). Finally, a copy of the California Fair Claims Settlement Practices document has been given to each examiner for their reference when handling a California claim..