

PUBLIC REPORT OF THE MARKET CONDUCT EXAMINATION

OF THE CLAIMS PRACTICES OF THE

**ESURANCE PROPERTY AND CASUALTY
INSURANCE COMPANY
NAIC # 30210 CDI # 3130-2**

AS OF JUNE 30, 2003

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



May 21, 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:

Esurance Property and Casualty Insurance Company

NAIC #30210

Hereinafter referred to as Esurance or 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 period July 1, 2002 through June 30, 2003. 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. Any alleged violations of other relevant laws which may result from this examination will be included in a separate report which will remain confidential subject to the provisions of CIC Section 735.5.

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 Company's office in San Francisco, 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 period July 1, 2002 through June 30, 2003, commonly referred to as the “review period”. The examiners reviewed 303 claim files. The examiners cited 74 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 tables and summaries.

Esurance			
CATEGORY	CLAIMS FOR REVIEW PERIOD	REVIEWED	CITATIONS
Personal Auto Bodily Injury	143	46	3
Personal Auto Property Damage	739	62	10
Personal Auto Collision	1,338	65	22
Personal Auto Comprehensive	395	58	21
Personal Auto Medical Payments	68	34	9
Personal Auto Uninsured Motorist Bodily Injury	24	18	2
Personal Auto Uninsured Motorist Property Damage	28	20	7
TOTALS	2,735	303	74

TABLE OF TOTAL CITATIONS

Citation	Description	Esurance
CCR §2695.8(f)	The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.	28
CCR §2695.8(b)(1)	The Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile or 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.	18
CCR §2695.3(a)	The Company's claim file failed to contain all documents, notes and work papers that pertain to the claim.	7
CCR §2695.3(b)(2)	The Company failed to record the date the Company received every relevant document in the file.	5
CCR §2695.7(g)	The Company attempted to settle a claim by making a settlement offer that was unreasonably low.	4
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.	3
CCR §2695.7(h)	Upon acceptance of the claim the Company failed to tender payment within 30 calendar days.	2
CCR §2695.4(a)	The Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.	1
CCR §2695.5(b)	The Company failed to respond to communications within 15 calendar days.	1
CCR §2695.7(b)(3)	The Company failed to include a statement in its 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.	1
CCR §2695.7(c)(1)	The Company failed to provide written notice of the need for additional time every 30 calendar days.	1
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.	1
CCR §2695.8(k)	The Company failed to document the basis of betterment, depreciation, or salvage. The basis for any adjustment shall be fully explained to the claimant in writing.	1
CIC §790.03(h)(1)	The Company failed to represent correctly to claimants, pertinent facts or insurance policy provisions relating to a coverage at issue.	1
Total Citations		74

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 within the scope of this report was \$2,543.78. Following the findings of the examination, a closed claim survey is being conducted by the Company.

1. The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based. In 28 instances, the Company failed to supply the claimant with a copy of the estimate upon which the settlement is based. The Department alleges these acts are in violation of CCR §2695.8(f).

Summary of Company Response: The Company acknowledges that, although it is the procedure to supply the vehicle owner with a copy of the appraisal, files were not documented that there was compliance. All claims paying personnel have been reminded through ongoing training to be sure the appraisals are supplied to all claimants, and that the files are appropriately documented.

2. The Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile or 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 seven instances, the Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile and in 11 instances, the Company failed to include in the settlement license fees and other fees incident to transfer of evidence of ownership of the comparable automobile. The Department alleges these acts are in violation of CCR §2695.8(b)(1).

Summary of Company Response: The Company acknowledges that the actual cash value of a totaled vehicle was not fully itemized and explained in writing to the insured. To comply with the regulations a new procedure has been implemented that automatically sends a copy of the total loss evaluation with each total loss settlement.

The Company also acknowledges that it did not always include the unused vehicle license fee, and other fees incident to the transfer of ownership, in the total loss settlements. The Company now utilizes a service that calculates these amounts and they are included in every total loss settlement. Additionally, an internal survey of all total loss claims is being done and additional monies will be paid if due. Esurance expects to complete this survey by June 2004.

3. The Company failed to properly document claim files. In seven instances, the Company's files failed to contain all documents, notes and work papers. The Department alleges these acts are in violation of CCR §2695.3(a).

Summary of Company Response: The Company acknowledges that the files did not contain all correspondence or documentation. All claims paying personnel have been reminded of the importance of maintaining copies of all correspondence and documentation. In addition,

the Company is researching new systems whereby claim documentation will be maintained electronically.

4. The Company failed to record claim data in the file. In five instances, the Company failed to record the date the Company received relevant documents. The Department alleges these acts are in violation of CCR §2695.3(b)(2).

Summary of Company Response: The Company acknowledges that it was unable to reconstruct when certain documents were received. It is the Company's standard procedure to date stamp all incoming correspondence and documents. It attributes these instances to human error. The importance of consistently date stamping all incoming correspondence has been reinforced with appropriate personnel.

5. The Company attempted to settle a claim by making a settlement offer that was unreasonably low. In four instances, the Company attempted to settle a claim by making a settlement offer that was unreasonably low. Two instances involved depreciation that was applied inappropriately. One instance involved the failure to make an offer of settlement. Another instance involved the erroneous application of a deductible. The Department alleges these acts are in violation of CCR §2695.7(g).

Summary of Company Response: The Company acknowledges that the amounts paid in these instances were not adequate and has issued supplemental payments amounting to \$1,671.78. The Company conducts monthly training with the staff to go over all areas in which improvement is needed. It also has an extensive internal audit that reviews payment adequacy.

6. The Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation. In three 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 are in violation of CCR §2695.8(i).

Summary of Company Response: The Company acknowledges that it had not been notifying the insureds of its subrogation intent. As a result of this examination, a procedure has been implemented that automatically generates written notice when the claim is received by the subrogation department.

7. Upon acceptance of the claim the Company failed to tender payment within 30 calendar days. In two instances, upon acceptance of the claim, the Company failed to tender payment within 30 calendar days. The Department alleges these acts are in violation of CCR §2695.7(h).

Summary of Company Response: The Company acknowledges that timely payments were not issued in these instances. The importance of making timely payments upon receipt of sufficient documentation has been reinforced with all claims paying personnel.

8. The Company failed to disclose all policy provisions. In one instance, the Company failed to disclose the provisions of the insurance policy. The insured was injured by an uninsured motorist and was not advised of the applicable uninsured motorist bodily injury coverage. The Department alleges this act is in violation of CCR §2695.4(a).

Summary of Company Response: The Company acknowledges that the insured was not properly informed. It has reopened the claim, contacted the insured, and made a settlement

in the amount of \$1,000.00. All claims paying personnel have been reminded that the insureds should be advised of any and all potentially applicable benefits or coverages.

9. The Company failed to respond to communications within 15 calendar days. In one instance, the Company failed to respond to communications within 15 calendar days. A subrogation demand was received from the adverse carrier and it was not acknowledged. The Department alleges this act is in violation of CCR §2695.5(b).

Summary of Company Response: The Company acknowledges that timely contact was not made upon receipt of the subrogation demand. All claims paying personnel have been reminded of the importance of responding timely to all communications.

10. The Company failed to advise the claimant that he or she may have the claim denial reviewed by the California Department of Insurance. In one instance, the Company failed to include a statement in a partial 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. The Department alleges this act is in violation of CCR §2695.7(b)(3).

Summary of Company Response: The Company's procedure is to comply with this section of the regulations in all denial letters. It was not done in this case because the file handler considered the letter more of an update than a partial denial of coverage. All claims paying personnel have been reminded to include the applicable wording in any letter of denial, including partial denials.

11. The Company failed to provide written notice of the need for additional time every 30 calendar days. In one instance, the Company failed to provide written notice of the need for additional time every 30 calendar days. The Department alleges this act is in violation of CCR §2695.7(c)(1).

Summary of Company Response: The Company acknowledges it did not advise the insured in writing of the need for additional time. All claims handling personnel have been reminded of the importance of keeping the claimants informed by complying with this section of the code.

12. The Company failed to document the determination of value. In one instance, 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. The basis of the baseline adjustment on the total loss vehicle is not supported. The Department alleges this act is in violation of CCR §2695.8(b)(1)(C).

Summary of Company Response: The Company bases its total loss settlements on amounts provided by an outside vendor. The Company contends that the vendor's calculations are fair and based on a thorough market analysis.

This is an unresolved issue and may result in further administrative action.

13. The Company failed to document the basis of betterment, depreciation, or salvage. The basis for any adjustment shall be fully explained to the claimant in writing. In one instance, the Company failed to document the basis of betterment, depreciation, or salvage. The basis for any adjustment shall be fully explained to the claimant in writing. The Department alleges this act is in violation of CCR §2695.8(k).

Summary of Company Response: The Company acknowledges that the basis of the depreciation was not presented to the insured in writing. All claims paying personnel have been reminded that this procedure must be adhered to whenever an amount claimed has been adjusted.

14. The Company failed to represent correctly to claimants, pertinent facts or insurance policy provisions. In one instance, the Company failed to represent correctly to the insured a policy provision relating to a coverage at issue. The insured was informed that there was no medical payments coverage because the injury occurred in a non-owned vehicle. The Department alleges this act is in violation of CIC §790.03 (h)(1).

Summary of Company Response: The Company acknowledges that a misrepresentation was made, but considers it an isolated incident. The error was discovered internally and corrected immediately. Nevertheless, all claims paying personnel have been reminded of the importance of being extremely careful when discussing coverage issues with the public.