

PUBLIC REPORT OF THE MARKET CONDUCT EXAMINATION
OF THE CLAIMS PRACTICES OF THE
WESTERN UNITED INSURANCE COMPANY

NAIC # 37770 CDI # 3229-2

AS OF NOVEMBER 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



June 9, 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:

Western United Insurance Company

NAIC #37770

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 period December 1, 2002 through November 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 primarily at the Company's offices in Irvine, 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 December 1, 2002 through November 30, 2003, commonly referred to as the “review period”. The examiners reviewed 424 claim files. The examiners cited 42 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.

Western United Insurance Company			
CATEGORY	CLAIMS FOR REVIEW PERIOD	REVIEWED	CITATIONS
Personal Automobile - Collision	7,099	67	11
Personal Automobile - Comprehensive	1,968	67	12
Personal Automobile – Property Damage	10,528	68	5
Personal Automobile – Bodily Injury	2,785	60	0
Personal Automobile – Uninsured Motorist Property Damage	354	56	7
Personal Automobile – Uninsured Motorist Bodily Injury	325	54	3
Personal Automobile – Medical Payments	691	52	4
TOTALS	23,750	424	42

TABLE OF TOTAL CITATIONS		
Citation	Description	Western United Insurance Company
CCR §2695.3(a)	The Company's claim file failed to contain all documents, notes and work papers that pertain to the claim.	21
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.	7
CCR §2695.7(g)	The Company attempted to settle a claim by making a settlement offer that was unreasonably low.	3
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.	2
CCR §2695.7(c)(1)	The Company failed to provide written notice of the need for additional time every 30 calendar days.	2
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.	2
CCR §2695.8(f)	The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.	2
CCR §2695.7(b)	The Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.	1
CCR §2695.7(b)(1)	The Company failed to provide the written basis for the denial of the claim.	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
Total Citations		42

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 \$2,912.55.

1. The Company failed to properly document claim files. In 21 instances, the Company's files failed to contain all documents, notes and work papers. While there is a written procedure in place, the majority of errors (18) reflect the failure to document the issuance of estimates to insureds. The Department alleges these acts are in violation of CCR §2695.3(a).

Summary of Company Response: The Company has issued a memorandum to all staff as a reminder to properly document all actions. Supervisors will monitor this requirement in their review of files. The in-house auditor will also be reviewing files to ensure that they are complete and contain all documents, notes and work papers that pertain to the claim.

"Each citation and/or violation will be reviewed with our Managers and Supervisors so that they understand the critical role they play in ensuring compliance. Secondly, we will work together with our Trainer and Auditor so they will support our goals. Finally, each supervisor will meet with their respective adjusters to go over each citation and the action necessary to ensure compliance now and in the future."

2. The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims. In seven instances, the Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under its insurance policies. Six of these errors involve unexplained gaps in file activity and one file reflected an adjuster failure to request payment letters, as required. The Department alleges these acts are in violation of CIC §790.03 (h)(3).

Summary of Company Response: The Company indicates that these errors are attributed to adjuster performance issues and that the individuals concerned have been counseled accordingly. Supervisors will be conducting file reviews in order to ensure compliance especially in the area of file diary action dates. Additionally, the Company will be conducting more frequent internal audits.

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3. The Company attempted to settle a claim by making a settlement offer that was unreasonably low. In three instances, the Company attempted to settle a claim by making a settlement offer that was unreasonably low. These errors involve failure to waive deductible and including special equipment adjustments in settlements. The Department alleges these acts are in violation of CCR §2695.7(g).

Summary of Company Response: The Company acknowledges the errors and indicates they are the result of adjuster oversight. In each instance cited by the examiners additional monies were issued to insureds during the course of the on-site examination. The Company has counseled the individual adjusters and will provide them with additional training as necessary. Additionally, the Company will be conducting more frequent internal audits.

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4. The Company failed to advise the claimant that he or she may have the claim denial reviewed by the California Department of Insurance. In two instances, 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. The Department alleges these acts are in violation of CCR §2695.7(b)(3).

Summary of Company Response: The Company acknowledges the errors and has issued an E-mail to the claims group reminding them that all denials, whether full or partial, must contain the required CDI information. Additional training will be implemented to ensure that all adjusters are fully aware of this requirement. In each case a corrected denial letter was issued to the claimant.

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5. The Company failed to provide written notice of the need for additional time every 30 calendar days. In two instances, the Company failed to provide written notice of the need for additional time every 30 calendar days. The Department alleges these acts are in violation of CCR §2695.7(c)(1).

Summary of Company Response: The Company acknowledges the errors and in each instance cited, the individual adjusters were counseled as regards maintaining regular diaries. Supervisors will be monitoring adherence to this requirement during periodic file reviews.

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6. 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 two instances, 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. All DMV fees were not included in the settlement. The Department alleges these acts are in violation of CCR §2695.8(b)(1).

Summary of Company Response: The Company acknowledges the errors and in each instance cited, adjuster oversight was involved. The individual adjusters were counseled accordingly and supplemental payments were issued to insureds. Additional training will be provided as necessary and supervisors will monitor checks for inclusion of all fees.

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7. The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.

In two instances, the Company failed to supply the claimant with a copy of the estimate upon which the settlement is based. In these files it was clear that no estimates were issued. The Department alleges these acts are in violation of CCR §2695.8(f).

Summary of Company Response: The Company acknowledges the errors and advised the examiners it is normal procedure to send a copy of the estimate with the payment and to note it in the file. In the future, the Company will have all supervisors check for this item when reviewing drafts as will the in-house auditor when reviewing files.

8. The Company failed to comply with the Fair Claims Practices Regulations. In one instance each, the Company failed to comply with the following Fair Claims Practices Regulations: CCR § 2695.7(b), CCR § 2695.7(b)(1), and CCR § 2695.8(k).

Summary of Company Response: The Company acknowledges these errors and has brought them to the attention of the appropriate adjusters. More frequent audits, as well as any necessary training, should adequately address these issues.