

PUBLIC REPORT OF EXAMINATION OF THE CLAIMS

PRACTICES OF THE

**TOPA INSURANCE COMPANY**  
**NAIC # 18031 CDI # 2989-2**

AS OF JANUARY 15, 2001

**STATE OF CALIFORNIA**



**DEPARTMENT OF INSURANCE**  
**FIELD CLAIMS BUREAU**

**TABLE OF CONTENTS**

SALUTATION.....1

SCOPE OF THE EXAMINATION.....2

CLAIMS SAMPLE REVIEWED AND OVERVIEW OF FINDINGS.....3

TABLE OF TOTAL CITATIONS.....4

SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS  
AND TOTAL RECOVERIES.....6

**CALIFORNIA DEPARTMENT OF INSURANCE**

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



April 9, 2002

The Honorable Harry W. Low  
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:

**Topa Insurance Company**

**NAIC #18031**

Hereinafter referred to as Topa or 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](http://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, 1999 through June 30, 1999 and January 1, 2000 through January 1, 2001. 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) 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 primarily conducted at the Company's claims office in Century City, 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, 1998 through June 30, 1999 and January 15, 2000 through January 15, 2001, commonly referred to as the “review period”. The examiners reviewed 583 Topa Insurance Company Personal Automobile (PA) claim files. The examiners cited 369 claims handling violations of the Fair Claims Settlement Practices Regulations and/or the California Insurance Code section 790.03 within the scope of this report.

<b>Topa Insurance Company</b> <b>July 1, 1998-June 30, 1999</b>			
<b>CATEGORY</b>	<b>CLAIMS FOR REVIEW PERIOD</b>	<b>REVIEWED</b>	<b>CITATIONS</b>
PA Bodily Injury	168	102	39
PA Property Damage	176	118	70
PA UMPD	77	26	26
PA UMBI	69	59	32
PA Medical	40	30	25
PA Comprehensive	54	33	14
PA Collision	117	60	44
PA Total Losses	106	47	56
<b>TOTALS</b>	807	475	306

<b>Topa Insurance Company</b> <b>January 15, 2000-January 15, 2001</b>			
<b>CATEGORY</b>	<b>CLAIMS FOR REVIEW PERIOD</b>	<b>REVIEWED</b>	<b>CITATIONS</b>
PA Bodily Injury	30	24	2
PA Property Damage	30	13	8
PA UMPD	30	6	3
PA UMBI	30	12	6
PA Medical	30	4	0
PA Comprehensive	30	19	14
PA Collision	30	18	16
PA Total Losses	30	12	14
<b>TOTALS</b>	240	108	63

## TABLE OF TOTAL CITATIONS

Citation	Description	Topa Insurance Company
CCR §2695.8(f)	The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.	46
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.	42
CIC §790.03(h)(3)	The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.	42
CCR §2695.7(c)(1)	The Company failed to provide written notice of the need for additional time every thirty calendar days.	40
CCR §2695.7(b)	The Company failed, upon receiving proof of claim, to accept or deny the claim within forty calendar days.	37
CCR §2695.7(h)	Upon acceptance of the claim the Company failed to tender payment within thirty calendar days.	28
CCR §2695.5(a)	The Company failed to respond to a Department of Insurance inquiry within twenty-one calendar days of the inquiry.	21
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.	19
CCR §2695.5(e)(2)	The Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days.	12
CCR §2695.5(e)(1)	The Company failed to acknowledge notice of claim within fifteen calendar days.	11
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.	10
CCR §2695.7(f)	The Company failed to provide written notice of any statute of limitation or other time period requirement not less than sixty days prior to the expiration date.	10
CCR §2695.4(a)	The Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.	9
CCR §2695.3(a)	The Company's claim file failed to contain all documents, notes and work papers which pertain to the claim.	8

### TABLE OF TOTAL CITATIONS

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.	7
CCR §2695.5(b)	The Company failed to respond to communications within fifteen calendar days.	6
CIC §790.03(h)(5)	The Company failed to effectuate prompt, fair and equitable settlements of claims when liability has become reasonably clear.	6
CCR §2695.5(e)(3)	The Company failed to begin investigation of the claim within fifteen calendar days.	4
CCR §2695.7(b)(1)	The Company failed to provide written basis for the denial of the claim.	3
CCR §2695.5(d)	The Company's claims agent failed to immediately transmit notice of claim to the insurer.	2
CIC §790.03(h)(1)	The Company misrepresented to claimant pertinent facts relating to coverage.	2
CCR §2695.7(d)	The Company persisted in seeking information not reasonably required for or material to the resolution of a claim dispute.	2
CCR §2695.8(l)	The Company failed to provide reasonable notice to a claimant before terminating payment for storage charges.	1
CCR §2695.8(b)(1)(A)	The Company failed to utilize comparable vehicles in the local market area in determining the value of a total loss vehicle.	1
<b>Total Citations</b>		<b>369</b>

## **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. 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 obligation of the Company to ensure that compliance is achieved. The total money recovered was \$1656.47 within the scope of this report.

**1. The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.** In 46 instances, the Company failed to supply the claimant with a copy of the estimate upon which the settlement is based. In the above instances, it was not documented that a copy of the estimate was provided to the claimant. The CDI did review other files where it was documented that a copy of the estimate was supplied. The Department alleges these acts are in violation of CCR § 2695.8(f).

**Company Response:** The Company believes that it has always been in compliance with Section 2695.8(f), as it has consistently required its adjusters to provide a copy of the estimate to the insured/claimant and to place a copy of the estimate in the claim file. We believe that placing a copy of the estimate in the file is sufficient documentation to evidence compliance with Section 2695.8(f). The documentation rule of Section 2695.3(a) requires the Company to maintain reasonable documentation *consistent with the Company's method of operation* to allow the examiner to determine pertinent events of the claim. This documentation rule is satisfied where the Company's procedures require the estimate to be provided and placed in the claim file. The Company notes that it has received no justified consumer complaints on this issue, which is further evidence of compliance.

Nevertheless, to provide further evidence of this procedure, the Company has adapted its practices to require an additional, separate file notation from the adjuster that a copy of the estimate has been given to the insured.

**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 42 instances, the Company either 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 30 instances the

proper fees were not paid and in 12 instances the Company failed to provide a copy of the Automobile Market Evaluation to the policyholder. The Department alleges these acts are in violation of CCR §2695.8(b)(1).

**Company Response:** With regard to the explanation of the cost of a comparable automobile, the Company believes that it has been in compliance with CCR §2695.8(b)(1). It is the Company's practice to provide each insured or claimant with an itemized recounting of how their settlement values were calculated. To further improve this process, the Company has amended its procedure to include a file notation that the examiner explained that the ACV was determined by obtaining a vendor Market Survey Report or other acceptable method, and that this report was discussed with and provided to the insured. The Total Loss letter will be modified to include explanations for any betterment applied. The Company has discussed the Department's observations with its technical staff and provided any necessary training to assure compliance with CCR §2695.8(b)(1).

With regard to the payment of fees, the Company does not believe that Section 2695.8(b)(1) requires insurers to pay transfer fees when not incurred by the insured, as is the case when the insured retains salvage. Without waiving this position, however, the Company has agreed to pay the transfer fees on first party claims in accordance with the Department's present interpretation.

**3. The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.** In 42 instances, the Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies. The Department alleges these acts are in violation of CIC §790.03(h)(3).

**Company Response:** The Company believes that it has adopted and implemented reasonable standards for the prompt investigation and processing of claims as required by 790.03 (h)(3). However, prior to the Exam the Company had recognized some of the issues raised by the Department. Consequently, the Company has implemented new procedures and provided training that will enhance and improve its practices as follows:

- Restructured the auto claim department to improve and enhance training, supervision and reporting structure.
- Hired additional staff to assist with claims handling and supervision.
- Provided continuous training to claim staff on DOI regulations and their applicability to claim practices.
- Continuously provided training documents/material to claim staff, as needs dictate.
- Will modify procedures as need or regulations require.
- Improved diary tools.

The Company will also continue to annually certify, as required by the regulations, that claim staff has read and understands the California Fair Claims Settlement Practices Regulations. In implementing these steps the Company believes that its processes, procedures and standards have been improved and enhanced to assure compliance with 790.03 (h)(3).

**4. The Company failed to provide written notice of the need for additional time every thirty-calendar days.** In 40 instances, the Company failed to provide written notice of the need for additional time every thirty-calendar days. The Department alleges these acts are in violation of CCR § 2695.7(c)(1).

**Company Response:** Company practice is to comply with Section 2695.7(c)(1). The steps discussed in our response to Item 3 above will enhance the Company's compliance with this section and should address the Department's concern.

**5. The Company failed to accept or deny the claim within forty calendar days.** In 37 instances, the Company failed, upon receiving proof of claim, to accept or deny the claim within forty calendar days. The Department alleges these acts are in violation of CCR § 2695.7(b).

**Company Response:** Company practice is to comply with Section 2695.7(b). The steps discussed in our response to Item 3 above will enhance the Company's compliance with this section and should address the Department's concern.

**6. Upon acceptance of the claim the Company failed to tender payment within thirty calendar days.** In 28 instances, upon acceptance of the claim the Company failed to tender payment within thirty calendar days. The Department alleges these acts are in violation of CCR § 2695.7(h).

**Company Response:** Company practice is to comply with Section 2695.7(h). The steps implemented and described in our response to Item 3 above will enhance the Company's compliance with this section and should address the Department's concern.

**7. The Company failed to respond to a Department of Insurance inquiry within twenty-one calendar days of the inquiry.** In 21 instances, the Company failed to respond to a Department of Insurance inquiry within twenty-one calendar days of the inquiry. The Department alleges these acts are in violation of CCR § 2695.5(a).

**Company Response:** The Company would like to point out that the 21 instances referred to were all related to responding to Market Conduct Exam referrals generated by the Department during the exam process. Upon being alerted that the requirements of CCR § 2695.5(a) also applied to inquiry generated by the

exam process, the Company assigned additional staff to the task of responding to the referrals.

**8. The Company failed to advise the claimant that he or she may have the claim denial reviewed by the California Department of Insurance.** In 19 instances, 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. The Department alleges these acts are in violation of CCR § 2695.7(b)(3).

**Company Response:** The Company has always required the DOI mandatory language in its denial letters. To improve the process, the Company restructured its workflow to assure that all proposed denial letters are reviewed by a manager. This process will enhance the Company practice in this area and should address the Department's concern.

**9. The Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days.** In 12 instances, the Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days. The Department alleges these acts are in violation of CCR § 2695.5(e)(2).

**Company Response:** A number of these citations relate to the notification of third party claimants that they are entitled to compensation for loss of use. The Regulations do not require Company to alert claimants that it will pay loss of use, as settlement with a third party claimant is a matter of negotiation. However, the Company will agree to implement a procedure whereby examiners must make a notation in the claim file regarding claimants' transportation needs during repair of the vehicle and the steps taken to resolve the issue

**10. The Company failed to acknowledge notice of claim within fifteen calendar days.** In 11 instances, the Company failed to acknowledge notice of claim within fifteen calendar days. The Department alleges these acts are in violation of CCR § 2695.5(e)(1).

**Company Response:** The Company's practice is to comply with Section 2695.5(e)(1). Prior to the Market Conduct Examination, the Company implemented a procedure of sending acknowledgement of claim immediately upon receipt and assignment of the claim to handling examiner. The acknowledgement of claim contains all necessary information to comply with the requirements of CCR § 2695.5(e)(1) and should address the concerns of the Department in this area.

**11. 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 10 instances, 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 these acts are in violation of CCR § 2695.8(k)

**Company Response:** The Regulations contain general documentation and disclosure requirements for betterment and do not require photographs or vendor reports to be provided in each case. The Company believes that its practices during the examination period generally complied with the regulatory standards. Still, the Company has drafted a new form letter itemizing the settlement amount and betterment in more detail and attaching any estimate or other document that details these amounts. Training has also been provided to enhance oral explanation and supplemented by written documentation of issues discussed with claimants. The steps taken will assure continued compliance with CCR § 2695.8(k).

**12. The Company failed to provide written notice of any statute of limitation sixty days prior to the expiration date.** In 10 instances, the Company failed to provide written notice of any statute of limitation or other time period requirement not less than sixty days prior to the expiration date. The Department alleges these acts are in violation of CCR § 2695.7(f).

**Company Response:** It is Company practice to provide appropriate notice of the expiration of the statute of limitations or other time limitations. The Company believes these citations are isolated and do not constitute a trend or general business practice under 790.03(h). The Company has enhanced its procedure by providing statute of limitations notices in its initial acknowledgement of claim. This procedure should address the concerns of the Department in this area.

**13. The Company failed to disclose all policy provisions.** In nine instances, the Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy. The Department alleges these acts are in violation of CCR § 2695.4(a).

**Company Response:** The Company's practice is to disclose benefits, coverage, time limits and other provisions. The Company believes the citations observed in the Report are isolated and do not constitute a trend or general business practice under 790.03(h). The Company has enhanced its procedure by providing disclosure of benefits, coverage, time limits and other provisions in its initial acknowledgement letter. In addition, examiners are trained to review these items in the initial telephone conversation with the insured or claimant. This procedure enhances compliance with Section 2695.4(a) and should address the concerns of the Department in this area.

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

**Company Response:** The Company believes the citations observed in the Report are isolated and do not constitute a trend or general business practice under 790.03(h). The Company has enhanced its compliance with this section by conducting periodic trend reviews to assure consistent compliance with all regulations, including documentation. The results of the reviews are reported to senior management who then implement remedial action and training where appropriate. The Company believes this procedure enhances its compliance with Section 2695.3(a) and should address the concerns of the Department in this area.

**15. The Company failed to document the determination of value.** In seven instances, 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 Department alleges these acts are in violation of CCR § 2695.8(b)(1)(C).

**Company Response:** The Company believes it was in compliance with this section. In recognition of the observations provided during the examination process, the Company is providing training and instructions to adjusters to clearly document, and photograph if possible, all depreciation and other deductions from value. The Company believes this procedure enhances its compliance with Section 2695.5(e)(1) and should address the concerns of the Department in this area.

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

**Company Response:** The Company believes that these instances are isolated and do not constitute a trend or general business practice under Section 790.03(h). The Company has enhanced its procedures so that a supervisor or manager reviews all mail upon receipt and prioritizes critical issues for immediate appropriate action. The Company believes this procedure enhances its compliance with Section 2695.5(b) and should address the concerns of the Department in this area.

**17. The Company failed to effectuate prompt, fair and equitable settlements of claims when liability has become reasonably clear.** In six instances, the Company failed to effectuate prompt, fair and equitable settlements of claims when liability has become reasonably clear. The Department alleges these acts are in violation of CIC §790.03(h)(5).

**Company Response:** This item concerns the documentation of payment of sales tax in third party total loss settlements. The Company maintains that, as the Regulations do not require sales tax to be included in third party total loss settlements, payment of the tax is a matter of negotiation in each case. In recognition of the Department's request, the Company has agreed to implement a procedure

under which examiners must note in the file that sales tax and other fees were considered during the settlement negotiations.

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

**Company Response:** The Company believes that these instances are isolated and do not constitute a trend or general business practice under Section 790.03(h). The Company procedure is to make timely contact and begin prompt investigation in accordance with regulations. If telephone contact is not established, then contact letters are sent to those parties and the file is placed on appropriate diary for follow-up and necessary action. The Company believes that its current procedure enhances its compliance with CCR § 2695.5(e)(3) and should address the Department's concerns in this area.

**19. The Company failed to provide written basis for the denial of the claim.** In three instances, the Company failed to provide written basis for the denial of the claim. The Department alleges these acts are in violation of CCR § 2695.7(b)(1).

**Company Response:** The Company believes that these instances are isolated and do not constitute a trend or general business practice under Section 790.03(h). Prior to the examination the Company had implemented procedures to assure that all denials contained the information necessary to comply with CCR § 2695.7(b)(1). These issues have been revisited with the technical staff to assure continued compliance with CCR § 2695.7(b)(1).

**20. The Company's claims agent failed to immediately transmit notice of claim to the insurer.** In two instances, the Company's claims agent failed to immediately transmit notice of claim to the insurer. The Department alleges these acts are in violation of CCR § 2695.5(d).

**Company Response:** The Company believes that these instances are isolated and do not constitute a trend or general business practice under Section 790.03(h). The Company has issued reminder notices to its agents of the requirement for immediate transmittal of claim notice to the insurer of any claim reported to them.

**21. The Company misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverage at issue.** In two instances, the Company misrepresented to claimants pertinent facts or insurance policy provisions relating to coverage at issue. The Department alleges these acts are in violation of CIC § 790.03(h)(1).

**Company Response:** The Company believes that these instances are isolated and do not constitute a trend or general business practice under Section

790.03(h). The Company's trend review, 30-day reports, and closing reports will protect against a reoccurrence of these instances.

**22. The Company persisted in seeking unnecessary information.** In two 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 are in violation of CCR § 2695.7(d).

**Company Response:** The Company believes that these instances are isolated and do not constitute a trend or general business practice under Section 790.03(h). The Company's trend review, 30-day reports and closing reports will protect against a reoccurrence of these instances.

**23. The Company failed to provide reasonable notice to a claimant before terminating payment for storage charges.** In one instance, the Company failed to provide reasonable notice to a claimant before terminating payment for storage charges. The Department alleges this act is in violation of CCR § 2695.8(1).

**Company Response:** The Company believes that this instance is isolated and does not constitute a trend or general business practice under Section 790.03(h). The Company has a practice of providing insureds and claimants with notice of limitations regarding coverage for storage charges. The Company has raised this topic in training sessions to ensure that all technical staff are aware of the requirements of regulation 2695.8(1).

**24. The Company failed to utilize comparable vehicles in the local market area in determining the value of a total loss vehicle.** In one instance, the Company failed to utilize a comparable vehicle in the local market area in determining the value of a total loss vehicle. The Department alleges this act is in violation of CCR §2695.8(b)(1)(A).

**Company Response:** The Company believes that this instance is isolated and does not constitute a trend or general business practice under Section 790.03(h). The Company practice is to review all vendor evaluations to assure that the evaluations were conducted in compliance with all regulations. The Company has raised this topic in training sessions to ensure that all technical staff are aware of the requirements of regulation 2695.8(b)(1)(A).