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THIS REPORT WILL BE MADE PUBLIC AND PUBLISHED ON THE  
CALIFORNIA DEPARTMENT OF INSURANCE (CDI) WEBSITE]**

**WEBSITE PUBLISHED REPORT OF THE MARKET CONDUCT  
EXAMINATION OF THE CLAIMS PRACTICES OF**

**FINANCIAL INDEMNITY COMPANY  
NAIC # 19852 CDI # 1310-2**

**NOVEMBER 30, 2012**

**ADOPTED OCTOBER 3, 2014**

**STATE OF CALIFORNIA**



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

## NOTICE

**The provisions of Section 735.5(a) (b) and (c) of the California Insurance Code (CIC) describe the Commissioner's authority and exercise of discretion in the use and/or publication of any final or preliminary examination report or other associated documents. The following examination report is a report that is made public pursuant to California Insurance Code Section 12938(b)(1) which requires the publication of every adopted report on an examination of unfair or deceptive practices in the business of insurance as defined in Section 790.03 that is adopted as filed, or as modified or corrected, by the Commissioner pursuant to Section 734.1.**

**TABLE OF CONTENTS**

**SALUTATION ..... 1**

**FOREWORD..... 2**

**SCOPE OF THE EXAMINATION..... 3**

**EXECUTIVE SUMMARY OF CLAIMS SAMPLE REVIEWED..... 4**

**RESULTS OF REVIEWS OF MARKET ANALYSIS, CONSUMER COMPLAINTS AND  
INQUIRIES, AND PREVIOUS EXAMINATIONS, AND PRIOR ENFORCEMENT  
ACTIONS ..... 5**

**DETAILS OF THE CURRENT EXAMINATION ..... 6**

**TABLE OF TOTAL CITATIONS ..... 8**

**TABLE OF CITATIONS BY LINE OF BUSINESS..... 11**

**SUMMARY OF EXAMINATION RESULTS ..... 13**

**DEPARTMENT OF INSURANCE**

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



October 3, 2014

The Honorable Dave Jones  
Insurance Commissioner  
State of California  
300 Capitol Mall  
Sacramento, California 95814

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 handling practices and procedures in California of:

**Financial Indemnity Company  
NAIC # 19852**

**Group NAIC # 0215**

Hereinafter, the Company listed above also will be referred to as FIC or the Company.

This report is made available for public inspection and is published on the California Department of Insurance website ([www.insurance.ca.gov](http://www.insurance.ca.gov)) pursuant to California Insurance Code section 12938(b)(1).

## FOREWORD

The examination covered the claims handling practices of the aforementioned Company on Personal Automobile and Commercial Automobile claims closed during the period from December 1, 2011 through November 30, 2012. The examination was made to discover, in general, if these and other operating procedures of the Company conform to the contractual obligations in the policy forms, the California Insurance Code (CIC), the California Code of Regulations (CCR) and case law. This report contains all alleged violations of laws that were identified during the course of the 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 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 reflects 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 the Company for use in California including any documentation maintained by the Company in support of positions or interpretations of the California Insurance Code, Fair Claims Settlement Practices Regulations, and other related statutes, regulations and case law used by the Company to ensure fair claims settlement practices.

2. A review of the application of such guidelines, procedures, and forms, by means of an examination of a sample of individual claims files and related records.

3. A review of the California Department of Insurance's (CDI) market analysis results; a review of consumer complaints and inquiries about the Company closed by the CDI during the period December 1, 2011 through November 30, 2012; and a review of previous CDI market conduct claims examination reports on the Company; and a review of prior CDI enforcement actions.

The review of the sample of individual claims files was conducted at the offices of the Company in Salem, Oregon.

## **EXECUTIVE SUMMARY OF CLAIMS SAMPLE REVIEWED**

The Personal Automobile and Commercial Automobile claims reviewed were closed from December 1, 2011 through November 30, 2012, referred to as the “review period”. The examiners randomly selected 411 FIC claims files for examination. The examiners cited 169 alleged claims handling violations of the California Insurance Code (CIC) and the California Code of Regulations (CCR) from this sample file review.

Findings of this examination included the failure to properly advise the insured of the method in which a request for reconsideration of fault can be made, failure to ask if a child passenger restraint system was in use during the accident or was in the vehicle at the time of the loss, failure to conduct and diligently pursue a thorough, fair and objective investigation, failure to respond to communications within 15 days, and failure to provide written notice of the need for additional time or information every 30 days.

## **RESULTS OF REVIEWS OF MARKET ANALYSIS, CONSUMER COMPLAINTS AND INQUIRIES, PREVIOUS EXAMINATIONS, AND PRIOR ENFORCEMENT ACTIONS**

Except as noted below, market analysis did not identify any specific issues of concern.

The Company was the subject of 95 California consumer complaints and inquiries closed from December 1, 2011 through November 30, 2012, in regard to the lines of business reviewed in this examination. The CDI alleged five violations of law for the failure to accept or deny the claim within 40 days, failure to provide written notice of the need for additional time to make a liability determination, failure to provide a written denial of the claim, failure to provide the applicable law or policy provision on a first-party claim denial, and failure to respond to the CDI's inquiry within 21 days. Of the complaints and inquiries, the CDI determined five complaints were justified. The examiner focused on these issues during the course of the file review.

The previous claims examination reviewed a period from February 1, 2002 through January 31, 2003. The most significant noncompliance issues identified in the previous examination report were the Company's failure to effectuate prompt, fair and equitable settlements of claims, failure to maintain claim data that are accessible, legible and retrievable for examination, failure to accept or deny a claim within 40 calendar days, failure to send a determination of fault letter, and failure 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 current examination also identified instances of failure to effectuate prompt, fair and equitable settlements of claims, and failure to accept or deny a claim within 40 calendar days.

FIC was not the subject of any prior enforcement action by the California Department of Insurance.

## DETAILS OF THE CURRENT EXAMINATION

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

<b>FIC SAMPLE FILES REVIEW</b>			
<b>LINE OF BUSINESS / CATEGORY</b>	<b>CLAIMS IN REVIEW PERIOD</b>	<b>SAMPLE FILES REVIEWED</b>	<b>NUMBER OF ALLEGED CITATIONS</b>
Private Passenger Automobile / Collision	11,885	56	27
Private Passenger Automobile / Other than Collision	2,266	14	12
Private Passenger Automobile / Property Damage	17,310	43	28
Private Passenger Automobile / Bodily Injury	6,439	27	34
Private Passenger Automobile / Uninsured Motorist Property Damage	1,316	32	18
Private Passenger Automobile / Uninsured Motorist Bodily Injury	829	38	3
Private Passenger Automobile / Medical Payment	1,356	25	12
Commercial Automobile / Collision	811	54	2
Commercial Automobile / Other than Collision	129	16	3
Commercial Automobile / Property Damage	432	16	1
Commercial Automobile / Bodily Injury	25	8	0
Commercial Automobile / Uninsured Motorist Property Damage	25	18	0
Commercial Automobile / Uninsured Motorist Bodily Injury	16	13	0
Commercial Automobile / Medical Payment	85	25	19

<b>FIC SAMPLE FILES REVIEW</b>			
<b>LINE OF BUSINESS / CATEGORY</b>	<b>CLAIMS IN REVIEW PERIOD</b>	<b>SAMPLE FILES REVIEWED</b>	<b>NUMBER OF ALLEGED CITATIONS</b>
Commercial Automobile / Liability Combined Single Limits / Property Damage	887	10	5
Commercial Automobile / Liability Combined Single Limits / Bodily Injury	274	16	5
<b>TOTALS</b>	44,208	411	169

## TABLE OF TOTAL CITATIONS

Citation	Description of Allegation	FIC Number of Alleged Citations
CCR §2632.13(e)(2) *[CIC §790.03(h)(3)]	The Company failed to properly advise the insured of the method in which a request for reconsideration of fault can be made. The Company advised the insured that a request for reconsideration of the liability determination must be in writing.	37
CIC §11580.011(e) *[CIC §790.03(h)(3)]	The Company failed to ask if a child passenger restraint system was in use by a child during an accident or was in the vehicle at the time of a loss that was covered by the policy.	30
CCR §2695.7(c)(1) *[CIC §790.03(h)(3)]	The Company failed to provide written notice of the need for additional time or information every 30 calendar days.	28
CCR §2695.7(d) *[CIC §790.03(h)(3)]	The Company failed to conduct and diligently pursue a thorough, fair and objective investigation.	12
CCR §2695.7(b) *[CIC §790.03(h)(4)]	The Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.	10
CCR §2695.5(b) *[CIC §790.03(h)(2)]	The Company failed to respond to communications within 15 calendar days.	9
CIC §11580.011(e) *[CIC §790.03(h)(5)]	The Company failed to replace the child passenger restraint system that was in use by a child during the accident or if it sustained a covered loss while in the vehicle.	5
CCR §2695.7(g) *[CIC §790.03(h)(5)]	The Company attempted to settle a claim by making a settlement offer that was unreasonably low.	5
CCR §2695.8(b)(4) *[CIC §790.03(h)(3)]	The Company failed to fully itemize in writing the determination of the cost of a comparable vehicle at the time the settlement offer was made. Itemization of all components of the settlement was not provided.	2
CCR §2695.8(b)(4) *[CIC §790.03(h)(3)]	The Company failed to explain in writing the determination of the cost of a comparable vehicle at the time the settlement offer was made. Determination of the actual cash value (ACV) was not explained.	2
CIC §790.03(h)(5)	The Company failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear.	3

Citation	Description of Allegation	FIC Number of Alleged Citations
CCR §2695.7(b)(1) *[CIC §790.03(h)(13)]	The Company failed to provide in writing the reasons for the denial of the claim in whole or in part including the factual and legal bases for each reason given.	3
CIC §1871.3(b) *[CIC §790.03(h)(3)]	The Company failed to properly instruct the insured regarding the signing of the theft affidavit.	2
CCR §2695.4(a) *[CIC §790.03(h)(1)]	The Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.	2
CCR §2695.5(e)(2) *[CIC §790.03(h)(3)]	The Company failed to provide necessary forms, instructions, and reasonable assistance within 15 calendar days.	2
CCR §2695.7(f) *[CIC §790.03(h)(3)]	The Company failed to provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim.	2
CCR §2695.8(c) *[CIC §790.03(h)(3)]	The Company failed to notify the insured that the file will be reopened if the Company is notified within 35 days that the insured cannot purchase a comparable automobile for the settlement amount offered or paid.	2
CCR §2695.8(i) *[CIC §790.03(h)(3)]	The Company failed to fully explain the basis for any adjustment to the claimant in writing.	2
CIC §758.6 *[CIC §790.03(h)(5)]	The Company failed to honor the methodology used in determining paint and material charges by offering or paying an amount unrelated to the particular methodology.	1
CIC §790.03(h)(1)	The Company misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.	1
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.	1
CIC §1871.3(a)(1) *[CIC §790.03(h)(3)]	The Company failed to include the penalty of perjury warning on its theft affidavit.	1
CCR §2695.3(a) *[CIC §790.03(h)(3)]	The Company failed to maintain all documents, notes and work papers which reasonably pertain to each claim in such detail that pertinent events and the dates of the events can be reconstructed.	1
CCR §2695.5(e)(1) *[CIC §790.03(h)(2)]	The Company failed to acknowledge notice of claim within 15 calendar days.	1

Citation	Description of Allegation	FIC Number of Alleged Citations
CCR §2695.5(e)(3) *[CIC §790.03(h)(3)]	The Company failed to begin investigation of the claim within 15 calendar days.	1
CCR §2695.7(h) *[CIC §790.03(h)(5)]	The Company failed, upon acceptance of the claim, to tender payment within 30 calendar days.	1
CCR §2695.7(p) *[CIC §790.03(h)(3)]	The Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation.	1
CCR §2695.8(b)(1) *[CIC §790.03(h)(5)]	The Company failed to include, in the settlement, the license fee and other annual fees computed based upon the remaining term of the current registration.	1
CCR §2695.8(e)(2) *[CIC §790.03(h)(3)]	The Company suggested or recommended that an automobile be repaired at a specific repair shop without informing the claimant in writing of the right to select the repair facility, pursuant to CIC §758.5.	1
<b>Total Number of Citations</b>		<b>169</b>

**\*DESCRIPTONS OF APPLICABLE  
UNFAIR CLAIMS SETTLEMENT PRACTICES**

- CIC §790.03(h)(1) The Company misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.
- CIC §790.03(h)(2) The Company failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- 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.
- CIC §790.03(h)(4) The Company failed to affirm or deny coverage of claims within a reasonable time after proof of loss requirements had been completed and submitted by the insured.
- CIC §790.03(h)(5) The Company failed to effectuate prompt, fair, and equitable settlements of claims in which liability had become reasonably clear.
- CIC §790.03(h)(13) The Company failed to provide promptly a reasonable explanation of the bases relied upon in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

**TABLE OF CITATIONS BY LINE OF BUSINESS**

<p align="center"><b>PRIVATE PASSENGER AUTOMOBILE</b>                  2011 Written Premium: \$160,767,034                  2012 Written Premium: \$146,941,806</p> <p><b>AMOUNT OF RECOVERIES            \$3,420.42</b></p>	<p align="center"><b>NUMBER OF CITATIONS</b></p>
CCR §2632.13(e)(2) [CIC §790.03(h)(3)]	37
CIC §11580.011(e) [CIC §790.03(h)(3)]	28
CCR §2695.7(d) [CIC §790.03(h)(3)]	11
CCR §2695.5(b) [CIC §790.03(h)(2)]	9
CCR §2695.7(c)(1) [CIC §790.03(h)(3)]	8
CIC §11580.011(e) [CIC §790.03(h)(5)]	5
CCR §2695.7(b) [CIC §790.03(h)(4)]	4
CCR §2695.7(b)(1) [CIC §790.03(h)(13)]	3
CCR §2695.7(g) [CIC §790.03(h)(5)]	3
CIC §790.03(h)(5)	2
CCR §2695.4(a) [CIC §790.03(h)(1)]	2
CCR §2695.5(e)(2) [CIC §790.03(h)(3)]	2
CCR §2695.7(f) [CIC §790.03(h)(3)]	2
CCR §2695.8(b)(4) [CIC §790.03(h)(3)]	2
CCR §2695.8(c) [CIC §790.03(h)(3)]	2
CCR §2695.8(i) [CIC §790.03(h)(3)]	2
CIC §758.6 [CIC §790.03(h)(5)]	1
CIC §790.03(h)(1)	1
CIC §790.03(h)(3)	1
CIC §1871.3(a)(1) [CIC §790.03(h)(3)]	1
CIC §1871.3(b) [CIC §790.03(h)(3)]	1
CCR §2695.3(a) [CIC §790.03(h)(3)]	1
CCR §2695.5(e)(1) [CIC §790.03(h)(2)]	1
CCR §2695.5(e)(3) [CIC §790.03(h)(3)]	1
CCR §2695.7(p) [CIC §790.03(h)(3)]	1
CCR §2695.8(b)(1) [CIC §790.03(h)(5)]	1
CCR §2695.8(b)(4) [CIC §790.03(h)(3)]	1
CCR §2695.8(e)(2) [CIC §790.03(h)(3)]	1
<b>SUBTOTAL</b>	<b>134</b>

<b>COMMERCIAL AUTOMOBILE</b> <b>2011 Written Premium: \$22,957,454</b> <b>2012 Written Premium: \$26,282,893</b>	<b>NUMBER OF CITATIONS</b>
<b>AMOUNT OF RECOVERIES            \$2,475.00</b>	
CCR §2695.7(c)(1) [CIC §790.03(h)(3)]	20
CCR §2695.7(b) [CIC §790.03(h)(4)]	6
CIC §11580.011(e) [CIC §790.03(h)(3)]	2
CCR §2695.7(g) [CIC §790.03(h)(5)]	2
CIC §790.03(h)(5)	1
CIC §1871.3(b) [CIC §790.03(h)(3)]	1
CCR §2695.7(d) [CIC §790.03(h)(3)]	1
CCR §2695.7(h) [CIC §790.03(h)(5)]	1
CCR §2695.8(b)(4) [CIC §790.03(h)(3)]	1
<p style="text-align: center;"><b>SUBTOTAL</b></p>	<p style="text-align: center;"><b>35</b></p>

<b>TOTAL</b>	<b>169</b>
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## 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.

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 if it intends to take appropriate corrective action in all jurisdictions where applicable. The Company intends to implement corrective actions in all jurisdictions.

Money recovered within the scope of this report was \$5,895.42 as described in sections number 3, 6, 9, 25, 31 and 32 below.

### PRIVATE PASSENGER AUTOMOBILE

1. **In 37 instances, the Company failed to properly advise the insured of the method in which a request for reconsideration of fault can be made. The Company advised the insured that a request for reconsideration of the liability determination must be in writing.** The Department alleges these acts are in violation of CCR §2632.13(e)(2) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges that the request for reconsideration does not need to be in writing. As a result of this examination, the Company revised its determination of fault letter such that it no longer states the request for reconsideration must be submitted in a written format. The Company implemented the revised letter within the claims system in April 2013.

2. **In 28 instances, the Company failed to ask if a child passenger restraint system was in use by a child during an accident or was in the vehicle at the time of a loss that was covered by the policy.** The Department alleges these acts are in violation of CIC §11580.011(e) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** As a result of this examination, the Company modified its First Notice of Loss procedure, effective January 2013, so that it includes asking the questions outlined in CIC Section 11580.011(e).

**3. In 10 instances, the Company failed to conduct and diligently pursue a thorough, fair and objective investigation.** In three instances, the Company delayed the request for additional information needed to determine liability. In three instances, a gap in file activity is noted. In one instance, the Company did not follow up with the adverse carrier to confirm whether or not the claimant driver had coverage. In one instance involving excessive file inactivity, the Company failed to follow its procedures that require a proactive, aggressive, and timely approach to file handling. In one instance, the Company failed to investigate a potential subrogation opportunity. In one instance the Company failed to inspect the child passenger restraint systems to determine whether they were damaged and placed the burden of proof on the claimant by asking for photographs of the seats. The Department alleges these acts are in violation of CCR §2695.7(d) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** While its best practice is to conduct and diligently pursue a thorough, fair and objective investigation, the Company acknowledges the delays in requesting additional information and the gaps in file activity. To correct the failure to pursue a subrogation investigation, the Company initiated subrogation and reimbursed the insured's deductible in the amount of \$500.00. Additionally, in the instance involving a liability investigation, the Company acknowledges it should have followed up with the claimant carrier to confirm coverage. In the instance involving a failure to inspect the child protective restraint systems for damage, the Company believes that, although its request for photographs from the claimant was reasonable, an inspection should have been completed absent the claimant's cooperation in providing the photographs. The Company conducted training on these issues with its claims staff in April 2013 and again in July 2014.

**4. In nine instances, the Company failed to respond to communications within 15 calendar days.** In eight instances pertaining to one claimant, the Company failed to return the claimant's telephone calls. In one instance, the Company failed to provide the information requested by the claimant attorney, within 15 calendar days. The Department alleges these acts are in violation of CCR §2695.5(b) and are unfair practices under CIC §790.03(h)(2).

**Summary of the Company's Response:** The Company acknowledges the file does not contain evidence it returned the claimant's telephone calls in the eight identified instances. The Company conducted training on this issue in April 2013. In the final instance, the Company states that, while it is the Company's best practice to respond to correspondence within 15 calendar days, it failed to do so in this instance. The Company conducted training on this issue with its claims staff in April 2013.

5. **In eight instances, the Company failed to provide written notice of the need for additional time or information every 30 calendar days.** The Department alleges these acts are in violation of CCR §2695.7(c)(1) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's best practice to notify the claimant in writing within 40 days of receipt of proof of claim that it needs additional time to accept or deny a claim, the Company states it failed to do so in these instances. The Company conducted training on this issue with its claims staff in April 2013.

6. **In five instances, the Company failed to replace the child passenger restraint system that was in use by a child during the accident or if it sustained a covered loss while in the vehicle.** In four instances, file notes indicate that the child restraint safety seats were occupied at the time of the accidents. In one instance, the child safety seat was included in the repair estimate but was not paid. The Department alleges these acts are in violation of CIC §11580.011(e) and are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company agrees it did not pay for the child restraint systems in these identified instances. In four instances, as a result of this examination, the Company issued payments for the car seats totaling \$600. The Company coached the adjusters on proper compliance with California child restraint system requirements on March 15, 2013. To correct the error in the last instance, and as a result of the examination, the Company issued a check to the claimant in the amount of \$140.70. The Company also sent requests to provide additional information if the actual cost to replace the seats were more than what was paid. The Company conducted training on this issue in April 2013. In addition, the Company modified its First Notice of Loss procedure, effective, January 2013, to include the questions outlined in CIC Section 11580.011(e).

7. **In four instances, the Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.** The Department alleges these acts are in violation of CCR §2695.7(b) and are unfair practices under CIC §790.03(h)(4).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's best practice to accept or deny a claim within 40 days of receipt of proof of claim, the Company states the identified files do not contain evidence this was done in these instances. The Company conducted training on this issue with its claims staff in April 2013.

8. **In three instances, the Company failed to provide in writing the reasons for the denial of the claim in whole or in part including the factual and legal bases for each reason given.** The Department alleges these acts are in violation of CCR §2695.7(b)(1) and are unfair practices under CIC §790.03(h)(13).

**Summary of the Company's Response:** The Company acknowledges these findings. To correct the errors, the Company sent a coverage denial letter to each insured identified in these instances. The Company conducted training on this issue with its claims staff in April 2013.

**9. In three instances, the Company attempted to settle a claim by making a settlement offer that was unreasonably low.** In one instance, the Company failed to pay the balance of the total loss settlement following receipt of the fully executed paperwork. In one instance, the Company paid the claimant less than the amount indicated on the signed release. Specifically, the release indicates a settlement of \$1100.00 and the Company paid \$923.60. In one instance, the Company failed to reimburse the insured the amount it recovered in salvage following payment of the Uninsured Motorist Property Damage (UMPD) limit of \$3500. Specifically, the Company retained the vehicle and recovered \$346.50 in salvage, resulting in the net amount paid by the Company of \$3,337.16. The Department alleges these acts are in violation of CCR §2695.7(g) and are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's practice to issue the balance of the total loss settlement funds upon receipt of the executed total loss paperwork, the Company states it was not done in the identified instance. As a result of this examination, the Company issued the unpaid balance of \$1,498.82 to the claimant. The Company states this file is not representative of its standard procedure. In addition to the payment, the Company conducted training on this error with its claims staff in April 2013.

To correct the underpayment of the amount on the signed release, the Company issued payment to the claimant in the amount of \$176.40. In addition to the payment, the Company conducted training on this issue with its claims staff in April 2013.

The Company acknowledges in the third instance that the insured should have been reimbursed the amount recovered from the salvage proceeds. To correct the underpayment of the UMPD limit, the Company issued a payment to the insured in the amount \$346.50, which exhausted the available limit of \$3,500 under UMPD coverage. In addition to the payment, the Company conducted training on this issue with its claims staff in April 2013.

**10. In two instances, the Company failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear.** In one instance, the Company paid the collision damage on November 7, 2012, after learning there was no coverage with the adverse carrier. However, the Company failed to return the insured's collision deductible under the Collision Damage Waiver provision until February 5, 2013. In one instance, the Company failed to effectuate a claim settlement with a claimant who had provided proof of claim and appeared to be ready and willing to discuss settlement of the claim. This failure resulted in the claimant seeking representation of an attorney to settle the claim. The Department

alleges these acts are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company states the error in first instance was due to a miscommunication between the adjuster and the appraiser after the insured changed his repair shop of choice. The adjuster was not properly informed that assignment was under UMPD coverage rather than under collision coverage. The Company conducted training on this issue with its claims staff in April 2013.

In response to the second error, the Company states its expectations are to make proactive efforts to move claims toward resolution. The Company acknowledges the claim handling was not representative of Company's policy and procedure. The Company conducted training on this issue with its claims staff in April 2013.

**11. In two instances, the Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.** In the first instance, the Company failed to disclose the appraisal provision of the contract upon receipt of a dispute between the Company and the insured over the value of the vehicle. In the second instance, the Company failed to disclose the specific details of the transportation expense coverage that may have been triggered by this total theft loss. The Department alleges these acts are in violation of CCR §2695.4(a) and are unfair practices under CIC §790.03(h)(1).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's best practice to disclose policy provisions, it states that it failed to disclose the appraisal provision and the transportation expense provision in these instances. The Company conducted training on this issue with its claims staff in April 2013.

**12. In two instances, the Company failed to provide necessary forms, instructions, and reasonable assistance within 15 calendar days.** The Department alleges these acts are in violation of CCR §2695.5(e)(2) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges these findings. Although it mailed a contact letter and a principally at-fault letter to the insured in one identified instance, it failed to provide specific instructions on how to proceed with the repair estimate that was also mailed to the insured. This is not representative of Company policy and procedure. The Company conducted training on this issue with its claims staff in April 2013. In the second instance, the handling adjuster is no longer employed with the Company; therefore, the Company conducted follow-up training with the supervisor in April 2013.

**13. In two instances, the Company failed to provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim.** The Department alleges this act is in violation of CCR

§2695.7(f) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's best practice to provide the statute of limitations in a situation such as this, the Company acknowledges it was not done in this instance. As a result of this finding, the Company sent the proper statute of limitations letter to the insured. The Company conducted training on this issue with its claims staff in April 2013.

**14. In two instances, the Company failed to explain in writing the determination of the cost of a comparable vehicle at the time the settlement offer was made. Determination of the actual cash value (ACV) was not explained.** The Department alleges these acts are in violation of CCR §2695.8(b)(4) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's best practice to provide a copy of the valuation to the vehicle owner as part of the settlement offer, the Company states the file does not contain evidence that it was done in these instances. In an effort to correct the error, the Company sent the valuation report to the claimant on June 26, 2014. In the other instance, the Company was not able to reproduce the valuation report. The Company conducted training on this issue with its claims staff in April 2013.

**15. In two instances, the Company failed to notify the insured that the file will be reopened if a comparable automobile cannot be purchased for the amount offered or paid.** The Department alleges these acts are in violation of CCR §2695.8(c) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's best practice to advise the insured that if he cannot find a comparable vehicle for the gross settlement amount within 35 days of the settlement/offer that the Company would reopen the file, the Company states the files do not contain evidence it was done in this instances. The Company conducted training on this issue with its claims staff in April 2013.

**16. In two instances, the Company failed to fully explain the basis for any adjustment to the claimant in writing.** In two instances, the Company failed to provide a written explanation to the insured of the adjustment for prior unrelated damage to the subject vehicle. The Department alleges these acts are in violation of CCR §2695.8(i) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's best practice to provide a written explanation of all adjustments, the Company states that the specific basis for the deduction was not provided in writing in the identified instances. The Company conducted training on this issue with its claims staff in April 2013.

17. **In one instance, the Company failed to honor the methodology used in determining paint and material charges by offering or paying an amount unrelated to the particular methodology.** In this instance, the Company allowed a lump sum of \$500 for paint and materials. The Department alleges this act is in violation of CIC §758.6 and is an unfair practice under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company does not agree with the Department's position, nor does it believe it has acted in violation of the law. The Company states it does not arbitrarily or otherwise place caps on the amount it will pay for claim-related paint and materials costs. Any user thresholds are merely a point where discussion is necessary with the chosen repairer to establish the appropriate rate and cost for the color and processes required for repair. However, in order to resolve this issue and demonstrate cooperation with Department, the Company agrees to amend its procedure going forward by utilizing the following formula when calculating the costs for paint and materials without any thresholds on these amounts: Paint Labor hours multiplied by the Paint Labor rate.

18. **In one instance, the Company misrepresented to claimants pertinent facts or insurance policy provisions relating to coverages at issue.** In this instance, the Company identified the incorrect license plate number in its request for registration information. The Department alleges this act is in violation of CIC §790.03(h)(1).

**Summary of the Company's Response:** The Company acknowledges that it incorrectly identified the license plate number in its investigation for additional information. This was an inadvertent error. As a result of the examination, the Company investigated the correct license plate number and was able to identify the claimant carrier.

19. **In one instance, the Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.** In this instance, the Company closed the claim without conducting an investigation. The Department alleges this act is in violation of CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges that the adjuster did not follow Company standards in the handling of this claim. The adjuster did not diligently pursue contact with the insured and/or claimant to determine the full facts of loss and to review the claims process. The Company states the file was reopened and attempts were made to reach the insured and the claimant by telephone and in writing. However, the claim was later closed again due to lack of response from either party. The Company conducted training on this issue with its claims staff in April 2013.

**20. In one instance, the Company failed to include a warning on its theft affidavit that false representations subject the insured to a penalty of perjury.**

The Department alleges this act is in violation of CIC §1871.3(a)(1) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** As a result of this examination, the Company immediately updated the theft affidavit such that it contains the perjury warning that complies with CIC §1871.3(a)(1).

**21. In one instance, the Company failed to properly instruct the insured regarding the signing of the theft affidavit.**

The insured was not informed that, in lieu of notarization, the form could be signed in the presence of the insurance agent, broker, adjuster, or other claims representative. The Department alleges this act is in violation of CIC §1871.3(b) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** As a result of this finding, the Company immediately revised the language on its theft affidavit so that it now explains that an insurance agent, broker, adjuster, or other claims representative can act as a valid witness to the insured's signature.

**22. In one instance, the Company failed to maintain all documents, notes and work papers which reasonably pertain to each claim in such detail that pertinent events and the dates of the events can be reconstructed.**

In this instance, the notes and file documents do not identify the name of the claimant carrier that is responsible for the loss. The Department alleges this act is in violation of CCR §2695.3(a) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges this finding. The source of this information is unclear as the note from the handling adjuster does not contain further details. The Company conducted training on this issue with its claims staff in April 2013.

**23. In one instance, the Company failed to acknowledge notice of claim within 15 calendar days.**

The Department alleges this act is in violation of CCR §2695.5(e)(1) and is an unfair practice under CIC §790.03(h)(2).

**Summary of the Company's Response:** The Company acknowledges this finding. The Company implemented system-generated acknowledgement letters as of August 10, 2012. Since the handling adjuster was no longer employed at the Company, the Company conducted follow-up training with the supervisor in April 2013.

**24. In one instance, the Company failed to begin investigation of the claim within 15 calendar days.**

The Department alleges this act is in violation of CCR §2695.5(e)(3) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges this finding. The handling adjuster is no longer employed with the Company. The Company administered follow-up training with the supervisor in April 2013.

**25. In one instance, the Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation.** The Department alleges this act is in violation of CCR §2695.7(p) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges this finding. While it is the Company's best practice to advise the insured of its intention to pursue subrogation, the Company states it was not done in this instance. To correct the error, the Company sent the subrogation letter to the identified insured. The Company conducted training on this issue with its claims staff in April 2013.

**26. In one instance, the Company failed to include, in the settlement, the license fee and other annual fees computed based upon the remaining term of the registration.** In this instance, the file contained two vehicle records obtained online. Although one document had no information available and the other showed a valid registration date and indicated a refund amount of \$158.00, the Company failed to pay the fees. The Department alleges this act is in violation of CCR §2695.8(b)(1) and is an unfair practice under CIC §790.03(h)(5).

**Summary of the Company's Response:** As a result of this finding, and to correct the error, the Company issued a payment to the insured in the amount of \$158.00. In addition, the Company conducted training on this issue with its claims staff in April 2013.

**27. In one instance, the Company failed to fully itemize in writing the determination of the cost of a comparable vehicle at the time the settlement offer was made.** Specifically, the letter did not itemize all components of the settlement. The Department alleges this act is in violation of CCR §2695.8(b)(4) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges this finding. While it is the Company's best practice to provide an itemized, written explanation of the settlement to the insured, the Company states the file does not contain evidence it was done in this instance. To correct the error, the Company sent an itemized total loss letter to the insured on June 26, 2014. The Company conducted training on this issue with its claims staff in April 2013.

**28. In one instance, the Company suggested or recommended that an automobile be repaired at a specific repair shop without informing the claimant in writing of the right to select the repair facility, pursuant to CIC §758.5.** The Department alleges this act is in violation of CCR §2695.8(e)(2) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges this finding. While it is the Company's practice to send a written disclosure, the Company states the file does not contain evidence that it provided the disclosure in this instance. The Company coached the individual adjuster on this issue and conducted training with its claims staff on this issue in April 2013.

## COMMERCIAL AUTOMOBILE

**29. In 20 instances, the Company failed to provide written notice of the need for additional time or information every 30 calendar days.** The Department alleges these acts are in violation of CCR §2695.7(c)(1) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's practice to provide written notice of the need for additional time or information every 30 calendar days, the Company agrees that it did not provide the insured with a status letter in the identified instances. The Company conducted training on this issue with its claims staff in April 2013.

**30. In six instances, the Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.** The Department alleges these acts are in violation of CCR §2695.7(b) and are unfair practices under CIC §790.03(h)(4).

**Summary of the Company's Response:** The Company acknowledges these findings. While it is the Company's practice to accept or deny the claim within 40 calendar days upon receiving proof of claim, the Company agrees it was not done in these instances. The Company conducted training on this issue with its claims staff in April 2013.

**31. In two instances, the Company failed to ask if a child passenger restraint system was in use by a child during an accident or was in the vehicle at the time of a loss that was covered by the policy.** The Department alleges these acts are in violation of CIC §11580.011(e) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** In an effort to correct the error, the Company spoke with the claimant attorney who said their file has no record that a child safety seat was in the claimant vehicle at the time of the loss. The attorney assured the Company that had there been a child safety seat in the vehicle he would have pursued replacement on behalf of his client. The Company conducted training on this issue with its claims staff in April 2013. Furthermore, the Company modified its First Notice of Loss procedure, effective January 2013, such that it asks the questions outlined in CIC Section 11580.011(e).

**32. In two instances, the Company attempted to settle a claim by making a settlement offer that was unreasonably low.** In one instance, the Company underpaid the stated value policy limit by \$756.00. In the second instance, the Company failed to follow its procedure to use the Proquote for the salvage value. The Department alleges these acts are in violation of CCR §2695.7(g) and are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's Response:** As a result of the examination, and to correct the first identified error, the Company re-opened the file and paid the insured \$756.00 which represents the unpaid balance under the stated value policy. The Company conducted training on this issue with its claims staff in April 2013.

In the second instance, the Company states that, per the criticism, the Company failed to follow its procedure to use the ProQuote for the salvage value. While it was the Company's practice to use ProQuote, the Company agrees it was not used in this instance. This claim was settled as a company-retained total loss, so no salvage deduction was applied. The Company conducted training on this issue with its claims staff in April 2013.

**33. In one instance, the Company failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear.** Specifically, the Company failed to reimburse the insured for medical bills which the insured had paid. The Department alleges this act is in violation of CIC §790.03(h)(5).

**Summary of the Company's Response:** As a result of this examination, and to correct the error, the Company reimbursed the insured for medical bills in the amount of \$1,719.00. In addition, the Company conducted training on this issue with its claims staff in April 2013.

**34. In one instance, the Company failed to properly instruct the insured regarding the signing of the theft affidavit.** The insured was not informed that, in lieu of notarization, the form could be signed in the presence of the agent, broker, adjuster, or other claims representative. The Department alleges this act is in violation of CIC §1871.3(b) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** As a result of this finding, the Company immediately revised the language on its theft affidavit so that it now explains that an insurance agent, broker, adjuster, or other claims representative can act as a valid witness to the insured's signature.

**35. In one instance, the Company failed to conduct and diligently pursue a thorough, fair and objective investigation.** In this instance, the Company failed to request documentation of a provider's tax identification information timely, thus delaying payment of a covered claim. The Department alleges this act is in violation of CCR §2695.7(d) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** While it is the Company's practice to conduct and diligently pursue a thorough, fair and objective investigation, the Company acknowledges that the request for documentation of a provider's tax identification information was not made timely in this instance.

**36. In one instance, the Company failed, upon acceptance of the claim, to tender payment within 30 calendar days.** The Department alleges this act is in violation of CCR §2695.7(h) and is an unfair practice under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company agrees with the Department. This issue was addressed in the April 2013 training.

**37. In one instance, the Company failed to explain in writing the determination of the cost of a comparable vehicle at the time the settlement offer was made.** The Department alleges this act is in violation of CCR §2695.8(b)(4) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges this finding. While it is the Company's best practice to send a total loss settlement letter to the vehicle owner, the Company states this was not done in this instance. To correct the error, the Company sent the settlement letter to the insured on June 26, 2014. The Company conducted training on this issue with its claims staff in April 2013.