

**[IN ACCORDANCE WITH CALIFORNIA INSURANCE CODE (CIC) SECTION 12938,  
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**

**AFFIRMATIVE INSURANCE COMPANY  
NAIC # 42609 CDI # 4870-2**

**AS OF DECEMBER 31, 2013**

**ADOPTED DECEMBER 21, 2015**

**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.**

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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



December 21, 2015

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:

**Affirmative Insurance Company**  
**NAIC # 42609**

**Group NAIC # 3596**

Hereinafter, the Company listed above also will be referred to as Affirmative, AIC, 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 Private Passenger Automobile claims closed during the period from January 1, 2013 through December 31, 2013. 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.

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. While this report contains violations of law that were cited by the examiner, additional violations of CIC § 790.03, or other laws, not cited in this report may also apply to any or all of the non-compliant or problematic activities that are described herein.

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 January 1, 2013 through December 31, 2013; 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 Addison, Texas.

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

The Private Passenger Automobile claims reviewed were closed from January 1, 2013 through December 31, 2013, referred to as the “review period”. The examiners randomly selected 235 AIC claims files for examination. The examiners cited 117 alleged claims handling violations of the California Insurance Code and other specified codes from this sample file review.

Findings of this examination included failure to explain and failure to fully itemize in writing the determination of the cost of a comparable vehicle at the time the settlement offer was made; failure to include all applicable taxes, license fees and other fees in the settlement of a total loss vehicle; and, failure to send the required notices pertaining to the total loss settlement of an owner-retained salvage vehicle.

## **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 43 California consumer complaints and inquiries closed from January 1, 2013 through December 31, 2013, in regard to the lines of business reviewed in this examination. The CDI alleged three violations of law including failure to notify claimants that claim denials can be reviewed by the California Department of Insurance, failure to provide a written denial with the basis for the denial, and failure to supply a copy of the written estimate upon which a settlement is based. 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.

There have been no prior claims examinations conducted upon this Company by the California Department of Insurance.

The Company was not the subject of a 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>AIC 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 VIOLATIONS</b>
Private Passenger Automobile / Physical Damage / Collision	6125	58	47
Private Passenger Automobile / Physical Damage / Comprehensive	1240	12	5
Private Passenger Automobile / Liability / Property Damage	5906	57	36
Private Passenger Automobile / Liability / Bodily Injury	1379	13	0
Private Passenger Automobile / Uninsured Motorist Property Damage	99	44	27
Private Passenger Automobile / Uninsured Motorist Bodily Injury	51	26	1
Private Passenger Automobile / Medical Payment	59	25	1
<b>TOTALS</b>	14859	235	117

## TABLE OF TOTAL ALLEGED VIOLATIONS

Citation	Description of Allegation	AIC Number of Alleged Violations
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.	12
	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.	12
CCR §2632.13(e)(1) *[CIC §790.03(h)(3)]	The Company failed to properly advise the insured that the driver of the insured vehicle was principally at fault for an accident.	12
CCR §2695.8(b)(1)(A) *[CIC §790.03(h)(5)]	The Company failed to include, in the settlement, sales tax associated with the cost of a comparable vehicle, discounted by the amount of sales tax attributed to the salvage value of the loss vehicle.	6
	The Company failed to include, in the settlement, fees incident to the transfer of the vehicle to salvage status.	5
CVC §11515(b) *[CIC §790.03(h)(3)]	The Company failed to notify the Department of Motor Vehicles that the owner of a total loss salvage vehicle retained possession of the vehicle.	5
	The Company failed to notify the insured or owner of his or her responsibility to comply with CVC §11515(b).	5
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.	5
	The Company failed to specify, in the written notice, any additional information the insurer requires to make a claim determination and to state any continuing reasons for the Company's inability to make a determination.	1
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.	6
CCR §2695.8(f) *[CIC §790.03(h)(3)]	The Company failed to supply the claimant with a copy of the estimate upon which the settlement was based.	6

Citation	Description of Allegation	AIC Number of Alleged Violations
CCR §2695.7(b) *[CIC §790.03(h)(3)]	The Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.	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 §2695.4(a) *[CIC §790.03(h)(1)]	The Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.	4
CCR §2695.7(b)(1) *[CIC §790.03(h)(13)] <i>First Party</i> *[CIC §790.03(h)(3)] <i>Third Party</i>	The Company failed to deny, dispute or reject a third party claim, in whole or in part, in writing.	2
	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.	2
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.	4
CIC §790.03(h)(1)	The Company misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.	3
CCR §2695.5(e)(1) *[CIC §790.03(h)(2)]	The Company failed to acknowledge notice of claim within 15 calendar days.	3
CCR §2695.8(k) *[CIC §790.03(h)(5)]	The Company failed to pay the reasonable storage charges incurred by the claimant.	3
CIC §11580.011(e) *[CIC §790.03(h)(5)]	The Company failed to replace the child passenger restraint system or failed to reimburse the claimant for the cost of purchasing a new 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.	2
CCR §2695.5(b) *[CIC §790.03(h)(2)]	The Company failed to respond to communications within 15 calendar days.	2
CIC §560 *[CIC §790.03(h)(5)]	The Company failed to issue payment to the repairer or to the named insured and repairer jointly within 10 days of receipt of an itemized bill or invoice.	1

Citation	Description of Allegation	AIC Number of Alleged Violations
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
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 §2695.7(b)(3) *[CIC §790.03(h)(3)]	The Company failed to include a statement in its claim denial that, if the claimant believes the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance.	1
CCR §2695.7(d) *[CIC §790.03(h)(3)]	The Company failed to conduct and diligently pursue a thorough, fair and objective investigation.	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
<b>Total Number of Alleged Violations</b>		<b>117</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)(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 ALLEGED VIOLATIONS BY LINE OF BUSINESS**

<p align="center"><b>PRIVATE PASSENGER AUTOMOBILE</b>                  2013 Written Premium: \$73,741,159</p> <p><b>AMOUNT OF RECOVERIES     \$137,662.07</b></p>	<p align="center"><b>NUMBER OF ALLEGED VIOLATIONS</b></p>
CCR §2695.8(b)(4) [CIC §790.03(h)(3)]	24
CCR §2632.13(e)(1) [CIC §790.03(h)(3)]	12
CCR §2695.8(b)(1)(A) [CIC §790.03(h)(5)]	11
CVC §11515(b) [CIC §790.03(h)(3)]	10
CCR §2695.7(c)(1) [CIC §790.03(h)(3)]	6
CCR §2695.8(c) [CIC §790.03(h)(3)]	6
CCR §2695.8(f) [CIC §790.03(h)(3)]	6
CCR §2695.7(b) [CIC §790.03(h)(3)]	5
CCR §2695.7(g) [CIC §790.03(h)(5)]	5
CCR §2695.4(a) [CIC §790.03(h)(1)]	4
CCR §2695.7(b)(1) [CIC §790.03(h)(3) / CIC §790.03(h)(13)]	4
CCR §2695.8(b)(1) [CIC §790.03(h)(5)]	4
CIC §790.03(h)(1)	3
CCR §2695.5(e)(1) [CIC §790.03(h)(2)]	3
CCR §2695.8(k) [CIC §790.03(h)(5)]	3
CIC §11580.011(e) [CIC §790.03(h)(5)]	2
CCR §2695.5(b) [CIC §790.03(h)(2)]	2
CIC §560 [CIC §790.03(h)(5)]	1
CIC §790.03(h)(3)	1
CCR §2695.3(a) [CIC §790.03(h)(3)]	1
CCR §2695.7(b)(3) [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 §2695.7(p) [CIC §790.03(h)(3)]	1
<b>SUBTOTAL</b>	<b>117</b>

<b>TOTAL</b>	<b>117</b>
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## **SUMMARY OF EXAMINATION RESULTS**

On September 16, 2015, Affirmative Insurance Company was placed in rehabilitation by the Circuit Court of Cook County, State of Illinois. The Company is in rehabilitation and under the control and supervision of the Illinois Office of the Special Deputy Receiver.

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. The implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

Money recovered within the scope of this report was \$6,972.08 as described in section numbers 3(a), 3(b), 9, 12, 15 and 16 below. Pursuant to the finding as described in section 13 below, the Company is re-opening the claim and affording coverage. The results of the claim and any payments are anticipated to be reported to the Department by December, 2015. Following the findings of the examination, closed claims surveys as described in section numbers 3(a), 12 and 15 below were conducted by the Company resulting in additional payments of \$130,689.99. As a result of the examination, the total amount of money returned to claimants within the scope of this report was \$137,662.07.

## **PRIVATE PASSENGER AUTOMOBILE**

### **1. In 24 instances, the Company failed to comply with the requirements of CCR §2695.8(b)(4).**

**1(a). In 12 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).

**1(b). In 12 instances, 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.** 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 to 1(a) and 1(b):** The Company acknowledges these findings. To ensure future compliance, the Company updated its total loss procedures and completed full implementation of the procedures effective July 15, 2014. The procedures require the adjuster to provide the actual cash value (ACV) report along with an offer letter itemizing the determination of the cost of a comparable vehicle.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**2. In 12 instances, the Company failed to properly advise the insured that the driver of the insured vehicle was principally at-fault for an accident.** Ten instances involved the failure to specify the basis of the liability determination and the failure to advise the insured of the right to reconsideration. Two instances involved the failure to send the determination of fault notice. The Department alleges these acts are in violation of CCR §2632.13(e)(1) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges these findings. To ensure future compliance, Affirmative updated the at-fault letter on April 1, 2014, to include both the specific basis for the determination of fault and the notice of the insured's right to have the determination of fault reconsidered. Additionally, the Company automated its process of providing at-fault letters to claimants and reinforced this issue with the staff. Further, the Company mailed the two at-fault letters that were not previously sent.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**3. In 11 instances, the Company failed to comply with the requirements of CCR §2695.8(b)(1)(A).**

**3(a). In six instances, the Company failed to include, in the settlement, sales tax associated with the cost of a comparable vehicle, discounted by the amount of sales tax attributed to the salvage value of the loss vehicle.** The Department alleges these acts are in violation of CCR §2695.8(b)(1)(A) and are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company acknowledges these findings. To ensure future compliance, the Company updated its total loss procedures and completed full implementation of the procedures effective July 15, 2014. The new total loss procedure specifically addresses the processes for including California sales tax in compliance with the regulation. As a result of these findings and to correct the errors, the Company paid a total of \$1,542.71 in sales tax to the identified claimants

In addition, in response to a concern that the Company may have overlooked the payment of sales tax in the past, the Company conducted an internal survey of all owner-retained total loss settlements with a date of loss of January 2013 (the date the Company began handling its own California claims) through September 22, 2014. The Company completed the survey on September 22, 2014 and reported the results to the Department on July 10, 2015. As a result of the survey, the Company issued payments totaling \$110,664.89 and mailed explanatory letters to all individuals affected. The payments included both unpaid sales tax and prorated registration fees identified in section number 12 below.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**3(b). In five instances, the Company failed to include, in the settlement, fees incident to the transfer of the vehicle to salvage status.** The Department alleges these acts are in violation of CCR §2695.8(b)(1)(A) and are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company acknowledges these findings. To ensure future compliance, the Company updated its total loss procedures effective July 15, 2014 to ensure fees are calculated accurately upon owner retention settlements. The revised total loss procedures specifically address the processes for including fees in compliance with the regulation. As a result of these findings, the Company paid each identified claimant the \$19.00 salvage certificate fee. The Company issued a total of \$95.00 payments to vehicle owners.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**4. In 10 instances, the Company failed to comply with the requirements of CVC §11515(b).**

**4(a). In five instances, the Company failed to notify the Department of Motor Vehicles that the owner of a total loss salvage vehicle retained possession of the vehicle.** The Department alleges these acts are in violation of CVC §11515(b) and are unfair practices under CIC §790.03(h)(3).

**4(b). In five instances, the Company failed to notify the insured or owner of his or her responsibility to comply with CVC §11515(b).** The Department alleges these acts are in violation of CVC §11515(b) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response to 4(a) and 4(b):** The Company updated its total loss procedures and completed full implementation of the procedures effective July 15, 2014. The Company's revised procedures address compliance with CVC §11515(b) by requiring that the adjuster send two documents when a vehicle owner opts to retain his or her salvaged vehicle. The first document is a letter advising the vehicle owner of his or her duty to report to the Department of Motor Vehicles (DMV) and of the right to request a refund from the DMV. The second document notifies the DMV that the vehicle owner retained possession of the vehicle.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**5. In six instances, the Company failed to comply with the requirements of CCR §2695.7(c)(1).**

**5(a). In five 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. To ensure future compliance, the Company stressed the need for these letters with claims staff in the April, 2014 leadership meetings.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**5(b). In one instance, the Company failed to specify, in the written notice, any additional information the insurer requires to make a claim determination and to state any continuing reasons for the Company's inability to make a determination.** The Department alleges this act is in violation of CCR §2695.7(c)(1) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges the necessary information needed for additional time was not provided to the insured in the letter dated May 5, 2013. The Company reinforced the regulation with the adjuster and with claims staff in the April, 2014 leadership meetings. The Company believes this is an exception as its procedure is to outline necessary information required to complete the claim investigation in its additional time letters.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**6. In six 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. To ensure future compliance, the Company updated its total loss procedures and completed full implementation of the procedures effective July 15, 2014. The revised procedures include language on the total loss offer letter which outlines the insured's right to request reconsideration of the settlement if the insured is unable to replace the comparable vehicle within 35 days.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**7. In six instances, the Company failed to supply the claimant with a copy of the estimate upon which the settlement was based.** The Department alleges these acts are in violation of CCR §2695.8(f) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges that the initial and supplemental estimates were not sent to the claimant in all identified instances. Effective April 1, 2014, the Company automated its process of providing estimates to vehicle owners and reinforced this requirement with claims staff.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**8. In five 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)(3).

**Summary of the Company's Response:** The Company acknowledges that the identified claims were not timely accepted or denied. In two instances involving subrogation claims, the Company's claim volume and workload was larger than expected in 2013, which caused delays in handling. To ensure timely handling, the Company increased claims staff during this time. To ensure future compliance for all instances, the Company provided reinforcement to staff regarding the requirement to accept or deny a claim with 40 calendar days of receiving a proof of claim on an ongoing basis during weekly leadership meetings held throughout April, 2014. Additionally, the Company's claims organization now performs regular Quality Assurance reviews to ensure process and regulatory compliance.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**9. In five instances, the Company attempted to settle a claim by making a settlement offer that was unreasonably low.** In the first instance, the vehicle was rated with cloth seats when the vehicle had leather seats. Therefore, the vehicle was priced incorrectly. In the second instance, the amount owed was \$17,956.73 yet the amount paid was \$17,781.19 resulting in an underpayment. In the third instance, the Uninsured Motorist Property Damage (UMPD) settlement was underpaid with no justification in the file. In the fourth instance, the Company subtracted two \$500.00 deductibles from the loss. In the fifth instance, upon receipt of proof the at-fault party had no insurance, the Company failed to issue payment of the insured's \$500.00 collision deductible pursuant to the collision damage waiver coverage on the policy. 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:** In the first instance, the Company agrees the vehicle should have been rated with leather seats. As a result of this isolated finding, the Company issued an additional payment of \$184.64 to the vehicle owner.

In the second instance, the Company agrees the amount paid was less than what was owed. As a result of this isolated finding, the Company issued an additional payment of \$175.54 to the vehicle owner

In the third instance, the Company acknowledges it underpaid the insured on the UMPD claim. As a result of this isolated finding, the Company issued an additional payment of \$270.63 to the vehicle owner.

In the fourth and fifth instances on the same claim, the Company agrees it applied two deductibles and failed to apply the collision damage waiver upon receiving proof the other party was uninsured. As a result of these isolated findings, the Company issued an additional payment of \$1,000.00 to the vehicle owner.

To ensure future compliance, the Company provided reinforcement to staff during weekly leadership meetings held throughout April, 2014. Additionally, the Company's claims organization now performs regular Quality Assurance reviews to ensure process and regulatory compliance.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**10. In four 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) and are unfair practices under CIC §790.03(h)(1).

**Summary of the Company's Response:** The Company acknowledges these findings. To ensure future compliance, the Company provided reinforcement to staff regarding the Company's procedure and practice to provide an initial acknowledgment/cover letter disclosing all coverages during weekly leadership meetings held throughout April, 2014. Additionally, the Company's claims organization now performs regular Quality Assurance reviews to ensure process and regulatory compliance.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**11. In four instances, the Company failed to comply with the requirements of CCR §2695.7(b)(1).**

**11(a). In two instances, the Company failed to deny, dispute or reject a third party claim, in whole or in part, in writing.** In these instances, the Company failed to send a written denial to a third-party claimant. The Department alleges these acts are in violation of CCR §2695.7(b)(1) and are unfair practices under CIC §790.03(h)(3).

**11(b). In two 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.** In one instance, the Company failed to send a denial letter to a first-party claimant. In one instance, the Company failed, in its written denial to a first-party claimant, to include the cancellation date of the policy as the

reason for the denial. 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 to 11(a) and 11(b):** The Company acknowledges these findings in all identified instances. The Company believes these are exceptions as it consistently sends denial letters when deemed necessary. To ensure future compliance, the Company reinforced the requirement to send a full or partial denial letter with staff and to include the cancellation date of the policy to first-party claimants during weekly leadership meetings held throughout April, 2014.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**12. In four instances, the Company failed to include, in the settlement, the license fee and other annual fees computed based upon the remaining term of the registration.** The Department alleges these acts are in violation of CCR §2695.8(b)(1) and are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company acknowledges these findings. On December 23, 2013, the Company entered into an agreement with a third-party vendor to provide the Company with registration information for vehicles registered in California. As a result of the findings of this examination, the Company upgraded its agreement with its vendor on April 3, 2014 to provide the adjuster with accurate prorated registration fees for total loss settlement valuations. Additionally, the Company updated its total loss procedures and completed full implementation of the procedures effective July 15, 2014. The updated procedures require the adjuster to upload information directly to its vendor to determine appropriate fees owed.

As a result of these findings and to correct the errors, the Company paid a total of \$598.00 in additional license fee and other annual fees computed based upon the remaining term of the registration to the identified claimants.

In addition, in response to a concern that the Company may have overlooked the payment of unused registration and license fees in the past, the Company conducted an internal survey of all owner-retained total loss settlements with a date of loss of January 2013 (the date the Company began handling its own California claims) through September 22, 2014. The Company completed the survey on September 22, 2014 and reported the results to the Department on July 10, 2015. As a result of the survey, the Company issued payments and mailed explanatory letters to all individuals affected. The details and results of the survey are included in summary section number 3(a) above.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**13. In three instances, the Company misrepresented to claimants pertinent facts or insurance policy provisions relating to coverages at issue.** In the first instance, the denial letter incorrectly stated the insured did not have Uninsured Motorist Property Damage (UMPD) coverage. In the second instance, the Company sent the insured a letter stating it was still awaiting information from the other party's insurance company to waive the deductible when confirmation of no insurance had already been received. In the third instance, the Company informed the insured that upon receipt of proof regarding the past premium payment and payment of additional premium, the Company would reinstate the insured's canceled policy. As a result of the Company's request, the insured submitted evidence of the prior premium payment and payment of additional premium. Nonetheless, the Company failed to reinstate the policy and cover the claim after the insured complied with the Company's request. Therefore, the Company misrepresented pertinent facts related to coverages and the subject claim. The Department alleges these acts are in violation of CIC §790.03(h)(1).

**Summary of the Company's Response:** In the first instance, the Company agrees incorrect information was disclosed in the letter to the insured. However, given that the threshold for UMPD had not been met, the Company owes no monies to the insured. The Company reinforced this finding with claims staff in the April, 2014 leadership meetings.

In the second instance, the Company agrees the letter to the insured dated June 14, 2013, contains a misrepresentation of fact that resulted in a delayed payment. The Company corrected the error on June 15, 2013, when the claim was transferred to a different claims representative who noticed the Company had received the additional information. This appears to be an oversight by the original claims representative. As a result of this finding, the Company re-communicated to all claims staff the importance of reviewing and labeling all incoming mail.

In the third instance, the Company disagrees with the Department's finding. The Company indicated that following the loss, the general agent advised the insured the Company would need documentation showing that a payment had been made prior to the date of loss as well as a payment of \$204.00 in order to reinstate the policy. The Company further stated that while the insured submitted a money order for \$204.00, the insured failed to submit the requested information regarding the attempted payment. The Company asserts that the additional documents regarding the money card payment provided by the insured were insufficient to support the insured's contention that she attempted to make a premium payment prior to the date of loss. However, while the Company continues to disagree with this finding, the Company is re-opening the claim and affording coverage in an effort to resolve this issue. The results of the claim and any payments are anticipated to be reported to the Department by December, 2015.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**14. In three instances, the Company failed to acknowledge notice of claim within 15 calendar days.** The Department alleges these acts are in violation of CCR §2695.5(e)(1) and are unfair practices under CIC §790.03(h)(2).

**Summary of the Company's Response:** The Company states that the adjusters did not respond as required per internal procedures and requirements in all identified instances. In two of these instances, the adjusters no longer work for the Company. To ensure compliance, the Company reinforced these requirements with claims staff on March 24, 2014.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**15. In three instances, the Company failed to pay the reasonable storage charges incurred by the claimant.** In these instances, the Company imposed a storage charge limit pursuant to its policy language. Section 2695.8(k) requires the insurer to pay reasonable storage charges and to provide reasonable notice to a claimant prior to disallowing storage charges. The Department alleges these acts are in violation of CCR §2695.8(k) and are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's Response:** Notwithstanding the Company's filing with and receipt of approval from the Department of the Company's policy form which includes limits of \$25.00 per day and \$250.00 maximum storage charges, the Company updated its procedures and completed full implementation effective July 15, 2014 allowing for consideration of reasonable storage charges rather than relying upon the policy limits. To ensure future compliance, the Company provided these new procedures to all total loss representatives and incorporated the procedural changes in total loss training for future employees. The Company also conducted a meeting with total loss supervisors at that time directing them to review all storage deductions in California. Additionally, the Company will include a revision to its policy language regarding storage fees when it revises its policy form in the normal course of business. As a result of the findings of the examination, the Company issued payments totaling \$2,749.48 in all identified instances.

In response to a concern that the Company may have imposed storage limits on claims outside the files reviewed in this examination, the Company conducted an internal survey of total loss files closed between January 1, 2012 and July 9, 2015 containing paid storage charges. The Company completed the survey and reported the results to the Department on September 29, 2015. The Company reviewed 136 total loss claims and identified 36 claims in which additional storage fees were owed. As a result of the survey, the Company issued payments totaling \$20,025.10 and mailed explanatory letters to all individuals affected. The internal survey included total loss claims only as the Company states it did not impose storage limits on vehicles subject to repairs.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**16. In two instances, the Company failed to replace the child passenger restraint system or failed to reimburse the claimant for the cost of purchasing a new 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 one instance, car seats were in the vehicle at the time of the loss and the adjuster did not confirm if the car seats were damaged. In another instance, the adjuster was aware that a child was occupying the seat at the time of the loss and still failed to pay for the car seat. 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:** As a result of the findings of the examination, the Company issued payments totaling \$356.08 in both instances. To ensure future compliance, the Company reinforced in weekly meetings the need to pay for the child passenger restraint system when it is damaged or occupied in an accident.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**17. In two instances, the Company failed to respond to communications within 15 calendar days.** In the first instance, the Company failed to respond to a request for a written response. In the second instance, the Company failed to respond to the lienholder's request for an explanation of the settlement. 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 these findings. To ensure future compliance, the Company provided reinforcement to staff regarding the requirement to respond to all communications within 15 calendar days during weekly leadership meetings held throughout April, 2014. Additionally, the Company's claims organization now performs regular Quality Assurance reviews to ensure process and regulatory compliance.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**18. In one instance, the Company failed to issue payment to the repairer or to the named insured and repairer jointly within 10 days of receipt of an itemized bill or invoice.** The Department alleges this act is in violation of CIC §560 and is an unfair practice under CIC §790.03(h)(5).

**Summary of the Company's Response:** The Company acknowledges this was an adjuster error and the adjuster is no longer employed by the Company. However, the Company maintains that this single isolated instance is not indicative of a systemic defect in the Company's practices or procedures warranting further remedial action. Nonetheless, to ensure future compliance, the Company provided reinforcement to staff regarding the insurance code during weekly leadership meetings held throughout April, 2014. Additionally, the Company's claims organization now performs regular Quality Assurance reviews to ensure process and regulatory compliance.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**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 failed to have a procedure to assure that mail returned as undeliverable by the post office was redirected to a suitable address. The Department alleges this act is in violation of CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges this finding. Effective March 25, 2014, the Company implemented a new process to address returned mail.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**20. 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 adjuster failed to document the file that the salvage value was obtained by Insurance Auto Auctions (IAA). 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:** This one instance involved the failure by the adjuster to document the salvage value obtained by IAA in the file. As a result of this finding, the Company updated its total loss procedures and completed full implementation of the procedures effective July 15, 2014. The updated procedures specifically require the adjuster to enter the full salvage value to the file, including a breakdown of the vehicle details and number of comparatives pulled for the valuation if IAA is used.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**21. In one instance, 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 this act is in violation of CCR §2695.7(b)(3) and is an unfair practice under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges its letter did not reference the CDI. To correct the error, the Company sent an amended letter on April 2, 2014, which referenced the CDI language.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**22. In one instances, the Company failed to conduct and diligently pursue a thorough, fair and objective investigation.** In this instance, the Company delayed the inspection of the vehicle to determine the extent of the loss. 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:** The Company acknowledges this finding. The Company stated the delay was in deciding whether to repair the vehicle or declare it a total loss. Due to not having staffed appraisers in the local area, timeliness regarding repair decisions has occurred. As a remedial measure, the Company employed appraisers in the Southern California region commencing on July 1, 2014. In the second instance, the Company states that the adjuster checked its records and confirmed the premium had not been received.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**23. In one instance, the Company failed, upon acceptance of the claim, to tender payment within 30 calendar days.** In this instance, the Company received the cleanup bill on November 22, 2013, and paid it on January 8, 2014. 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 acknowledges the delay and states this was an oversight by the adjuster. As a result of this finding, the Company provided feedback training to the adjuster in April, 2014.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.

**24. 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. As a result of this finding, the Company entered into a relationship with a new subrogation vendor as of June 1, 2015. As these letters are sent by the vendor, the vendor retains the copies. However, the Company is able to obtain copies of these letters directly from the vendor and intends to integrate its system with the subrogation system when feasible.

Although the Company provided remedial measures to ensure future compliance, the implementation of any remedial or corrective actions will be dependent upon the outcome of the rehabilitation by the State of Illinois.