

**[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**

**MERCURY INSURANCE COMPANY
NAIC # 27553 CDI # 2143-6**

**MERCURY CASUALTY COMPANY
NAIC # 11908 CDI # 1952-1**

**CALIFORNIA AUTOMOBILE INSURANCE COMPANY
NAIC # 38342 CDI # 2343-2**

AS OF JUNE 15, 2014

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:

Mercury Insurance Company
NAIC # 27553

Mercury Casualty Company
NAIC # 11908

California Automobile Insurance Company
NAIC # 38342

Group NAIC # 0660

Hereinafter, the Companies listed above also will be referred to as MIC, MCC, CAIC, or the Company or, collectively, as the Companies.

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

FOREWORD

The examination covered the claims handling practices of the aforementioned Companies on private passenger automobile, commercial automobile and homeowners claims closed during the period from June 16, 2013 through June 15, 2014. The examination was made to discover, in general, if these and other operating procedures of the Companies 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 insurers’ 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 insurers’ 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 in this report by the examiners, 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 Companies’ 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 Companies for use in California including any documentation maintained by the Companies 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 Companies 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 these Companies closed by the CDI during the period June 16, 2013 through June 15, 2014; a review of previous CDI market conduct claims examination reports on these Companies; and a review of prior CDI enforcement actions.

The review of the sample of individual claims files was conducted at the offices of the Companies in Brea, California.

EXECUTIVE SUMMARY OF CLAIMS SAMPLE REVIEWED

The private passenger automobile, commercial automobile, and homeowners claims reviewed were closed from June 16, 2013 through June 15, 2014, referred to as the “review period”. The examiners randomly selected 187 MIC claim files, 175 MCC claim files, and 120 CAIC claim files for examination. The examiners cited 106 alleged claims handling violations of the California Insurance Code from this sample file review.

Findings of this examination include a failure 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; a failure to deposit injury claim information with a licensed insurance claims analysis bureau; a failure to fully explain the amount of depreciation taken on a homeowners claim; and a failure to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.

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

The Companies were the subject of 627 California consumer complaints and inquiries closed from June 16, 2013 through June 15, 2014, in regard to the lines of business reviewed in this examination. Of the complaints and inquiries, the CDI determined 23 complaints were justified for claims handling delay and four were justified for improper denial of claim. The examiners focused on these issues during the course of the file review.

The previous claims examination of Mercury Insurance Company (MIC) and Mercury Casualty Company (MCC) reviewed a period from June 1, 2002 through May 31, 2003. The most significant noncompliance issues identified in the previous examination report were the Companies' failure to pay total loss taxes and fees; failure to provide notice of additional time needed to investigate claims; failure to pay claims within 40 days; and failure to provide a written basis for denial. These issues were not identified as problematic in the current examination.

The previous claims examination of California Auto Insurance Company (CAIC) reviewed a period from June 1, 2001 through May 31, 2002. The most significant noncompliance issues identified in this previous examination report was the Company's failure to pay total loss taxes and fees; and failure to provide the claimant with a copy of the estimate. These issues were not identified as problematic in the current examination.

DETAILS OF THE CURRENT EXAMINATION

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

MIC SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Private Passenger Automobile / Collision	156,091	49	21
Private Passenger Automobile / Comprehensive	15,546	5	2
Private Passenger Automobile / Medical Payments	17,152	18	1
Private Passenger Automobile / Property Damage	107,110	46	9
Private Passenger Automobile / Bodily Injury	36,681	16	4
Private Passenger Automobile / Uninsured Motorist Bodily Injury (UMBI)	8,090	25	8
Private Passenger Automobile / Uninsured Motorist Property Damage (UMPD)	8,795	28	3
TOTALS	349,465	187	48

MCC SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Private Passenger Automobile / Collision	535	2	0
Private Passenger Automobile / Comprehensive	19	2	0
Private Passenger Automobile / Medical Payments	337	2	0
Private Passenger Automobile / Property Damage	977	2	0
Private Passenger Automobile / Bodily Injury	2,091	1	0
Private Passenger Automobile / Uninsured Motorist Bodily Injury (UMBI)	311	1	0
Private Passenger Automobile / Uninsured Motorist Property Damage (UMPD)	5	2	0
Commercial Automobile / Collision	1289	31	6
Commercial Automobile / Comprehensive	215	2	0
Commercial Automobile / Property Damage	573	12	2
Commercial Automobile / Bodily Injury	350	7	0
Commercial Automobile / Uninsured Motorist Bodily Injury (UMBI)	29	13	1
Commercial Automobile / Uninsured Motorist Property Damage (UMPD)	39	18	1
Homeowners / Property	17,469	62	22
Homeowners / Liability	1,060	10	3
Dwelling Fire / Property	703	7	5
Dwelling Fire / Liability	6	1	0
TOTALS	26,008	175	40

CAIC SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Private Passenger Automobile / Collision	39,950	10	3
Private Passenger Automobile / Comprehensive	4,048	2	0
Private Passenger Automobile / Medical Payments	3,840	5	1
Private Passenger Automobile / Property Damage	30,929	4	1
Private Passenger Automobile / Bodily Injury	9,018	1	0
Private Passenger Automobile / Uninsured Motorist Bodily Injury (UMBI)	1,834	6	1
Private Passenger Automobile / Uninsured Motorist Property Damage (UMPD)	2,538	8	3
Commercial Automobile / Collision	1,326	32	1
Commercial Automobile / Comprehensive	102	2	0
Private Passenger Automobile / Property Damage	1,193	25	4
Commercial Automobile / Bodily Injury	264	6	0
Commercial Automobile / Uninsured Motorist Bodily Injury (UMBI)	17	8	4
Commercial Automobile / Uninsured Motorist Property Damage (UMPD)	23	11	0
TOTALS	95,082	120	18

TABLE OF TOTAL ALLEGED VIOLATIONS

Citation	Description of Allegation	MIC Number of Alleged Violations	MCC Number of Alleged Violations	CAIC Number of Alleged Violations
CIC §11580.011(e) *[CIC §790.03(h)(3)] *[CIC §790.03(h)(5)]	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.	23	5	3
	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.	3	0	0
CCR §2695.9(f) *[CIC §790.03(h)(3)]	The Company failed to fully explain the basis for any adjustment to the claimant in writing.	0	14	0
CIC §1876 *[CIC §790.03(h)(3)]	The Company failed, within 20 days of receipt of a bodily injury, medical payment or uninsured motorist bodily injury claim, to deposit the claims information with a licensed insurance claims analysis bureau.	6	4	1
CCR §2695.8(b)(4) *[CIC §790.03(h)(3)]	The Company failed to take reasonable steps to verify that the determination of the cost of a comparable vehicle was accurate and representative of the market value in the local market area.	3	2	1
	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.	1	0	0
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.	2	0	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.	1	0	3

Citation	Description of Allegation	MIC Number of Alleged Violations	MCC Number of Alleged Violations	CAIC Number of Alleged Violations
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.	1	3	0
CIC §790.03(h)(5)	The Company failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear.	0	2	1
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.	0	2	1
CCR §2695.9(f) *[CIC §790.03(h)(3)]	The Company failed to document in the claim file all justification for the adjustment of the amount claimed because of betterment, depreciation, or salvage. Any adjustment for betterment or depreciation shall reflect a measurable difference in market value attributable to the condition and age of the property	0	3	0
CIC §790.03(h)(1)	The Company misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.	1	1	0
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	0	0
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.	1	0	1
CCR §2695.9(f) *[CIC §790.03(h)(5)]	The Company improperly applied betterment or depreciation to property not normally subject to repair and replacement during the useful life of the property.	0	2	0
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	0	0
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.	1	0	0

Citation	Description of Allegation	MIC Number of Alleged Violations	MCC Number of Alleged Violations	CAIC Number of Alleged Violations
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	0	0
CCR §2695.9(f)(1) *[CIC §790.03(h)(5)]	The Company improperly applied depreciation or betterment to the expense of labor necessary to repair, rebuild or replace covered property.	0	1	0
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.	0	1	0
CIC §880 *[CIC §790.03(h)(3)]	The Company failed to conduct its business in its own name.	0	0	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	0	0
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.	0	0	1
Total Number of Alleged Violations		48	40	18

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

- 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 ALLEGED VIOLATIONS BY LINE OF BUSINESS

<p align="center">PRIVATE PASSENGER AUTOMOBILE 2013 Written Premium: \$1,734,647,406</p> <p>AMOUNT OF RECOVERIES \$1478.69</p>	<p align="center">NUMBER OF ALLEGED VIOLATIONS</p>
CIC §11580.011(e) [CIC §790.03(h)(3)]	28
CIC §790.03(h)(3)	7
CIC §1876 [CIC §790.03(h)(3)]	6
CCR §2695.8(b)(4) [CIC §790.03(h)(3)]	5
CCR §2695.8(f) [CIC §790.03(h)(3)]	2
CCR §2695.5(e)(2) [CIC §790.03(h)(3)]	2
CCR §2695.7(g) [CIC §790.03(h)(5)]	1
CCR §2695.7(b) [CIC §790.03(h)(4)]	1
CIC §790.03(h)(1)	1
CCR §2695.8(b)(1) [CIC §790.03(h)(5)]	1
CCR §2695.7(b)(1) [CIC §790.03(h)(13)]	1
CCR §2695.7(c)(1) [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
SUBTOTAL	58

COMMERCIAL AUTOMOBILE 2013 Written Premium: \$52,993,415	NUMBER OF ALLEGED VIOLATIONS
AMOUNT OF RECOVERIES \$2,145.99	
CIC §11580.011(e) [CIC §790.03(h)(3)]	6
CCR §2695.7(c)(1) [CIC §790.03(h)(3)]	3
CIC §1876 [CIC §790.03(h)(3)]	2
CIC §790.03(h)(5)	2
CCR §2695.8(b)(4) [CIC §790.03(h)(3)]	2
CCR §2695.3(a) [CIC §790.03(h)(3)]	1
CIC §560 [CIC §790.03(h)(5)]	1
CIC §880 [CIC §790.03(h)(3)]	1
SUBTOTAL	18

HOMEOWNERS 2013 Written Premium: \$265,764,968	NUMBER OF ALLEGED VIOLATIONS
AMOUNT OF RECOVERIES \$731.19	
CCR §2695.9(f) [CIC §790.03(h)(3)]	17
CIC §1876 [CIC §790.03(h)(3)]	3
CCR §2695.7(g) [CIC §790.03(h)(5)]	3
CIC §790.03(h)(5)	1
CCR §2695.7(b) [CIC §790.03(h)(4)]	2
CCR §2695.9(f) [CIC §790.03(h)(5)]	2
CIC §790.03(h)(1)	1
CCR §2695.9(f)(1) [CIC §790.03(h)(5)]	1
SUBTOTAL	30

TOTAL	106
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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 Companies are required to identify remedial or corrective action that has been or will be taken to correct the deficiency. The Companies are obligated to ensure that compliance is achieved.

Any noncompliant practices identified in this report may extend to other jurisdictions. The Companies were asked if it intends to take appropriate corrective action in all jurisdictions where applicable. The Companies intend to implement corrective actions in all jurisdictions.

Money recovered within the scope of this report was \$4,355.87 as described in section numbers 1, 7, 8, 10, 15, 21, 23, 25 and 27 below.

PRIVATE PASSENGER AUTOMOBILE

1. In 28 instances, the Companies failed to comply with CIC §11580.011(e) as follows:

1(a). In 25 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.

1(b). In three 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.

The Department alleges these acts are in violation of CIC §11580.011(e) and are unfair practices under CIC §790.03(h)(3) and CIC §790.03(h)(5).

Summary of the Companies' Response 1(a): In 25 instances, the Companies agree to the findings that these claim files did not incorporate inquiries regarding a child passenger restraint system in the vehicles at the time of loss. In April 2014 and prior to

the Department's examination, the Companies' claims process was already amended to include inquiries about child passenger restraint systems. The Companies updated their policies and procedures on their National Claims Portal; revised the Companies' recorded interview template to include a car seat inquiry; and transmitted a global communication on October 1, 2014 to all claims personnel on changes to enforce compliance with CIC §11580.011(e).

The Companies also conduct training on a continuous basis and specifically schedule classes to ensure that new employees are fully trained. The Companies provided the Department with a copy of the revised recorded interview template on March 25, 2015.

Summary of the Companies' Response 1(b): The Company agrees with the findings. As a result of the examination, the Company reopened the pertinent claims to issue additional payments in the amount of \$303.95.

The Company has also counseled pertinent claim staff on this issue. The Company conducts training on a continuous basis to reinforce compliance with the statute, and has updated its policies and procedures for child passenger restraint systems on its National Claims Portal.

2. In seven instances, the Companies failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies. In four instances, the Companies sent communications to insureds indicating that "any suit or action on the policy regarding a collision, comprehensive, or loan lease gap coverage must be filed within 12 months from the date of loss." The Companies denied claims by enforcing a 365-day contractual statute of limitation on first party coverage for collision, comprehensive and loan lease gap coverage. The Companies' practice, guidelines and parameters were not defined with regard to the implementation of these timelines for notice of claim, or proof of claim which would result in a coverage denial.

Of the three remaining instances, one was based on the Company's failure to recognize and investigate a potential uninsured motorist bodily injury (UMBI) claim. The second instance is due to the Company's failure to follow its procedure to respond to an intercompany arbitration filing. The third instance demonstrated that the Company did not have a process in place to provide the statute of limitation notice on a closed claim.

The Department alleges these acts are in violation of CIC §790.03(h)(3).

Summary of the Companies' Response: In four instances, the Companies acknowledge the findings and indicate that they have updated processes pertaining to the 365-day timeline to deny claims which will include the following steps:

- 1) When a claim is made more than 365 days from the date of loss, the Companies will provide coverage if the insured is still a customer; no lapses exist;

no prior or subsequent damage exists; and the vehicle is still on the policy. The Company will also consider payment if the Company failed to transmit the notice letter that advises the insured of the policy's time limitation language. Once the claim is accepted for payment, the Companies will adjust and pay parts and labor costs prevailing as of the date of loss.

2) The Companies will refer claims made more than 365 days from the date of loss for a legal opinion with its Legal Department in the following instances:

- a) An insured is no longer a customer or there has been a lapse in coverage
- b) The Companies will be unable to collect subrogation because the statute of limitations has expired
- c) The Companies cannot locate the parties or identify the vehicles involved
- d) The Companies cannot determine the amount or extent of the claimed loss due to one or more unrelated losses
- e) The Companies cannot determine whether the loss occurred during the policy period

If the legal opinion determines that the Companies were not prejudiced by the delay in notice, these claims will be provided coverage and the claims will be paid.

3) Claim denials will be routed to the Companies' Legal department. Upon receipt of a legal review, the Branch Manager will advise the Divisional Manager of the outcome and a recommendation for further handling. The manager may also route or discuss these cases with his or her divisional manager prior to a decision to deny claims for failure to file the claim within 365 days from date of loss.

The Companies believe that adoption and implementation of the above-described processes fully complies with the Companies' obligation to implement reasonable standards for the prompt investigation and processing of claims pursuant to CIC § 790.03(h)(3). The Companies believes they have legal authority for the enforceability of this contractual provision, but the Companies have agreed to adopt a prejudice standard (as reflected in the process above), to primarily improve customer service and to cooperate with the Department on this matter.

With regard to the last three instances, the Companies indicate that these were isolated incidents of adjuster errors. The Company agrees that the adjuster failed to recognize a UMBI exposure however the claim was subsequently reopened upon receipt of a UMBI demand. The Company also agrees that it failed to respond to intercompany arbitration to defend its liability position against an adverse party. Finally, the Company acknowledges that it failed to reopen a claim to issue a statute of limitation notice on a potential UMBI claim. As a result of the examination, the Companies reopened this last claim and issued the UMBI statute of limitation notice on December 31, 2014.

The Companies have addressed these issues with pertinent staff for statutory reinforcement.

3. In six instances, the Companies failed, within 20 days of receipt of a bodily injury, medical payment or uninsured motorist bodily injury claim, to deposit the claims information with a licensed insurance claims analysis bureau. The Department alleges these acts are in violation of CIC §1876 and are unfair practices under CIC §790.03(h)(3).

Summary of the Companies' Response: The Companies agree to the findings. The file handlers have been counseled for compliance reinforcement. Further, the Companies conduct training on a continuous basis and specifically schedule classes to ensure that new employees are fully trained.

On October 1, 2014, the Companies updated its Claims National Portal with the policies and procedures for claims indexing. The Companies provided a copy of the procedure to the Department on March 25, 2015.

4. In five instances, the Companies failed to comply with CCR §2695.8(b)(4) as follows:

4(a) In four instances, the Companies failed to take reasonable steps to verify that the determination of the cost of a comparable vehicle was accurate and representative of the market value in the local market area. The Companies' guidelines for locating comparable vehicles on total loss claims were not representative of the local market area in these four instances.

4(b) 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. Determination of the actual cash value (ACV) was not explained. The Company failed to provide the insured a written explanation of the ultimate determination of the cost of a comparable vehicle..

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 Companies' Response 4(a): The Companies agree with the findings that the market was expanded to include a broader area outside of the local market area. Although the Companies believe that its procedures were consistent with a reasonable interpretation of this regulation, the Companies agree that the files were not sufficiently documented in accordance with CCR § 2695.8(b)(4)(D). As a result of the examination, the Companies have revised its guidelines to comply with CCR §2695.8(b)(4) and indicate the following steps: In instances where no comparable vehicles are available within the local market area, the radius may be expanded; however, the claim file will be documented accordingly as to the basis of the expanded search. The Companies' documentation will detail how the Actual Cash Value (ACV) was determined, what source was used, and will explain any deviations including expanding from the local market area.

Summary of the Companies' Response 4(b): The Companies acknowledge that it only provided the insured with an initial first valuation report of \$17,402.00. However, the Company indicates that there were subsequent counter-offers made to the insured which resulted in an adjustment of \$4,452.00 in the final valuation report of \$21,856.00.

The Companies conduct training on a continuous basis including scheduling training for new employees for regulatory compliance and reinforcement.

5. In two instances, the Companies 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 Companies' Response: The Companies agree that copies of the estimates were not provided in both instances. The Companies have addressed this issue with pertinent staff. The Companies implement training on claims processes on a continuous basis to reinforce regulatory compliance.

6. In two instances, the Company failed to provide necessary forms, instructions, and reasonable assistance within 15 calendar days. The Company failed to transmit an accident statement form, medical authorizations and a medical report form in these instances. 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 that the claims were not handled in accordance with Company procedures. This matter was addressed with pertinent staff for reinforcement. The Company also conducts claims staff training on a continuous basis to reinforce regulatory compliance.

7. In one instance, the Company attempted to settle a claim by making a settlement offer that was unreasonably low. –The Company failed to pay the out-of-pocket car rental expense incurred by a claimant that was included in the subrogation demand from the claimant carrier.

The Department alleges this act is in violation of CCR §2695.7(g) and is an unfair practice under CIC §790.03(h)(5).

Summary of the Company's Response: The Company agrees that it should have included the out-of-pocket car rental amount incurred by the claimant. The Company states the car rental invoice was partially paid to the claimant carrier. The error was an oversight on the part of the adjuster and has been addressed accordingly. As a result of the examination, the Company has issued additional payment in the amount of \$22.74.

8. **In one instance, the Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.** The Company failed to accept or deny an ambulance bill. The Department alleges this act is in violation of CCR §2695.7(b) and is an unfair practice under CIC §790.03(h)(4).

Summary of the Company's Response: The Company agrees with the finding and has addressed this issue with pertinent staff. As a result of the examination, the claim was reopened, and a payment was issued in the amount of \$1,037.00

The Company conducts training with its claims staff on a continuous basis to reinforce compliance with the regulations.

9. **In one instance, the Company misrepresented to claimants pertinent facts or insurance policy provisions relating to coverages at issue.** —The Company misrepresented to an insured specific information regarding medical payment coverage indicating it was an excess and reimbursable coverage. The Department alleges this act is in violation of CIC §790.03(h)(1).

Summary of the Company's Response: The Company agrees with the finding and has addressed this issue with pertinent staff. The Company conducts claims training on a continuous basis to reinforce compliance with the statute.

10. **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.** The Company failed to pay for unused vehicle license fees on a total loss claim. 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: The Company agrees with the finding and has addressed the issue with pertinent staff for reinforcement. As a result of the examination, the Company reopened the claim and issued an additional payment of \$115.00.

The Company conducts claims training on a continuous basis to reinforce compliance with regulations and other statutes.

11. **In one instance, 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 Company failed to provide a written denial to an insured for possible unrelated prior damage.

The Department alleges this act is in violation of CCR §2695.7(b)(1) and is unfair practice under CIC §790.03(h)(13).

Summary of the Company's Response: The Company agrees with the finding. The Company indicates that an estimate was completed and was provided to the insured

for informational purposes only, outlining the damage as Unrelated Prior Damage. The Company acknowledges that the insured had inquired about the inclusion of these damages with her claim, thus a written denial should have been provided at that point. In this instance, the claim was not handled in accordance with Company policies and procedures and has this issue has been addressed with pertinent staff.

The Company conducts training with its claims staff on a continuous basis to reinforce compliance with the regulations.

12. The Companies failed to comply with the Fair Claims Regulations Practices. In each single instance (for a total of three instances), the Company failed to comply with the following Fair Claims Regulation Practices:

- a) CCR §2695.7(c)(1) for failure to provide written notice of the need for additional time or information every 30 calendar days;
- b) CCR §2695.7(h) for failure upon acceptance of the claim, to tender payment within 30 calendar days; and
- c) CCR §2695.7(p) for failure to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation.

The Department alleges these acts are in violation of the Fair Claims Regulation Practices and are unfair practices under CIC §790.03(h)(3) and CIC §790.03(h)(5).

Summary of the Companies' Response: The Companies agree with the findings. These files were not handled in accordance with the Companies' procedures and have been addressed with pertinent staff for reinforcement.

The Company conducts training on a continuous basis including scheduling training for new employees for regulatory and statutory compliance.

COMMERCIAL AUTOMOBILE

13. In six instances, the Companies 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 Companies' Response: The Companies agree to the findings that these claim files did not incorporate inquiries regarding a child passenger restraint system in the vehicles at the time of loss. In April 2014 and prior to the Department's examination, the Companies' claims process was amended to include inquiries about child passenger restraint systems. The Companies updated their policies and procedures on their National Claims Portal; revised the Companies' recorded interview template to include a car seat inquiry; and transmitted a global communication on October 1, 2014 to all claims personnel regarding changes to enforce compliance with CIC §11580.011(e).

The Companies also conduct training on a continuous basis and specifically schedule classes to ensure that new employees are fully trained. The Companies provided the Department with a copy of the revised recorded interview template on March 25, 2015.

14. In three instances, the Company failed to provide written notice of the need for additional time or information every 30 calendar days. In two instances, the Company failed to transmit status letters within regulatory timelines. In the last instance the Company failed to send a status letter to the claimant. 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 agrees with the findings. Regulatory status letters were not sent timely and/or were not transmitted to the claimant. These claims were not handled in accordance with Company procedures. The claim handlers have been counseled accordingly for compliance reinforcement.

15. In two instances, the Company failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear. The first instance was based on a supplemental repair estimate that was not paid. The second instance was due to a failure to pay the insured's claim for uninsured motorist property damage. The Department alleges these acts are in violation of CIC §790.03(h)(5).

Summary of the Company's Response: The Company agrees with the finding and has addressed these issues with pertinent staff. As a result of this examination, the Company reopened these claims and issued payments totaling \$2,145.99.

The Company conducts training with its claims staff on a continuous basis to reinforce compliance with the regulations.

16. In two instances, the Companies failed, within 20 days of receipt of a bodily injury, medical payment or uninsured motorist bodily injury claim, to deposit the claims information with a licensed insurance claims analysis bureau. The Department alleges these acts are in violation of CIC §1876 and are unfair practices under CIC §790.03(h)(3).

Summary of the Companies' Response: The Companies agree to the findings. The file handlers have been counseled for compliance reinforcement. Further, the Companies conduct training on a continuous basis and specifically schedule classes to ensure that new employees are fully trained.

On October 1, 2014, the Companies updated its Claims National Portal with the policies and procedures for claims indexing. The Companies provided a copy of the procedure to the Department on March 25, 2015.

17. In two instances, the Companies failed to comply with CCR §2695.8(b)(4) as follows:

17(a). The Company failed to take reasonable steps to verify that the determination of the cost of a comparable vehicle was accurate and representative of the market value in the local market area. The vehicle valuation revealed ten vehicles which were outside the primary area of the insured's resident location. The Company expanded its search of comparable vehicles outside of the local market area for comparable replacement vehicles.

17(b). 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 Company failed to provide the insured with a copy of the vehicle valuation upon which the settlement offer was based.

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 Companies' Response: The Companies agree with the findings and indicate these were isolated incidents. The Companies has reinforced the review of local market listings before expanding the market search outside of the local market area. The Company has also reiterated the requirement to explain in writing the determination of the cost of a comparable vehicle.

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 agrees with the finding that a payment to the repair facility was not issued timely. This was an isolated incident and the pertinent claims adjuster is no longer with the Company.

19. 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. 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 agrees with the finding that a copy of the "Notice of Salvage Retention" letter has not been retained on the claim file. The Company has reiterated this compliance issue with pertinent staff.

The Company conducts training with its claims staff on a continuous basis to reinforce compliance with the regulations.

20. In one instance, the Company failed to conduct its business in its own name. The Department alleges this act is in violation of CIC §880 and is an unfair practice under CIC §790.03(h)(3).

Summary of the Company's Response: The Company agrees with the finding. The Company counseled pertinent staff and a reminder memorandum was provided to the branch offices during a department meeting held on October 17, 2014.

HOMEOWNERS

21. In 19 instances, the Company failed to comply with CCR §2695.9(f) as follows:

21(a). In 14 instances, the Company failed to fully explain the basis for any adjustment to the claimant in writing. The Company's correspondence failed to explain the amount of depreciation taken and failed to include an explanation of how it was calculated. The Company did not consider the condition and age of the property in applying betterment or depreciation in ten of these instances. In the last four instances, the Company did not include the depreciation or condition on their estimates on claims handled by its Third Party Administrator (TPA).

21(b). In three instances, the Company failed to document in the claim file all justification for the adjustment of the amount claimed because of betterment, depreciation, or salvage. Any adjustment for betterment or depreciation shall reflect a measurable difference in market value attributable to the condition and age of the property. In these instances, the Company failed to document the basis for depreciation.

21(c). In two instances, the Company improperly applied betterment or depreciation to property not normally subject to repair and replacement during the useful life of the property. In both instances Company misapplied depreciation to supplies to be used in preparation for repairs.

The Department alleges these acts are in violation of CCR §2695.9(f) and are unfair practices under CIC §790.03(h)(3) or CIC §790.03(h)(5).

Summary of the Company's Response 21(a): The Company agrees to the findings in all instances. On November 20, 2014, Mercury Casualty Company (MCC) sent a memorandum to all staff reiterating the importance of documenting and validating reasons for any depreciation amount taken on a line-by-line basis on the estimates. The homeowner (HO) template settlement letters have been updated with a disclosure of depreciation items on the settlement.

As a result of the examination, a new column will be added to estimates to include not only the percentage of depreciation, but also to reflect the condition of the item. The Company updated its Property Inventory Sheet on November 20, 2014 to include a column for "condition/usage". This Property Inventory Sheet will be attached and transmitted with the property settlement letter for consistency. A training memorandum was sent to claims staff on November 20, 2014 as to the new process that has been added to the Company's internal audit procedures. The Company's in-house adjusters and independent adjusters have also been instructed to fully document their files to specify and validate the application of depreciation.

The Company provided the Department with sample copies of their updated vendor estimate details and their revised template Property Inventory List form outlining the basis for depreciation.

Summary of the Company's Response 21(b): The Company agrees to the findings in all instances. In September 2014, all independent adjusting firms received an email from the Company instructing them that "...special attention should be made regarding the application of depreciation on structural items. The reasons/justification for the basis of any depreciation applied must be documented in the estimate or report." The Company provides its independent adjusters at the time of assignment with the Company's internal guidelines, including documentation requirements for depreciation. If the independent adjuster fails to provide the necessary support for depreciation, the assigned Company adjuster will follow up to obtain justification and other support.

The Company has implemented training and claims processes to ensure future compliance including a memorandum to remind all staff to document the file accordingly. This depreciation issue has been incorporated into the Company's internal audit process to ensure compliance.

The Company provided the Department with sample copies of their updated vendor estimate details and their revised template Property Inventory List form outlining the basis for depreciation.

Summary of the Company's Response to 21(c): The Company agrees with the findings that depreciation was improperly applied in both cases. The Company reopened the claims and issued additional monies owed for \$4.29.

The Company conducts training on a continuous basis to reinforce regulatory compliance.

22. In three instances, the Company failed, within 20 days of receipt of a bodily injury, medical payment or uninsured motorist bodily injury claim, to deposit the claims information with a licensed insurance claims analysis bureau. The Company failed to deposit the claims information with a licensed insurance claims analysis bureau on two bodily injury claims. In the last instance, the Company delayed submission of

information beyond statutory timelines. The Department alleges these acts are in violation of CIC §1876 and are unfair practices under CIC §790.03(h)(3).

Summary of the Company's Response: The Company agrees to the findings. The file handlers have been counseled for compliance reinforcement. Further, the Company conducts training on a continuous basis and specifically schedule classes to ensure that new employees are fully trained.

On October 1, 2014, the Company updated its Claims National Portal with the policies and procedures for claims indexing. The Company provided a copy of the updated procedures to the Department on March 25, 2015.

23. In three instances, the Company attempted to settle a claim by making a settlement offer that was unreasonably low. In two instances, the Company underpaid the additional living expenses benefits. In the third instance, the Company failed to pay a plumber's emergency fee for leak detection. 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 agrees to the findings. As a result of the examination, the Company reopened the claims and issued additional payments totaling \$304.69.

The Company has addressed this matter with pertinent personnel for regulatory compliance. Further, the Company will reiterate this issue in claims training which is conducted on a continuous basis.

24. In two instances, the Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days. The Company failed to accept the claims within regulatory timelines. 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 agrees with the findings. The Company has added personnel staffing to help minimize the need for temporary adjusters in the future. The Company conducts training to reinforce regulatory compliance on a continuous basis.

25. In one instance, the Company failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear. The Company failed to pay the insured's out-of-pocket medical expenses due to a pending Medicare Lien. The Department alleges this act is in violation of CIC §790.03(h)(5).

Summary of the Company's Response: The Company agrees to this finding. As a result of the examination, the Company has issued an additional payment of \$395.46. The Company has addressed this issue with pertinent staff for reinforcement. The Company also conducts claims training on a continuous basis for regulatory and statutory compliance.

26. In one instance, the Company misrepresented to claimants pertinent facts or insurance policy provisions relating to coverages at issue. The Company misidentified the time period during which a claim for recoverable depreciation could be made. The Department alleges this act is in violation of CIC §790.03(h)(1).

Summary of the Company's Response: The Company agrees with the finding that a wrong date was provided for the recovery of withheld depreciation. The Company has addressed this matter with pertinent staff and has reiterated compliance to this statute in training conducted on a continuous basis.

27. In one instance, the Company improperly applied depreciation to the expense of labor necessary to repair, rebuild or replace covered property. The Company improperly applied depreciation to labor cost of cleaning tile. The Department alleges this act is in violation of CCR §2695.9(f)(1) and is an unfair practice under CIC §790.03(h)(5).

Summary of the Company's Response: The Company agrees with the finding that depreciation was improperly applied in this case. As a result of the examination, the Company reopened the claim and issued additional payment to an insured for \$26.75. On November 20, 2014, the Company sent an e-Newsletter reiterating the depreciation documentation procedures to all claims staff. It was emphasized that the claims staff must document how depreciation was determined.

The Inventory Checklist template form to be provided to the insureds was updated in November 2014 to include important changes. These changes include adding columns for 'Age', 'Condition of Item' and 'Depreciation'. The Companies worked with their independent vendor and added a depreciation percentage "% column" and a "condition" column to their estimates.

The Company provided the Department with sample copies of their updated vendor estimate details and their revised template Property Inventory List form outlining the basis for depreciation.