

**[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**

**FINANCIAL AMERICAN PROPERTY AND CASUALTY
INSURANCE COMPANY
NAIC # 21075 CDI # 1964-6**

AS OF SEPTEMBER 30, 2013

ADOPTED SEPTEMBER 30, 2014

STATE OF CALIFORNIA



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

NOTICE

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

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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



September 30, 2014

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

Honorable Commissioner:

Pursuant to instructions, and under the authority granted under Part 2, Chapter 1, Article 4, Sections 730, 733, 736, and Article 6.5, Section 790.04 of the California Insurance Code; and Title 10, Chapter 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, an examination was made of the claims handling practices and procedures in California of:

**Financial American Property and Casualty Insurance Company
NAIC # 21075**

Group NAIC # 4736

Hereinafter, the Company listed above also will be referred to as FAMPAC 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) pursuant to California Insurance Code section 12938(b)(1).

FOREWORD

The examination covered the claims handling practices of the aforementioned Company on Mechanical Breakdown Insurance claims closed during the period from October 1, 2012 through September 30, 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. This report contains all alleged violations of laws that were identified during the course of the examination.

The report is written in a “report by exception” format. The report does not present a comprehensive overview of the subject insurer’s practices. The report contains a summary of pertinent information about the lines of business examined, details of the non-compliant or problematic activities that were discovered during the course of the examination and the insurer’s proposals for correcting the deficiencies. When a violation that reflects an underpayment to the claimant is discovered and the insurer corrects the underpayment, the additional amount paid is identified as a recovery in this report. All unacceptable or non-compliant activities may not have been discovered. Failure to identify, comment upon or criticize non-compliant practices in this state or other jurisdictions does not constitute acceptance of such practices.

Alleged violations identified in this report, any criticisms of practices and the Company’s responses, if any, have not undergone a formal administrative or judicial process.

SCOPE OF THE EXAMINATION

To accomplish the foregoing, the examination included:

1. A review of the guidelines, procedures, training plans and forms adopted by the Company for use in California including any documentation maintained by the Company in support of positions or interpretations of the California Insurance Code, Fair Claims Settlement Practices Regulations, and other related statutes, regulations and case law used by the Company to ensure fair claims settlement practices.

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

3. A review of the California Department of Insurance's (CDI) market analysis results; a review of consumer complaints and inquiries about this Company closed by the CDI during the period October 1, 2012 through September 30, 2013; and a review of previous CDI market conduct claims examination reports on this 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 California Department of Insurance in Los Angeles, California.

EXECUTIVE SUMMARY OF CLAIMS SAMPLE REVIEWED

The Mechanical Breakdown Insurance claims reviewed were closed from October 1, 2012 through September 30, 2013, referred to as the “review period”. The examiners randomly selected 70 FAMPAC claims files for examination. The examiners cited 103 alleged claims handling violations of the California Insurance Code from this sample file review.

Findings of this examination include failure to disclose all benefits, coverage, time limits or other provisions of the insurance policy; failure 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; and attempting to settle a claim by making a settlement offer that was unreasonably low.

RESULTS OF REVIEWS OF MARKET ANALYSIS, CONSUMER COMPLAINTS AND INQUIRIES, AND 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 two California consumer complaints and inquiries closed from October 1, 2012 through September 30, 2013, in regard to the line of business reviewed in this examination. The CDI alleged two violations of law. Of the complaints and inquiries, the CDI determined one complaint was justified for a delay in claim handling. The examiners focused on this issue during the course of the file review.

The previous examination was completed by the Field Claims Bureau and reviewed a period from January 1, 2002 through December 31, 2002. The examination was conducted as part of Ace American Insurance Company when the Company was named "Industrial Underwriters Insurance Company". The Company changed its legal name to Cardif Property and Casualty Insurance Company effective October 28, 2005, and to Financial American Property and Casualty Insurance Company effective October 20, 2010. There was no specific area of concern identified in the previous claims examination.

DETAILS OF THE CURRENT EXAMINATION

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

FAMPAC SAMPLE FILE REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED CITATIONS
Other Liability / Mechanical Breakdown	2,399	70	103
TOTALS	2,399	70	103

TABLE OF TOTAL CITATIONS

Citation	Description of Allegation	FAMPAC Number of Alleged Citations
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.	70
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.	13
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.	11
CIC §880 *[CIC §790.03(h)(3)]	The Company failed to conduct its business in its own name.	7
CCR §2695.3(b)(3) *[CIC §790.03(h)(3)]	The Company failed to maintain hard copy files or maintain claims files that are accessible, legible and capable of duplication to hard copy for five years.	1
CIC §816 *[CIC §790.03(h)(5)] General	No insurer shall pay any person given discretion as to settlement of claims under any policy of insurance, or surety bond, whether in direct negotiation with the claimant or in supervision of the person negotiating, a compensation which in any way is contingent upon the amount of settlement of such claims, except as in this section otherwise expressly provided.	1
Total Number of Citations		103

***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)(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 CITATIONS BY LINE OF BUSINESS

<p align="center">OTHER LIABILITY 2012 Written Premium: \$5,178,421</p> <p>AMOUNT OF RECOVERIES \$2,180.40</p>	<p align="center">NUMBER OF CITATIONS</p>
CCR §2695.4(a) [CIC §790.03(h)(1)]	70
CCR §2695.7(b)(1) [CIC §790.03(h)(13)]	13
CCR §2695.7(g) [CIC §790.03(h)(5)]	11
CIC §880 [CIC §790.03(h)(3)]	7
CCR §2695.3(b)(3) [CIC §790.03(h)(3)]	1
CIC §816 [CIC §790.03(h)(5)]	1
<p align="center">TOTAL</p>	103

SUMMARY OF EXAMINATION RESULTS

The following is a brief summary of the criticisms that were developed during the course of this examination related to the violations alleged in this report.

In response to each criticism, the Company is required to identify remedial or corrective action that has been or will be taken to correct the deficiency. The Company is obligated to ensure that compliance is achieved.

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

Money recovered within the scope of this report was \$2,180.40 as described in section number 3 below.

MECHANICAL BREAKDOWN INSURANCE

1. **In 70 instances, the Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy** The Company failed to disclose and explain the pertinent benefits to its insureds such as towing and road service, car rental, trip interruption, lost key/lockout, tire coverage, and other optional coverages. The Company also failed to disclose the payment limitations and restrictions on the 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 indicates that its claims are handled by a Third Party Administrator (TPA). Upon enrollment into the Mechanical Breakdown Insurance Program, the Company issues specimen fulfillment packets (brochure) that provide an outline of coverage to its insureds.

The Company agrees that all benefits, coverage, time limits or other provisions of the insurance policy were not disclosed to its insureds at the time the claims were presented. The Company has addressed this issue with its TPA to ensure compliance to regulation. The Company has also developed a template letter, which outlines

benefits, for its TPA to transmit promptly to the insureds upon receipt of notice of a claim. This notice will outline the benefits that may be available under the policy. A copy of the benefit disclosure letter has been provided to the Department by the Company.

The Company will regularly monitor the claims handling and settlement processes of its TPA to ensure compliance. The Company will institute quality control measures on its claims processes and settlement practices to comply with the law.

2. In 13 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. Upon receipt of invoices, the Company partially denied payment of parts and/or labor on the repair estimates. The Company failed to provide written notice of its denial, including its factual and legal basis. The Department alleges these acts are in violation of CCR §2695.7(b)(1) and are unfair practices under CIC §790.03(h)(13).

Summary of the Company's Response: The repair facility is provided with an authorization number which contains the dollar amount that the Company agrees to pay (approval of repair). However, the Company agrees that these claimants were not notified in writing of the reasons for the partial denial of their claims. As a result of the Department's examination, the Company's TPA has amended its claim procedures to comply with the law. Each claimant will be notified in writing of the reasons for the denial of claims, whether in whole or in part.

3. In 11 instances, the Company attempted to settle a claim by making a settlement offer that was unreasonably low. In ten instances, the Company did not pay for eligible covered supplies, parts and/or labor, including quarts of engine oil in two instances, and various other items (such as an EGR valve gasket, polish, O-rings and clamps, power steering fluid, an EGR cooler under its emissions coverage, transfer case lubricant, a hose clamp and hydraulic fluid, one (labor) hour of repair service, and one (labor) hour of diagnostic service) in eight instances. In the eleventh instance, the Company failed to reimburse an insured for their car rental deposit. 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 each instance, the Company agrees that the claim was not settled properly. As a result of the examination, the Company has issued additional payments in all instances for a combined total of \$2,180.40. The Company's TPA has also modified its claim procedures which will include a detailed review of the repair items and to assess the reasonable costs associated with the repair of a covered mechanical breakdown.

The Company will regularly monitor the claims handling and settlement processes of its TPA to ensure compliance. The Company will institute quality control measures on its claims processes and settlement practices to comply with the law.

4. **In seven instances, the Company failed to conduct its business in its own name.** The Company's TPA sent out letters which failed to identify the insurance carrier by name. The Department alleges these acts are in violation of CIC §880 and are unfair practices under CIC §790.03(h)(3).

Summary of the Company's Response: The Company agrees that the pertinent TPA communications failed to identify the underwriting company name. The Company has coordinated with its TPA, to revise all template letters to include the Company's underwriting name.

5. **In one instance, the Company failed to maintain hard copy files or maintain claims files that are accessible, legible and capable of duplication to hard copy for five years.** In one instance, the Company's notes, dated June 7, 2013, referenced an amount of \$4,408.32 which was removed from an alleged repair estimate. The pertinent copy of the estimate was missing from the file. The Department alleges this act is in violation of CCR §2695.3(b)(3) and is an unfair practice under CIC §790.03(h)(3).

Summary of the Company's Response: The Company acknowledges this finding. The Company states the amount of \$4,408.32 was the original estimate prepared by a repair facility. The Company agrees that a copy of the repair estimate was not retained on the claim file as required by regulation. Instead, the TPA retained an inspection estimate prepared by its own third party inspection company.

The Company will regularly monitor the claims handling and settlement processes of its TPA to ensure compliance. The Company will institute quality control measures on its claims processes and settlement practices to comply with the law.

GENERAL

6. **The Company's Third Party Administrator has utilized a compensation program that provides payment to its claims staff based upon the amount of claim settlement. The Department alleges these acts are violations of California Insurance Code Section 816 which states, "No insurer shall pay any person given discretion as to settlement of claims under any policy of insurance, or surety bond, whether in direct negotiation with the claimant or in supervision of the person negotiating, a compensation which in any way is contingent upon the amount of settlement of such claims, except as in this section otherwise expressly provided."** The Company acknowledges that its Third Party (claims) Administrator has a bonus incentive program that is in conflict with CIC §816. The TPA's bonus program compensates claim staff for results that are in part contingent upon the dollar amount of their claims settlements. The Department alleges these acts are in violation of CIC §816 and are unfair practices under CIC §790.03(h)(5).

Summary of the Company's Response: The Company states that its Third Party Administrator's (TPA's) claims staff has participated in a bonus program with a financial incentive since 2011. The Company has identified 21 claims staff handling the Company's California claims that have benefited financially from this bonus program. As a result of the examination, the Company has directed its TPA to remove the financial based KPI's (Key Performance Indicators) from their incentive program. The Company's claims will therefore be excluded from the criterion which pertains to the factor of "average claim cost" of the claims administered by the TPA, which will be limited to the Mechanical Breakdown Insurance business underwritten by Financial American Property and Casualty in California and Oregon. The TPA has confirmed the removal of the Company's claims from this consideration in the bonus program. Further, this change was conveyed to the TPA's claims staff, and became effective on April 4, 2014.