

**[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**

**MARYLAND CASUALTY COMPANY
NAIC # 19356 CDI # 0114-9**

**NORTHERN INSURANCE COMPANY OF NEW YORK
NAIC # 19372 CDI # 0326-9**

**ASSURANCE COMPANY OF AMERICA
NAIC # 19305 CDI # 1956-2**

AS OF AUGUST 31, 2013

ADOPTED AUGUST 28, 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



August 28, 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:

Maryland Casualty Company
NAIC # 19356

Northern Insurance Company of New York
NAIC # 19372

Assurance Company of America
NAIC # 19305

Group NAIC # 0212

Hereinafter, the Companies listed above also will be referred to as MCC, NICNY, ACA 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 Commercial Automobile, Commercial Property, Accident and Disability and Workers' Compensation claims closed during the period from September 1, 2012 through August 31, 2013. 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 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 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 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 these Companies closed by the CDI during the period September 1, 2012 through August 31, 2013; 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 Zurich North America in Rancho Cordova, California and Farmers Insurance Exchange in Orange, California.

Farmers Insurance Exchange adjusted claims for MCC, NICNY and ACA during the review period while transitioning from Zurich to Farmers.

EXECUTIVE SUMMARY OF CLAIMS SAMPLE REVIEWED

The Commercial Automobile, Commercial Property, Accident and Disability and Workers' Compensation claims reviewed were closed from September 1, 2012 through August 31, 2013, referred to as the "review period". The examiners randomly selected 15 MCC claims files, nine NICNY claims files and 11 ACA claims files for examination. The examiners cited 24 alleged claims handling violations of the California Insurance Code and California Fair Claims Settlement Regulations from this sample file review.

Findings of this examination included delays in payments and responding to communications.

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

The results of the market analysis review revealed that during 2010, ACA was the subject of an enforcement action in the state of Connecticut, and during 2011, MCC and NICNY were the subjects of enforcement actions in the state of Maryland. Each action alleged improper claims handling. The examiner focused on these issues during the course of the file review. These issues also were reflected in the results of this examination.

The Companies were the subject of one California consumer complaint and inquiries closed from September 1, 2012 through August 31, 2013, in regard to the lines of business reviewed in this examination. This complaint was not determined to be justified.

The previous claims examination reviewed a period from May 1, 2003 through April 30, 2004. 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:

MCC SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Commercial Auto / Collision	53	1	0
Commercial Auto / Comprehensive	13	1	0
Commercial Auto / Property Damage	57	1	0
Commercial Auto / Bodily Injury	15	1	0
Commercial Auto / Uninsured Motorist Bodily Injury (UMBI) / Underinsured Motorist Bodily Injury (UNBI)	1	1	0
Commercial Auto / Medical Payment	4	1	0
Commercial Property / Property	476	5	1
Workers' Compensation / Indemnity	14	1	0
Workers' Compensation / Medical	11	1	0
Workers' Compensation / Denied	6	1	0
Workers' Compensation / Open	46	1	9
TOTALS	696	15	10

NICNY SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Commercial Auto / Collision	8	1	0
Commercial Auto / Comprehensive	4	1	0
Commercial Auto / Bodily Injury	1	1	0
Commercial Auto / Uninsured Motorist Bodily Injury (UMBI) / Underinsured Motorist Bodily Injury (UNBI)	1	1	0
Commercial Property / Property	25	1	0
Workers' Compensation / Indemnity	36	1	4
Workers' Compensation / Medical	28	1	0
Workers' Compensation / Denied	4	1	0
Workers' Compensation / Open	122	1	4
TOTALS	229	9	8

ACA SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Commercial Auto / Collision	15	1	0
Commercial Auto / Comprehensive	7	1	0
Commercial Auto / Property Damage	12	1	0
Commercial Property / Boiler and Machinery	174	2	0
Commercial Property / Property	173	2	0
Workers' Compensation / Indemnity	10	1	6
Workers' Compensation / Medical	9	1	0
Workers' Compensation / Denied	1	1	0
Workers' Compensation / Open	23	1	0
TOTALS	424	11	6

TABLE OF TOTAL ALLEGED VIOLATIONS

Citation	Description of Allegation	MCC Number of Alleged Violations	NICNY Number of Alleged Violations	ACA Number of Alleged Violations
CIC §790.03(h)(2)	The Company failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.	3	4	3
CIC §790.03(h)(5)	The Company failed to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.	6	3	3
CIC §1879.2(a) *[CIC §790.03(h)(3)]	The Company failed to include the California fraud warning on insurance forms.	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.	0	1	0
Total Number of Citations		10	8	6

***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.

TABLE OF ALLEGED VIOLATIONS BY LINE OF BUSINESS

WORKERS' COMPENSATION 2012 Written Premium: \$11,865,401.00	NUMBER OF ALLEGED VIOLATIONS
AMOUNT OF RECOVERIES \$14,251.98	
CIC §790.03(h)(2)	10
CIC §790.03(h)(5)	12
CIC §790.03(h)(3)	1
SUBTOTAL	23

COMMERCIAL PROPERTY 2012 Written Premium: \$26,812.00	NUMBER OF ALLEGED VIOLATIONS
AMOUNT OF RECOVERIES \$0	
CIC §1879.2(a) CIC §790.03(h)(3)	1
SUBTOTAL	1

TOTAL	24
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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 they intend to take appropriate corrective action in all jurisdictions where applicable. The Companies' state that their proposed corrective action would only apply to those locations and staff that handle California claims. Given the varying requirements in other jurisdictions, the Companies have not specifically noted whether any of the practices observed by the California examiners in this exam are inconsistent with the requirements of any other jurisdiction.

Money recovered within the scope of this report was \$14,251.98 as described in section number 2 below. Pursuant to the findings of the examination as described in section 2 below, the Companies are conducting a closed claims survey. The results of the survey and additional payments, if any, shall be reported to the Department by January 2016.

WORKERS' COMPENSATION

1. In ten instances, the Companies failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies. In six instances, requests for authorization (RFAs) were not processed within five business days. Authorization shall be given pursuant to the timeframe, procedure, and notice requirements of California Code of Regulations, Title 8, §9792.9(b)(1) where the loss occurred prior to January 1, 2013 and the request for authorization was received prior to July 1, 2013; or §9792.9.1(b)(1) where the loss occurred after January 1, 2013 and the request for authorization was received after July 1, 2013. In each case, prospective reviews must be made within five business days from first receipt of the request.

In three instances, written authorizations were not provided within 24 hours of telephone approvals. This is not in conformity with California Code of Regulations, Title 8, §9792.9(c)(3) where the loss occurred prior to January 1, 2013 and the request for authorization was received prior to July 1, 2013; or §9792.9.1(d)(2) where the loss occurred after January 1, 2013 and the request for authorization was received after July 1, 2013. In each case where the initial approval is made by telephone, a written confirmation of the approval must be sent within 24 hours for concurrent review.

In the last instance, a provider's request for reconsideration was not responded to within 14 days of receipt. This is not in conformity with Title 8, California Code of Regulations §9792.5.5(g) which requires that a request for second review must be responded to in writing within 14 days (reference Labor Code §4603.2).

The Department alleges these acts are in violation of CIC §790.03(h)(2).

Summary of the Companies' Response: The Companies acknowledge the findings and state that the issues are due to adjuster oversight. In addition, the Companies reinforced best practices with its staff to ensure compliance with the California workers' compensation (WC) requirements in a Claims Bulletin which was provided to the Department on June 10, 2014. The Companies also completed staff training for reinforcement on May 15, 2014.

2. In twelve instances, the Companies failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear. The Companies failed to effectuate prompt, fair and equitable settlement of WC claims in the following instances:

- a) In six instances involving the delayed payment of medical invoices, the Companies failed to include the applicable penalties and interest amounts with the settlement. This is not in conformity with the requirements of LC §4602.

- b) In two instances involving requests for reconsideration, payment of medical bills were also delayed. These instances do not conform to the payment timeline requirement of 21 days of the request for consideration under Title 8, California Code of Regulations §9792.5.5(h).
- c) In two instances, eligible CPT procedures on medical invoices were improperly denied in violation of LC §4602.
- d) In the last two instances, payment was delayed following receipt of medical bills and records. These delayed payments were not in conformity with LC §4603.2(b)(2) requiring that payment be made within 45 working days (prior to January 1, 2013); or 45 calendar days (after January 1, 2013) following receipt of proof.

The Department alleges these acts are in violation of CIC §790.03(h)(5).

Summary of the Companies' Response: The Companies' acknowledge the findings and state that the issues are due to adjuster oversight. As a result of the examination, \$10,479.65 was issued to claimants for unpaid medical bills; and \$3,772.33 was issued to claimants for penalty and interest related to medical bill payments. In addition, the Companies reinforced best claims practices with its staff to ensure medical bills are paid timely in accordance with the California WC medical bill payment requirements. Timely bill payment guidelines were reinforced in a Claims Bulletin and staff training completed on May 15, 2014.

The Companies also voluntarily implemented an action plan effective April 1, 2014, to review and revise procedures, implement regular monitoring efforts, and complete an internal validation of the updated process. In addition, the Companies will conduct a voluntary self-review of applicable workers' compensation (WC) bills paid between March 1, 2011 and August 31, 2014. The Companies will provide the results of this survey to the Department on or before December 31, 2015.

3. 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, a Notice of First Temporary Disability (TD) Indemnity Payment was not provided within 14 days of knowledge of disability. This is in violation of Title 8 California Code of Regulations §9812(a)(1) which requires that notice is sent no later than the 14th day after the employer's date of knowledge of injury and disability. The Department alleges this act is in violation of CIC §790.03(h)(3).

Summary of the Company's Response: The Company states that it does not believe it is in violation of CIC §790.03(h)(3), but acknowledges the finding and states that the error was due to adjuster oversight. As a result of the examination, the issue has been addressed with the involved adjuster for future handling.

COMMERCIAL PROPERTY

4. **In one instance, the Company failed to include the California fraud warning on insurance forms.** In this instance, the Personal Property Worksheet included the incorrect California fraud language. The Department alleges this act is in violation of CIC §1879.2(a) and is an unfair practice under CIC §790.03(h)(3).

Summary of the Company's Response: The Company states that it does not believe it is in violation of CIC §790.03(h)(3), but acknowledges the finding and states that the error was due to adjuster oversight in the use of an incorrect form. The pertinent adjuster is no longer with the Company.