

**[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**

**BALBOA INSURANCE COMPANY
NAIC # 24813 CDI # 1345-8
MERITPLAN INSURANCE COMPANY
NAIC # 24821 CDI # 1429-0
NEWPORT INSURANCE COMPANY
NAIC # 24848 CDI # 1773-1**

AS OF DECEMBER 31, 2014

ADOPTED OCTOBER 22, 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



October 22, 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:

Balboa Insurance Company
NAIC # 24813
Meritplan Insurance Company
NAIC # 24821
Newport Insurance Company
NAIC # 24848

Group NAIC # 1330

Hereinafter, the Companies listed above also will be referred to as BIC, MIC, NIC 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 Personal Automobile, Commercial Auto Gap, Homeowners and Lender-Placed Property claims closed during the period from January 1, 2014 through December 31, 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. 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 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 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 January 1, 2014 through December 31, 2014; and 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 California Department of Insurance in Los Angeles, California.

EXECUTIVE SUMMARY OF CLAIMS SAMPLE REVIEWED

The Personal Automobile, Commercial Auto Gap, Homeowners and Lender Placed Property claims reviewed were closed from January 1, 2014 through December 31, 2014, referred to as the “review period”. The examiners randomly selected 28 BIC claims files, 51 MIC claims files and 36 NIC claims files for examination. The examiners cited 39 alleged claims handling violations of the California Insurance Code from this sample file review.

Findings of this examination included a failure to conduct business in its own name; a failure to document the basis of betterment or depreciation; and a failure to fully explain the basis for any betterment or depreciation adjustment to the claimant in writing.

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

The results of the market analysis review revealed that during 2011, an enforcement action was taken in the state of Colorado. The action alleged as a primary issue a failure to affirm or deny coverage within a reasonable time after proof of loss statements had been completed. The examiners focused on this issue during the course of the file review. This issue was not reflected in the results of this examination.

The Companies were the subject of five California consumer complaints and inquiries closed from January 1, 2014 through December 31, 2014, in regard to the lines of business reviewed in this examination. Of the complaints and inquiries, the CDI determined none of the complaints was justified. There was no specific area of concern identified in the complaint review.

The previous claims examination reviewed a period from April 1, 2002 through March 31, 2003. The most significant noncompliance issues identified in the previous examination report were the Companies' failure to advise the claimant that he or she may have the matter reviewed by the California Department of Insurance; and the Companies' failure to conduct business in its own name. The Companies' failure to conduct business in its own name was 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:

BIC SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Automobile/Private Passenger Automobile	43	11	8
Automobile/Commercial Auto Gap	33	9	13
Homeowners/Homeowners Property	19	2	3
Homeowners/Lender-Placed Property	25	6	0
TOTALS	120	28	24

MIC SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Automobile/Private Passenger Automobile	24	6	0
Homeowners/Homeowners Property	19	8	2
Homeowners/Lender-Placed Property	132	37	2
TOTALS	175	51	4

NIC SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF ALLEGED VIOLATIONS
Homeowners/Homeowners Property	71	31	9
Homeowners/Lender-Placed Property	11	5	2
TOTALS	82	36	11

TABLE OF TOTAL VIOLATIONS

Citation	Description of Allegation	BIC Number of Alleged Violations	MIC Number of Alleged Violations	NIC Number of Alleged Violations
CIC §880 *[CIC §790.03(h)(3)]	The Company failed to conduct its business in its own name.	13	0	0
CCR §2695.9(f) *[CIC §790.03(h)(3)]	The Company failed to document the basis of betterment, depreciation, or salvage.	1	2	4
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.	1	2	4
CCR §2632.13(e)(2) *[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. The determination of fault letter was not sent.	2	0	0
CCR §2632.13(e)(2) *[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. The insured was not properly advised of their right to reconsideration of the determination of liability.	1	0	0
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	0	0
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.	1	0	0
CCR §2695.5(b) *[CIC §790.03(h)(2)]	The Company failed to respond to communications within 15 calendar days.	1	0	0
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	0

Citation	Description of Allegation	BIC Number of Alleged Violations	MIC Number of Alleged Violations	NIC Number of Alleged Violations
CIC §11580.011(e) *[CIC §790.03(h)(5)]	The Company failed to replace the child passenger restraint system that was in use by a child during the accident or if it sustained a covered loss while in the vehicle.	1	0	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.	1	0	0
CCR §2695.5(e)(1) *[CIC §790.03(h)(2)]	The Company failed to acknowledge notice of claim within 15 calendar days.	0	0	1
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.	0	0	1
CCR §2695.5(e)(3) *[CIC §790.03(h)(3)]	The Company failed to begin investigation of the claim within 15 calendar days.	0	0	1
Total Number of Violations		24	4	11

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

- 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.

TABLE OF VIOLATIONS BY LINE OF BUSINESS

PERSONAL AUTOMOBILE 2014 Written Premium: \$194,467	NUMBER OF CITATIONS
AMOUNT OF RECOVERIES \$322.48	
CCR §2632.13(e)(2) [CIC §790.03(h)(3)]	3
CCR §2695.7(b)(3) [CIC §790.03(h)(3)]	1
CCR §2695.7(b) [CIC §790.03(h)(3)]	1
CCR §2695.5(b) [CIC §790.03(h)(2)]	1
CCR §2695.7(c)(1) [CIC §790.03(h)(3)]	1
CIC §11580.011(e) [CIC §790.03(h)(5)]	1
SUBTOTAL	8

COMMERCIAL AUTO GAP 2014 Written Premium: (\$-282,818)	NUMBER OF CITATIONS
AMOUNT OF RECOVERIES \$0.00	
CIC §880 [CIC §790.03(h)(3)]	13
SUBTOTAL	13

LENDER PLACED PROPERTY 2014 Written Premium: (\$-470,338)	NUMBER OF CITATIONS
AMOUNT OF RECOVERIES \$0.00	
CCR §2695.9(f) [CIC §790.03(h)(3)]	4
SUBTOTAL	4

<p style="text-align: center;">HOMEOWNERS 2014 Written Premium: \$ 0.00</p> <p>AMOUNT OF RECOVERIES \$348.49</p>	<p style="text-align: center;">NUMBER OF CITATIONS</p>
CCR §2695.9(f) [CIC §790.03(h)(3)]	10
CCR §2695.5(e)(1) [CIC §790.03(h)(2)]	1
CCR §2695.5(e)(2) [CIC §790.03(h)(3)]	1
CIC §2695.5(e)(3) [CIC §790.03(h)(3)]	1
CIC §790.03(h)(5)	1
SUBTOTAL	14
TOTAL	39

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 intend to implement corrective actions in all jurisdictions.

Money recovered within the scope of this report was \$670.97 as described in section numbers 6, 10, and 15 below. As a result of the examination, the total amount of money returned to claimants within the scope of this report was \$670.97.

PERSONAL AUTOMOBILE

1. **In three instances, the Company failed to properly advise the insured that the driver of the insured vehicle was principally at-fault for an accident.** The Company failed to send the determination of fault notices in two instances, and failed to properly advise the insured of his right to reconsideration in one instance. The Department alleges these acts are in violation of CCR §2632.13(e)(2) and are unfair practices under CIC §790.03(h)(3).

Summary of the Company's Response: The Company agrees with the findings. The pertinent adjusters have been provided compliance reinforcement to send determination of fault letters. In the last instance regarding the right to reconsideration, the claim was handled by a Managing General Agent (MGA) of the Balboa companies. The MGA has now made the necessary changes to its template letter to advise the insureds of their right to reconsideration within 30 days of the insured's receipt of a written notice. The corrective actions were completed, and have also been implemented for other jurisdictions in which the Company may be subject to similar requirements.

2. 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 the finding and indicates that it is the Company's standard practice to include a statement in its claim denial that the matter may be reviewed by the California Department of Insurance. The adjuster who handled this claim was promptly provided enhanced training to emphasize the requirements of this regulation. The claims administrator staff (QBE) which handles Personal Auto claims on behalf of the Company was also provided communications for compliance reinforcement. The corrective actions were completed and have also been implemented for other jurisdictions in which the Company may be subject to similar requirements.

3. In one instance, the Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days. A subrogation package was not accepted or denied until 112 days from receipt of the demand. The Department alleges this act is in violation of CCR §2695.7(b) and is an unfair practice under CIC §790.03(h)(3).

Summary of the Company's Response: The Company acknowledges the finding and indicates that it is the Company's standard practice upon receiving proof of claim, to accept or deny the claim within 40 calendar days. The pertinent adjuster was promptly provided enhanced training to reinforce this regulation. The claims administrator staff (QBE) was provided feedback to emphasize this regulatory standard. The corrective actions were completed and also implemented for other jurisdictions in which the Company may be subject to similar requirements.

4. In one instance, the Company failed to respond to communications within 15 calendar days. The Department alleges this act is in violation of CCR §2695.5(b) and is an unfair practice under CIC §790.03(h)(2).

Summary of the Company's Response: The Company acknowledges the finding and indicates that it is the Company's standard practice to respond to communications within 15 calendar days. The pertinent adjuster was promptly provided enhanced training to reinforce this regulation. The claims administrator staff (QBE) was provided feedback to emphasize this regulatory standard. The corrective actions were completed and also implemented for other jurisdictions in which the Company may be subject to similar requirements.

5. In one instance, the Company failed to provide written notice of the need for additional time or information every 30 calendar days. 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 finding and indicates that it is the Company's standard practice to provide written notice of

the need for additional time or information every 30 calendar days. The pertinent adjuster was promptly provided enhanced training to reinforce this regulation. The claims administrator staff (QBE) was provided feedback to emphasize this regulatory standard. The corrective actions were completed and also implemented for other jurisdictions in which the Company may be subject to similar requirements.

6. In one instance, 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 this act is in violation of CIC §11580.011(e) and is an unfair practice under CIC §790.03(h)(5).

Summary of the Company's Response: The Company acknowledges the finding and indicates that it is the Company's practice to replace a child passenger restraint system that is in use by a child during an accident. The Company agrees that in this instance it did not replace the child passenger restraint system in use by a child. The pertinent adjuster was provided enhanced training for regulatory guidance. The claims administrator staff (QBE) was provided feedback to emphasize this regulatory standard.

As a result of the examination, the Company contacted the insured, determined the cost to replace the child passenger restraint systems, and issued additional payment to the insured in the amount of \$322.48. The corrective actions were completed and also implemented for other jurisdictions in which the Company may be subject to similar requirements.

COMMERCIAL AUTO GAP

7. In 13 instances, the Company failed to conduct its business in its own name. In all 13 instances, communications were transmitted incorrectly reflecting the underwriting insurance company as Praetorian Insurance Company. 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 with the findings and the pertinent agency has been counseled to comply with the requirements of this statute. The Company has reminded staff and agents to ensure the correct Company letterhead is used when adjudicating claims on behalf of the Company. To ensure compliance with CIC §880 and CIC §790.03(h)(3), the Agent of Balboa Insurance Company has completed remedial training and will now be including a separate notice in its correspondence to claimants to identify the correct underwriting name. These corrective actions were completed and also implemented for other jurisdictions in which the Company may be subject to similar requirements.

LENDER PLACED PROPERTY

8. **In two instances, the Company failed to document the basis of betterment, depreciation, or salvage.** In these instances, the basis for the depreciation that was applied to the claim settlement was not documented. The Department alleges these acts are in violation of CCR §2695.9(f) and are unfair practices under CIC §790.03(h)(3).

Summary of the Company's Response: The Company agrees that the basis of the depreciation for these claims was not documented in the claim files. The Company provided remedial training to its adjusters to ensure they understand how to apply and document depreciation. The Company made changes to its letter templates to incorporate detailed information about depreciation. For all Balboa claims, QBE is now utilizing the Xactware software platform to assist its adjusters in providing accurate estimates to claimants. The Company indicates that the Xactware platform allows its adjusters to review and document specific information on estimates sent to claimants, including the percentage of depreciation based on age and condition. The Xactware platform also allows its adjusters to apply depreciation consistently across all jurisdictions, and to ensure compliance with state-specific regulations.

9. **In two instances, the Companies failed to fully explain the basis for any adjustment to the claimant in writing.** In these instances the basis for the depreciation that was applied was not explained to the claimant in writing. The Department alleges these acts are in violation of CCR §2695.9(f) and are unfair practices under CIC §790.03(h)(3).

Summary of the Companies' Response: The Companies agree that the basis of the depreciation for these claims was not fully explained to the claimants in writing. The Companies provided remedial training to its adjusters to ensure they understand how to apply and document depreciation. The Company made changes to its letter templates to incorporate detailed information about depreciation. For all Balboa claims, QBE is now utilizing the Xactware software platform to assist its adjusters in providing accurate estimates to claimants. The Xactware estimate will be sent with a cover letter to claimants, along with the revised letter templates discussed above, explaining how the depreciation figure was arrived at and what source was used to determine depreciation.

HOMEOWNERS

10. **In five instances, the Companies failed to document the basis of betterment, depreciation, or salvage.** In these instances the basis for the depreciation that was applied to the claim settlement was not documented. The Department alleges these acts are in violation of CCR §2695.9(f) and are unfair practices under CIC §790.03(h)(3).

Summary of the Companies' Response: The Companies agree that the basis of the depreciation for these claims was not documented in the claim files. The Companies have provided remedial training to its adjusters to ensure they understand how to apply

and document depreciation. The Companies made changes to its letter templates to incorporate detailed information about depreciation. In one of these instances, the Company agreed that the depreciation that was applied was excessive. The Company recalculated the depreciation and issued an additional payment to the insured in the amount of \$303.62. Further, QBE now will be utilizing the Xactware software platform to assist its adjusters in providing accurate estimates to claimants. The Company indicates that the Xactware platform allows its adjusters to review and document specific information on estimates sent to claimants, including the percentage of depreciation based on age and condition. The Xactware platform also allows adjusters to apply depreciation consistently across all jurisdictions, and ensure compliance with state-specific regulations.

11. In five instances, the Company failed to fully explain the basis for any adjustment to the claimant in writing. In these instances the basis for the depreciation that was applied was not explained to the claimant in writing. The Department alleges these acts are in violation of CCR §2695.9(f) and are unfair practices under CIC §790.03(h)(3).

Summary of the Companies' Response: The Company agrees that the basis of the depreciation for these claims was not fully explained to the claimants in writing. The Company provided remedial training to its adjusters to ensure they understand how to apply and document depreciation. The Company made changes to its letter templates to incorporate detailed information about depreciation. For all Balboa claims, QBE will now be utilizing the Xactware software platform to assist its adjusters in providing accurate estimates to claimants. The Xactware estimate will be sent with a revised cover letter template to claimants, explaining how the depreciation figure was arrived at and what source was used to determine depreciation.

12. In one instance, the Company failed to acknowledge notice of claim within 15 calendar days. The Department alleges this act is in violation of CCR §2695.5(e)(1) and is an unfair practice under CIC §790.03(h)(2).

Summary of the Companies' Response: The Company agrees that in this instance the claim was not acknowledged timely. The Company indicates it is the Company's practice to acknowledge notice of claim within 15 calendar days. The pertinent adjuster has been counseled to emphasize this regulatory standard. This requirement has been reinforced by the Company through additional education and training. The corrective actions were completed, and will be implemented for other jurisdictions in which the Company may be subject to similar requirements.

13. In one instance, the Company failed to provide necessary forms, instructions, and reasonable assistance within 15 calendar days. The Department alleges this act is in violation of CCR §2695.5(e)(2) and is an unfair practice under CIC §790.03(h)(3).

Summary of the Company's Response: The Company agrees that in this instance, it did not send the necessary forms, instructions, and reasonable assistance within regulatory timelines. The Company indicates this was not in conformity with Company procedures and the pertinent adjuster has been counseled. The Company has reinforced this requirement through additional education and training. These corrective actions have been completed, and will be implemented for other jurisdictions in which the Company may be subject to similar requirements.

14. In one instance, the Company failed to begin investigation of the claim within 15 calendar days. In this instance, the investigation of the claim began late on the 21st day after the notice of claim was received. The Department alleges this act is in violation of CCR §2695.5(e)(3) and is an unfair practice under CIC §790.03(h)(3).

Summary of the Company's Response: The Company agrees that in this instance, it failed to investigate the claim promptly within regulatory timelines, which was not was not in conformity with Company procedures. The pertinent adjuster has been counseled to emphasize prompt claim investigations. The Company has reinforced this requirement through additional education and training. These corrective actions have been completed, and will be implemented for other jurisdictions in which the Company may be subject to similar requirements.

15. In one instance, the Company failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear. In this instance the Company applied depreciation to material sales tax. The Department alleges this act is in violation of CIC §790.03(h)(5).

Summary of the Company's Response: The Company agrees that depreciation was improperly applied to the material sales tax. This issue has been addressed with the adjuster, and a letter dated March 4, 2015, was mailed to the claimant advising that \$44.87 was reimbursed for the material sales tax. The Company has reinforced this requirement through additional education and training. These corrective actions have been completed, and will be implemented for other jurisdictions in which the Company may be subject to similar requirements.