

**[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 HANDLING, RATING, AND UNDERWRITING PRACTICES OF**

**BERKLEY INSURANCE COMPANY  
NAIC # 32603 CDI # 3050-2**

**AS OF APRIL 15, 2014**

**ADOPTED SEPTEMBER 29, 2014**

**STATE OF CALIFORNIA**



**CALIFORNIA DEPARTMENT OF INSURANCE  
MARKET CONDUCT DIVISION**

## 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.**

## TABLE OF CONTENTS

<b>SALUTATION .....</b>	<b>1</b>
<b>FOREWORD.....</b>	<b>2</b>
<b>SCOPE OF THE EXAMINATION.....</b>	<b>3</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
<b>RESULTS OF REVIEWS OF MARKET ANALYSIS, CONSUMER COMPLAINTS AND INQUIRIES, PREVIOUS EXAMINATIONS, AND PRIOR ENFORCEMENT ACTIONS .....</b>	<b>5</b>
<b>DETAILS OF THE CURRENT EXAMINATION .....</b>	<b>6</b>
<b>SUMMARY OF EXAMINATION RESULTS .....</b>	<b>8</b>

**DEPARTMENT OF INSURANCE**

Market Conduct Division  
300 Capitol Mall  
Sacramento, CA 95814



September 29, 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 the California Insurance Code Part 2, Chapter 1, Article 4, Sections 730, 733, 736, and Article 6.5, Section 790.04; and California Code of Regulations Title 10, Chapter 5, Subchapter 7.5, Section 2695.3(a), a limited examination was made of the claims handling, rating, and underwriting practices and procedures in California of:

**Berkley Insurance Company  
NAIC # 32603**

**Group NAIC # 0098**

Hereinafter, the Company listed above also will be referred to as BIC or the Company.

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

## FOREWORD

This limited desk examination covered the claims handling, rating, and underwriting practices of the aforementioned Company's line of business during the period April 16, 2013 through April 15, 2014. The limited 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 pertains to Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al. A separate report pertains to laws other than Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al.

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 identified violations result in payments by the Company to policyholders or claimants, those amounts paid are identified as recoveries 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 specified guidelines, procedures, and forms adopted by the Company for use in California.
2. 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 April 16, 2013 through April 15, 2014; and a review of reports on the previous CDI market conduct examination of this Company; and a review of prior CDI enforcement actions.

This limited examination was conducted at the offices of the California Department of Insurance in Los Angeles, California.

## **EXECUTIVE SUMMARY**

This desk examination was limited in scope to market analysis information, including California consumer complaint information, to national enforcement activity and to information provided by the Company in response to the Department's data request. There was no review of underwriting or claims files during this examination.

The primary finding resulting in an alleged violation of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al., that was identified in the course of the examination was the failure to provide the annual certification of claims training. Details of the findings are provided in the Summary of Examination Results section of this report.

Berkley Insurance Company reported \$23,252,340 in written premiums on Professional Liability and Directors' and Officers' (D&O) Liability coverage in California during 2013. The Company closed 110 Professional Liability and D&O claims during the examination period April 16, 2013 through April 15, 2014.

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

The market analysis did not identify any specific issues of concern within the scope of this report.

There were no specific areas of concern identified in the complaint review.

There were no specific areas of concern identified during the previous examination.

## DETAILS OF THE CURRENT EXAMINATION

The following tables summarize the Company’s responses, within the scope of this report, to the Department’s data request and the alleged violations under Section 790.03 and title 10, California Code of Regulations, Section 2695 et al., that resulted from the review of that data. All “NO” answers in the Areas of Review table are addressed in the Summary of Examination Results section of this report. A summary of each of the laws cited due to a “NO” answer is provided in the Cited Statutes and Regulations table.

<b>AREAS OF REVIEW</b>		
<b>SPECIFIC ISSUE REVIEWED</b>	<b>INDICATION OF COMPLIANCE (YES/NO)</b>	<b>SUMMARY OF RESULTS ITEM NUMBER</b>
Certification of claims training by a principal – CCR §2695.6(b) [CIC §790.03(h)(3)]	NO	1
Copy of written standards for claims – CCR §2695.6(a) [CIC §790.03(h)(3)]	YES	--
Compliance with Special Investigative Unit Regulations – CIC §1875.20 and CCR §§2698.30-2698.43 [CIC §790.03(h)(3)]	YES	--
Compliance of letters and forms – CCR §2695.7(b)(3) CIC §880 [CIC §790.03(h)(3)]	YES	--
Compliance with requirements for acknowledgement of claims CCR §2695.5(e)(1) [CIC §790.03(h)(2)]	YES	--
Compliance with requirements for reasonable assistance CCR §2695.5(e)(2) [CIC §790.03(h)(3)]	YES	--
Compliance with requirements to begin investigation – CCR §2695.5(e)(3) [CIC §790.03(h)(3)]	YES	--
Compliance with requirement to disclose benefits – CCR §2695.4(a) [CIC §790.03(h)(1)]	YES	--

Compliance with requirements to respond to communication – CCR §2695.5(b) [CIC §790.03(h)(2)]	YES	--
Compliance with requirements to accept or deny in 40 days – CCR §2695.7(b) [CIC §790.03(h)(3) and/or CIC §790.03(h)(4)]	YES	--
Compliance with requirements to send additional time letters every 30 days – CCR §2695.7(c)(1) [CIC §790.03(h)(3)]	YES	--
Compliance with requirements to tender payment within 30 days CCR §2695.7(h) [CIC §790.03(h)(5)]	YES	--

<b>CITED STATUTES AND REGULATIONS</b>	
<b>Citation</b>	<b>Description</b>
CCR §2695.6(b) *[CIC §790.03(h)(3)]	All licensees shall provide thorough and adequate training regarding the regulations to all their claims agents. Licensees shall certify that their claims agents have been trained regarding these regulations and shall demonstrate compliance with this requirement as outlined in this subsection.

**\*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 its insurance policies.

## SUMMARY OF EXAMINATION RESULTS

The following is a brief summary of the practices, within the scope of this report, that were alleged to be non-compliant during the course of this limited examination. This report contains only alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al.

In response to each of the Department's allegations of non-compliance, the Company was 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 and maintained.

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 indicates that it will implement the corrective actions in all jurisdictions.

Within the scope of this report, there were no claims recoveries or return premium as a result of the issues described in this report.

### **Directors' and Officers' ( D&O) Liability and Professional Liability**

1. The Company reported that it is unable to produce the certificate on the required annual training of its claims adjusters in accordance with California law. The Department alleges this act is in violation of CCR §2695.6(b) and is an unfair practice under CIC §790.03(h)(3).

**Summary of Company Response:** The Company will be implementing corrective action to ensure annual training is conducted for its claims staff, and that the annual certification is maintained in a central repository. The Company has scheduled the training for its staff on June 20, 2014.