

**[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**

**EMPLOYERS MUTUAL CASUALTY COMPANY  
NAIC # 21415 CDI # 1575-0**

**AS OF DECEMBER 31, 2014**

**ADOPTED DECEMBER 21, 2015**

**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.**

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**DEPARTMENT OF INSURANCE**

Market Conduct Division  
300 Capitol Mall  
Sacramento, CA 95814



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 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:

**Employers Mutual Casualty Company**  
**NAIC # 21415**  
**Group NAIC # 0062**

Hereinafter, the Company listed above also will be referred to as EMCC 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 Commercial Automobile line of business during the period January 1, 2014 through December 31, 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 2695.1 et seq. A separate report pertains to laws other than Section 790.03 and Title 10, California Code of Regulations, Section 2695.1 et seq.

The report does not present a comprehensive overview of the subject insurer's practices. The report contains a summary of pertinent information about the line 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 January 1, 2014 through December 31, 2014; a review of reports on the previous CDI market conduct examination of this Company; and a review of prior 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 claim files during this examination.

The primary findings resulting in alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695.1 et seq., that were identified in the course of the examination include a failure to comply with requirements to provide the option of having the theft affidavit claim form signed in the presence of the agent, broker, adjuster or other claim representative in lieu of requiring notarization; and a failure to comply with the requirements when subrogation will be pursued.

Employers Mutual Casualty Company reported \$10,594,790 in written premiums on commercial automobile line of insurance coverage in California in 2014. The Company closed 505 commercial automobile claims during 2014.

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

The results of the market analysis review revealed that on February 19, 2014, the State of Missouri took an enforcement action against Employers Mutual Casualty for an alleged failure to pay sales taxes on auto total loss claims. This issue was not identified in the results of this examination.

Within the scope of this report, the Company was the subject of two California consumer complaints and inquiries closed from January 1, 2014 through December 31, 2014 in regard to the line of business reviewed in this examination. One complaint was justified for a delay on claims handling. The examiner followed up on this issue during the course of the examination.

The previous examination was completed by the Field Claims Bureau and reviewed the period from June 1, 2003 through May 31, 2004. The most significant noncompliance issue identified in the previous examination report and within the scope of this report was the Company's failure to supply the claimant with a copy of the estimate upon which the settlement is based; a failure to provide written notice of the need for additional time every 30 calendar day; and a failure to include, in the settlement, all applicable taxes, license fees, and other fees incident to transfer of evidence of ownership of the comparable automobile. The examiner followed up with company management on these issues during the course of this examination.

The Company was the subject of an enforcement action finalized by the California Department of Insurance (CDI) on August 21, 2003, with a penalty of \$15,000.00. The action stemmed from a Field Claims Bureau examination conducted in 1999, and identified 78 claims handling violations. Significant noncompliance issues identified in the enforcement action were a failure to implement reasonable standards for the prompt investigation and processing of claims; a failure to provide the claimant with a notice of the applicable statute of limitations for bodily injury; a failure to respond

to communications from a claimant within 15 days; a failure to inform the claimant that it could request a review of a denied claim with the CDI; a failure to pay or provide a written basis for the total loss settlement; a failure to pay the DMV transfer fee; a failure to provide a discernible, measurable, itemized, and specified basis for adjustments to the value of the vehicle; and a failure to return the entire amount of unearned premium to the insured, retroactive to the day after the date of loss. These issues were not identified as problematic in the current 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 2695.1 et seq., 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>
Claims agent training certification– CCR §2695.6(b)(1)(2)(3) [CIC §790.03(h)(3)]	Yes	-
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 requirement to disclose benefits – CCR §2695.4(a) [CIC §790.03(h)(1)]	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 requirements to respond to communication –	Yes	-

CCR §2695.5(b) [CIC §790.03(h)(2)]		
Compliance with requirements to utilize a HIPAA compliant medical authorization form – CIC §791.06 [CIC §790.03(h)(3)]	Yes	-
Compliance with requirements to issue all denials in writing – CCR §2695.7(b)(1) [CIC §790.03(h)(13)]	Yes	-
Compliance with requirements to reference the California Department of Insurance in denials – CCR §2695.7(b)(3) [CIC §790.03(h)(3)]	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	-
Compliance with requirements to provide the insured with “The Auto Body Repair Consumer Bill of Rights” – CCR §2695.85(a) [CIC §790.03(h)(3)]	Yes	-
Compliance with requirements not to require repairs from a specific shop – CCR §2695.8(e)(1) [CIC §790.03(h)(3)]	Yes	-
Compliance with requirements to supply claimants with repair estimates – CCR §2695.8(f) [CIC §790.03(h)(3)]	Yes	-
Compliance with requirements to warrant non-original equipment crash parts – CCR §2695.8(g)(3) [CIC §790.03(h)(3)]	Yes	-
Compliance with requirements to explain in writing any adjustments due to depreciation – CCR §2695.8(i) [CIC §790.03(h)(3)]	Yes	-
Compliance with requirements not to cap or limit amount paid for paint and material – CIC §758.6 [CIC §790.03(h)(5)]	Yes	-
Compliance with requirements to explain clearly in the policy that labor may be depreciated – CCR §2695.8(j) [CIC §790.03(h)(3)]	Yes	-
Compliance with requirements to issue payment of agreed repair amount within 10 days – CIC §560 [CIC §790.03(h)(5)]	Yes	-
Compliance with requirements to provide reasonable notice to the claimant before terminating the payment for storage- CCR §2695.8(k) [CIC §790.03(h)(3)]	Yes	-
Compliance with requirements to fully itemize and explain in writing how the actual cash value (ACV) of the total loss vehicle was determined- CCR §2695.8(b)(4) [CIC §790.03(h)(30)]	Yes	-

Compliance with requirements when salvage is retain, to include in the settlement amount the sales tax, one-time transfer fee, pro-rata license fee and other annual fees- CIC §2695.8(b)(1) [CIC §790.03(h)(5)]	Yes	-
Compliance with requirements to provide a properly endorsed certificate of ownership to the California Department of Motor Vehicles within 10 days-- CVC §115159(a) CIC §790.03(h)(3)	Yes	-
Compliance with requirements to include in the settlement the sales tax, and fees incidental to transfer to salvage status when retained by owner— CCR§2695.8(b)(1)(A) CIC §790.03(h)(3)	Yes	-
Compliance with requirements to obtain an actual total loss salvage bid from a salvage pool, salvage dealer, wholesale motor vehicle auction or dismantler to determine the salvage value of the total loss vehicle- CCR§2695.8(b)(1)(A) CIC §790.03(h)(3)	Yes	-
Compliance with requirements to provide the identification information of the potential salvage buyer, if the owner requests— CCR CCR§2695.8(b)(1)(A) CIC §790.03(h)(3)	Yes	-
Compliance with requirements to fully itemize and explain total loss settlement offers in writing- CCR CCR§2695.8(b)(4) CIC §790.03(h)(3)	Yes	-
Compliance with requirements to notify within 35 days after the gross settlement of the total loss, if unable to purchase a comparable vehicle, the claim will then re-open- CIC §2695.8(c ) CIC §790.03(h)(3)	Yes	-
Compliance with requirements to owner retains salvage, disclose in writing that the owner must notify DMV of salvage retention; that notice to DMV may affect the vehicle's future resale value; and that the owner may seek refund of unused license fees from the DMV- CIC §2695.8(b)(1)(A) CVC §11515(b) CIC §790.03(h)(3)	Yes	-
Compliance with requirements prior to the settlement of a vehicle theft, obtain all of the documentation required- CIC §1871.3(a) CIC §790.03(h)(3)	Yes	-
Compliance with requirements in lieu of requiring the theft affidavit to be notarized, the option is provided of having the claim form signed in the presence of the agent, broker, adjuster or other claim representative – CIC §1871.3(b) CIC §790.03(h)(3)	No	1
Compliance with requirements to retain for at least three years a legible copy of the police report of a vehicle theft- CIC §1871.3(d)(3)(1) CIC §790.03(h)(3)	Yes	-
Compliance with requirements whether subrogation will be pursued- CCR§2695.7(p) CIC §790.03(h)(3)	No	1
Compliance with requirements to provide any unsettled bodily injury claim with a written notice for the applicable	Yes	-

statute of limitations at least 60 days before the statute expires- CCR §2695.7(f) CIC §790.03(h)(15)		
Compliance with requirements to provide any unsettled uninsured motorist bodily injury claim with a written notice for the applicable statute of limitations at least 30 days before the statute expires- CCR §2695.7(f) CIC §790.03(h)(15)	Yes	-

<b>CITED STATUTES AND REGULATIONS</b>	
<b>Citation</b>	<b>Description</b>
CIC §1871.3(b) *CIC §790.03(h)(3)	The Company failed to properly instruct the insured regarding the signing of the theft affidavit.
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.

**\*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.
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## **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 2695.1 et seq.

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 claim recoveries or return premium as a result of the issues described in this report.

### **COMMERCIAL AUTOMOBILE**

1. The Company reported that it did not provide the insured the option of having the theft affidavit claim form signed in the presence of the agent, broker, adjuster or other claims representative. The Department alleges this act is in violation of CIC §1871.3(b) and is an unfair practice under CIC §790.03(h)(3).

**Summary of Company Response:** On September 14, 2015, the Claims Manager provided training to the Claims Supervisors and claims staff on the options available to complete the theft affidavit form in compliance with CIC §1871.3(b), and CIC §790.03(h)(3). The Company has provided the Department with a copy of its training material.

2. The Company reported that it was not advising their insureds in writing whether subrogation will be pursued or discontinued. The Department alleges this act is in violation of CCR §2695.7(p) and is an unfair practice under CIC §790.03(h).

**Summary of Company Response:** On September 8, 2015, the Company provided training to its supervisors and staff to reinforce the requirement of written notices to insureds when subrogation will be pursued or terminated. The Company provided the Department with a copy of the training material to ensure compliance with CCR §2695.7(p). .