



Cary L. Cheldin
President

Mr. Craig Dixon, Bureau Chief
California Department of Insurance
300 South Spring Street, 11th Floor
Los Angeles, CA 90013

June 19, 2002

Re: Market Conduct Examination Report – Claims Practices

Dear Mr. Dixon:

This responds to your letter dated June 17, 2002, and to the “*verified*” Report attached thereto, dated June 14, 2002. We will provide a copy of this communication to the Commissioner so as to engage his personal involvement.

Pursuant to Insurance Code Section 12938(b)(3), we hereby demand publication of these comments, in their entirety, without censure. We have taken great care to assure that all comments are responsive to the Report and conform to all regulatory requirements. The format of this response complies with CCR Section 2695.30, including an electronic media version (enclosed).

In these comments, the words “we,” “us,” “our,” and “Crusader” refer to Crusader Insurance Company; and, the phrase “the CDI” refers to the California Department of Insurance, the Insurance Commissioner, and to those state employees responsible for the work product of that governmental agency. “CIC” refers to the California Insurance Code. The “Report” refers to the CDI’s subject Report of Examination.

1. Under "CLAIM SAMPLE REVIEWED AND OVERVIEW OF FINDINGS," the CDI's report inaccurately refers to "12" "CITATIONS," when in fact the CDI did not issue any citation against Crusader. Not only were citations not issued to Crusader, but the CDI's report acknowledges that, "*Any alleged violations identified in this report and any criticisms of practices have not undergone a formal administrative or judicial process.*" In this regard we believe that the content of the CDI's Report is contradictory and designed to be misleading, meant to damage our good reputation, in violation of California Insurance Code Section 44 and of California Government Code Sections 19572 et seq.

Under "TABLE OF TOTAL CITATIONS," again, the CDI's report inaccurately refers to "12" "CITATIONS," when in fact the CDI did not issue any citation against Crusader. In this regard, for the reasons stated above, we believe that the CDI's Report is contradictory and designed to be misleading, meant to damage our good reputation, in violation of California Insurance Code Section 44 and of California Government Code Sections 19572 et seq.

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2. Under "TABLE OF TOTAL CITATIONS," the CDI's report makes the following allegations against us:
 - a. *"The Company failed to properly document claim files." "Citation CCR Section 2695.3(a)"*
 - b. *"The Company attempted to settle a claim by making a settlement offer that was unreasonably low." "Citation CCR Section 2695.7(g)."*

These allegations are first and foremost fallacious, in addition to being unreasonable, arbitrary and capricious. As is fully illustrated in our response #4, below, we never failed to properly document a claim file; and, as is fully illustrated in our response #5, below, we never attempted to settle a claim by making an unreasonably low offer.

I personally reviewed these claim files and was unable to understand or identify the basis of the CDI's allegations. I am a 21-year veteran of the insurance industry. Also, in reviewing these files, I noticed that none contained any consumer complaint. (Despite the NAIC standards, which call for the CDI's report to contain a review of consumer complaint history, and despite the fact that California Insurance Code Sections 730 and 733 require the CDI to conform to such standards, the CDI's report fails to disclose the fact that no justified complaints have ever been filed against Crusader.) We believe that the CDI's allegations in this Report are untrue, lack any factual or legal foundation, and are in violation of California's Constitution, including the state's Government Code.

3. Under "SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS AND TOTAL RECOVERIES," the CDI's report provides two different sections titled "**Summary of Company Response**," pertaining to allegations of regulatory violation, wherein Crusader's opinions are misquoted and inaccurately described. We believe that it is inappropriate for the CDI's public Report to contain such misrepresentations. By including such misrepresentations in their Report, we believe that the CDI's staff is evidencing its bias and is violating California Insurance Code Section 12938(b)(3) and California Government Code Sections 19572 et seq. Furthermore, we believe that it is illegal for the CDI to confuse or deprive the public access to Crusader's unedited and uncensored comments about the Report.

4. Under "SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS AND TOTAL RECOVERIES," the CDI's report provides a section titled "**1. The Company failed to properly document claim files**," pertaining to allegations of violating CCR Section 2695.3(a). These allegations are untrue and illogical. In each of the three instances referenced, we diligently maintained all documents, notes and work papers that are required by law.

In three instances, the CDI concluded that we failed to properly document our claim file. However, in each of those instances the CDI appears to be taking the position that each and every conversation, act, failure to act, or decision must be documented with precise exactitude. For instance, the CDI demands that our home-office's claim file contain an exhaustive description (i. e., "a blow by blow account") of all efforts

undertaken to determine the value of each and every item. We contend that our only obligation is to comply with the Regulations, which only require that reasonable efforts be made so that claim files reflect what occurred and how the claim was processed. In each of the cases noted, our file provides sufficient information so that a reader of the file can establish what was done and how the claims decisions were arrived at. Furthermore, in each of those instances, we retained an independent adjuster to assist in the claims handling, yet the CDI made no effort to determine whether additional information was contained within the independent adjuster's off-site file that would in some fashion further demonstrate the claims handling procedures.

As pertains to this allegation, CCR Section 2695.3(a) requires that claim files "*contain all documents, notes and work papers (including copies of all correspondence) which reasonably pertain to each claim in such detail that pertinent events and the dates of the events can be reconstructed and the licensee's actions pertaining to the claim can be determined;*" (emphasis added). However, the CDI's Report fails to identify any specific lack of our compliance with CCR 2695.3(a), and the Report misquotes the law by omitting reference to the words emphasized above. Also, the CDI has never published any bulletin, letter or opinion to express or to clarify its interpretation of the regulation cited in their Report. In the three instances described in their Report, the CDI attempts to enforce an underground rule, that claim files must "*contain all documents, notes and work papers which pertain to the claim,*" without exception or qualification; however, such is not expressly required by CCR 2695.3(a) nor by any other statute or regulation.

The CDI's Report reflects its attempt to enforce a regulation on the basis of an improper and incomplete reading, and, in so doing, we believe that the CDI violated California Government Code Section 11340.5 and deprived California citizens of their right to participate in the regulatory process. Also, by publishing such inappropriate and damaging allegations against a private citizen, like us, in its Report, we believe that the CDI's behavior constitutes gross negligence and that it violates Government Code Sections 19572 et seq. and Insurance Code Section 44.

5. Under "SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS AND TOTAL RECOVERIES," the CDI's report provides a section titled "**2. *The Company attempted to settle a claim by making a settlement offer that was unreasonably low,***" pertaining to allegations of violating CCR Section 2695.7(g). However, the CDI allegations are untrue and illogical. We have never attempted to settle a claim by making a settlement offer that was unreasonably low. None of the subject policyholders complained about our handling of their claims, and none of them invoked the policy's dispute resolution or arbitration clause.

With respect to the issue of sales tax (i.e., referenced exclusively by the CDI as the basis for two of their nine "citations" in this category), it is the CDI's position that the carrier must indemnify for unincurred sales tax, that is, the tax an insured might incur if they were to replace the damaged or destroyed item. That position, however, is improper in the adjustment of "*actual cash value*" losses, because an "*actual cash*

value" determination seeks to approximate the "*fair market value*" of the item just prior to its loss. As stated by the California Supreme Court in Jefferson Insurance Company v. Superior Court (May) (1973) Cal.3d 398, 90 Cal.Rptr. 608, "*fair market value*" is the price that a willing buyer would pay a willing seller, neither being under the compulsion to sell or buy. In each of our adjustments of loss, we properly sought to define the fair market value of the item in question in accordance with the holding of Jefferson.

The CDI has established a pattern and practice of misapplying the term "*actual cash value*" as it is understood by the California courts. In this regard, the CDI seems to believe that "*actual cash value*" is synonymous with "*replacement cost*." Because we issued these policies of insurance on an "*actual cash value*" basis, and collected premiums predicated upon such policy terms, the provision of indemnity on a "*replacement cost*" basis would be detrimental to us and would afford coverage for that which was not paid.

In each of the other seven instances noted in this category of the Report, we diligently and dutifully obtained objective information upon which to define and articulate the "*fair market value*" of the items in question. The following is an analysis of each of those matters:

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- (a) In one instance, the items in question were a stolen sewing machine and small tools. The value of the sewing machine was based on a value submitted by the insured which was accepted and paid by us. An owner in California is able to testify as to the value of his or her own items. Therefore, we were reasonable in concluding the actual cash value of the sewing machine. As to the small tools, we sought to locate a market for such items so that the fair market value could be arrived at. Due to the nature of the items in question however, a readily available market did not exist. Therefore, we relied upon the objective information available, such as classified ads in the Penny Saver advertising for sale similar items. This is consistent with the holding in Jefferson, supra, which discusses and articulates the manner and method of arriving at actual cash value compensation under an insurance policy such as ours. Furthermore, the insured was invited to send us any information to evidence an amount greater than that paid, but no such documentation was received.
- (b) The next instance involved a liquor store. We obtained information regarding the fair market value of the business personal property from a reliable salvage company who is familiar with the used items in question and who regularly obtains information regarding fair market value. Furthermore, the insured was invited to send us any information to evidence an amount greater than that paid, but no such documentation was received.

- (c) In the next instance, we adjusted the loss of an espresso machine which was approximately 10 years old. The policy was issued on an actual cash value basis. Our fair market value was predicated upon information obtained from vendors of similar items which resulted in a range of value from \$500.00 to \$2,000.00. We paid the sum of \$2,000.00 to our insured. Furthermore, our insured was invited to send us any information to evidence an amount greater than that paid, but no such documentation was received.
- (d) In the next instance, we evaluated the loss of used kitchen equipment. In order to assess the fair market value, we sought information from a reputable dealer in such items. In this instance, the insured was later arrested and charged with fraud relating to the very loss in question. Nonetheless, the insured was invited to send us any information to evidence an amount greater than that paid, but no such documentation was received. The insured subsequently pled "guilty" to insurance fraud and agreed to pay us restitution.
- (e) The next claim involved used restaurant equipment. We attempted to locate dealers who dealt in the items in question. In our efforts, we located a suitable vendor by ultimately relying on dealers in used restaurant equipment and pawn shops. These sources were the only available markets for these items, so this information was used to address the fair market value of the items in question. Furthermore, our insured was invited to send us any information to evidence an amount greater than that paid, but no such documentation was received.

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- (f) In the next matter, the claim centered on hand tools, two pool cues, and two pool cue cases. No market was located by which to assess the fair market value of such used items, so we availed ourself to a vendor who specialized in these items. The vendor provided us with its fair market value analysis of the items. We paid the claim based on the evaluation of this third party objective vendor. Also, our insured was invited to send us any information to evidence an amount greater than that paid, but no such documentation was received.
- (g) The next instance, we adjusted another claim related to restaurant equipment. Efforts were made to identify an appropriate market for the used items in question so that an actual cash value determination could be arrived at. However, due to the nature of the items in question (stereo, cash register and telephones), a readily available market was not able to be located. Therefore, we referred to secondary sources, such as classified ads and pawnbrokers. Also, our insured was invited to send us any information to evidence an amount greater than that paid, but no such documentation was received.

With respect to the treatment of evaluating personal property claims, CCR Section 2695.7(g) makes no reference to “*fair market value*,” “*replacement value*,” or to “*actual cash value*.” Although other judicial precedent exists on the subject of evaluating personal property claims, the Report omits the fact that the CDI has never published any bulletin, letter, or opinion to express or clarify its intent to enforce CCR 2695.7(g) in a manner that is inconsistent with that precedent. Thus, the Report reflects the CDI’s attempt to enforce a rule that insurers must always pay for “*personal property claims*” on the basis of what policyholders “*could purchase or replace the used property for*,” without regard to the claimant’s insurable interest or unjust enrichment, without exception, and despite the fact that such is contradicted by policy language and not required by CCR 2695.7(g) or by any other statute or regulation.

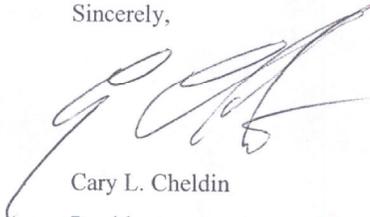
Since such a rule was not filed with the Secretary of State, we believe that the CDI’s behavior violates California Government Code Section 11340.5 and deprives California citizens of their right to participate in the regulatory process. Also, by publishing such inappropriate and potentially damaging allegations against a private citizen, like us, in their Report, we believe that the CDI’s behavior constitutes gross negligence, and that it violates Government Code Sections 19572 et seq. and Insurance Code Section 44.

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6. Finally, the CDI's report conveys an adversarial attitude against us. We believe that such an attitude is misplaced, that it does not serve the public good, and that it is counterproductive, prejudicial, and unsupported by statute, regulation, or by the National Association of Insurance Commissioners. It is inappropriate for any governmental agency, including the CDI's employees, to assume that any private citizen has broken the law, and to then concoct a scheme to support the allegation with underground regulations and misinterpretations of the law, as we believe that CDI employees have done within this Report.

Our comments provided herein are based on the CDI's report as it was presented to us by the CDI on June 17, 2002; therefore, if the CDI elects to amend the report prior to its adoption, we demand the opportunity to amend our comments accordingly, pursuant to CIC Section 12938.

Sincerely,



Cary L. Cheldin
President

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