



# Top 10 - Market Conduct

Property & Casualty - 2014

# Agenda

- A look at the Top 10
- Additional compliance concerns
- Some “fine” data
- Trends & best practices

# Top 10 - 2014

- Failure to acknowledge, pay, investigate or deny claims within specified time frames
- Using unapproved/unfiled rates and rules or misapplying rating factors
- Failure to provide required compliant disclosures in claims processing
- Failure to cancel or nonrenew policies in accordance with requirements
- Failure to process total loss claims properly

# Top 10 - 2014

- Failure to adhere to producer appointment, termination, records and/or licensing requirements
- Improper/incomplete documentation of underwriting files
- Improper/incomplete documentation of claim files
- Failure to provide required compliant disclosures in underwriting processes
- Failure to process and pay claims in accordance with policies



# Timely Claim Handling

# Time -sensitive Claims Categories

- Acknowledge
- Deny
- Investigate
- Delay letter
- Pay
- Communicate

# Acknowledgement

- Failed to acknowledge notice of claim within 15 calendar days. In these instances, the claim was not acknowledged within regulatory guidelines. Upon notice of claim, the Company acknowledged receipt between 19 - 477 days later.

CA 8/14

# Investigation

- Company dispatched a service contractor to the insured's home on September 4, 2012, who provided the Company with a loss statement on February 6, 2013. During this time period, the file was void of any investigative activity in an effort to resolve the claim.

CA 6/14



# Communications

- Persisted in requesting additional information when the claim file contained sufficient information to determine its liability.
- Not diligent in its efforts to contact the claimant.

CA 3/14

# Timely Claim Handling

- Commercial first party closed without payment claims: the company failed to conduct a proper and timely investigation in regard to the first party claims handling in violation of 215 ILCS 5/154.6(c).

IL 10/14

- The Company failed to pay the medical bill within 30 days for the claim noted.

PA 9/14

- Failed to return the insured's deductible in a timely manner after subrogation recovery was successful.

AZ 10/14

# 3<sup>rd</sup> Party Claims

- When it is reasonably clear that the liability rests with the insured, the Company fails to handle the claim correctly when dealing with a third party or third party carrier.
- The Company delays the investigation and handling of the claim, refuses to accept liability within a reasonable time when liability is apparent and sometimes never accepts liability.
- The Company fails to provide reasonable estimates, fails to answer pertinent communication in a timely manner and fails to respond to communication at all. As a result of these practices the Company forces third party claimants to file with their own carrier or file suit, or forces the third party carrier to file suit or arbitration.

IL 4/14



# Rating Issues

# “Right Rates”

- In connection with certain commercial and personal automobile insurance policies:
  - Charged rates that deviated from the approved rates filed with the Department
  - Failed to maintain adequate procedures to minimize the occurrence of improperly charged rates

NY 9/14

# System Issues

- Company self-reported that it did not begin using the new rate on the effective date due to IT system issues, and that the Company had also inadvertently failed to request an effective date change.
- Issuing insurance policies to 2,535 policyholders using rates that were not filed and in effect.

WA 3/14

# System Issues

- During market conduct analysis “Company” was asked about, and revealed programming errors that impacted 1,106 automobile policyholders in Kansas, resulting in overcharges... had been charging rates inconsistent from the rates filed with the Kansas Insurance Department.

5/14

# Unapproved Rates/Errors

- Policies continued to be issued with incorrect use of fire protection class codes and incorrect rating factors were applied.
- The desk examination also revealed that the use of incorrect rating schedules (IRPM modifications) continued.

WA 2/14

- Issuing 3 police professional liability policies using rates not approved by the Division, that remained in effect for a 3 to 5 year period.

TN 1/14



# Rating errors - Some Detailed Examples

The rating errors consisted of the following:

- Personal property replacement cost was calculated incorrectly on 42 policies.
- An incorrect protective device credit was applied on 15 policies.
- An incorrect deductible factor was applied on five policies.
- The protective device credit applied on two policies was in excess of the maximum allowed.
- An incorrect base rate was applied on two policies.

NC 5/14



# Claims Disclosures

# Personal Auto Claims

- Failed to inform an insured of the Collision or Other Than Collision (OTC) deductible when the file indicated the coverage was applicable to the loss.
- Failed to inform an insured of the Medical Expense Benefits coverage when the file indicated the coverage was applicable to the loss.
- Failed to accurately inform an insured of the Transportation Expense coverage when the file indicated the coverage was applicable to the loss.
- Failed to inform an insured of the benefits or coverages, including rental benefits, available under the UMPD and/or UIM.
- These findings occurred with such frequency as to indicate a general business practice.

VA 12/14

# Non-OEM Notices

- Settling partial automobile claim losses on the basis of written repair estimates prepared by or for the Companies that failed to clearly indicate the location of the licensed salvage dealer from which like kind and quality parts expected to be used in the repairs were obtained.

OH 5/14

# Claims Disclosures

- The company is sending an "Inactive Loss Notice" that appears to be serving as both a delay letter and a closure/denial letter, it states that if the claimant does not respond within the next 60 days, the claim file will be closed and cannot be reopened. As a "delay letter" the claimant is given the reason the investigations remains incomplete (waiting on an estimate from the claimant)...
- Examiner Recommendations: It is recommended that the company comply with the following
  - State the legal grounds for the claim denial.
  - Notify first-party claimant of the statute of limitations, not less than thirty days before the date on which such time limit expires.
  - Provide contact information and the option to contact the Commissioner's Office.

WV 5/14



# Cancellation/Nonrenewal

# Reasons in Illinois

- The reason provided for nonrenewal was the termination of the producer.
- Failed to provide a specific reason or reasons for nonrenewal

10/14

- Failing to include on the notice of cancellation a specific explanation of the reason or reasons for cancellation. A Class Criticism was issued in the Commercial Truck Cancellation Survey.

4/14

# Credit Information “Reason” in New Hampshire

- Subsequent to January 1, 2011, the effective date of RSA 417-B:2-a, {Company} cancelled nine mobile home policies. Although these cancellations were made within 90 days of the policies' issuance, which is permissible, the cancellations were made solely on the basis of information contained in the insureds' credit report.

2/14



# Days' Notice in Illinois

- Failing to provide a 30 day advance notice of cancellation of commercial auto policies during the first 60 days of coverage. A General Trend Criticism was issued in the commercial auto cancellation survey.
- Commercial cancellations: the company failed to provide a notice of rehabilitation with a reasonable time for repair

10/14

# Required Language in Virginia

- Failed to advise the insured of his right to review by the Commissioner of Insurance.
- Failed to inform the insured of the availability of other insurance through his agent, another insurer, or the Virginia Automobile Insurance Plan (VAIP).
- Company's notice advising the insured of the availability of other insurance is not in the precise language prescribed by the Code of Virginia.

12/14

# Required Language in Virginia

- The AUD language in the company's cancellation notice did not include wording substantially similar to that of the prototype set forth in Administrative Letter 1981-16.

9/14

# Underwriting Guidelines in Maryland

Based upon consumer complaints, the Administration conducted an investigation {#} into the activities of Respondent concerning its nonrenewal of commercial insurance policies. The Administration directed Respondent to conduct a self-audit to identify commercial insurance policies that were nonrenewed...The investigation showed Respondent did not have adequate written underwriting guidelines in place to determine whether to continue a policy or nonrenew it.

11/14

# Loss Runs

- Failing to send loss information at the same time as the notice of nonrenewal. A Class Criticism was issued in the Commercial Auto Nonrenewal Survey.

IL 4/14



# Motor Vehicle Total Losses

# Disclose - Report - Process in California

- Failed to provide a full disclosure in writing and failed to itemize how the total loss settlement amounts were calculated.
- Failed to notify the DMV that the owner of a total loss salvage vehicle retained possession of the vehicle.

12/14

- The process for itemizing holdbacks on total loss vehicles until total loss vehicle documents are received was not followed

3/14

# Total Loss Documentation in Maryland

- Company was unable to show it discussed that certain information concerning its settlement offer would be provided in writing, if requested, and that the claimant may reject the Company's settlement offer and make a written counteroffer.

9/14





# Underwriting Documentation

# Documentation = Proof in Arizona

- Company failed to properly document and retain signed UM and UIM selection forms for 14 applicants that selected coverage limits less than limits for bodily injury or death contained in their policy.

8/14

# Documentation = Proof in Maryland

- Failed to provide certified mailing documentation to verify its nonrenewal notices were sent by certified mail as required by the statute.

6/14



# Claims Documentation

# Documentation = Proof in California

- Failed to document the basis of betterment or depreciation. In one instance, the Company applied 50% betterment to 10 of the vehicle's tires without documented measurement of the remaining tread to support the deduction. In the second instance, the Company applied 50% betterment to the cost to replace the radiator; however, justification for the betterment was not found in the claim file.
- Failed to document in the claim file all justification for the adjustment of the amount claimed because of betterment, depreciation or salvage.

12/14

# Documentation = Proof in Kentucky

- Failed to provide relevant PPA claim file documents. Relevant claim file documents included denial letters, signed total loss paperwork, total loss evaluations, salvage quotes, contact letters, PIP applications and medical authorizations, delay letters, estimates, subrogation letters and medical bills.

6/15



# Underwriting Disclosures

# Surcharge - UM/UIM - Tort in Pennsylvania

- Failed to provide the surcharge disclosure plan at the time of application with the estimated amount of increase.

9/14

- The Company failed to provide forms for rejection of stacked limits for uninsured and underinsured motorist coverage signed by the first named insured.

12/14

- The Company did not provide the notice of tort options to the insured at renewal.

9/14



## Other Notices

- Failed to include all of the information required by the statute in its Insurance Credit Score Disclosure notice.

VA 6/14

- Notices failed to provide a compliant Summary of Rights language to its policyholders

AZ 8/14



# Payments

# Payments

- Failed to pay the insured's UMPD claim properly when both Collision and UMPD coverages applied to the claim.
- Failed to pay the insured's rental benefits, available under the UMPD coverage and/or UIM coverage.
- Failed to pay the claim in accordance with the policy provisions under the insured's Medical Expense Benefits coverage.
- Failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses Coverage. Failed to pay the claim in accordance with the policy provisions under the insured's Other than Collision or Collision coverage.

VA 12/14

# Correctly Compensating

- Claimants were not compensated for loss of use

CT 12/14

- An insurer shall use the Medicare payment applicable in this Commonwealth to determine the appropriate payment. The applicable Medicare payment shall be utilized even when a service is not a reimbursed service under Medicare. If no Medicare payment has been calculated, payment shall be 80% of the provider's usual and customary charge. The Company failed to pay 80% of the prescription invoice for the claim noted.

PA 12/14



# Producers



# Licensing & Appointment

- Not in compliance with the statutory producer licensing requirements in 40 instances where an individual producer was not appointed

CT 11/14

# Producer Issues

- No later than 35 days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its agent requirements and internal procedures and is currently obtaining and maintaining agent licensing records that document that all individual agents writing new business for the Company are properly licensed at the time each application is taken, that the assignments of commissions to producing agencies are properly documented and that such records are kept at a location or locations which will allow the records to be produced timely when requested as required by Colorado insurance law.

10/14



# Claims Disclosures



# Claims Disclosures

- The company issued checks or drafts in partial settlement of a loss or claim under a specific coverage which contained language that purported to release the insurer or its insured from its total liability.
- The company failed to provide a Notice of Settlement Payment to the claimant that complies with the language required by statute.

VA 12/14

# Other Disclosures

- Failed to secure a theft affidavit from the insured.
- 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.

CA 12/14

- Failed to provide the insured with the right of recourse letter (commonly known as "Exhibit A") within seven days of determination of the total loss

IL 4/14



It's worth noting...



# Arizona TPT

- The Examiners identified 8 first party homeowner settlements, in which the Company failed to pay the correct Transaction Privilege Tax (TPT.)

8/14

# California Issues

- Failed to ask if a child passenger restraint system (CPRS) was in use by a child during an accident or was in the vehicle at the time of a loss that was covered by the policy. Specifically, the Company failed, in all identified instances involving third party liability claims, to ask whether a child passenger restraint system (CPRS) was in use by a child during the accident or was unoccupied and damaged at the time of the loss.

12/14

- Failed to conduct its business in its own name. The Company failed to specify the insurer of record on claim correspondence, status letters and electronic mail.

9/14

# Colorado Policy Forms

- No later than 35 days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all its policies delivered or issued for delivery in Colorado to provide medical payments coverage for all insured persons, even when the driver is operating the covered auto while intoxicated or under the influence of alcohol or other drugs, in compliance with Colorado insurance law.

10/14

# Connecticut - Reporting Requires Procedure

- Respondent did not have a procedure in place to determine vehicle total losses and report such losses to the National Insurance Crime Bureau (NICB) in accordance with Section 38a-357 of the Connecticut General Statutes.

CT 12/14

# Massachusetts - CS Checks - Local Reporting

- Testing indicated that for one private passenger automobile claim, no Department of Revenue check was completed.
- Testing indicated that three tested homeowners property claims over \$1,000 were not properly and timely reported to local building and health authorities to disclose a potentially dangerous condition.

12/14





# Missouri Large Deductible Filings

- Failed to submit filings for individually rated large deductible workers compensation insurance policies

7/14

# Missouri - Reporting it Right

- Losses reimbursed by the employer were reported to the NCCI on a gross basis even though there was no evidence that the insureds elected the gross reporting option.

5/14

# Reporting documentation/filing

- Company...was unable to provide documentation to support the North Carolina Notice of Termination form sent to the Division of Motor Vehicles for 100 percent of the cancelled commercial automobile files reviewed.

NC 4/14

- Failed to file an FR-46 within 15 days of cancelling the policy as required by the Virginia Motor Vehicle Code.

VA 6/14

# Texas - Loss Control

- Failing to provide its policyholders with loss control information and failing to administer its loss control program for general liability coverage in accord with Texas law.
- Failing to provide its policyholders with loss control information and failing to administer its loss control program for commercial automobile liability coverage in accord with Texas law.

2/14

# Claim Reserves Issues

- Failed to comply with the requirements of CIC § 995.1, which requires an insurer to promptly record a claim and establish claim reserves once notified of a policy claim, and failed to follow its own procedures for setting a timely case reserve that reflects the probable ultimate payment of a loss.

CA 12/14

- As a result of this examination, the Company provided documentation that it had increased its reserve account to... and advised it would review and adjust its reserve account within 30 days after the close of each quarter.

NV 5/14



# Looking at compliance questions...

# Sample Questions for a New York Claims Audit

- Was receipt of the claim acknowledged, in writing or if by other means appropriately noted in file, within 15 business days?
- Did the insurer report to the central organization all auto total left losses within 2 business days following receipt of claim?
- Are all communications, transactions, notes and work papers for each claim maintained in the claim file?

# Sample Questions for a Pennsylvania Audit

- Does the insurer adequately inform the insured that he or she may reject underinsured motorist coverage by signing the required written rejection form?
- If a covered motor vehicle is equipped with a passive restraint device, does the rate reflect a premium discount for such device?
- Does the insurer give the surcharge disclosure plan to each prospective insured at the time application is made for motor vehicle insurance coverage?





Noncompliance has its costs...

# Selected Average Fine Data - 2014

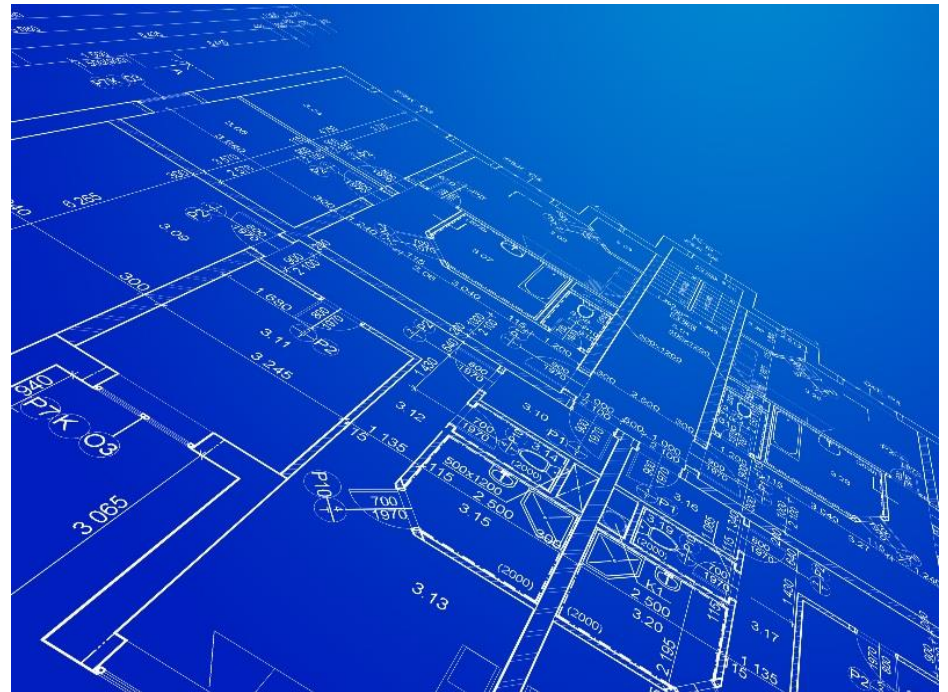
- Arizona: \$28,500
- Connecticut: \$49,900
- Florida: \$35,000
- Illinois: \$47,500
- Kentucky: \$9,300
- Maryland: \$18,800
- Missouri: \$19,400
- New York: \$54,600
- Pennsylvania: \$99,500

# Market Regulation Categories - The Foundation

- Operations/Management
- Complaint Handling
- Marketing and Sales
- Producer Licensing
- Policyholder Service
- Underwriting and Rating
- Claims

# Blueprint for “Top 10” Compliance...and Beyond

- Know your requirements
- Monitor for changes
- Establish controls
- Audit for compliance



## For more information

- [Visit our website](#)
- Contact [Kathy Donovan](#)
- Call 800.481.1522



# Thank you for attending today

- You will soon receive an email containing:
  - a link to a recording of today's presentation
  - a link to download a PDF of the PowerPoint deck used in today's presentation

