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STATE OF WASHINGTON
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No. 96185-9

SUPREME COURT OF THE STATE OF WASHINGTON

LAZURI DANIELS,

Petitioner,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY,

Respondent,

**BRIEF OF AMICI CURIAE AMERICAN PROPERTY CASUALTY
INSURANCE ASSOCIATION and NATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES IN SUPPORT OF
RESPONDENT STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**

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I. IDENTITY AND INTERESTS OF AMICI CURIAE

American Property Casualty Insurance Association (APCIA) is the preeminent national trade association representing property and casualty insurers writing business in Washington, nationwide, and globally. APCIA was recently formed through a merger of two longstanding trade associations—Property Casualty Insurers Association of America (PCI) and American Insurance Association (AIA). APCIA’s members, which range in size from small companies to the largest insurers with global operations, represent nearly 60% of the United States property and casualty marketplace. On issues of importance to that marketplace, APCIA advocates sound public policies on behalf of its members in legislative and regulatory forums at the state and federal levels, and files amicus-curiae briefs in significant cases before federal and state courts. This allows APCIA to share its broad national perspectives with the judiciary on matters that shape and develop the law. APCIA’s interests are in the clear, consistent, and reasoned development of law that affects its members and the policyholders they insure.

National Association of Mutual Insurance Companies (NAMIC) is the oldest property/casualty insurance trade association in the country with more than 1,400-member companies representing 41 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC member companies serve more than 170 million policyholders and write more than \$253 billion in annual premiums. Our

members account for 54 percent of homeowners, 43 percent of automobile, and 35 percent of the business insurance markets. Through our advocacy programs, we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

II. STATEMENT OF THE CASE

APCIA and NAMIC, collectively referred to as “Amici,” rely on the facts as presented in Respondent State Farm Mutual Automobile Insurance Company’s Answer to Petition for Review.

III. ARGUMENT

A. Summary of Argument Presented by Amici

In the Court of Appeals decision on review, *Daniels v. State Farm*, 4 Wash. App. 2d 268, 421 P.3d 996 (2018) (“the decision”), the dissenting opinion called into question the validity of the applicable insurance regulation - WAC 284-30-393 (“the WAC”). *Id.*, at 300 (“the dissent”). To the extent this Court believes the WAC is subject to further inquiry, Amici submit this brief to urge the Court to decline to do so for three reasons, in addition to those set forth in the briefing of Respondent State Farm. First, Amici set forth the history of changes to the Unfair Claims Settlement Practices Act as they apply to the WAC to illustrate for the Court the clear intent of the Office of the Insurance Commissioner. Second, Amici assert that because no party has sought to challenge the WAC, respectfully, the Court lacks authority to disregard the WAC. RCW 34.05.570(1)(a). And

third, Amici assert that insurers are required to comply with the letter of the WAC or face penalties. Finally, Amici set forth one more flaw in the dissent's analysis of the WAC. None of these arguments have been made in prior briefing by State Farm and Amici believe these arguments will assist the Court.

B. The History of Changes to WAC 284-30-393 Make Clear That the OIC Intended a Policyholder's Deductible Would be Subject to Reduction Where There is Comparable Fault.

The initial version of WAC 284-30-393 - formerly WAC 284-30-3905 (2003), *repealed by*, Wash.St.Reg (WSR) 09-11-129 (August 21, 2009) - did *not* require that insureds be fully reimbursed for their deductibles from any subrogation recovery obtained by their insurer:

284-30-3905. If my insurer collects my deductible back, will I recover the full amount of my deductible?

(1) At a minimum, recovery will be shared on a proportionate basis with your insurer.

(2) No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery, and then only for the pro rata share of the allocated loss adjustment expense.

(Appendix 1). Six years later, the Office of the Insurance Commissioner (OIC) sought to amend the WAC in January 2009 as part of a larger effort to clarify claims settlement practices and automobile claims, repairs, and total loss settlements. The final version, effective August 1, 2009, was part of the Unfair Claims Settlement Practices regulation and *did* require insurers to reimburse insureds first and fully for their deductibles as follows (in relevant part):

NEW SECTION: WAC 284-30-393 Insurer must include an insured's deductible in its subrogation demands. The insurer must include the insured's deductible, if any, in its subrogation demands. Subrogation recoveries must be allocated first to the insured for any deductible(s) incurred in the loss. Deductions for expenses must not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be made only as a pro rata share of the allocated loss adjustment expense. . .

(Appendix 2 – including pre-proposal statement, proposed and final versions).

Within fifteen months of the effective date of the WAC, on November 10, 2010, the OIC submitted a pre-proposal statement of inquiry for the purpose of evaluating “the clarity of the current WAC 284-30-393, and whether amendment is necessary to provide additional guidance to insurers and insureds about the requirements associated with subrogation demands.” (Appendix 3 - including pre-proposal statement, proposed and final versions). This inquiry was prompted by a petition to the OIC by Farmers Insurance Company dated September 13, 2010 seeking “to amend the regulation so that insurers may deduct the amount of an insured’s comparative fault from reimbursement for their deductible, when settling a claim.” (CP 33). The OIC determined amendment was necessary to add clarity and to “provide guidance about the requirements associated with subrogation demands.” (Appendix 3).

Proposed amendments were filed on April 14, 2011 and the final version, set forth below in relevant part, became effective July 11, 2011. This is the version of the WAC applicable to this case:

WAC 284-30-393 Insurer must include an insured's deductible in its subrogation demands. The insurer must include the insured's deductible, if any, in its subrogation demands. ~~((Subrogation))~~ Any recoveries must be allocated first to the insured for any deductible(s) incurred in the loss, less applicable comparable fault. Deductions for expenses must not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be made only as a pro rata share of the allocated loss adjustment expense. . .

(Appendix 3).

Thus, the version of the WAC applicable to this case is clear: “any recoveries as the result of the insurer’s subrogation demands would still be allocated first to the insured – *but the deductible would be subject to reduction if there is an applicable comparable fault.*” (CP 33)(emphasis added). In the OIC’s “Final Cost Benefit Analysis” for this version of the WAC, it concluded that the benefits of the amendment outweigh the costs to both policyholders and to insurers. (CP 33-36).

C. Petitioner Has Not Challenged the Validity of WAC 284-30-393 Thereby Mooting the Dissent’s Attempt to do so.

The parties do not dispute that the WAC is applicable to this dispute. *See* Petition for Review at p. 15; Answer to Petition for Review, *passim*. Nor do the parties dispute the applicable version of this regulation promulgated by the OIC, effective July 11, 2011. The WAC unequivocally requires insurers, when pursuing recovery of their subrogation interest, to allocate any recovery first to the insured for its out of pocket deductible, less the insured’s pro-rata portion of comparable fault. Yet, the dissent *sua sponte* found the 2011 amendment to the WAC to be “wrong” and “without basis in statute or case law.”

The burden of demonstrating the invalidity of an agency action is on the party asserting invalidity. RCW 34.05.570(1)(a). Here, Petitioner does not seek to invalidate the WAC. Instead, possibly recognizing her failure to seek relief under RCW 34.05.570, Petitioner dances around the topic by suggesting that “current WAC 284-30-393 [attempts] to “split the baby,” [and] is actually irreconcilable with the dictates of *Averill*.” But the fact remains, Petitioner does not seek to invalidate the WAC.

RCW 34.05.570 sets forth specific procedures for anyone seeking to invalidate an agency action and it *does not* permit a court to invalidate a regulation *sua sponte*. To the extent this Court believes the WAC is subject to further inquiry, Amici urge that such inquiry may only be accomplished by following the procedures set forth in RCW 34.05.570.

Without any challenge to the WAC, the Court is duty-bound to enforce it as it is written.

Washington applies canons of statutory interpretation to regulations. When applying basic statutory construction principles, the primary task is to determine which interpretation best reflects the intent of the regulation and to give effect to that interpretation. Accordingly, “[a]s in statutory interpretation, where a regulation is clear and unambiguous, words in a regulation are given their plain and ordinary meaning unless a contrary intent appears.” Further, “a reviewing court has a duty to give meaning to every word in a regulation.”

Lundquist v. First Nat'l Ins. Co. of Am., No. 18-5301 RJB, 2018 WL 3344791, at *3 (W.D. Wash. July 9, 2018)(internal citations omitted).

D. WAC 284-30-393 is Part of the Unfair Claims Settlement Practices Act and Any Failure to Comply Subjects an Insurer to the Act’s Enforcement Provisions.

As set forth above in §B, *supra*, the WAC is part of a larger effort by the OIC to promulgate certain minimum standards for fair settlement practices and automobile claims, repairs, and total loss settlements. *See* WAC 284-30-300. Violation of any of the standards set forth in WAC 284-30-300 through WAC 284-30-400 “are subject to the enforcement provisions set forth in RCW 48.30.010 and also constitute a failure to comply with a regulation pursuant to 48.05.140(1).” WAC 284-30-400.

RCW 48.30.010(1) prohibits any insurer from engaging in unfair or deceptive acts or practices in the conduct of the insurance business, as such acts or practices are defined in RCW 48.30.010(2):

In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation ... define other ... acts and practices ... reasonably found by the commissioner to be unfair or deceptive.

Thus, the legislature gave the OIC rule-making authority under RCW 48.30.010(2) to define unfair or deceptive acts or practices in the business of insurance. The WAC is one of those. Failure to comply with it could subject an insurer to a claim for an unfair or deceptive act (i.e., bad faith). *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wash. 2d 133, 151, 930 P.2d 288, 297 (1997).

RCW 48.05.140(1) provides the OIC with authority to “refuse, suspend, or revoke an insurer’s certificate of authority . . .” for failure of an

insurance company licensed in Washington to comply with the provisions of the WAC. Here, State Farm complied with the letter of the regulation.

E. As it Relates to the WAC, the *Averill* Case Determined Only That the 2009 Version of the WAC Would Not Apply Retroactively.

Finally, the parties have addressed the *Averill* case at length. Amici add the following which responds to an incorrect assertion made by the dissent regarding the *Averill* decision as it relates to the WAC.

The *Averill* court did not decide, as the dissent incorrectly asserts, that the former “regulation was wrong as a matter of law.” *Daniels, supra* at 300. In *Averill*, as in the case at bar, no party sought to challenge the validity of the WAC. *Averill*, at n. 9 (“Farmers has not challenged the validity of the regulation, and we do not address that issue.”) Instead, the *Averill* court analyzed only whether the 2009 amendment to the WAC should apply retroactively. *Averill* at 115 (“We must therefore decide whether the new regulation applies retroactively.”) Regulations that clarify the law may apply retroactively; regulations that change the law may not. *Averill* at 116 (internal citations omitted). The *Averill* court found that the amendment to the WAC changed the law because it was based on the OIC’s interpretation of *Thiringer*, and “[t]he OIC’s interpretation of *Thiringer* is wrong as a matter of law.” *Averill* at 117. Because the WAC misinterpreted the common law and “in fact changed an insurer’s affirmative obligations concerning recovery of deductible,” the *Averill* court conclude that it did not apply retroactively. *Averill* at 117-118.

Thus, *Averill* did not hold and does not support that a court may *sua sponte* declare a WAC “wrong” or invalid.

IV. CONCLUSION

Amici urge this this Court to affirm the Court of Appeals decision.

Respectfully submitted this 22nd day of March, 2019.

CARNEY BADLEY SPELLMAN, P.S.

By *S/ Linda B. Clapham*

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 22nd day of March, 2019.

S/ Allie M. Keihn

Allie M. Keihn, Legal Assistant

Appendix 1

Washington Administrative Code - 2003

WAC 284-30-3905
Wash. Admin. Code 284-30-3905
WASHINGTON ADMINISTRATIVE CODE
TITLE 284. INSURANCE COMMISSIONER, OFFICE OF THE
CHAPTER 284-30. TRADE PRACTICES
UNFAIR CLAIMS SETTLEMENT PRACTICES

Current through January 7, 2004

284-30-3905. If my insurer collects my deductible back, will I recover the full amount of my deductible?

- (1) At a minimum, recovery will be shared on a proportionate basis with your insurer.
- (2) No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery, and then only for the pro rata share of the allocated loss adjustment expense.

Statutory Authority: RCW 48.02.060, 48.30.010. 03-14-092 (Matter No. R 2002-06), S 284-30-3905, filed 6/30/03, effective 10/1/03.

<General Materials (GM) - References, Annotations, or Tables>

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Appendix 2

WSR 07-19-105**PREPROPOSAL STATEMENT OF INQUIRY****OFFICE OF****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2007-08 -- Filed September 19, 2007, 8:46 a.m.]

Subject of Possible Rule Making: Claims settlement practices and automobile claims, repairs, and settlements. This rule-making notice is supplemental to the CR-101 filed on July 2, 2007.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.02.060 and 48.30.010.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The commissioner will review chapter 284-30 WAC to determine if the current claims settlement regulation can be clarified, simplified, and made more effective. One goal is to give consumers, insurers and adjusters a better understanding of their rights and obligations and to provide clearer expectations of what should occur in the claims settlement process.

A CR-101 was filed on July 2, 2007, under this same insurance commissioner matter number with the stated purpose to review WAC 284-30-390 only. During that review it was decided that the subject of this rule making should be broadened to include additional sections in the chapter. Several sections of chapter 284-30 WAC will be amended for clarity or rearranged for ease of understanding. It is possible that a few changes to the chapter may be needed.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study; and by sending written comments by November 3, 2007.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, fax (360) 586-3109, e-mail KacyS@oic.wa.gov.

September 19, 2007

Mike Kreidler

Insurance Commissioner

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WSR 09-03-106**PROPOSED RULES****OFFICE OF****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2007-08 -- Filed January 21, 2009, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-105.

Title of Rule and Other Identifying Information: Claims settlement practices and automobile claims, repairs, and total loss settlements.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on March 2, 2009, at 1:00 p.m.

Date of Intended Adoption: March 16, 2009.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by February 27, 2009.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by February 27, 2009, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed amendments clarify and recodify several sections of chapter 284-30 WAC related to unfair practices in the settlement of insurance claims. The amendments to existing sections do not make substantive changes to these rules; the amendments refine or clarify current rules.

NOTE: These rules are not intended to and do not create any new unfair settlement or trade practice rules subject to the Insurance Fair Conduct Act (RCW 48.30.015).

Reasons Supporting Proposal: These proposed rules clarify and recodify several sections of chapter 284-30 WAC that the commissioner finds are confusing or difficult to understand or administer. These amendments are part of the commissioner's examination and consideration of all rules in TITLE 284 WAC for clarity and consistency. **These rules are not intended to and do not create any new unfair settlement or trade practice rules subject to the Insurance Fair Conduct Act (IFCA).**

Statutory Authority for Adoption: RCW 48.02.060 and 48.30.010.

Statute Being Implemented: RCW 48.02.060 and 48.30.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Carlson, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7042; Implementation and Enforcement: John Hamje, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7042.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the domestic insurers actively offering coverage in Washington state meet the definition of small business under the

law.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail KacyS@oic.wa.gov.

January 21, 2009

Mike Kreidler

Insurance Commissioner

OTS-1153.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC

284-30- 3901 Definitions for settlement of vehicle claims.

3901

WAC

284-30- 3902 When my vehicle is repairable, what can I expect from the insurer?

3902

WAC

284-30- 3903 Can I get my vehicle repaired at a shop of my choice?

3903

WAC

284-30- 3904 Will my insurer pursue collection of my deductible?

3904

WAC

284-30- 3905 If my insurer collects my deductible back, will I recover the full amount of my deductible?

3905

WAC

284-30- 3906 If another party is responsible for my vehicle damage, can that party's insurer refuse to settle my vehicle damage and force me to use my own collision coverage?

3906

WAC

284-30- 3907 How can my insurer settle my vehicle total loss claim?

3907

WAC

284-30- 3908 Are there factors that may adjust my settlement?

3908

WAC

284-30- 3909 If my vehicle is determined to be a total loss, can I keep it?

3909

WAC

284-30- 3910 Can the insurer move my vehicle prior to settlement of the claim?

3910

WAC

284-30- 3911 What information must be included in the insurer's valuation report?

3911

WAC

What if I, as an insured, accept the settlement based on my insurer's valuation and cannot find a

284-30-3912 comparable vehicle within a reasonable distance of my vehicle's principally garaged area?

WAC

284-30-3913 What must the insurer do prior to the denial of storage and towing costs?

WAC

284-30-3914 When I am dealing with someone else's insurer, what are my rights regarding a rental vehicle?

WAC

284-30-3915 What if the other person's insurer offers a flat rental amount per day, week, or month?

WAC

284-30-3916 In a total loss situation, what happens if I have a loan or lease on my vehicle and the outstanding balance exceeds the actual cash value of my vehicle?

WAC

284-30-410 Effective date.

OTS-1158.6

THE UNFAIR CLAIMS SETTLEMENT PRACTICES REGULATION

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-300 Authority and purpose. RCW 48.30.010 authorizes the commissioner to define methods of competition and acts and practices in the conduct of the business of insurance which are unfair or deceptive. The purpose of this regulation, WAC 284-30-300 through ~~((284-30-410))~~ 284-30-400, is to define certain minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claims settlement practices. This regulation may be cited and referred to as the unfair claims settlement practices regulation.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-300, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-310 Scope of this regulation. This regulation applies to all insurers and to all insurance policies and insurance contracts. This regulation is not exclusive, and acts performed, whether or not specified herein, may also be deemed to be violations of specific provisions of the insurance code or other regulations.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-310, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-320 Definitions. When used in this regulation, WAC 284-30-300 through 284-30-400:

(1) ~~((("Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim;))~~ "Actual cash value" means the fair market value of the loss vehicle immediately prior to the loss.

(2) "Claimant" means, depending upon the circumstance, either a first party claimant, a third party claimant, or both and includes ~~((such))~~ a claimant's designated legal representative and ~~((includes))~~ a member of the claimant's immediate family designated by the claimant((;)).

(3) "Comparable motor vehicle" means a vehicle that is the same make and model, of the same or newer model year, similar body style, with similar options and mileage as the loss vehicle and in similar overall condition, as established by current data.

(4) "Current data" means data within ninety days prior to or after the date of loss.

(5) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(6) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right as a covered person to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by ~~(a) a~~ a policy or contract~~(b).~~

~~((4))~~ (7) "Insurance policy" or "insurance contract" mean any contract of insurance, indemnity, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer~~(b).~~

~~((5))~~ (8) "Insurer" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal mutual insurer, fraternal mutual life insurer, and any other legal entity engaged in the business of insurance, authorized or licensed to issue or who issues any insurance policy or insurance contract in this state. "Insurer" does not include health care service contractors, as defined in RCW 48.44.010, and health maintenance organizations, as defined in RCW 48.46.020~~(b).~~

~~((6))~~ (9) "Investigation" means all activities of ~~(a) the~~ the insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract~~(b).~~

~~((7))~~ (10) "Loss vehicle" means the damaged motor vehicle or a motor vehicle that the insurer determines is a "total loss."

(11) "Motor vehicle" means any vehicle subject to registration under chapter 46.16 RCW.

(12) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to ~~(a) the~~ the insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim~~(b).~~

~~((8))~~ (13) "Principally garaged area" means the place where the loss vehicle is normally kept, consistent with the applicable policy of insurance.

(14) "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of ~~(a) the~~ the insurer.

(15) "Total loss" means that the insurer has determined that the cost of parts and labor, plus the salvage value, meets or exceeds, or is likely to meet or exceed, the "actual cash value" of the loss vehicle. Other factors may be considered in reaching the total loss determination such as for example, the existence of a biohazard or a death in the vehicle resulting from the loss.

(16) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-320, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 87-5, filed 4/21/87)

WAC 284-30-330 Specific unfair claims settlement practices defined. The following are hereby defined as

unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, specifically applicable to the settlement of claims:

- (1) Misrepresenting pertinent facts or insurance policy provisions.
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (4) Refusing to pay claims without conducting a reasonable investigation.
- (5) Failing to affirm or deny coverage of claims within a reasonable time after fully completed proof of loss ~~((statements))~~ documents have been ~~((completed))~~ submitted.
- (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. In particular, this includes an obligation to ~~((effectuate prompt payment of))~~ promptly pay property damage claims to innocent third parties in these clear liability situations. If two or more insurers ~~((are involved))~~ share liability, they should arrange to make ~~((such))~~ appropriate payment, leaving to themselves the burden of apportioning it.
- (7) Compelling ~~((insureds))~~ a first party claimant to ~~((institute))~~ initiate or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings.
- (8) Attempting to settle a claim for less than the amount to which a reasonable ~~((man))~~ person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.
- (9) Making a claim~~((s))~~ payment~~((s))~~ to ~~((insureds))~~ a first party claimant or ~~((beneficiaries))~~ beneficiary not accompanied by a statement setting forth the coverage under which the payment~~((s are being))~~ is made.
- (10) Asserting to ~~((insureds or))~~ a first party claimant~~((s))~~ a policy of appealing ~~((from))~~ arbitration awards in favor of insureds or first party claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.
- (11) Delaying the investigation or payment of claims by requiring ~~((an insured,))~~ a first party claimant, or ~~((the))~~ his or her physician ~~((of either))~~ to submit a preliminary claim report and then requiring subsequent submissions which contain substantially the same information.
- (12) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.
- (13) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.
- (14) Unfairly discriminating against claimants because they are represented by a public adjuster.
- (15) Failure to expeditiously honor drafts given in settlement of claims. A failure to honor a draft within three working days ~~((of))~~ after notice of receipt by the payor bank will constitute a violation of this provision. Dishonor of ~~((any such))~~ a draft for valid reasons related to the settlement of the claim will not constitute a violation of this provision.

(16) Failure to adopt and implement reasonable standards for the processing and payment of claims (~~((one))~~) after the obligation to pay has been established. Except as to those instances where the time for payment is governed by statute or rule or is set forth in an applicable contract, procedures which are not designed to deliver a check or draft to the payee in payment of a settled claim within fifteen business days after receipt by the insurer or its attorney of properly executed releases or other settlement documents are not acceptable. Where the insurer is obligated to furnish an appropriate release or settlement document to ~~((an insured or))~~ a claimant, it ~~((shall))~~ must do so within twenty working days after a settlement has been reached.

(17) Delaying appraisals or adding to their cost under insurance policy appraisal provisions through the use of appraisers from outside of the loss area. The use of appraisers from outside the loss area is appropriate only where the unique nature of the loss or a lack of competent local appraisers make the use of out-of-area appraisers necessary.

(18) Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal.

(19) Negotiating or settling a claim directly with any claimant known to be represented by an attorney without the attorney's knowledge and consent. This does not prohibit routine inquiries to ~~((an insured))~~ a first party claimant to identify the claimant or to obtain details concerning the claim.

[Statutory Authority: RCW 48.02.060, 48.44.050 and 48.46.200. 87-09-071 (Order R 87-5), § 284-30-330, filed 4/21/87. Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-330, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-340 File and record documentation. The insurer's claim files ~~((shall be))~~ are subject to examination by the commissioner or by ~~((his))~~ duly appointed designees. ~~((Such))~~ These files ~~((shall))~~ must contain all notes and work papers pertaining to the claim in ~~((such))~~ enough detail that pertinent events and ~~((the))~~ dates of ~~((such))~~ these events can be reconstructed.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-340, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-360 ~~((Failure))~~ Standards for the insurer to acknowledge pertinent communications. (1) ~~((Every insurer, upon))~~ Within ten working days after receiving notification of a claim ~~((shall, within ten working days))~~ under an individual insurance policy, or within fifteen working days with respect to claims arising under group insurance contracts, the insurer must acknowledge ~~((the))~~ its receipt of ~~((such))~~ the notice ~~((unless))~~ of claim.

(a) If payment is made within ~~((such))~~ that period of time, acknowledgement by payment constitutes a satisfactory response.

(b) If an acknowledgement is made by means other than writing, an appropriate notation of ~~((such))~~ the acknowledgement ~~((shall))~~ must be made in the claim file of the insurer ~~((and dated))~~ describing how, when, and to whom the notice was made.

(c) Notification given to an agent of ~~((an))~~ the insurer ~~((shall be))~~ is notification to the insurer.

(2) ~~((Every insurer,))~~ Upon receipt of any inquiry from the ~~((office of the insurance))~~ commissioner ~~((respecting a claim shall, within fifteen working days of receipt of such inquiry,))~~ concerning a complaint, every insurer must furnish the ~~((department))~~ commissioner with an adequate response to the inquiry within fifteen working days after receipt of the commissioner's inquiry.

(3) For all other pertinent communications from a claimant which reasonably suggest that a response is expected, an appropriate reply ((shall)) must be ((made)) provided within ten working days for individual insurance policies, or fifteen working days with respect to communications arising under group insurance contracts(~~(, on all other pertinent communications from a claimant which reasonably suggest that a response is expected))~~).

(4) ~~((Every insurer;))~~ Upon receiving notification of a claim, ~~((shall))~~ every insurer must promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within the time limits specified in subsection (1) of this section ~~((shall))~~ constitutes compliance with that subsection.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-360, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-370 Standards for prompt investigation of a claim((s)). Every insurer ~~((shall))~~ must complete its investigation of a claim within thirty days after notification of claim, unless ~~((such))~~ the investigation cannot reasonably be completed within ~~((such))~~ that time. All persons involved in the investigation of a claim ~~((shall))~~ must provide reasonable assistance to the insurer in order to facilitate compliance with this provision.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-370, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-380 Settlement standards ~~((for prompt, fair and equitable settlements))~~ applicable to all insurers. (1) Within fifteen working days after receipt by the insurer of ~~((properly))~~ fully completed and executed proofs of loss, the insurer must advise the first party claimant ~~((shall be advised of the acceptance or denial of the claim by the insurer))~~ whether the claim has been accepted or denied. ~~((No))~~ The insurer ~~((shall))~~ must not deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to ~~((such))~~ the specific provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer ~~((shall))~~ must contain a copy of the denial.

(2) If a claim is denied for reasons other than those described in subsection (1) and is made by any other means than in writing, an appropriate notation ~~((shall))~~ must be made in the claim file of the insurer describing how, when, and to whom the notice was made.

(3) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it ~~((shall so))~~ must notify the first party claimant within fifteen working days after receipt of the proofs of loss giving the reasons more time is needed. If after that time the investigation remains incomplete, the insurer ~~((shall;))~~ must notify the first party claimant in writing stating the reason or reasons additional time is needed for investigation. This notification must be sent within forty-five days ~~((from))~~ after the date of the initial notification and ~~((no later than)),~~ if needed, additional notice must be provided every thirty days ~~((thereafter; send to such claimant a letter setting forth the reasons additional time is needed for investigation))~~ after that date explaining why the claim remains unresolved.

(4) Insurers ~~((shall))~~ must not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(5) Insurers ~~((shall))~~ must not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. ~~((Such))~~ This notice ~~((shall))~~ must be given to first party

claimants thirty days and to third party claimants sixty days before the date on which ~~((such))~~ any time limit may expire.

(6) ~~((No))~~ The insurer ~~((shall))~~ **must not** make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a ~~((given))~~ specified period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(7) Insurers are responsible for the accuracy of evaluations to determine actual cash value.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-380, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Matter No. R 2002-06, filed 6/30/03, effective 10/1/03)

WAC 284-30-390 ~~((Regulation of settlements of insurance claims relating to vehicles.))~~ Acts or practices considered unfair in the settlement of motor vehicle claims. ~~((WAC 284-30-390 through 284-30-3916 are the standards for prompt, fair, and equitable settlements for insurance claims relating to vehicles.))~~ In addition to the unfair claims settlement practices specified in this regulation, the following acts or practices are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, specifically applicable to the settlement of motor vehicle claims:

(1) Failure of the insurer to make a good faith effort to communicate with the repair facility chosen by the claimant and must not arbitrarily deny a claimant's estimate for repairs.

(a) A denial of the claimant's estimate for repairs to be completed at the chosen repair facility based solely on the repair facility's hourly rate is considered arbitrary if the rate does not result in a higher overall cost of repairs.

(b) If the insurer pays less than the amount of the estimate from the claimant's chosen repair facility, the insurer must fully disclose the reason or reasons it paid less than the claimant's estimate, and must thoroughly document the circumstances in its claim file.

(2) Requiring the claimant to travel unreasonably to:

(a) Obtain a repair estimate;

(b) Have the loss vehicle repaired at a specific repair facility; or

(c) Obtain a temporary rental or loaner vehicle.

(3) Failure of the insurer to prepare or accept an estimate provided by the claimant that will restore the loss vehicle to its condition prior to the loss.

(a) If the insurer prepares the estimate, it must provide a copy of the estimate to the claimant.

(b) If a claimant provides the estimate and the insurer, after evaluation of the claimant's estimate, determines it owes an amount that differs from the estimate the claimant provided, the insurer must fully disclose the reason or reasons for the difference to the claimant, and must thoroughly document the circumstances in the claim file.

(c) If the claimant chooses to take the loss vehicle to a repair facility where the overall cost to restore the loss vehicle to its condition prior to the loss exceeds the insurer's estimate, the claimant must be advised that he or she may be responsible for any additional amount above the insurer's estimate.

(4) If the insurer prepares the estimate, failure of the insurer to provide a list of repair facilities within the claimant's principally garaged area that will complete the vehicle repairs for the estimated cost of the insurer prepared estimate, upon request of the claimant.

(5) Failure of the insurer to consider any additional loss related damage the repair facility discovers during the repairs to the loss vehicle.

(6) Failure of the insurer to limit deductions for betterment and depreciation to parts normally subject to repair and replacement during the useful life of the loss vehicle. Deductions for betterment and depreciation are limited to the lesser of:

(a) An increase in the actual cash value of the loss vehicle caused by the replacement of the part; or

(b) An amount equal to the value of the expired life of the part to be repaired or replaced when compared to the normal useful life of that part.

(7) If provided for by the terms of the applicable insurance policy, and if the insurer elects to exercise its right to repair the loss vehicle at a specific repair facility, failure of the insurer to prepare or accept an estimate that will restore the loss vehicle to its condition prior to the loss at no additional cost to the first party claimant other than as stated in the applicable policy of insurance.

(8) If liability and damages are reasonably clear, recommending that claimants make a claim under their own collision coverage solely to avoid paying claims under the liability insurance policy.

[Statutory Authority: RCW 48.02.060, 48.30.010. 03-14-092 (Matter No. R 2002-06), § 284-30-390, filed 6/30/03, effective 10/1/03. Statutory Authority: RCW 48.02.060, 48.44.050 and 48.46.200. 87-09-071 (Order R 87-5), § 284-30-390, filed 4/21/87. Statutory Authority: RCW 48.02.060 (3)(a). 85-02-019 (Order R 84-8), § 284-30-390, filed 12/27/84. Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-390, filed 7/27/78, effective 9/1/78.]

NEW SECTION

WAC 284-30-391 Methods and standards of practice for settlement of total loss vehicle claims. Unless an agreed value is reached, the insurer must adjust and settle vehicle total losses using the methods set forth in subsections (1) through (3) of this section. Subsections (4) through (6) of this section establish standards of practice for the settlement of total loss vehicle claims. If an agreed value or methodology is reached between the claimant and the insurer using an evaluation that varies from the methods described in subsections (1) through (3) of this section, the agreement must be documented in the claim file. The insurer must take reasonable steps to ensure that the agreed value is accurate and representative of the actual cash value of a comparable motor vehicle in the principally garaged area.

(1) Replacing the loss vehicle: The insurer may settle a total loss claim by offering to replace the loss vehicle with a comparable motor vehicle that is available for inspection within a reasonable distance from where the loss vehicle is principally garaged.

(2) Cash settlement: The insurer may settle a total loss claim by offering a cash settlement based on the actual cash value of a comparable motor vehicle, less any applicable deductible provided for in the policy.

(a) Only a vehicle identified as a comparable motor vehicle may be used to determine the actual cash value.

(b) The insurer must determine the actual cash value of the loss vehicle by using any one or more of the following methods:

(i) Comparable motor vehicle: The actual cash value of a comparable motor vehicle based on current data obtained in the area where the loss vehicle is principally garaged.

(ii) Licensed dealer quotes: Quotations for the cost of a comparable motor vehicle obtained from two or more licensed dealers within a reasonable distance of the principally garaged area not to exceed one hundred fifty miles (except where there are no licensed dealers having comparable motor vehicles within one hundred fifty miles).

(iii) Advertised data comparison: The actual cash value of two or more comparable motor vehicles advertised for sale in the local media if the advertisements meet the definition of current data as defined in WAC 284-30-320(4). The vehicles must be located within a reasonable distance of the principally garaged area not to exceed one hundred fifty miles.

(iv) Computerized source: The insurer may use a computerized source to establish a statistically valid actual cash value of the loss vehicle. The source used must meet all of the following criteria:

(A) The source's data base must produce values for at least eighty-five percent of all makes and models for a minimum of fifteen years taking into account the values of all major options for such motor vehicles.

(B) The source must produce actual cash values based on current data within a reasonable distance of the principally garaged area, not to exceed one hundred fifty miles.

(C) The source must rely upon the actual cash value of comparable motor vehicles that are currently available or were available in the market place within ninety days prior to or after the date of loss.

(D) The source must provide a list of comparable motor vehicles used to determine the actual cash value. If more than thirty comparable motor vehicles are located, the insurer need list only thirty but may list more.

(v) Cash settlement search area: If none of the methods in subsection (2)(b)(i) through (iv) of this section produce a comparable motor vehicle to establish an actual cash value within the principally garaged area, the search area may be expanded in increasing circles of twenty-five mile increments, up to one hundred and fifty miles, until two or more comparable motor vehicles are located. If no comparable motor vehicles can be located within one hundred fifty miles, the search area may be expanded with the agreement of the first party claimant.

(3) Appraisal: If the first party claimant and the insurer fail to agree on the actual cash value of the loss vehicle and the insurance policy has an appraisal provision, either the insurer or the first party claimant may invoke the appraisal provision of the policy to resolve disputes concerning the actual cash value.

(4) Settlement requirements: When settling a total loss vehicle claim using methods in subsections (1) through (3) of this section, the insurer must:

(a) Communicate its settlement offer to the claimant by phone or in writing and information about this communication must be documented in the claim file, including the date, time, and name of the person to whom the offer was made.

(b) Base all offers on itemized and verifiable dollar amounts for vehicles that are currently available, or were available within ninety days of the date of loss, using appropriate deductions or additions for options, mileage or condition when determining comparability.

(c) Consider relevant information supplied by the claimant when determining appropriate deductions or additions.

(d) Provide a true and accurate copy of any "valuation report," as described in WAC 284-30-392, if requested.

(e) As part of the settlement amount, include all applicable government taxes and fees that would have been incurred by the claimant if the claimant had purchased the loss vehicle immediately prior to the loss. These taxes and fees must be included in the settlement amount whether or not the claimant retains or subsequently transfers ownership of the loss vehicle.

(5) Settlement adjustments: Insurers may adjust a total loss settlement through the following methods only:

(a) The insurer may deduct from a first party claim the amount of another claim payment (including the applicable deductible) previously made to an insured for prior unrepaired damage to the same vehicle.

(b) Deductions other than those made pursuant to (a) of this subsection may be made for other unrepaired damage as long as the amount of deduction is no greater than the decrease in actual cash value due to prior damage.

(c) If the claimant retains the total loss vehicle, the insurer may deduct the salvage value from the settlement amount, as used in subsection (4)(e) of this section. Upon a request by the claimant, the insurer must provide the name and address of a salvage entity or dismantler who will purchase the salvage for the amount deducted with no additional charge. This purchase option must remain available for at least thirty days after the settlement agreement is reached but the claimant must be advised that the salvage entity may not honor its offer if the condition of the salvage has changed.

(d) Any additions or deductions from the actual cash value must be explained to the claimant and must be itemized showing specific dollar amounts.

(6) Reopening a claim file:

(a) The insurer must reopen the claim file if within the first thirty-five days after the date final payment is sent to the first party claimant, lienholder, or both, the claimant is not able to purchase a comparable motor vehicle for the agreed amount but was able to locate, but did not purchase a comparable motor vehicle that costs more than the agreed settlement amount.

(b) If the claimant has satisfied (a) of this subsection, and if the appraisal section of the policy has not been utilized, the insurer must do one of the following:

(i) Locate a comparable motor vehicle that is currently available for the agreed settlement amount;

(ii) Pay the claimant the difference between the agreed settlement amount and the cost of the comparable motor vehicle;

(iii) Purchase the comparable motor vehicle for the claimant; or

(iv) Conclude the loss settlement in the manner provided in the appraisal section of the insurance policy in force at the time of the loss.

(c) The insurer is not required to reopen the claim file if:

(i) The claimant received written notification of the location of a specific comparable motor vehicle available for purchase for the agreed settlement amount and the claimant did not purchase this vehicle within five business days after the date final payment is sent to the claimant, lienholder, or both; or

(ii) The appraisal provision was previously exercised.

□

NEW SECTION

WAC 284-30-392 Information that must be included in the insurer's total loss vehicle valuation report.

The insurer's total loss vehicle valuation report must include:

(1) All information collected during the initial inspection assessing the condition, equipment, and mileage of the loss vehicle;

(2) All information the insurer used to determine the actual cash value of the loss vehicle;

(3) A list of the comparable motor vehicles used by the insurer to arrive at the actual cash value. This list must include:

- (a) The source of the information used;
- (b) The date of the information;
- (c) Contact information for the seller, the comparable motor vehicle's vehicle identification number, or both;
- (d) The seller's asking price;
- (e) The sold price, if available; and
- (f) The location or contact information for each comparable motor vehicle at the time of the valuation.

(4) When the insurer uses a computerized source for determining statistically valid actual cash values meeting the requirements of WAC 284-30-391 (2)(b)(iv):

- (a) The source must provide a list of comparable motor vehicles used to determine the actual cash value. If more than thirty comparable motor vehicles are used, only thirty must be listed.
- (b) Any supplemental information must be clearly identified with a separate heading.
- (c) Any weighting of identified vehicles to arrive at an average must be documented and explained.

□

NEW SECTION

WAC 284-30-393 Insurer must include an insured's deductible in its subrogation demands. The insurer must include the insured's deductible, if any, in its subrogation demands. Subrogation recoveries must be shared on a proportionate basis with the insured, unless the deductible amount has been otherwise recovered. Deductions for expenses must not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be made only as a pro rata share of the allocated loss adjustment expense. The insurer must keep its insured regularly informed of its efforts related to the progress of subrogation claims. "Regularly informed" means that the insurer must contact its insured within sixty days after the start of the subrogation process, and no less frequently than every one hundred eighty days until the insured's interest is resolved.

□

NEW SECTION

WAC 284-30-394 Denial of storage and towing costs. Prior to denying storage and towing costs, the insurer must do all of the following:

- (1) Advise the first party claimant by phone or in writing before it stops payment for storage of the loss vehicle. This communication must be documented in the claim file. If it is a phone call, the documentation must include the date, time, name of the person contacted and a summary of the conversation;
- (2) Before stopping payment for storage, provide reasonable time for the claimant to move the loss vehicle. Five calendar days is considered reasonable time unless the claimant agrees to a shorter time period;
- (3) Pay any and all reasonable towing charges unless otherwise provided in the applicable insurance policy.

□

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-400 Enforcement. Violations of the standards ((imposed by WAC 284-30-330 through 284-30-390 shall be)) for unfair claims settlement practices in this regulation are subject to the enforcement provisions set forth in RCW 48.30.010 and ((shall)) also constitute a failure to comply with a regulation pursuant to RCW 48.05.140(1).

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-400, filed 7/27/78, effective 9/1/78.]

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WSR 09-11-129

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-08 -- Filed May 20, 2009, 11:28 a.m. , effective August 21, 2009]

Effective Date of Rule: August 21, 2009.

Purpose: These rules clarify and recodify numerous sections of chapter 284-30 WAC related to unfair practices in the settlement of insurance claims. The amendments do not make substantive changes to these rules; the amendments and new sections refine or clarify current rules.

NOTE: These rules are not intended and do not create any new unfair settlement or trade practice rules subject to the Insurance Fair Conduct Act (RCW 48.30.015).

Citation of Existing Rules Affected by this Order: Repealing WAC 284-30-3901, 284-30-3902, 284-30-3903, 284-30-3904, 284-30-3905, 284-30-3906, 284-30-3907, 284-30-3908, 284-30-3909, 284-30-3910, 284-30-3911, 284-30-3912, 284-30-3913, 284-30-3914, 284-30-3915, 284-30-3916 and 284-30-410; and amending WAC 284-30-300, 284-30-310, 284-30-320, 284-30-330, 284-30-340, 284-30-360, 284-30-370, 284-30-380, 284-30-390, and 284-30-400.

Statutory Authority for Adoption: RCW 48.02.060 and 48.30.010.

Adopted under notice filed as WSR 09-03-106 on January 21, 2009.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made based on public comment:

- Amended the definition of "comparable motor vehicle" in WAC 284-30-320(3).
- WAC 284-30-390(5) was amended to include: "If requested by the claimant and."
- WAC 284-30-393 was amended to include: "must be allocated first to the insured for any deductible(s) incurred in the loss."

A final cost-benefit analysis is available by contacting Chris Carlson, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7042, fax (360) 586-3109, e-mail ChrisCA@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 10, Repealed 17.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 10, Repealed 17.

Date Adopted: Mary [May] 20, 2009.

Mike Kreidler

Insurance Commissioner

OTS-1158.7

THE UNFAIR CLAIMS SETTLEMENT PRACTICES REGULATION AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-300 Authority and purpose. RCW 48.30.010 authorizes the commissioner to define methods of competition and acts and practices in the conduct of the business of insurance which are unfair or deceptive. The purpose of this regulation, WAC 284-30-300 through ~~((284-30-410))~~ 284-30-400, is to define certain minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claims settlement practices. This regulation may be cited and referred to as the unfair claims settlement practices regulation.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-300, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-310 Scope of this regulation. This regulation applies to all insurers and to all insurance policies and insurance contracts. This regulation is not exclusive, and acts performed, whether or not specified herein, may also be deemed to be violations of specific provisions of the insurance code or other regulations.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-310, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-320 Definitions. When used in this regulation, WAC 284-30-300 through 284-30-400:

(1) ~~(("Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim;))~~ "Actual cash value" means the fair market value of the loss vehicle immediately prior to the loss.

(2) "Claimant" means, depending upon the circumstance, either a first party claimant, a third party claimant, or both and includes ~~((such))~~ a claimant's designated legal representative and ~~((includes))~~ a member of the claimant's immediate family designated by the claimant~~((;))~~.

(3) "Comparable motor vehicle" means a vehicle that is the same make and model, of the same or newer model year, similar body style, with similar options and mileage as the loss vehicle and in similar overall condition, as established by current data. To achieve comparability, deductions or additions for options, mileage or condition may be made if they are itemized and appropriate in dollar amount.

(4) "Current data" means data within ninety days prior to or after the date of loss.

(5) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(6) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right as a covered person to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by ~~((such))~~ a policy or contract~~((;))~~.

~~((4))~~ (7) "Insurance policy" or "insurance contract" mean any contract of insurance, indemnity, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer~~((;))~~.

~~((5))~~ (8) "Insurer" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal mutual insurer, fraternal mutual life insurer, and any other legal entity engaged in the business of insurance, authorized or licensed to issue or who issues any insurance policy or insurance contract in this state. "Insurer" does not include health care service contractors, as defined in RCW 48.44.010, and health maintenance organizations, as defined in RCW 48.46.020~~((;))~~.

~~((6))~~ (9) "Investigation" means all activities of ~~((an))~~ the insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract~~((;))~~.

~~((7))~~ (10) "Loss vehicle" means the damaged motor vehicle or a motor vehicle that the insurer determines is a "total loss."

(11) "Motor vehicle" means any vehicle subject to registration under chapter 46.16 RCW.

(12) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to ~~((an))~~ the insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim~~((; and))~~.

~~((8))~~ (13) "Principally garaged area" means the place where the loss vehicle is normally kept, consistent with the applicable policy of insurance.

(14) "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of ~~((an))~~ the insurer.

(15) "Total loss" means that the insurer has determined that the cost of parts and labor, plus the salvage value, meets or exceeds, or is likely to meet or exceed, the "actual cash value" of the loss vehicle. Other factors may be considered in reaching the total loss determination, such as the existence of a biohazard or a death in the vehicle resulting from the loss.

(16) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-320, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 87-5, filed 4/21/87)

WAC 284-30-330 Specific unfair claims settlement practices defined. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:

- (1) Misrepresenting pertinent facts or insurance policy provisions.
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (4) Refusing to pay claims without conducting a reasonable investigation.

(5) Failing to affirm or deny coverage of claims within a reasonable time after fully completed proof of loss ~~((statements have))~~ documentation has been ~~((completed))~~ submitted.

(6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. In particular, this includes an obligation to ~~((effectuate prompt payment of))~~ promptly pay property damage claims to innocent third parties in clear liability situations. If two or more insurers ~~((are involved))~~ share liability, they should arrange to make ~~((such))~~ appropriate payment, leaving to themselves the burden of apportioning ~~((it))~~ liability.

(7) Compelling ~~((insureds))~~ a first party claimant to ~~((institute))~~ initiate or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings.

(8) Attempting to settle a claim for less than the amount to which a reasonable ~~((man))~~ person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

(9) Making a claim~~((s))~~ payment~~((s))~~ to ~~((insureds))~~ a first party claimant or ~~((beneficiaries))~~ beneficiary not accompanied by a statement setting forth the coverage under which the payment~~((s are being))~~ is made.

(10) Asserting to ~~((insureds or))~~ a first party claimant~~((s))~~ a policy of appealing ~~((from))~~ arbitration awards in favor of insureds or first party claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring ~~((an insured,))~~ a first party claimant~~((;))~~ or ~~((the))~~ his or her physician ~~((of either))~~ to submit a preliminary claim report and then requiring subsequent submissions which contain substantially the same information.

(12) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(14) Unfairly discriminating against claimants because they are represented by a public adjuster.

(15) ~~((Failure))~~ Failing to expeditiously honor drafts given in settlement of claims. A failure to honor a draft within three working days ~~((of))~~ after notice of receipt by the payor bank will constitute a violation of this provision. Dishonor of ~~((any such))~~ a draft for valid reasons related to the settlement of the claim will not constitute a violation of this provision.

(16) ~~((Failure))~~ Failing to adopt and implement reasonable standards for the processing and payment of claims ~~((once))~~ after the obligation to pay has been established. Except as to those instances where the time for payment is governed by statute or rule or is set forth in an applicable contract, procedures which are not designed to deliver a check or draft to the payee in payment of a settled claim within fifteen business days after receipt by the insurer or its attorney of properly executed releases or other settlement documents are not acceptable. Where the insurer is obligated to furnish an appropriate release or settlement document to ~~((an insured or))~~ a claimant, it ~~((shall))~~ must do so within twenty working days after a settlement has been reached.

(17) Delaying appraisals or adding to their cost under insurance policy appraisal provisions through the use of appraisers from outside of the loss area. The use of appraisers from outside the loss area is appropriate only where the unique nature of the loss or a lack of competent local appraisers make the use of out-of-area appraisers necessary.

(18) Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal.

(19) Negotiating or settling a claim directly with any claimant known to be represented by an attorney without the attorney's knowledge and consent. This does not prohibit routine inquiries to ~~((an insured))~~ a first party claimant to identify the claimant or to obtain details concerning the claim.

[Statutory Authority: RCW 48.02.060, 48.44.050 and 48.46.200. 87-09-071 (Order R 87-5), § 284-30-330, filed 4/21/87. Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-330, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-340 File and record documentation. The insurer's claim files ~~((shall be))~~ are subject to examination by the commissioner or by ~~((his))~~ duly appointed designees. ~~((Such))~~ The files ~~((shall))~~ must contain all notes and work papers pertaining to the claim in ~~((such))~~ enough detail that pertinent events and ~~((the))~~ dates of ~~((such))~~ the events can be reconstructed.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-340, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-360 ~~((Failure)) Standards for the insurer to acknowledge pertinent communications.~~ (1) ~~((Every insurer, upon))~~ Within ten working days after receiving notification of a claim ~~((shall, within ten working days))~~ under an individual insurance policy, or within fifteen working days with respect to claims arising under group insurance contracts, the insurer must acknowledge ~~((the))~~ its receipt of ~~((such))~~ the notice ~~((unless))~~ of claim.

(a) If payment is made within ~~((such))~~ that period of time, acknowledgement by payment constitutes a satisfactory response.

(b) If an acknowledgement is made by means other than writing, an appropriate notation of ~~((such))~~ the acknowledgement ~~((shall))~~ must be made in the claim file of the insurer ~~((and dated))~~ describing how, when, and to whom the notice was made.

(c) Notification given to an agent of ~~((an))~~ the insurer ~~((shall be))~~ is notification to the insurer.

(2) ~~((Every insurer,))~~ Upon receipt of any inquiry from the ~~((office of the insurance))~~ commissioner ~~((respecting a claim shall, within fifteen working days of receipt of such inquiry,))~~ concerning a complaint, every insurer must furnish the ~~((department))~~ commissioner with an adequate response to the inquiry within fifteen working days after receipt of the commissioner's inquiry.

(3) For all other pertinent communications from a claimant reasonably suggesting that a response is expected, an appropriate reply ~~((shall))~~ must be ~~((made))~~ provided within ten working days for individual insurance policies, or fifteen working days with respect to communications arising under group insurance contracts ~~((, or on all other pertinent communications from a claimant which reasonably suggest that a response is expected))~~.

(4) ~~((Every insurer,))~~ Upon receiving notification of a claim, ~~((shall))~~ every insurer must promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within the time limits specified in subsection (1) of this section ~~((shall))~~ constitutes compliance with that subsection.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-360, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-370 Standards for prompt investigation of a claim((s)). Every insurer ~~((shall))~~ must complete its investigation of a claim within thirty days after notification of claim, unless ~~((such))~~ the investigation cannot reasonably be completed within ~~((such))~~ that time. All persons involved in the investigation of a claim ~~((shall))~~ must provide reasonable assistance to the insurer in order to facilitate compliance with this provision.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-370, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-380 ~~Settlement standards ((for prompt, fair and equitable settlements))~~ applicable to all insurers. (1) Within fifteen working days after receipt by the insurer of ~~((properly))~~ fully completed and executed proofs of loss, the insurer must notify the first party claimant ~~((shall be advised of the acceptance or denial of the claim by the insurer))~~ whether the claim has been accepted or denied. ~~((No))~~ The insurer ((shall)) must not deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to ~~((such))~~ the specific provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer ~~((shall))~~ must contain a copy of the denial.

(2) If a claim is denied for reasons other than those described in subsection (1) and is made by any other means than in writing, an appropriate notation ~~((shall))~~ must be made in the claim file of the insurer describing how, when, and to whom the notice was made.

(3) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it ~~((shall so))~~ must notify the first party claimant within fifteen working days after receipt of the proofs of loss giving the reasons more time is needed. If after that time the investigation remains incomplete, the insurer ~~((shall;))~~ must notify the first party claimant in writing stating the reason or reasons additional time is needed for investigation. This notification must be sent within forty-five days ~~((from))~~ after the date of the initial notification and ~~((no later than)),~~ if needed, additional notice must be provided every thirty days ~~((thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation))~~ after that date explaining why the claim remains unresolved.

(4) Insurers ~~((shall))~~ must not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(5) Insurers ~~((shall))~~ must not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. ~~((Such))~~ This notice ~~((shall))~~ must be given to first party claimants thirty days and to third party claimants sixty days before the date on which ~~((such))~~ any time limit may expire.

(6) ~~((No))~~ The insurer ~~((shall))~~ must not make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a ~~((given))~~ specified period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(7) Insurers are responsible for the accuracy of evaluations to determine actual cash value.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-380, filed 7/27/78, effective 9/1/78.]

AMENDATORY SECTION(Amending Matter No. R 2002-06, filed 6/30/03, effective 10/1/03)

WAC 284-30-390 ~~((Regulation of settlements of insurance claims relating to vehicles;))~~ Acts or practices

considered unfair in the settlement of motor vehicle claims. ((~~WAC 284-30-390 through 284-30-3916 are the standards for prompt, fair, and equitable settlements for insurance claims relating to vehicles.~~)) In addition to the unfair claims settlement practices specified in this regulation, the following acts or practices of the insurer are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, specifically applicable to the settlement of motor vehicle claims:

___ (1) Failing to make a good faith effort to communicate with the repair facility chosen by the claimant.

___ (2) Arbitrarily denying a claimant's estimate for repairs.

___ (a) A denial of the claimant's estimate for repairs to be completed at the chosen repair facility based solely on the repair facility's hourly rate is considered arbitrary if the rate does not result in a higher overall cost of repairs.

___ (b) If the insurer pays less than the amount of the estimate from the claimant's chosen repair facility, the insurer must fully disclose the reason or reasons it paid less than the claimant's estimate, and must thoroughly document the circumstances in its claim file.

___ (3) Requiring the claimant to travel unreasonably to:

___ (a) Obtain a repair estimate;

___ (b) Have the loss vehicle repaired at a specific repair facility; or

___ (c) Obtain a temporary rental or loaner vehicle.

___ (4) Failing to prepare or accept an estimate provided by the claimant that will restore the loss vehicle to its condition prior to the loss.

___ (a) If the insurer prepares the estimate, it must provide a copy of the estimate to the claimant.

___ (b) If a claimant provides the estimate and the insurer, after evaluation of the claimant's estimate, determines it owes an amount that differs from the estimate the claimant provided, the insurer must fully disclose the reason or reasons for the difference to the claimant, and must thoroughly document the circumstances in the claim file.

___ (c) If the claimant chooses to take the loss vehicle to a repair facility where the overall cost to restore the loss vehicle to its condition prior to the loss exceeds the insurer's estimate, the claimant must be advised that he or she may be responsible for any additional amount above the insurer's estimate.

___ (5) If requested by the claimant and if the insurer prepares the estimate, failing to provide a list of repair facilities within a reasonable distance of the claimant's principally garaged area that will complete the vehicle repairs for the estimated cost of the insurer prepared estimate.

___ (6) Failing to consider any additional loss related damage the repair facility discovers during the repairs to the loss vehicle.

___ (7) Failing to limit deductions for betterment and depreciation to parts normally subject to repair and replacement during the useful life of the loss vehicle. Deductions for betterment and depreciation are limited to the lesser of:

___ (a) An increase in the actual cash value of the loss vehicle caused by the replacement of the part; or

___ (b) An amount equal to the value of the expired life of the part to be repaired or replaced when compared to the normal useful life of that part.

___ (8) If provided for by the terms of the applicable insurance policy, and if the insurer elects to exercise its right to repair the loss vehicle at a specific repair facility, failing to prepare or accept an estimate that will restore the

loss vehicle to its condition prior to the loss at no additional cost to the first party claimant other than as stated in the applicable policy of insurance.

(9) If liability and damages are reasonably clear, recommending that claimants make a claim under their own collision coverage solely to avoid paying claims under the liability insurance policy.

[Statutory Authority: RCW 48.02.060, 48.30.010. 03-14-092 (Matter No. R 2002-06), § 284-30-390, filed 6/30/03, effective 10/1/03. Statutory Authority: RCW 48.02.060, 48.44.050 and 48.46.200. 87-09-071 (Order R 87-5), § 284-30-390, filed 4/21/87. Statutory Authority: RCW 48.02.060 (3)(a). 85-02-019 (Order R 84-8), § 284-30-390, filed 12/27/84. Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-390, filed 7/27/78, effective 9/1/78.]

NEW SECTION

WAC 284-30-391 Methods and standards of practice for settlement of total loss vehicle claims. Unless an agreed value is reached, the insurer must adjust and settle vehicle total losses using the methods set forth in subsections (1) through (3) of this section. Subsections (4) through (6) of this section establish standards of practice for the settlement of total loss vehicle claims. If an agreed value or methodology is reached between the claimant and the insurer using an evaluation that varies from the methods described in subsections (1) through (3) of this section, the agreement must be documented in the claim file. The insurer must take reasonable steps to ensure that the agreed value is accurate and representative of the actual cash value of a comparable motor vehicle in the principally garaged area.

(1) Replacing the loss vehicle: The insurer may settle a total loss claim by offering to replace the loss vehicle with a comparable motor vehicle that is available for inspection within a reasonable distance from where the loss vehicle is principally garaged.

(2) Cash settlement: The insurer may settle a total loss claim by offering a cash settlement based on the actual cash value of a comparable motor vehicle, less any applicable deductible provided for in the policy.

(a) Only a vehicle identified as a comparable motor vehicle may be used to determine the actual cash value.

(b) The insurer must determine the actual cash value of the loss vehicle by using any one or more of the following methods:

(i) Comparable motor vehicle: The actual cash value of a comparable motor vehicle based on current data obtained in the area where the loss vehicle is principally garaged.

(ii) Licensed dealer quotes: Quotations for the cost of a comparable motor vehicle obtained from two or more licensed dealers within a reasonable distance of the principally garaged area not to exceed one hundred fifty miles (except where there are no licensed dealers having comparable motor vehicles within one hundred fifty miles).

(iii) Advertised data comparison: The actual cash value of two or more comparable motor vehicles advertised for sale in the local media if the advertisements meet the definition of current data as defined in WAC 284-30-320(4). The vehicles must be located within a reasonable distance of the principally garaged area not to exceed one hundred fifty miles.

(iv) Computerized source: The insurer may use a computerized source to establish a statistically valid actual cash value of the loss vehicle. The source used must meet all of the following criteria:

(A) The source's data base must produce values for at least eighty-five percent of all makes and models for a minimum of fifteen years taking into account the values of all major options for such motor vehicles.

(B) The source must produce actual cash values based on current data within a reasonable distance of the principally garaged area, not to exceed one hundred fifty miles.

(C) The source must rely upon the actual cash value of comparable motor vehicles that are currently available or were available in the market place within ninety days prior to or after the date of loss.

(D) The source must provide a list of comparable motor vehicles used to determine the actual cash value. If more than thirty comparable motor vehicles are located, the insurer need list only thirty but may list more.

(v) Cash settlement search area: If none of the methods in subsection (2)(b)(i) through (iv) of this section produce a comparable motor vehicle to establish an actual cash value within a reasonable distance of the principally garaged area, the search area may be expanded in increasing circles of twenty-five mile increments, up to one hundred and fifty miles, until two or more comparable motor vehicles are located. If no comparable motor vehicles can be located within one hundred fifty miles, the search area may be expanded with the agreement of the first party claimant.

(3) Appraisal: If the first party claimant and the insurer fail to agree on the actual cash value of the loss vehicle and the insurance policy has an appraisal provision, either the insurer or the first party claimant may invoke the appraisal provision of the policy to resolve disputes concerning the actual cash value.

(4) Settlement requirements: When settling a total loss vehicle claim using methods in subsections (1) through (3) of this section, the insurer must:

(a) Communicate its settlement offer to the claimant by phone or in writing and information about this communication must be documented in the claim file, including the date, time, and name of the person to whom the offer was made.

(b) Base all offers on itemized and verifiable dollar amounts for vehicles that are currently available, or were available within ninety days of the date of loss, using appropriate deductions or additions for options, mileage or condition when determining comparability.

(c) Consider relevant information supplied by the claimant when determining appropriate deductions or additions.

(d) Provide a true and accurate copy of any "valuation report," as described in WAC 284-30-392, if requested.

(e) As part of the settlement amount, include all applicable government taxes and fees that would have been incurred by the claimant if the claimant had purchased the loss vehicle immediately prior to the loss. These taxes and fees must be included in the settlement amount whether or not the claimant retains or subsequently transfers ownership of the loss vehicle.

(5) Settlement adjustments: Insurers may adjust a total loss settlement through the following methods only:

(a) The insurer may deduct from a first party claim the amount of another claim payment (including the applicable deductible) previously made to an insured for prior unrepaired damage to the same vehicle.

(b) Deductions other than those made pursuant to (a) of this subsection may be made for other unrepaired damage as long as the amount of deduction is no greater than the decrease in the actual cash value due to prior damage.

(c) If the claimant retains the total loss vehicle, the insurer may deduct the salvage value from the settlement amount, as described in subsection (4)(e) of this section. Upon a request by the claimant, the insurer must provide the name and address of a salvage entity or dismantler who will purchase the salvage for the amount deducted with no additional charge. This purchase option must remain available for at least thirty days after the settlement agreement is reached and the claimant must be advised that the salvage entity may not honor its offer if the condition of the salvage has changed.

(d) Any additions or deductions from the actual cash value must be explained to the claimant and must be itemized showing specific dollar amounts.

(6) Reopening a claim file:

(a) The insurer must reopen the claim file if within the first thirty-five days after the date final payment is sent to the first party claimant, lienholder, or both, the claimant is not able to purchase a comparable motor vehicle for the agreed amount but was able to locate, but did not purchase a comparable motor vehicle that costs more than the agreed settlement amount.

(b) If the claimant has satisfied (a) of this subsection, and if the appraisal section of the policy has not been utilized, the insurer must do one of the following:

(i) Locate a comparable motor vehicle that is currently available for the agreed settlement amount;

(ii) Pay the claimant the difference between the agreed settlement amount and the cost of the comparable motor vehicle;

(iii) Purchase the comparable motor vehicle for the claimant; or

(iv) Conclude the loss settlement in the manner provided in the appraisal section of the insurance policy in force at the time of the loss.

(c) The insurer is not required to reopen the claim file if:

(i) The claimant received written notification of the location of a specific comparable motor vehicle available for purchase for the agreed settlement amount and the claimant did not purchase this vehicle within five business days after the date final payment is sent to the claimant, lienholder, or both; or

(ii) The appraisal provision was previously exercised.

□

NEW SECTION**WAC 284-30-392 Information that must be included in the insurer's total loss vehicle valuation report.**

The insurer's total loss vehicle valuation report must include:

(1) All information collected during the initial inspection assessing the condition, equipment, and mileage of the loss vehicle;

(2) All information the insurer used to determine the actual cash value of the loss vehicle;

(3) A list of the comparable motor vehicles used by the insurer to arrive at the actual cash value. This list must include:

(a) The source of the information used;

(b) The date of the information;

(c) The contact information for the seller, the comparable motor vehicle's vehicle identification number, or both;

(d) The seller's asking price;

(e) The sold price, if available; and

(f) The location or contact information for each comparable motor vehicle at the time of the valuation.

(4) When the insurer uses a computerized source for determining statistically valid actual cash values after meeting the requirements of WAC 284-30-391 (2)(b)(iv):

(a) The source must provide a list of comparable motor vehicles used to determine the actual cash value. If more than thirty comparable motor vehicles are used, only thirty must be listed.

(b) Any supplemental information must be clearly identified with a separate heading.

(c) Any weighting of identified vehicles to arrive at an average must be documented and explained.

□

NEW SECTION

WAC 284-30-393 Insurer must include an insured's deductible in its subrogation demands. The insurer must include the insured's deductible, if any, in its subrogation demands. Subrogation recoveries must be allocated first to the insured for any deductible(s) incurred in the loss. Deductions for expenses must not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be made only as a pro rata share of the allocated loss adjustment expense. The insurer must keep its insured regularly informed of its efforts related to the progress of subrogation claims. "Regularly informed" means that the insurer must contact its insured within sixty days after the start of the subrogation process, and no less frequently than every one hundred eighty days until the insured's interest is resolved.

□

NEW SECTION

WAC 284-30-394 Denial of storage and towing costs. Prior to denying storage and towing costs, the insurer must do all of the following:

(1) Advise the first party claimant by phone or in writing before it stops payment for storage of the loss vehicle. This communication must be documented in the claim file. If it is a phone call, the documentation must include the date, time, name of the person contacted and a summary of the conversation;

(2) Provide reasonable time for the claimant to move the loss vehicle before stopping payment for storage. Five calendar days is considered reasonable time unless the claimant agrees to a shorter time period;

(3) Pay any and all reasonable towing charges unless otherwise provided in the applicable insurance policy.

□

AMENDATORY SECTION(Amending Order R 78-3, filed 7/27/78, effective 9/1/78)

WAC 284-30-400 Enforcement. Violations of the standards ((imposed by WAC 284-30-330 through 284-30-390 shall be)) for unfair claims settlement practices in this regulation are subject to the enforcement provisions set forth in RCW 48.30.010 and ((shall)) also constitute a failure to comply with a regulation pursuant to RCW 48.05.140(1).

[Statutory Authority: RCW 48.02.060 and 48.30.010. 78-08-082 (Order R 78-3), § 284-30-400, filed 7/27/78, effective 9/1/78.]

OTS-1153.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC

284-30-3901 Definitions for settlement of vehicle claims.

WAC

284-30-3902 When my vehicle is repairable, what can I expect from the insurer?

WAC

284-30-3903 Can I get my vehicle repaired at a shop of my choice?

WAC

284-30-3904 Will my insurer pursue collection of my deductible?

WAC

284-30-3905 If my insurer collects my deductible back, will I recover the full amount of my deductible?

WAC

284-30-3906 If another party is responsible for my vehicle damage, can that party's insurer refuse to settle my vehicle damage and force me to use my own collision coverage?

WAC

284-30-3907 How can my insurer settle my vehicle total loss claim?

WAC

284-30-3908 Are there factors that may adjust my settlement?

WAC

284-30-3909 If my vehicle is determined to be a total loss, can I keep it?

WAC

284-30-3910 Can the insurer move my vehicle prior to settlement of the claim?

WAC

284-30-3911 What information must be included in the insurer's valuation report?

WAC

284-30-3912 What if I, as an insured, accept the settlement based on my insurer's valuation and cannot find a comparable vehicle within a reasonable distance of my vehicle's principally garaged area?

WAC

284-30-3913 What must the insurer do prior to the denial of storage and towing costs?

WAC

284-30-3914 When I am dealing with someone else's insurer, what are my rights regarding a rental vehicle?

WAC

284-30-3915 What if the other person's insurer offers a flat rental amount per day, week, or month?

WAC

284-30-3916 In a total loss situation, what happens if I have a loan or lease on my vehicle and the outstanding balance exceeds the actual cash value of my vehicle?

WAC

Effective date.

284-30-
410

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Appendix 3

WSR 10-23-050**PREPROPOSAL STATEMENT OF INQUIRY****OFFICE OF****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2010-15 -- Filed November 10, 2010, 2:31 p.m.]

Subject of Possible Rule Making: WAC 284-30-393 Regarding how an insurer handles subrogation.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.02.060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The commissioner will evaluate the clarity of the current WAC 284-30-393, and whether amendment is necessary to provide additional guidance to insurers and insureds about the requirements associated with subrogation demands.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Submit written comments by December 22, 2010, to Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, kacys@oic.wa.gov.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Scott, (360) 725-7041, P.O. Box 40258, Olympia, WA 98504-0258, kacys@oic.wa.gov.

November 10, 2010

Mike Kreidler

Insurance Commissioner

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WSR 11-09-027

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-15 -- Filed April 14, 2011, 7:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-23-050.

Title of Rule and Other Identifying Information: WAC 284-30-393 Regarding how an insurer handles an insured's deductible in a subrogation recovery.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on May 24, 2011, at 1:00 p.m.

Date of Intended Adoption: June 6, 2011.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail kacys@oic.wa.gov, fax (360) 586-3109, by May 23, 2011.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by May 23, 2011, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed amendment will add clarity and improve the efficiency of claims handling in Washington for consumers and insurers.

Reasons Supporting Proposal: WAC 284-30-393 has been evaluated for clarity and the commissioner has determined that it is necessary to provide guidance about the requirements associated with subrogation demands.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.30.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0257 [98504-0258], (360) 725-7041; Implementation: John Hamje, P.O. Box 40258, Olympia, WA 98504-0257 [98504-0258], (360) 725-7262; and Enforcement: Carol Sureau, P.O. Box 40258, Olympia, WA 98504-0257 [98504-0258], (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule amendment would only affect regulations that apply to property and casualty insurers. None of the active domestic insurers in this line can be considered small businesses (both having less than fifty employees and being owned/operated independently).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

April 14, 2011

Mike Kreidler

Insurance Commissioner

OTS-3928.1

AMENDATORY SECTION(Amending Matter No. R 2007-08, filed 5/20/09, effective 8/21/09)

WAC 284-30-393 Insurer must include an insured's deductible in its subrogation demands. The insurer must include the insured's deductible, if any, in its subrogation demands. ((Subrogation)) Any recoveries must be allocated first to the insured for any deductible(s) incurred in the loss, less applicable comparable fault. Deductions for expenses must not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be made only as a pro rata share of the allocated loss adjustment expense. The insurer must keep its insured regularly informed of its efforts related to the progress of subrogation claims. "Regularly informed" means that the insurer must contact its insured within sixty days after the start of the subrogation process, and no less frequently than every one hundred eighty days until the insured's interest is resolved.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 09-11-129 (Matter No. R 2007-08), § 284-30-393, filed 5/20/09, effective 8/21/09.]

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WSR 11-13-029**PERMANENT RULES****OFFICE OF****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2010-15 -- Filed June 7, 2011, 2:02 p.m. , effective July 8, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This new rule provides clarity and improves the efficiency of claims handling in Washington for consumers and insurers.

Citation of Existing Rules Affected by this Order: Amending WAC 284-30-393.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 11-09-027 on April 14, 2011.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 7, 2011.

Mike Kreidler

Insurance Commissioner

OTS-3928.1

AMENDATORY SECTION(Amending Matter No. R 2007-08, filed 5/20/09, effective 8/21/09)

WAC 284-30-393 Insurer must include an insured's deductible in its subrogation demands. The insurer must include the insured's deductible, if any, in its subrogation demands. ((Subrogation)) Any recoveries must be allocated first to the insured for any deductible(s) incurred in the loss, less applicable comparable fault. Deductions for expenses must not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be made only as a pro rata share of the allocated loss adjustment

expense. The insurer must keep its insured regularly informed of its efforts related to the progress of subrogation claims. "Regularly informed" means that the insurer must contact its insured within sixty days after the start of the subrogation process, and no less frequently than every one hundred eighty days until the insured's interest is resolved.

[Statutory Authority: RCW 48.02.060 and 48.30.010. 09-11-129 (Matter No. R 2007-08), § 284-30-393, filed 5/20/09, effective 8/21/09.]

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CARNEY BADLEY SPELLMAN

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Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96185-9
Appellate Court Case Title: Lazuri Daniels v. State Farm Mutual Automobile Insurance Company
Superior Court Case Number: 16-2-08824-4

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