

STATE OF INDIANA)
) SS: BEFORE THE INDIANA
COUNTY OF MARION) COMMISSIONER OF INSURANCE
)
) WARRANT NUMBER: 11563-MC12-0831-007
)

IN THE MATTER OF:)
)
UNIQUE INSURANCE COMPANY)
4245 N. Knox)
Chicago, IL 60641)
)
NAIC Number: 10655)
)
Market Conduct Examination)
)
)

FILED

JAN 09 2015

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

This matter comes before Stephen W. Robertson, Commissioner of the Indiana Department of Insurance (the "Commissioner") as a result of his consideration and review of the Verified Examination Report prepared by Ingardus, LLC ("Ingardus"), relevant workpapers, and the submission provided by Unique Insurance Company in the above-captioned market conduct examination of Unique Insurance Company ("Unique" or the "Company") for the period of July 1, 2010, through August 31, 2012. The Commissioner now issues the following Findings of Fact, Conclusions of Law and Final Order.

FINDINGS OF FACT

1. Unique is an Illinois-domiciled property & casualty insurer with its principle place of business and home office located in Chicago, Illinois.
2. Unique was incorporated on March 21, 1996, began operating on April 4, 1996, and started writing business in Indiana in 2008 to drivers who have difficulty obtaining automobile coverage within the standard insurance market.



3. At all relevant times, Unique was licensed as a property & casualty company in Indiana.
4. From 2010 through 2012, the Company's Gross Indiana Premium Written was Eight Million Two Hundred Ninety Thousand Seven Hundred Sixty Dollars (\$8,290,760), according to its filed Annual Financial Statements.
5. From January 1, 2010, through December 31, 2012, the Indiana Department of Insurance (the "Department") received thirty eight (38) complaints regarding Unique. Unique's complaint index in 2010 was 19.34; in 2011 Unique's complaint index was 18.09; and in 2012 Unique's complaint index was 19.56.
6. A complaint index of 1.00 means the insurer's share of all complaints received is equal to its share of all business written in Indiana. A complaint index of 19.00 means the insurer's share of all the complaints received by the Department is nineteen (19) times as large as its share of business written in Indiana.
7. The Department's Consumer Services Division received and reviewed consumer complaints against Unique and its handling of claims and escalated those complaints to the Enforcement Division due to their apparent egregious practices.
8. The Enforcement Division entered into an Agreed Entry with Unique on September 28, 2011, to resolve violations of the Unfair Competition; Unfair or Deceptive Acts and Practices statute.
9. After the September 28, 2011 Agreed Entry, the Consumer Services Division *continued receiving* complaints from consumers regarding Unique's handling of claims; the Enforcement Division escalated the company action to the Market Conduct staff.

10. On October 3, 2012 the Commissioner issued an Examination Warrant and appointed Ingardus as examiner to perform a targeted market conduct examination (the "Examination") of Unique for the period of July 1, 2010, through August 31, 2012. The scope of the examination was limited to determining whether Unique:
- a. failed to properly process claims in violation of Indiana's Unfair Claims Settlement Practices Act found in Ind. Code § 27-4-1-4.5;
 - b. failed to adequately and timely respond to complaints in violation of Ind. Code § 27-4-1-5.6;
 - c. violated Indiana Code § 27-4-1-1 *et. seq.*; or
 - d. violated any other Indiana insurance laws.
11. On October 3, 2012, the Company was notified of the Examination.
12. The Examiner-in-Charge ("Examiner") of the market conduct examination has completed review of the Company's management and operations, complaint handling, and claims handling and the effect those had on consumers.
13. On September 12, 2014, the Department provided the Company with a draft examination report concerning the findings of the market conduct examination ("Examination"), and the Company was given an opportunity to comment thereon.
14. The Department engaged in discussions with the Company with respect to regulatory concerns raised by the Examination, the Company's submission and admissions to the draft report, continued violation of an Agreed Entry, and a substantial increase in complaints received by the Department while the Examination was underway.
15. During its examination, Ingardus reviewed, among other things, Unique's (i) procedures for investigating and handling claims, (ii) procedures and practices for

resolving claims, (iii) responses to complaints, and (iv) operations and business practices, procedures and documents. (Ex. A at pp. 8-9).

16. Pursuant to standard market conduct examination procedures, the Examiner reviewed a statistical sample of Unique's files. The examiners sampled:

- 24 complaint files;
- 71 claim files with no minimum claim payment or reserve amount; and
- 60 claim files with total claim payments and reserves each in excess of Two Thousand Dollars (\$2,000).

(Verified Report, pp. 8-9).

17. During the Examination, the Company's responses were often incomplete or untimely. (Verified Report, p. 9).

18. The examination "resulted in a total of 339 potential violations in which [Unique] may not have been fully compliant with Indiana insurance statutes, regulations, and rules or failed to follow specific written interpretation provided by the Indiana Department of Insurance in Bulletin 82." (Ex. A at p. 10).

19. Notably, Unique did not provide, after repeated requests, documentation demonstrating that adequate standards, processes, or other internal controls had been adopted and/or implemented to ensure the following:

- a. the prompt investigation of claims; (Ex. A at p. 18)
- b. the fair and equitable settlements of claims; (Ex. A at p. 23) or
- c. the timely communication with claimants and regulatory agencies; (Ex. A at pp. 24, 27, and 31).

20. During the course of the Examination the examiner issued follow up request documents called "Concerns" to the Company for clarification and/or correction of any investigative interpretation, finding or conclusion. (Ex. C)
21. The Company's response to every Concern failed to address the potential violations for the period covered by the Examination. (Ex A pp 16, 17, 20, 23 and 24)
22. The Company's response to various Concerns was that "new practices would be enforced" or "Unique maintains that [it] ha[s] adopted and implemented reasonable standards for the prompt investigation of claims" or "has removed the requirement for a Report of Accident and gives weight to all available sources of information in order to ensure proper, fair handling of every matter on its individual merits" or "the Company is now in position to effectuate settlements in those cases in which liability is reasonably clear" or " The Company will henceforth cite and quote specific policy language, and the reason for the denial". (Ex A pp 16, 17, 20, 23 and 24).
23. In its responses to the presented Concerns, the Company did not provide any documentation from which the Examiner could verify the accuracy of those statements.
24. The Company admitted that "Illinois Insurance Code was used for Indiana claims and investigation procedures. The Illinois Insurance Code does not require the Company to 'act reasonably promptly upon communications.' " (Ex A p15)
25. On November 6, 2014, Ingardus tendered a Verified Examination Report ("Report") to the Department. (Ex. A)
26. On November 12, 2014, the Report concerning the findings of the Examination was provided to the Company and the Company was given an opportunity to tender its written submission/rebuttal.

27. On December 11, 2014, Unique tendered its written submission or rebuttal to the Report and attached a November 14, 2013, letter previously submitted to the Department. (Exhibit B).
28. Findings of Fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action. Ind. Code §27-1-3.1-9.
29. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated as such.

CONCLUSIONS OF LAW

30. The Department is authorized to regulate the practice of insurance pursuant to Indiana Code Title 27.
31. Under the authority of Ind. Code § 27-1-3.1-1 *et. seq.* (the "Examination Statute"), the Commissioner may conduct an examination of any company. (Ind. Code § 27-1-3.1-8(a)(1)).
32. For purposes of such an examination, "company" means any person engaging in any transaction or kind of insurance and any person who may otherwise be subject to the administrative, regulatory, or taxing authority of the Commissioner. (Ind. Code § 27-1-3.1-2).
33. Unique is a "company" as defined in Ind. Code § 27-1-3.2-2.
34. The Department and Ingardus conducted the Examination in compliance with Indiana's Examination Statute and the NAIC Market Regulation Handbook.
35. During the course of the Examination it became evident that Unique was operating in violation of Indiana law and to the detriment of consumers, thereby invoking Ind. Code §. 27-1-3.1-14(c) and (d).

36. Ingardus provided the Department a Report of its factual findings on November 6, 2014.
37. Pursuant to Ind. Code § 27-1-3.1-14(d), the Examination Statute authorizes the Commissioner to use and, if appropriate, to make public any preliminary examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an Examination in the furtherance of any legal or regulatory action that the Commissioner may, in the Commissioner's sole discretion, consider appropriate.
38. The Report prepared by Ingardus and tendered to the Department on November 6, 2014, attached hereto as Exhibit A, is appropriate for the Commissioner to use in the furtherance of legal or regulatory action.
39. If the Commissioner determines that regulatory action is appropriate as a result of any examination, the Commissioner may initiate any proceedings or actions authorized by law. (Ind. Code § 27-1-3.1-14(c)).
40. The conditions prescribed by law for granting a certificate of authority are found in Ind. Code § 27-1-3-20. One such condition dictates that no certificate of authority shall be issued until the Commissioner has found that the company has submitted a sound plan of operation. (Ind. Code § 27-1-3-20(a)(1)). In addition, the Commissioner may issue a certificate of authority to any company when it has complied with the requirements of the laws of this state so as to entitle it to do business herein. Ind. Code § 27-1-3-20(a).
41. Upon review of the Report and relevant workpapers, it has become apparent that Unique does not have a sound plan of operation as indicated by the fact that the Company does not have procedures in place to resolve consumer claims.

42. In addition, after reviewing the Report and the Company Submission it has become evident that Unique has not complied with the requirements of this state which entitles it to do business in this state.
43. Pursuant to Ind. Code § 27-1-3.1-11(b), if an examination report reveals that the company is operating in violation of any law, regulation, or prior order of the Commissioner, the Commissioner may order the company to take any action the Commissioner considers necessary and appropriate to cure that violation.
44. The Company committed 55 known violations of Ind. Code § 27-4-1-4.5(2) by failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
45. The Company committed 17 known violations of Ind. Code § 27-4-1-4.5(3) by failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
46. The Company committed 14 known violations of Ind. Code § 27-4-1-4.5(4) by refusing to pay claims without conducting a reasonable investigation based upon all available information.
47. The Company committed 70 known violations of Ind. Code § 27-4-1-4.5(6) by not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. Of these, 13 were not fair, 31 were not prompt, and 26 were both not fair *and* not prompt.
48. The Company committed 21 known violations of Ind. Code § 27-4-1-4.5(14) by 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.

49. The Company committed 16 known violations of Ind. Code § 27-4-1-4.5(15) by ascribing a percentage of fault to a person seeking to recover from an insured party, in spite of an obvious absence of fault on the part of that person.
50. The Company committed 39 known violations of Ind. Code § 27-4-1-5.6(b) by failing to appropriately respond to complaints received by the Department.
51. The Company committed 13 known violations of Ind. Code § 27-4-1.5-8 by failing to provide notice of choice of body parts for automobile repair.
52. The Company committed 40 known violations of the Department's directions, found in Bulletin 82, that payment of sales tax is necessary to fully compensate a claimant for a loss. Failure to abide by this Bulletin constitutes additional violations of Ind. Code § 27-4-1-4.5(3).
53. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

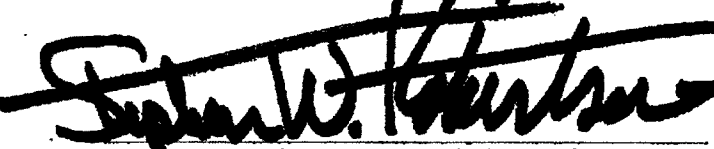
ORDER

The Commissioner, having reviewed the Report, Unique's Submission and relevant workpapers, hereby ADOPTS the Report and enters the following Order to cure Unique's violations of Indiana law:

1. Unique shall cease writing new business in Indiana until a Corrective Action Plan, addressing the violations enumerated in the Report, is approved by the Department and implemented by Unique. However, the Company will be expected to continue to fulfill its obligation under existing policies until such time as they expire or are cancelled by the insured or terminated for non-payment under the Company's existing policies and procedures. The Corrective Action Plan must include the following:

- a. deadlines for corrective measures to have been taken;
 - b. documentation that policies and procedures have been written and provided to employees;
 - c. acknowledgement that claims are being resolved based on Indiana law;
 - d. documentation that claims are being resolved within a reasonable time period, to be no longer than thirty (30) days;
 - e. ongoing monitoring by Ingardus and the Department;
 - f. regular communication with claimants; and
 - g. monthly written updates to the Department.
2. All action taken pursuant to the Corrective Action Plan must be finalized within one (1) year from the date of this Order.
 3. Ingardus shall monitor, at Unique's expense, the claims handling of all run off claims open, closed or unpaid until such time as the Corrective Action Plan referred to above is instituted.
 4. Unique shall provide restitution to all policyholders whose claims are determined by Ingardus in consultation with the Department to have been resolved unfairly or in violation of Indiana law.

ALL OF WHICH IS ORDERED THIS 5th day of January 2015.


Stephen W. Robertson, Commissioner of Insurance
Indiana Department of Insurance