

**Direct Auto Insurance Company**

## MARKET CONDUCT EXAMINATION REPORT

DATE OF EXAMINATION:	June 18, 2012 through December 6, 2012 and April 22, 2013 through April 25, 2013
EXAMINATION OF:	Direct Auto Insurance Company, (P&C Domestic) NAIC #12721
LOCATION OF EXAMINATION:	330 South Wells Street, Suite 910 Chicago, Illinois 60606-7161
PERIOD COVERED BY EXAMINATION:	April 1, 2011 through March 31, 2012
EXAMINERS:	Larry J. Nelson Roger O. Henschen Examiner-in-Charge

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I. SUMMARY

1. The Company was criticized under 215 ILCS 5/423.23 for failing to provide the correct zip code for the Chicago office of the Illinois Department of Insurance when advising the insured of the right to appeal a cancellation and the procedure to follow for such appeal. This act is misleading and unfair and provides the insured incorrect information which is also in conflict with 215 ILCS 5/423(1) and/or 215 ILCS 5/429(1).

A Class Criticism was issued in the Private Passenger Auto Cancellation Survey.

2. The Company was criticized under 215 ILCS 5/423.23 for failing to provide the correct zip code for the Chicago office of the Illinois Department of Insurance when advising the insured of the right to appeal a nonrenewal and the procedure to follow for such appeal. This act is misleading and unfair and provides the insured incorrect information which is also in conflict with 215 ILCS 5/423(1) and/or 215 ILCS 5/429(1).

A Class Criticism was issued in the Private Passenger Auto Nonrenewal Survey.

3. The Company was criticized under 215 ILCS 5/143.15 for failing to provide a specific explanation of the reason or reasons for cancellation and/or failing to provide the appropriate 10 or 30 days advance notice, whichever is applicable.

A Class Criticism was issued in the Private Passenger Auto Cancellation Survey.

4. The Company was in violation of 215 ILCS 5/143.17, which requires that when nonrenewing a Private Passenger Auto policy the Company maintain proof of mailing, as defined in subsection (a), and provide a specific explanation of the reasons for nonrenewal, as defined in subsection (e), and if manifesting their willingness to renew directly to the insured, specify the premium amount payable, as defined in subsection (b).

A Class Criticism applies in the Private Passenger Auto Nonrenewal Survey.

5. The Company was criticized under 215 ILCS 5/141.01 for nonrenewing auto policies because their contract with the agent/producer had been terminated.

A Class Criticism was issued in the Private Passenger Auto Nonrenewal Survey.

6. The Company was in conflict with 50 Ill. Adm. Code 754.10 for failing to use the rules, rates or rating plans, classifications or other schedules filed with the Illinois Department of Insurance creating undercharges totaling \$5,746.00 and overcharges totaling \$968.00 annually. The Company made no adjustments or refunds on any policies as requested. One producer, who generated approximately

1/3 of the Company business, was responsible for many errors. This Company knew of the problem but did nothing to correct or control this producer.

A General Trend Criticism was issued in the Private Passenger Auto New Business Survey.

7. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(2) for having a first party median in excess of 40 calendar days.

A Class Criticism applies in the Private Passenger Auto First Party Median & Paid Survey.

8. The Company was criticized under 50 Ill. Adm. Code 919.30(c) for failing to maintain detailed documentation in the claim file in order to permit reconstruction of the company's activities relative to resolution of the claim. In particular, it can be determined when a check was *created* but not when it was *mailed*.

A Class Criticism applies in the Private Passenger Auto First Party Median & Paid Survey.

9. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(2) for failing to provide the insured with a reasonable written explanation for the delay when the claim remained unresolved for more than 40 calendar days and/or failing to accompany the written explanation with Notice of Availability of the Department of Insurance and/or failing to send the written explanation in a timely manner.

A General Trend Criticism was issued in the Private Passenger Auto First Party Median & Paid Survey.

10. The Company was criticized under 50 Ill. Adm. Code 919.50(a)(1) for failing to provide the insured the Notice of Availability of the Department of Insurance on denial letters.

A General Trend Criticism applies in the Private Passenger Auto First Party Median & Paid Survey in which these claims were initially denied but later payment was made.

11. The Company was criticized under 50 Ill. Adm. Code 919.50(a)(1) for failing to include the zip code of the Chicago office of the Department of Insurance when providing the Availability of the Department of Insurance on denial letters and/or failing to provide a reasonable explanation for the denial and/or failure to provide the Notice of Availability at all.

A Class Criticism was issued in the Private Passenger Auto First Party Closed Without Payment Survey.

12. The Company was in conflict with 215 ILCS 5/423(1), 5/424(4),r 5/429(1) and/or 215 ILCS 5/154.6(c) and (h) for committing unfair acts and/or or misleading and confusing acts by sending delay letters that were not true, giving incorrect phone numbers, denying because of misrepresentation when applications were not signed to verify misrepresentation, providing misleading and confusing verbiage in correspondence, leaving off phone numbers and not proactively trying to expedite the claim in order to provide a prompt, fair and equitable resolution.

A General Trend Criticism was issued in the Private Passenger Auto First Party Closed Without Payment Survey.

13. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(2) for failing to provide the insured with a reasonable written explanation for the delay when the claim remained unresolved for more than 40 calendar days, and failing to accompany the written explanation with Notice of Availability of the Department of Insurance as defined in 50 Ill. Adm. Code 919.40, and/or failing to send the written explanation in a timely manner.

A General Trend Criticism was issued in the Private Passenger Auto First Party Closed Without Payment Survey.

14. The Company was criticized under 50 Ill. Adm. Code 919.30(c) for failing to have detailed documentation in claim files in order to permit reconstruction of all of the company's activities relative to resolving the claim.

A General Trend Criticism was issued in the Private Passenger Auto First Party Closed Without Payment Survey.

15. The Company was criticized under 50 Ill. Adm. Code 919.80(c)(2) for failing to use and follow the methodology of the source used to determine the value of a total loss. The Company created four (4) underpayments totaling \$3,490.00. The Company did not make payments to these insureds. This was discovered while reviewing the Private Passenger Auto First Party Closed Without Payment Survey.

16. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(3) for having a third party median in excess of 60 calendar days.

A Class Criticism applies.

17. The Company was criticized under 215 ILCS 5/154.6(d) for failing to effectuate prompt, fair and equitable settlements and under 215 ILCS 5/154.6(c) for failing to have standards to promptly investigate and then settle the third party claims. Their actions and inactions are unfair and deceptive which is in conflict with 215 ILCS 5/423(1) and/or 215 ILCS 5/424(4) and/or 215 ILCS 5/429(1).

A Class Criticism was issued in the Private Passenger Auto Third Party Median & Party Survey.

18. The Company was criticized under 50 Ill. Adm. Code 919.30(c) for failing to have detailed documentation in claim files in order to permit reconstruction of all of the company's activities relative to resolving the claim.

A Class Criticism was issued in the Private Passenger Auto Third Party Median & Paid Survey.

19. The Company was criticized under 215 ILCS 5/154.6(g) for engaging in activities which resulted in a disproportionate number of lawsuits to be filed against the insurer or its insureds by claimants or simply engaging in activities which force lawsuits which would be considered unfair and deceptive acts which are in conflict with 215 ILCS 5/423(1), 5/424(4) and/or 5/429(1).

A General Trend Criticism was issued in the Private Passenger Auto Third Party Median & Paid Survey.

20. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(3) for failing to provide the third party with a reasonable written explanation for the delay when the claim remained unresolved for more than 60 days and/or sending that written explanation in an untimely manner.

A General Trend Criticism was issued in the Private Passenger Auto Third Party Median & Paid Survey.

21. The Company was criticized under 215 ILCS 5/154.6(c) as further defined in 50 Ill. Adm. Code 919.40 for failing to adopt and implement reasonable standards to promptly settle their claims.

A General Trend Criticism was issued in the Private Passenger Auto Third Party Median & Paid Survey.

22. The Company was criticized under 50 Ill. Adm. Code 919.30(c) for failing to have detailed documentation in claim files in order to permit reconstruction of all of the company's activities relative to resolving the claim.

A Class Criticism was issued in the Private Passenger Auto Third Party Closed Without Payment Survey.

23. The Company was criticized under 215 ILCS 5/154.6(d) for failing to effectuate prompt, fair and equitable settlements when liability was reasonably clear and under 215 ILCS 5/154.6(c) for failing to have standards to promptly investigate and then settle the third party claims. Their actions and inactions are unfair and

deceptive which is in conflict with 215 ILCS 5/423(1), 215 ILCS 5/424(4) and/or 215 ILCS 5/429(1).

A Class Criticism was issued in the Private Passenger Auto Third Closed Without Payment Survey.

24. The Company was criticized under 50 Ill. Adm. Code 919.50(a)(2) for failing to send a denial letter to the third party when denying the claim and/or failing to provide a reasonable explanation of the basis of the denial and/or denying the third party claim when not justified according to information in the claim file. That is also an action which is unfair and deceptive which is in conflict with 215 ILCS 5/423(1) and/or 5/424(4) and/or 5/429(1).

A Class Criticism was issued in the Private Passenger Auto Third Party Closed Without Payment Survey.

25. The Company was in conflict with 215 ILCS 5/423(1), 5/424(4) and/or 5/429(1) for denying based on unjustified reasons, prolonging the resolution of the claim for extended periods of time, making low settlement offers to third party carriers, and committing similar practices to avoid payment of legitimate claims.

A Class Criticism applies for their actions and/or inactions in the Private Passenger Auto Third Party Closed Without Payment Survey.

26. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(3) for failing to provide the third party with a reasonable written explanation for the delay when the claim remained unresolved for more than 60 days, failing to send the explanation in a timely manner, and failing to provide a reasonable explanation that is clear and understandable.

A General Trend Criticism was issued in the Private Passenger Auto Third Party Closed Without Payment Survey.

27. The Company was criticized under 50 Ill. Adm. Code 919.80(c) for failing to provide the insured, at a minimum, the information contained in Exhibit A and failing to provide that information in a timely manner. The verbiage in Exhibit A sent to the insured was incorrect, misleading and confusing.

A Class Criticism was issued in the Private Passenger Auto First Party Total Loss Survey.

28. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(2) for failing to provide the insured with a reasonable written explanation for the delay when the claim remained unresolved for more than 40 calendar days, failed to provide that explanation in a timely manner, or failed to provide an explanation that was reasonable and understandable.



A Class Criticism was issued in the Private Passenger Auto First Party Total Loss Survey.

29. The Company was criticized under 50 Ill. Adm. Code 919.80(c)(3)(A)(i) for failing to reimburse the insured the correct amount of taxes and/or fees when the insured replaced the total loss vehicle creating two (2) underpayments totaling \$284.60 and two (2) overpayments totaling \$50.01. Reimbursements have not been made.

A Class Criticism applies in the Private Passenger Auto First Party Total Loss Survey for the error percentage of 100%.

30. The Company was criticized under 50 Ill. Adm. Code 919.80(c)(2) for failing to use and follow the definitions/methodologies of the source used to determine the market value of the insured total loss vehicle. The source they use is CCC Information Services ("CCC"). Those actions have created underpayments totaling \$37,616.86, one (1) overpayment totaling \$385.00, eight (8) undetermined underpayments and six (6) undetermined if underpayments or overpayments. The Company made two (2) payments totaling \$3,683.74.

A Class Criticism was issued in the Private Passenger Auto First Party Total Loss Survey.

31. The Company was criticized under 50 Ill. Adm. Code 919.30(c) for failing to have detailed documentation in claim files in order permit reconstruction of all of the company's activities relative to resolving the claim.

A Class Criticism was issued in the Private Passenger Auto First Party Total Loss Survey.

32. The Company was criticized under 50 Ill. Adm. Code 919.60(a) for including verbiage on the proof of loss sent to the insured indicating that signing the proof of loss was accepting the settlement in full or as a final settlement.

A General Trend Criticism was issued in the Private Passenger Auto First Party Total Loss Survey.

33. The Company was in conflict with 215 ILCS 5/423(1), 5/424(4) and/or 5/429(1) for actions that were unfair, deceptive, confusing and/or misleading. Letters were sent to insureds stating Illinois law requires that the Company provide a certain letter when the insured files a comprehensive claim when there is no such law. Unrelated prior damage reductions were not shown on the proof of loss. Two party checks were made out instead of a separate check for the lien holder and a separate check for the insured.

A Class Criticism is applicable in the Private Passenger Auto First Party Total Loss Survey.

34. The Company was criticized under 50 Ill. Adm. Code 919.30(c) for failing to have detailed documentation in claim files in order to permit reconstruction of all of the company's activities relative to resolving the claim.

A Class Criticism was issued in the Private Passenger Auto Subrogation Survey.

35. The Company was criticized under 215 ILCS 5/143b for failing to return the full and correct pro-rata share of the deductible to their insureds creating underpayments totaling \$459.94 and overpayments totaling \$242.06. The Company presented the examiners the checks for the underpayments.

A General Trend Criticism was issued in the Private Passenger Auto Subrogation Survey.

36. The Company was in conflict with 215 ILCS 5/423(1), 5/424(4) and/or 5/429(1) for committing acts that were unfair. After a check was returned to the Company, they made no attempt to find a new address, find a phone number, or contact the producer. In another file, the Company subrogated against a third party carrier and received payments when they never paid their insured for the collision. In another file the Company reduced the deductible returned to the insured by taking off legal fees when the Company had been reimbursed for those fees.

A General Trend Criticism was issued in the Private Passenger Auto Subrogation Survey.

37. The Company was criticized under 50 Ill. Adm. Code 926.50 for failing to maintain their complaint log as outlined in Exhibit A and as defined in Exhibit B.

A Class Criticism was issued in the Department Complaints Survey.

38. The Company was criticized under 50 Ill. Adm. Code 926.50 for failing to maintain their complaint log as outlined in Exhibit A and as defined in Exhibit B.

A Class Criticism was issued in the Consumer Complaints Survey.

39. In reviewing complaints, the Company was in violation of 215 ILCS 5/154 for rescinding policies due to misrepresentation when the application was not signed or dated by the applicant.

#### INTERRELATED AND ADDITIONAL FINDINGS

40. The Company was criticized under 50 Ill. Adm. Code 2601.20 for failing to provide their policyholders in writing the separate premium being charged for

each coverage or group of coverages at renewal when the premium had changed. A Class Criticism applies.

41. When examining claim files in the Private Passenger Auto First Party Median & Paid Survey, the following was discovered. When the insured had no lien holder and there was no evidence the insured requested the check be payable to the insured *and* body shop, the Company made the check payable to the insured and body shop instead of simply the insured in 29 of the 37 files that had no lien holder on the vehicle (78.35%). Making the check payable to the insured will effectuate a prompt settlement in compliance with 215 ILCS 5/154.6(c), 5/154.6(d) and/or 5/154.6(r).

A Class Criticism applies.

42. In the Private Passenger Auto First Party Median & Paid Survey files, the Company mailed the check to the body shop instead of the insured in 82 of 96 files reviewed (85.42%). The policy contract is between the insured and the Company not the body shop and the Company. The checks should have been mailed to the insured unless there is documentation or evidence that the insured requested otherwise. The Company action conflicts with prompt settlement and violates 215 ILCS 5/154.6(c), 5/154.6(d) and/or 5/154.6(r). The acts/practices further conflict with 215 ILCS 5/423(1), 5/424(4) and/or 5/429(1).

A Class Criticism applies.

43. The response to Interrogatory #1 indicated that the Company was in violation of 215 ILCS 5/143.25a. The Company does not inform insureds prior to the first renewal of their auto policy that a premium savings could result from higher deductible for collision and comprehensive coverage.

A Class Criticism applies.

The response to Interrogatory #2 indicated that the Company was in violation of 215 ILCS 5/143d(a). The Company had no toll free number or designated number for policyholders to call at the Company's expense.

A Class Criticism applies.

44. While examining this Company, the Department of Insurance requested that the examiners look at a certain complaint. After reviewing the complaint and Company response, it was determined the Company owed the complainant money. The Company issued a check in the amount of \$1,639.52 to the complainant and the check was mailed by the examiners.
45. When it is reasonably clear that liability rests with the insured, the Company fails to handle the claim correctly in most situations dealing with a third party or third

party carrier in violation of 215 ILCS 5/154.6(g) and/or (h). The Company delays the investigation and handling of the claim, refuses to accept liability within a reasonable time particularly when the insured is 100% negligent, sometimes does not accept liability, gives low estimates, forces third party claimants to file with their own carrier, forces third party claimants to file suit, forces the third party carriers to file suit or arbitration, fails to answer pertinent communication in a timely manner, or fails to respond to pertinent communication.

The Company fails to act proactively to promptly pay and resolve the claim. Sometimes when their insured is at fault and the Company fails to accept liability, they offer less than the subrogated amount demanded indicating to the third party carrier that they could repair the vehicle for less or assessing comparative negligence without a prompt and fair investigation.

Low payment offers and payments to a third party carrier may cause an adverse effect on the Illinois policyholders of that carrier. The policyholders of those carriers must make up the difference in increased premiums. Additionally, third party carriers are only required to return the pro-rata share of their insureds deductible, which could also create an adverse effect on their policyholders by causing increased premiums. After waiting long periods of time for a fair settlement, third party carriers may simply agree to a lesser amount to get the file closed.

## II. BACKGROUND

Direct Auto Insurance Company (DAIC) was incorporated in 2006 in the state of Illinois. The Company writes private passenger automobile insurance in the State of Illinois, primarily concentrated in the metropolitan area of Chicago.

### III. METHODOLOGY

The Market Conduct examination places emphasis on evaluating an insurer's systems and procedures in dealing with insureds and claimants.

The following categories are the general areas examined:

1. Risk Selection
2. Underwriting
3. Producer Licensing
4. Claims
5. Complaints

The review of these categories is accomplished through examination of individual underwriting and claim files, written interrogatories, interviews with company personnel, analysis of policy forms and endorsements, and verification of computer rating accuracy. Each of these categories is examined for compliance with Department Rules and Regulations and applicable state law.

The report concerns itself with improper practices performed with such frequency as to indicate general business practices. Individual files criticized are identified and communicated to the insurer but not cited in the report if not indicative of a general trend, except if there were underpayments and/or overpayments in claim surveys or undercharges and/or overcharges in underwriting surveys.

The following methods were used to obtain the required samples to assure methodical selection.

#### Risk Selection

Cancellations and nonrenewals were requested on the basis of the effective date of the transaction falling within the period under examination. They were reviewed for compliance with statutory requirements, the accuracy and validity of reasons given and for any possible discrimination.

#### Underwriting

New files were selected based on the inception date falling within the period under examination. New policies were reviewed for rating accuracy, use of filed rates, use of filed forms, compliance with company underwriting guidelines, and to insure that the protection provided was as requested.

#### Producer Licensing

The producer of record for the new policies that were examined, were checked for proper licensing.

Claims

Claims were requested based on the settlement occurring within the period under examination.

Complaints

Complaints were requested based on those received by the company during the period under examination.

### Selection of Samples

A.	Risk Selection	Total <u>Files</u>	# <u>Reviewed</u>	% <u>Reviewed</u>
	1. Private Passenger Auto Cancellations	910	50	5.49
	2. Private Passenger Auto Nonrenewals	155	82	52.90
	3. Producer Terminations	0	0	N/A
B.	Underwriting			
	1. Private Passenger Auto New Business	20,192	116	0.57
C.	Producer Licensing			
	1. New Business	116	116	100.00
D.	Claims			
	1. Private Passenger Auto First Party Median & Paid	451	96	21.29
	2. Private Passenger Auto First Party Closed Without Payment	759	107	14.10
	3. Private Passenger Auto Third Party Median & Paid	473	95	20.08
	4. Private Passenger Auto Third Party Closed Without Payment	538	99	18.40
	5. Private Passenger Auto Total Losses – First Party	79	50	63.29
	6. Private Passenger Auto Subrogation	54	40	74.07
E.	Complaints			
	1. Department of Insurance Complaints	42	42	100.00
	2. Consumer Complaints	3	3	100.00



#### IV. FINDINGS

##### A. Risk Selection

###### 1. Private Passenger Auto Cancellations

In 100% of the cancellations in which the Company advised the insured of the right to appeal and the procedure to follow, the Company was in violation of 215 ILCS 5/143.23. An insured is required to deliver or mail the appeal/request for a hearing to the Director of Insurance. In advising the insured, this Company provided the incorrect zip code for the Chicago office of the Department of Insurance. This act is also unfair and in conflict with 215 ILCS 5/423(1) and/or 215 ILCS 5/429(1). Without a correct zip code a request for a hearing may not be received by the Director. A Class Criticism was issued.

Forty-nine (49) of the 50 cancellations (98%) were in violation of 215 ILCS 5/143.15. Forty-seven (47) cancellation notices failed to include a specific explanation of the reason(s) for cancellation. Forty-six (46) cancellations failed to provide the insured the proper number of day's notice [10] for nonpayment of premium or [30] days notice otherwise. A Class Criticism was issued.

In three (3) of the 50 cancellations (6%), the Company failed to maintain proof of mailing of the notice of cancellation. The Company was in violation of 215 ILCS 5/143.14.

###### 2. Private Passenger Auto Nonrenewals

The Company was in violation of 215 ILCS 5/143.17 for failing to nonrenew correctly or when not nonrenewing, to renew correctly. A Class Criticism applies. See the following three (3) violations.

- As required by 215 ILCS 5/143.17(b), if a company does not nonrenew a policy of automobile insurance, they must manifest their willingness to renew directly to the insured. Such written notice shall specify the premium amount payable, including any premium payment plan available, and the name of any person or persons, if any, authorized to receive payment on behalf of the company. If no person is so authorized, the premium notice shall so state. The company did manifest its willingness to renew a policy but *did not* specify the premium amount payable. The Company was in violation of 215 ILCS 5/143.17(b).

- In 64 of the 82 nonrenewals examined (78.05%), the Company was in violation of 215 ILCS 5/143.17(e) for failing to provide a specific explanation of the reasons for nonrenewal.

In seven (7) of the 82 nonrenewals examined (8.54%), the Company was in violation of 215 ILCS 5/143.17(a). The Company failed to maintain the proof of mailing as required.

In 100% of the nonrenewals in which the Company advised the insured of the right to appeal and the procedure to follow, the Company was in conflict with 215 ILCS 5/143.23. An insured is required to deliver or mail the appeal/request for a hearing to the Director of Insurance. In advising the insured, this Company provided the incorrect zip code for the Chicago office of the Department of Insurance. This act is also unfair and in conflict with 215 ILCS 5/423(1) and/or 215 ILCS 5/429(1). Without a correct zip code the letter to request a hearing may not be received by the Director. A Class Criticism was issued.

In 47 of the 82 nonrenewals examined (57.32%), the policy was nonrenewed because the agent/producer no longer represented the Company. That is a violation of 215 ILCS 5/141.01. A Class Criticism was issued.

### 3. Producer Terminations

The examiner requested a list of producers that were terminated during the examination period. The Company informed the examiner that there were no terminations effective during the examination period. No producer terminations were reviewed.

## B. Underwriting

### 1. Private Passenger Auto New Business

One hundred sixteen (116) new business files were rated. In 57 files (49.14%), the Company was in conflict with 50 Ill. Adm. Code 754.10 for failing to use the rules, rates or rating plans, classifications, or other schedules filed with the Illinois Department of Insurance, creating undercharges totaling \$5,746.00 and overcharges totaling \$968.00 annually. The Company made no refunds or adjustments to the policies. One producer, who generated approximately 1/3 of the new business, was responsible for many of the rating errors. This Company knew of the errors but did nothing to correct or to control this producer. A General Trend Criticism was issued.

C. Producer Licensing – New Business

One hundred sixteen (116) new business policies were examined. In three (3) of those policies (2.59%), the producer was not properly licensed at the time of application in violation of 215 ILCS 5/500-15(a).

D. Claims

1. Private Passenger Auto First Party Median & Paid

The median payment period was 65 days distributed as follows:

<u>Days</u>	<u>Number</u>	<u>Percent</u>
0-30	17	17.71
31-60	27	28.13
61-90	16	16.67
91-180	15	15.63
181-365	13	13.54
<u>over 365</u>	<u>08</u>	<u>08.33</u>
Total	96	100.00

Section 919.80(b)(1) reads: “The period used in computing the ‘median payment period’ shall mean the period measured from the date of notification of loss to the date of final payment or the rendering of the repaired automobile to the insured or third party claimant.” The date of notification of loss could be determined. However, the date of rendering the repaired auto and the date of payment could not be determined. Although, the date the company *created* a check could be determined, the *date of mailing* the check could not be determined. As a result, the examiners used the “check paid date” in computing the median payment period. That date was provided to the examiners by the Company. The median payment period was 65 days. The Company was in violation of 50 Ill. Adm. Code 919.80(b)(2) for having a first party median in excess of 40 calendar days. Ninety-six (96) files were used to determine the median. A Class Criticism applies.

There were a few exceptions for which there was documentation of when the check was mailed. The lack of documentation is in violation of 50 Ill. Adm. Code 919.30(c). There were also two (2) claim files in which the activities of the Company in resolving the claim could not be determined. A Class Criticism applies.

Ninety-five (95) files were examined. Fifty-one (51) files remained unresolved for more than 40 calendar days from the date the loss was reported requiring a reasonable written explanation for the delay to be provided to the insured as outlined in 50 Ill. Adm. Code 919.80(b)(2).

The Company failed to do so in 17 of those 51 files (33.33%). The Company failed to provide the insured the written explanation in 11 files. In five (5) files a written explanation was sent but was untimely. In one (1) file the Company failed to provide the Notice of Availability of the Department of Insurance. A General Trend Criticism was issued.

In eight (8) files the claim was initially denied and closed without payment. Later, for various reasons, the claim was reopened and paid. However, as required by 50 Ill. Adm. Code 919.50(a)(1), when a first party claim is denied, the Company is required to send the insured a reasonable written explanation of the denial and accompany that explanation with Notice of Availability of the Department of Insurance. The Company failed to provide the insured the Notice of Availability of the Department of Insurance in two (2) of the eight (8) files (25%). A General Trend Criticism was issued and applicable for the error ratio.

## 2. Private Passenger Auto First Party Closed Without Payment

There were denial letters sent to seven (7) insureds. The Company was in violation of 50 Ill. Adm. Code 919.50(a)(1) in six (6) files (85.71%). Four (4) letters failed to include the zip code of the Chicago office of the Department of Insurance. One (1) denial letter failed to include the zip code of the Chicago office and failed to provide a reasonable explanation for the denial and was confusing. One (1) denial failed to include the Notice of Availability of the Department of Insurance, did not provide a reasonable explanation and was confusing. A Class Criticism was issued.

In 44 of 107 files examined (41.12%) the Company engaged in unfair or deceptive acts and practices in violation of 215 ILCS 5/423(1), 5/424(4), 5/429(1) and/or 215 ILCS 5/154.6(c) and (h). A General Trend Criticism was issued.

The Company engaged in the following unfair, deceptive acts, and practices:

- Issued delay letters giving reasons for the delay due to the insureds' failure to act, when the action had never been requested by the Company;
- Provided an incorrect phone number to call regarding claims;
- Sent a letter to the insured instructing them to take their vehicle to a certain body shop and instructing them to call the body shop in advance to schedule the inspection, but omitted the body shop's phone number;
- Instructed the insureds to return a signed accident report by a certain date when the date was incorrect, misleading or confusing.
- Used misleading and confusing verbiage;

- Denied claims due to misrepresentation when applications were unsigned by the applicant; and
- Failed to complete an investigation by contacting all parties and providing a fair and equitable resolution to the claim.

Fifty-two (52) files remained unresolved for more than 40 calendar days from the date the loss was reported requiring a reasonable written explanation for the delay to be provided the insured as outlined in 50 Ill. Adm. Code 919.80(b)(2). The Company failed to do so in 10 of the 52 files (19.23%). The Company failed to provide the insured the written explanation in four (4) files. In six (6) files the Company failed to include the availability of the Illinois Department of Insurance or that availability was included incorrectly/not completely as is defined in 50 Ill. Adm. Code 919.40. In three (3) of those six (6) files the delay letter was not sent in a timely matter. A General Trend Criticism was issued.

In 10 of 107 files (9.35%), the Company failed to have documentation that would allow the examiner to reconstruct the actions taken by the Company relative to the resolution of the claim. The Company was in violation of 50 Ill. Adm. Code 919.30(c). A General Trend Criticism was issued.

In four (4) files the insured vehicle was a total loss and the Company closed the file without making any payment. The Company identified CCC as the source for determining the value of the vehicle, but failed to apply the methodology of CCC resulting in four (4) underpayments totaling \$3,490.00. The Company was in violation of 50 Ill. Adm. Code 919.80(c)(2). The Company refused to make any payments.

3. Private Passenger Auto Third Party Median & Paid

Ninety-five (95) files were used to compute the median. The median payment period was 241 days with arbitration, subrogation and litigation files included. The median was 61 days for the remaining 32 files with arbitration, subrogation and litigation excluded.

*With arbitration, subrogation and litigation*

<u>Days</u>	<u>Number</u>	<u>Percent</u>
0-30	06	06.32
31-60	14	14.74
61-90	08	08.42
91-180	14	14.74
181-365	21	22.11
<u>over 365</u>	<u>32</u>	<u>33.68</u>
Total	95	100.00

*Without arbitration, subrogation and litigation*

<u>Days</u>	<u>Number</u>	<u>Percent</u>
0-30	03	09.38
31-60	13	40.63
61-90	06	18.75
91-180	05	15.63
181-365	04	12.50
<u>over 365</u>	<u>01</u>	<u>03.13</u>
Total	32	100.00

Sixty-three (63) of 95 claims (66.32%) went to arbitration, subrogation or litigation.

From the medians developed, the Company was in violation of 50 Ill. Adm. Code 919.80(b)(3) for having a median(s) in excess of 60 calendar days for property damage liability claims. A Class Criticism applies.

In 64 of 75 files (85.33%), the Company failed to effectuate a prompt, fair and equitable settlement in violation of 215 ILCS 5/154.6(d) and in violation of 215 ILCS 5/154.6(c) for not having standards to promptly investigate and settle. The Company actions were unfair and deceptive in conflict with 215 ILCS 5/423(1), 5/424(4), 5/154.6(c), 5/154.6(d) and/or 5/429(1). Although these are paid files, some were initially denied. The denials were unjustified because there was no information to support a denial. Investigations were delayed and the Company did not proactively handle the claims in order to promptly settle and resolve. This is reflected in the median above. Verbiage in a release form sent to the third party was unfair, deceptive and untrue. There were many low offers and many lawsuits. Third parties were forced to go to their own carrier. A Class Criticism was issued.

In 57 of 75 files (76%), there was insufficient documentation to allow reconstruction of the Company's activities relative to the claim in violation of 50 Ill. Adm. Code 919.30(c). The lack of documentation prevented the examiner from determining when checks were mailed. Unless specifically noted as date of mailing, the documentation only reflected the date the checks were created. A Class Criticism was issued.

Seventy-five (75) files were reviewed and 35 of those files (46.67%) resulted in a lawsuit in violation of 215 ILCS 5/154.6(g). The company prolonged investigation of the claim, denied the claim for unjustified reasons, or extended a significantly lower offer than the subrogation demand, which resulted in the subrogee filing a lawsuit to resolve the claim. A General Trend Criticism was issued.

Thirty-six (36) files remained unresolved in excess of 60 calendar days from the date the loss was reported. A reasonable written explanation for the delay must be provided to third party claimants as outlined in 50 Ill. Adm. Code 919.80(b)(3). In 14 of the 36 files (38.89%), the Company was in violation. In 11 files the Company failed to send written explanation. In three (3) files the letter was sent late. A General Trend Criticism was issued.

Twelve (12) files (16%) were criticized for being in conflict with 215 ILCS 5/154.6(c) as further defined in 50 Ill. Adm. Code 919.40. The activities or lack of activities with insureds and claimants were in contrast to a prompt investigation. A General Trend Criticism was issued.

In four (4) of 75 files (5.33%) the Company failed to meet the requirements for prompt payment as outlined in 50 Ill. Adm. Code 919.50(a).

4. Private Passenger Auto Third Party Closed Without Payment

In 83 of 99 files (83.84%) documentation was insufficient to allow reconstruction of the company's activities relative to the claim and a violation of 50 Ill. Adm. Code 919.30(c). A Class Criticism was issued.

In 73 of 99 files (73.74%) the Company failed to adopt and implement reasonable standards in its policies for the prompt investigation and settlement of claims in violation of 215 ILCS 5/154.6(c). The Company also did not attempt in good faith to effectuate a prompt, fair and equitable settlement of the claim when liability was reasonably clear in violation of 215 ILCS 5/154.6(d). The Company actions were unfair and deceptive in conflict with 215 ILCS 5/423(1), 5/424(4) and/or 5/429(1). A Class Criticism was issued.

Fifty-one (51) claims were denied. In 27 of the denied claims (52.94%), the Company failed to send a denial letter, failed to provide a reasonable explanation of the basis for the denial and/or denied claims for reasons that were not justified in light of the claim information included in the claim file. These 27 files were in violation of 50 Ill. Adm. Code 919.50(a)(2). These acts or practices were also unfair and deceptive in violation of 215 ILCS 5/423(1), 5/424(4) and 5/429(1). A Class Criticism was issued.

In 29 of 99 files (29.29%), the Company handled the claim in an unfair or deceptive manner which is prohibited by 215 ILCS 5/424(4) and 5/429(1) if not specified. Claims were denied for unjustified reasons. Claim settlement was prolonged for extended periods of time. Settlement offers

to adverse carriers were low. Similar practices were also employed to avoid payment of legitimate claims.

Third party claims remained unresolved in excess of 60 days in 53 files. In 12 of those 53 files (22.64%) the Company was cited for failing to send the third party a reasonable written explanation as required by and as outlined in 50 Ill. Adm. Code 919.80(b)(3). A written explanation was not sent in 10 files. It was sent late in one (1) file and the explanation was unclear in another file. A General Trend Criticism was issued.

5. Private Passenger Auto Total Losses - First Party

Fifty (50) total losses were examined. Under 50 Ill. Adm. Code 919.80(c), the Company is required to provide the insured with, at a minimum, the information contained in Exhibit A and provide that information within seven (7) days of the insured vehicle being determined a total loss. The Company was in violation in 100% of the files. The Exhibit A that was mailed to the insureds was confusing and misleading. The verbiage used was incorrect, split up and located in several different locations on the Exhibit. Also, the Company was cited for sending Exhibit A late in 10 files and failing to send the Exhibit in one (1) file. The language in the Exhibit is unfair, misleading and confusing in violation of 215 ILCS 5/154.6(r), 5/423(1), 5/424(4) and/or 5/429(1). A Class Criticism was issued.

Twenty-nine (29) total losses took in excess of 40 calendar days to be resolved. As required by 50 Ill. Adm. Code 919.80(b)(2), a reasonable written explanation for the delay must be provided to the insured within 40 days from the date of notification of loss. The explanation must also include the Availability of the Illinois Department of Insurance as defined in 50 Ill. Adm. Code 919.40. In 20 of 29 files (68.97%), the Company was not in compliance. In 12 files, the Company failed to send an explanation. In six (6) files, the explanation was untimely. In two (2) files, the explanation failed to provide a reasonable explanation as to why the insured or lien holder had not been paid. A Class Criticism was issued. OK

The insured provided the Company with proof of a replacement vehicle in four (4) files. In four (4) of these files (100%), the calculation for the sales tax and transfer and title fees were computed incorrectly. In two (2) files the Company underpaid a total of \$284.60. In another two (2) files, the Company made overpayments totaling \$50.01. The Company was in violation of 50 Ill. Adm. Code 919.80(c)(3)(A)(i). A Class Criticism applies for the error percentage. The Company failed to provide proof of payments as requested.



The Company uses CCC to determine the market value of the insured total loss vehicle. The Company may use any of the sources described in 50 Ill. Adm. Code 919.80(c)(2). However, once the source is chosen, the Company must use the methodologies of that source. The Company failed to follow and use the methodology of CCC in 48 of the 50 files examined (96%). This resulted in: 33 underpayments totaling \$37,616.86; one (1) overpayment totaling \$385.00; eight (8) undetermined underpayment amounts; and six (6) files for which it is undetermined if there was an underpayment/overpayment. The underpayments and overpayments were due to the Company failing to use the CCC matrix correctly. The Company was in violation of 50 Ill. Adm. Code 919.80(c)(2). Failing to follow the methodologies of the source chosen, CCC, resulted in not providing the insured a fair and equitable settlement in violation of 215 ILCS 5/154.6(d) and 5/154.6(r). These acts and practices are unfair and in violation of 215 ILCS 5/423(1) and/or 5/424(4) and/or 5/429(1). The Company made two (2) payments totaling \$3,683.74. A Class Criticism was issued

In 47 of the 50 files (94%), there was insufficient documentation to allow reconstruction of the Company's activities relative to each claim in violation of 50 Ill. Adm. Code 919.30(c). The examiner could not determine from the file *if* and *when* checks were *mailed*. There was also no financial information on when and if checks cleared the bank. Many items were not date stamped, therefore it is unknown when they were received. On most of the total loss estimates, there was a handwritten note that the vehicle was a "Total Loss," but there was no date for when the determination was made. Some notes were incomplete and some of the comments were not available to read. A Class Criticism was issued.

In eight (8) of 49 proofs of loss examined (16.33%) the Company included language that signing the proof of loss was accepting the settlement for the total loss as a full settlement or as a final settlement in violation of 50 Ill. Adm. Code 919.60(a). The language stated: "AMOUNT CLAIMED UNDER THIS POLICY by the insured and accepted in full settlement....." and then on the right side was the amount the Company offered. A General Trend Criticism was issued.

In two (2) of 50 files (4%), the Company failed to respond to pertinent communications within 15 days of receipt. The Company was in violation of 215 ILCS 5/154.6(b) as defined in 50 Ill. Adm. Code 919.40.

The following, in addition to the above, lists actions committed by this Company that can be considered unfair, deceptive acts/practices that are misleading and confusing constituting improper claims practices in conflict with 215 ILCS 5/423(1), 5/424(4), 5/429(1) and 215 ILCS 5/154.6:

- Sending insureds letters that read “Illinois law requires us to provide you with the enclosed information whenever you file a comprehensive claim,” when there is NO such Illinois law;
- Not providing unrelated prior damage on the proof of loss; and
- Making checks payable to both the lien holder and the insured when money is due to both, which delays payment.

6. Private Passenger Auto Subrogation - First Party

The Company was criticized under 50 Ill. Adm. Code 919.30(c) because there was insufficient documentation to allow reconstruction of the Company’s activities relative to the claim. It was difficult to determine when checks were mailed. The date of mailing was not documented except for in a few rare instances. The Company documented when checks were *created* but not when they were *mailed*. A Class Criticism was issued.

In seven (7) of 40 files (17.50%), the Company failed to pay the full and correct pro-rata deductible out of the net recovery in violation of 215 ILCS 5/143b. There were three (3) overpayments totaling \$242.06 and four (4) underpayments totaling \$459.94. The Company presented the examiner with the checks for the underpayments. A General Trend Criticism was issued.

In three (3) of 40 files (7.50%), the Company committed unfair acts/practices in violation of 215 ILCS 5/423(1), 5/424(4) and 5/429(1). A deductible check was returned to the Company and the Company made no effort to find a new address (mailed to an incorrect address) and did not call or contact the agent to get the insured paid. The Company subrogated against a third party and received payments when they never made payments for a collision. The Company reduced the deductible paid to the insured by taking off legal fees when they had been reimbursed for the legal fees. A General Trend applies.

E. Complaints

1. Department of Insurance Complaints

Some complaints were for rescinding the policy for material misrepresentation when the application was not signed and dated by the insured. When there is no signed application, there can be no evidence of misrepresentation of false warranty. The Company was in violation of 215 ILCS 5/154.

The Company maintains Department of Insurance Complaints, but not in accordance with 50 Ill. Adm. Code 926.50 Exhibit A and as described in Exhibit B. A Class Criticism was issued.

2. Consumer Complaints

The Company maintains Consumer Complaints, but not as outlined in 50 Ill. Adm. Code 926.50 Exhibit A and as described in Exhibit B. A Class Criticism was issued.

V. INTERRELATED and ADDITIONAL FINDINGS

1. 50 Ill. Adm. Code 2601.20 requires all companies issuing any policy of automobile liability insurance to clearly indicate to the policyholder in writing the separate premium being charged for each coverage or group of coverages. Such indication shall not be required at renewal if such separate premium and total policy premium are unchanged. While doing the Auto Nonrenewal Survey the Company informed the examiners that when the premium(s) has changed, the Company has no procedure to inform the insured of the separate and total premiums. The Company was in violation of 50 Ill. Adm. Code 2601.20 and a Class Criticism was issued.
2. When examining the claim files in the First Party Paid Survey, the following was discovered: Thirty-seven (37) files had no lien holder. However, the Company made the check *payable* to the *insured and the body shop* in 29 of those 37 files (78.39%). Since there was no lien on the vehicle, the check should have been payable to the insured only, unless there was evidence that the insured requested otherwise. The policy is a contract between the insured and the Company. Making the check payable to the insured will effectuate a prompt settlement in compliance with 215 ILCS 5/154.6(c) and/or 5/154.6(d) and/or 5/154.6(r). Making the check payable to the insured is the fair thing to do so not as to be in conflict with 215 ILCS 5/423(1) and/or 5/424(4) and/or 5/429(1). A Class Criticism applies.
3. While examining the claim files in the First Party Paid Survey, the following was discovered: In 82 of 96 files (85.42%) the Company *mailed* the check to the body shop instead of to the insured. The policy contract is between the insured and the Company. The check(s) should have been mailed to the insured unless there was evidence the insured requested otherwise. Mailing the checks to the insured is the prompt and fair thing to do and will keep the Company from being in conflict with 215 ILCS 5/154.6(c) and/or 5/154.6(d) and/or 5/154.6(r) or possibly in conflict with 215 ILCS 5/423(1) and/or 5/424(4) and/or 5/429(1). A Class Criticism applies.
4. Response to Interrogatory #1: The Company indicated they do not inform the insured prior to the first renewal of their automobile policy that a premium savings could result from higher deductibles for collision and comprehensive coverage. A Class Criticism applies for violation of 215 ILCS 5/143.25a.
5. Response to Interrogatory #2: The Company has no toll free number or a designated number for policyholders to call at the Company's expense. The Company is in violation of 215 ILCS 5/143d(a) and a Class Criticism applies.
6. While examining this Company, the Department of Insurance requested that the examiners look at a particular complaint. After reviewing the complaint and Company response, it was determined the Company owed the complainant

money. The Company issued a check in the amount of \$1,639.52 to the complainant and the check was mailed by the examiners.

7. When delay letters were due or sent to private passenger auto insureds or third party claimants, the Company failed to provide the reasonable written explanation for the delay as required by and outlined in 50 Ill. Adm. Code 919.80(b)(2) and/or 50 Ill. Adm. Code 919.80(b)(3) in 73 out of 221 times (33.03%). General Trend Criticisms were issued in the Private Passenger Auto First Party Paid Survey, First Party Closed Without Payment Survey, Third Party Paid Survey and Third Party Closed Without Payment Survey. A Class Criticism was issued in the Total Loss Survey.

<u>Survey</u>	<u># of times delay letter was due</u>	<u># of times not sent or sent incorrectly</u>
First Party Auto Paid	51	17
First Party Auto C.W.P.	52	10
Third Party Auto Paid	36	14
Third Party Auto C.W.P	53	12
Total Losses	<u>29</u>	<u>20</u>
	221	73

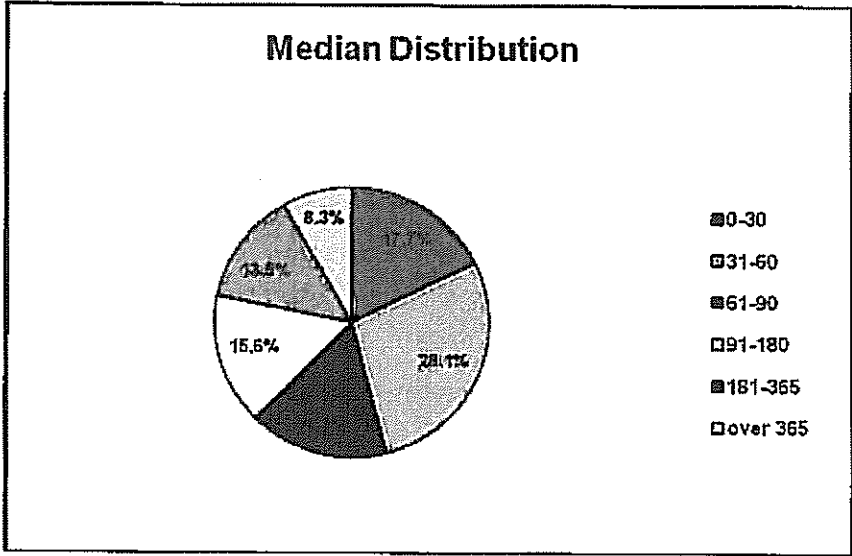
8. When it is reasonably clear that liability rests with the insured, the Company fails to handle the claim correctly in many and most situations when dealing with a third party or third party carrier. The Company delays the investigation and handling of the claim, refuses to accept liability within a reasonable time especially when the insured is 100% negligent, sometimes does not accept liability, gives low estimates, forces third party claimants to file with their own carrier, forces third party claimants to file suit, forces the third party carriers to file suit or arbitration, fails to answer pertinent communication in a timely manner, or fails to respond to pertinent communication.

The Company fails to act proactively to promptly pay and resolve the claim. Sometimes when their insured is at fault and the Company fails to accept liability, they offer less than the subrogated amount demanded indicating to the third party carrier that they could repair the vehicle for less or assessing comparative negligence without a prompt and fair investigation.

Low payment offers and payments to a third party carrier may cause an adverse effect on the Illinois policyholders of that carrier. Those policyholders are consumers. The policyholders of those carriers must make up the difference in increased premiums. Additionally, third party carriers are only required to return the pro-rata share of their insureds deductible, which could also create an adverse effect on their policyholders by causing increased premiums. After waiting long periods of time for a fair settlement, third party carriers may simply agree to a lesser amount to get the file closed.

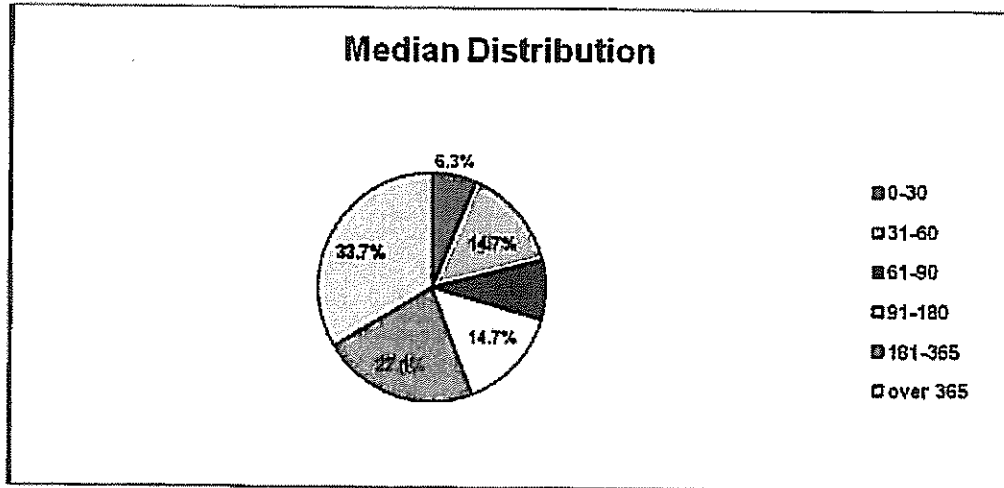
VI. TECHNICAL APPENDICES

A. Private Passenger Auto First Party Median - 65 days



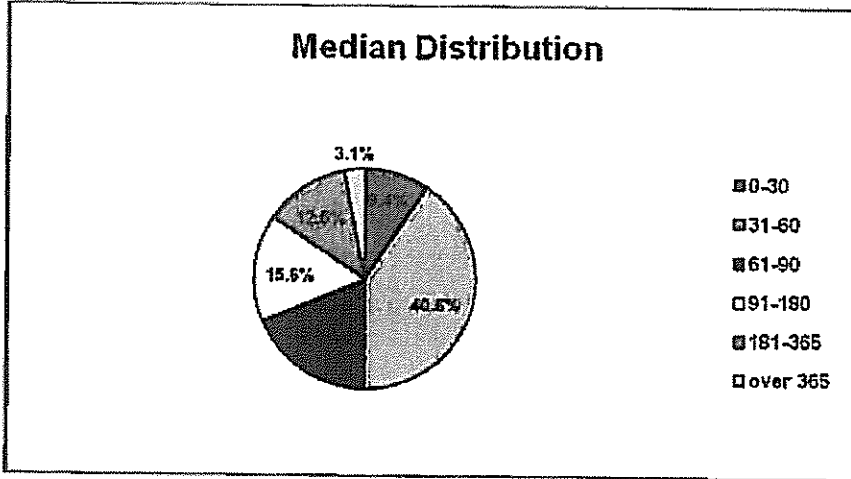
<b>MEDIAN DISTRIBUTION</b>		
<b># Days</b>	<b>Number</b>	<b>Percent</b>
0-30	17	17.71%
31-60	27	28.13%
61-90	16	16.67%
91-180	15	15.63%
181-365	13	13.54%
over 365	8	8.33%
<b>Total</b>	<b>96</b>	<b>100.00%</b>

B. Private Passenger Auto Third Party Paid Median (With subrogation, arbitration and litigation files included) - 241 days



<b>MEDIAN DISTRIBUTION</b>		
<b># Days</b>	<b>Number</b>	<b>Percent</b>
0-30	6	6.32%
31-60	14	14.74%
61-90	8	8.42%
91-180	14	14.74%
181-365	21	22.11%
over 365	32	33.68%
<b>Total</b>	<b>95</b>	<b>100.00%</b>

C. Private Passenger Auto Third Party Paid Median (Without subrogation, arbitration and litigation files) - 61 days



<b>MEDIAN DISTRIBUTION</b>		
<b># Days</b>	<b>Number</b>	<b>Percent</b>
0-30	3	9.38%
31-60	13	40.63%
61-90	6	18.75%
91-180	5	15.63%
181-365	4	12.50%
over 365	1	3.13%
<b>Total</b>	<b>32</b>	<b>100.00%</b>



STATE OF ILLINOIS            )  
  ) ss  
COUNTY OF COOK            )

Roger Henschen, being first duly sworn upon his oath, deposes and says:

That he was appointed by the Director of Insurance of the State of Illinois (the "Director") as Examiner-In Charge to examine the insurance business and affairs of:

Direct Auto Insurance Company, NAIC #12721

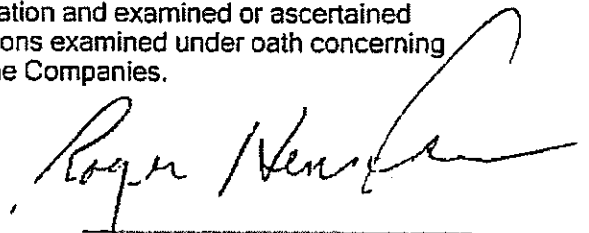
That, as Examiner-In-Charge, he was directed to make a full and true report to the Director of the examination with a full statement of the condition and operation of the business and affairs of the Companies with any other information as shall in the opinion of the Examiner-In-Charge be requisite to furnish the Director with a statement of the condition and operation of the Companies' business and affairs and the manner in which the Companies conduct their business;

That neither he nor any other persons designated as examiners nor any members of their immediate families is an officer of, connected with, or financially interested in the Companies nor any of the Companies' affiliates other than as policyholders, and that neither he nor any other persons designated as examiners nor any members of their immediate families is financially interested in any other corporation or person affected by the examination;

That an examination was made of the affairs of the Companies pursuant to the authority vested in the Examiner-In-Charge by the Director of Insurance of the State of Illinois;

That he was the Examiner-in-Charge of said examination and the attached report of examination is a full and true statement of the condition and operation of the insurance business and affairs of the Companies for the period covered by the Report as determined by the examiners;

That the Report contains only facts ascertained from the books, papers, records, or documents, and other evidence obtained by investigation and examined or ascertained from the testimony of officers or agents or other persons examined under oath concerning the business, affairs, conduct, and performance of the Companies.



\_\_\_\_\_  
Roger Henschen  
Examiner-In-Charge

Subscribed and sworn to before me  
this 1 day of August, 2013.

  
\_\_\_\_\_  
Notary Public



IN THE MATTER OF:

DIRECT AUTO INSURANCE COMPANY  
330 SOUTH WELLS STREET  
SUITE 910  
CHICAGO, IL 60606-7161

13-HR-0863

STIPULATION AND CONSENT ORDER

WHEREAS, the Director (Director) of the Illinois Department of Insurance (Department) is a duly authorized and appointed official of the State of Illinois, having authority and responsibility for the enforcement of the insurance laws of this State; and

WHEREAS, Direct Auto Insurance Company (Company) is authorized under the insurance laws of this State and by the Director as a domestic mutual company, to engage in the business of soliciting, selling and issuing insurance policies; and

WHEREAS, a Market Conduct Examination of the Company was conducted by duly qualified examiners of the Department pursuant to Sections 131.21, 132, 401, 402 and 425 of the Illinois Insurance Code (215 ILCS 5/131.21, 5/132, 5/401, 5/402 and 5/425); and

WHEREAS, the Department examiners have filed an examination report as an official document of the Department as a result of the Market Conduct Examination; and

WHEREAS, said report cited various areas in which the Company was not in compliance with the Illinois Insurance Code (215 ILCS 5/1 *et seq.*) and Department Regulations (50 Ill. Adm. Code 101 *et seq.*); and

WHEREAS, nothing herein contained, nor any action taken by the Company in connection with this Stipulation and Consent Order, shall constitute, or be construed as, an admission of fault, liability or wrongdoing of any kind whatsoever by the Company; and

WHEREAS, the Company is aware of and understands its various rights in connection with the examination and report, including the right to counsel, notice, hearing and appeal under Sections 132, 401, 402, 407 and 407.2 of the Illinois Insurance Code and Title 50, Part 2402 of the Illinois Administrative Code; and

WHEREAS, the Company understands and agrees that by entering into this Stipulation and Consent Order, it waives any and all rights to notice and hearing; and

WHEREAS, the Company and the Director, for the purpose of resolving all matters raised by the report and in order to avoid any further administrative action, hereby enter into this Stipulation and Consent Order.

NOW, THEREFORE, IT IS agreed by and between the Company and the Director as follows:

1. That the Market Conduct Examination indicated various areas in which the Company was not in compliance with provisions of the Illinois Insurance Code and/or Department Regulations; and
2. That the Director and the Company consent to this order requiring the Company to take certain actions to come into compliance with provisions of the Illinois Insurance Code and/or Department Regulations.

THEREFORE, IT IS HEREBY ORDERED by the undersigned Director that the Company shall:

1. Institute and implement procedures consistent with 215 ILCS 5/143.15, which requires that all notices of cancellation of a Private Passenger Auto policy include a specific explanation of the reason or reasons for cancellation and provide at least 10 or 30 days notice.
2. Institute and implement procedures consistent with 215 ILCS 5/143.17, which requires that when nonrenewing a Private Passenger Auto policy the Company maintain proof of mailing, as defined in subsection (a), and provide a specific explanation of the reasons for nonrenewal, as defined in subsection (e), and if manifesting their willingness to renew directly to the insured, specify the premium amount payable, as defined in subsection (b).
3. Institute and implement procedures consistent with 215 ILCS 5/141.01, which requires that if a Private Passenger Auto policy is being nonrenewed, the nonrenewal cannot be due to the Company contract with the agent/producer being terminated.
4. Institute and implement procedures to use the rules, rates, rating plans, classifications or other schedules, filed with the Illinois Department of Insurance when issuing Private Passenger Auto policies, in accordance with 50 Ill. Adm. Code 754.10.
5. Institute and implement procedures to provide the insured a reasonable written explanation for the delay when the claim has been unresolved in excess of 40 calendar days in accordance with 50 Ill. Adm. Code 919.80(b)(2). Those explanations must be timely and include Notice of Availability of the Illinois Department of Insurance as defined in 50 Ill. Adm. Code 919.40. This includes first party claims that were paid, closed without payment, or were total losses.

6. Institute and implement procedures to provide the third party a reasonable written explanation for the delay when the claim has been unresolved in excess of 60 calendar days in accordance with 50 Ill. Adm. Code 919.80(b)(3). Those explanations must be timely and include Notice of Availability of the Illinois Department of Insurance as defined in 50 Ill. Adm. Code 919.40. This includes third party property damage claims that were paid or closed without payment.
7. Institute and implement procedures consistent with 50 Ill. Adm. Code 919.30(c), which requires detailed documentation be contained in each claim file in order to permit reconstruction of the company's activities relative to each claim. This includes all first and third party claims.
8. Institute and implement procedures consistent with 50 Ill. Adm. Code 919.50(a)(1) for Private Passenger Auto First Party claimants, which requires that when a claim is denied, a reasonable written explanation of the basis for the denial must be provided to the claimant within 30 days after the investigation and determination of liability is completed, and Notice of Availability of the Department of Insurance shall accompany this explanation.
9. Institute and implement procedures consistent with 50 Ill. Adm. Code 919.50(a)(2) for third party property damage liability claimants, which requires that when a claim is denied, a reasonable written explanation of the basis for the denial must be provided to the third party claimant. The written explanation must be justified according to the information in the claim file.
10. Cease sending delay letters that are incorrect or inconsistent. The Company shall provide straightforward and unambiguous verbiage in correspondence. In handling claims, the Company shall provide for a prompt, fair and equitable resolution.
11. Institute and implement procedures consistent with 215 ILCS 5/154.6(c), which requires the Company to promptly investigate and then settle third party claims.
12. Institute and implement procedures consistent with 215 ILCS 5/154.6(d), which requires them to effectuate prompt, fair and equitable settlements for third party claims.
13. Institute and implement procedures consistent with 215 ILCS 5/154.6(h) to prevent refusal to pay claims without conducting a reasonable investigation based on all available information.
14. Revise the language in Exhibit A so that it complies with 50 Ill. Adm. Code 919.80(c). Institute and implement procedures for insureds who experienced a total loss to their vehicle, to send the Exhibit A in a timely manner consistent with 50 Ill. Adm. Code 919.80(c).
15. Institute and maintain procedures to reimburse the insured the applicable sales taxes, transfer and title fees as required by and outlined in 50 Ill. Adm. Code

919.80(c)(3)(A)(i).

16. Cease sending letters to insureds with a comprehensive loss that state that Illinois law requires the letter to be provided to the insured when a comprehensive claim is filed. Further, when unrelated prior damage reduces the total loss settlement to the insured, that reduction must be indicated on the proof of loss.
17. Institute and implement procedures consistent with 215 ILCS 5/143b, which requires that a personal automobile insurer who has successfully recovered subrogation, shall return the correct pro rata share of the deductible to the insured.
18. Institute and implement procedures to avoid being in conflict with 215 ILCS 5/423(1), 5/424(4) and 5/429(1) by:
  - a. Making a bona fide effort to contact the insured when a subrogation deductible check has been returned including but not limited to finding a new address, phone number, and contacting the producer;
  - b. Not initiating subrogation against a third party carrier when the Company has not paid the insured the collision payment;
  - c. Not subtracting legal fees from the deductible amount paid to the insured when the Company has already been reimbursed for those legal fees.
19. Institute and maintain procedures to maintain Department and Consumer Complaint records consistent with 50 Ill. Adm. Code 926.50 Exhibit A and as described in Exhibit B.
20. Institute and implement procedures consistent with 50 Ill. Adm. Code 2601.20, which requires all companies issuing any policy of liability insurance to clearly indicate to the policyholder in writing the separate premium being charged for each group of coverage, and if the premium has changed at renewal, to inform the insureds at that time of the separate premiums.
21. Institute and implement procedures consistent with 215 ILCS 5/154.6(c), 5/154.6(d) and 5/154.6(r). When there is no lien on the insured vehicle, the check for damages shall be made payable to the insured instead of the insured *and* body shop unless the insured has specifically requested a two (2) party check and that is documented in the claim file.
22. Institute and implement procedures consistent with 215 ILCS 5/143.25a, which requires the Company, prior to the first renewal of the insured's auto policy, to inform the insured that a premium savings could result from higher deductible for collision and comprehensive coverage.
23. Institute and implement procedures consistent with 215 ILCS 5/143d(a), which requires the Company to maintain a toll free number or a designated telephone number provided at the Company's expense for policyholder use.

24. Institute and implement procedures, in accordance with 215 ILCS 154.6(d) and 50 Ill. Adm. Code 919.30(c), to maintain documentation of the bases for the Company's estimates prior to making offers in third party claims, as well as all communications.
25. Open all underpaid claims identified in this exam and pay the insureds, as appropriate.
26. Submit to the Director of Insurance, State of Illinois, proof of compliance with the above twenty-five (25) Orders within 30 days of execution of this Stipulation and Consent Order.
27. Pay to the Director of Insurance, State of Illinois, a civil forfeiture of seventy five thousand dollars (\$75,000.00) within 30 days of the entry date of this Stipulation and Consent Order.
28. Submit to a compliance examination within eighteen (18) months from the filing of this Order.

Hearing No. 13-HR-0863 is dismissed upon entry of this Stipulation and Consent Order.

NOTHING contained herein shall prohibit the Director from taking any and all appropriate regulatory action as set forth in the Illinois Insurance Code, including but not limited to levying additional forfeitures, should the Company violate any of the provisions of this Stipulation and Consent order or any provisions of the Illinois Insurance Code or Department Regulations.

On behalf of Direct Auto Insurance Company:

*Joe Fitzgerald*  
Signature

JOE FITZGERALD  
Name

PRESIDENT  
Title

Subscribed and sworn to before me this  
30<sup>th</sup> day of June A.D. 2015.



*Melissa A Joseph*  
Notary Public

DEPARTMENT OF INSURANCE of the  
State of Illinois;

DATE 7/2/2015

*Anne Melissa Dowling*  
Anne Melissa Dowling  
Acting Director