

**REPORT OF MARKET CONDUCT EXAMINATION**

**FARMERS INSURANCE COMPANY, INC.**

**AND**

**MID-CENTURY INSURANCE COPANY**

**10850 LOWELL AVENUE**

**OVERLAND PARK, KS 66210**

**AS OF**

**JUNE 30, 2002**

**BY**

**KANSAS INSURANCE DEPARTMENT**

## TABLE OF CONTENTS

| <b><u>SUBJECT</u></b>                       | <b><u>PAGE NO.</u></b> |
|---|------------------------|
| <b>EXECUTIVE SUMMARY</b>                    | <b>3</b>               |
| <b>SALUTATION</b>                           | <b>5</b>               |
| <b>SCOPE OF REVIEW</b>                      | <b>6</b>               |
| <b>SUMMARY OF REVIEW</b>                    | <b>6</b>               |
| <b>DESK EXAMINATION/ON SITE EXAMINATION</b> | <b>6</b>               |
| <b>CLAIM HANDLING</b>                       | <b>7</b>               |
| <b>GENERAL RECOMMENDATIONS</b>              | <b>10</b>              |
| <b>CONCLUSION</b>                           | <b>11</b>              |
| <b>APPENDIX I</b>                           | <b>12</b>              |

## EXECUTIVE SUMMARY

The Kansas Insurance Department performed a targeted market conduct examination of Farmers Insurance Company, Inc. and Mid-Century insurance Company, hereafter referred to as FIG. The examination was conducted by reviewing the company's third party property damage claims. The exam team reviewed the claims at the company's processing center in Overland Park, KS. Several meetings were held with the FIG claims management staff that focused on their current claim operations. To supplement and verify the understanding of how the company adjusts a third party claim, a series of samples were selected for review to verify their procedures and practices in claims handling.

The company had just converted to a new electronic claims processing system. All documents will now be scanned into their claims system and the claims representatives will view the entire claim on-line. The new system will give FIG more control over their claim processing and provide immediate documentation when any document is received in their office. For our purposes the period of review was under their old system, and the exam team reviewed paper files.

The company passed all tests; and in terms of delivering good service to its insureds, the examiners were impressed with the overall professional performance by the FIG staff and the overall timely handling of the claims. The exam team has made recommendations on several issues.

### LIST OF RECOMMENDATIONS

1. FIG claim files show a lack of consistent investigation. The files at times showed inconsistent or incomplete claim procedures as spelled out in the company's manuals. KID recommends that FIG strive to maintain a consistent standard for investigation for all of their claims in the area of contact, investigation and evaluation. Per KAR 40-1-34, Sections 4, 6a, 7 and 8a & b.
2. There was a lack of consistent file documentation, and consequently the examiners had difficulty at times determining what activity was being done on the file or what was the status of the claim. KID recommends that FIG maintain a consistent standard of documentation on their claim files in the areas of contact, investigation and evaluation. This would include determining the ACV of a vehicle and any deduction for salvage if the owner is retaining the car. Per KAR 40-1-34, Section 4 and 9a3.
3. As a result of the exam conducted in 2000 by KID on FIG, the following recommendation was made:

Recommendation 4: - FIC, Inc. needs to review their claim handling procedures for settling a total automobile loss. This would include establishing a cost of a comparable automobile in the local market area if available or securing quotes from a qualified dealer(s) in the local market area per the requirements of K.A.R. 40-1-34 Sec. 9.

From the sample reviewed in this exam, it does not appear that FIG has changed its practice and is still relying on a third party vendor to establish the ACV of a total automobile. This evaluation does not necessarily take into account a local market survey. FIG had 10 cases where they did not try and establish the value of a car by looking for a comparable automobile in the local market area or securing quotes from a qualified dealer(s) in that local market.

The company is still in violation of the various Sections of KAR 40-1-34 Section 9 and should immediately correct its procedures on evaluating the total loss of an automobile to bring FIG into compliance with this regulation.

Honorable Sandy Praeger  
Insurance Commissioner  
Kansas Insurance Department  
420 SW Ninth Street  
Topeka, KS 66612

February 17, 2003

Dear Commissioner Praeger:

In accordance with your respective authorization, and pursuant to K.S.A. 40-222, a market conduct examination has been conducted on the business affairs of:

Farmers Insurance Company, Inc.

And

Mid-Century Insurance Company

10850 Lowell Av.

Overland Park, Ks 66210

hereafter referred to as "FIG." or the "Company", and the following report of such an examination is respectfully submitted,

Lyle Behrens, CPCU, CIE, ARM  
Market Conduct Supervisor  
Examiner in Charge

## **SCOPE OF REVIEW**

A Targeted market conduct examination of FIG claims was completed to determine compliance with applicable statutes, regulations and bulletins of the state of Kansas. The examination was conducted according to the guidelines and procedures recommended in the NAIC Market Conduct Examiners Handbook.

The examination included, but was **not limited to the following:**

### COMPANY OVERVIEW

#### CLAIMS

- Claim Processing
- Use of Outside Pricing Entities
- Timeliness and Accuracy of Claim Payment
- Proper Maintenance of Claim Files

## **SUMMARY OF REVIEW**

The market conduct examination focused on Farmers Insurance Company's, Inc. and Mid-Century insurance Company's handling of third party auto claims. The testing and file review consisted of a sampling from the Company's claim files in their processing center in Overland Park, Kansas.

The claim processing for FIG is handled out of their two branch offices located in Wichita and Overland Park, Kansas.

The examination included a review of the Company's settled third party property damage claim files from January 1, 2000 to June 30, 2002.

General topics were covered in Interrogatories submitted to FIG for their written response. The subjects covered claim processing and claim training. The response received adequately addressed the issues presented.

## **DESK EXAMINATION/ON-SITE EXAMINATION**

### COMPANY OVERVIEW

#### **Tests for Company Operations/Management**

##### **Standard 1**

Records are adequate, accessible, consistent and orderly and comply with state record retention requirements. KSA 40-222 a, b, c & g.

The company provided the exam team with the necessary records and documents in a timely fashion.

## **Standard 2**

The company cooperates on a timely basis with examiners performing the examinations. KSA 40-222 c & g.

The company was very cooperative and provided the exam team with the items requested within the time frames established for this exam.

## **CLAIMS**

Claims are reported directly to the company or to their agents.. Upon receipt a claim is assigned directly to an auto Claims Representative (CR) if received with shop information. If shop information is not provided the claim is assigned to a claims associate for a customer contact. Upon contact, three options are given:

Circle of Dependability (COD)

Drive In Appointment

Field Inspection, with the desired repair facility selected by the customer

FIG tries to inspect at repair facilities so an agreed price can be reached. In rural territories they will inspect vehicles at the customer's residence or place of employment depending on the customer's choice.

Once the vehicle is inspected an electronic estimate is written determining damage. If repairable, the estimate and an Insured Payment Authorization (IPA) are given to the customer/shop. The IPA is a payment voucher signed by the customer and redeemable by the repair facility upon completion of the repairs. Once the insured and shop validate the repairs, the customer pays the deductible, if applicable, and the shop submits the IPA for payment. Third party claimants are issued a check made payable to the owner of the vehicle alone. If the vehicle is determined to be a total loss FIG obtains an evaluation based on local comparable vehicles to determine the actual cash value. The insured or third party claimant can provide support or documentation to support increases in value. Upon completion and with agreement from the customer, a check is issued for the actual cash value of the vehicle, with all applicable taxes, license fees and other applicable transfer fees in exchange for the correct title of vehicle.

Appraisal pursuant to the terms of the policy is offered in the event FIG cannot reach an agreement with the individual on the value of the vehicle. The proper remedy for the claimant is through the judicial system or his or her own carrier who can then pursue resolution via Inter-company arbitration.

Third party claims requiring additional information (i.e. clarification of facts, questionable liability) are assigned to a CR to conduct an investigation to ascertain the facts for the individual loss. FIG strives to obtain: police reports and statements of insured, claimants, and disinterested witnesses. Facts as determined are considered to determine if the application of comparative negligence is applicable. Such facts are as follows: Points of Impact, Speed,

Weather, Road Conditions, Traffic Conditions, Day or Night, Visibility, etc. Based on the facts determined through the investigation of the specific loss comparative negligence percentages are applied if applicable.

**Tests for Claims** (See Appendix I for the wording of the appropriate statute or regulation)

**Standard 1**

The initial contact by the company with the claimant is within the required time frame. KAR 40-1-34 6(a & d).

| <u>Type</u>          | <u>Sample</u> | <u>Errors</u> | <u>%Pass</u> | <u>Pass/Fail</u> |
|----------------------|---------------|---------------|--------------|------------------|
| 2000 Pd Auto Claims  | 97            | 4             | 96%          | Pass             |
| 2001 Pd Auto Claims  | 92            | 8             | 91%          | Fail             |
| 2002 Pd Auto Claims  | 96            | 5             | 95%          | Pass             |
| Total Pd Auto Claims | 285           | 17            | 94%          | Pass             |

**Standard 2**

Timely investigations are conducted. KAR 40-1-34 7 & 8(c).

| <u>Type</u>          | <u>Sample</u> | <u>Errors</u> | <u>%Pass</u> | <u>Pass/Fail</u> |
|----------------------|---------------|---------------|--------------|------------------|
| 2000 Pd Auto Claims  | 97            | 3             | 97%          | Pass             |
| 2001 Pd Auto Claims  | 92            | 7             | 92%          | Fail             |
| 2002 Pd Auto Claims  | 96            | 2             | 98%          | Pass             |
| Total Pd Auto Claims | 285           | 12            | 96%          | Pass             |

**Standard 3**

Claims are resolved in a timely manner. KAR 40-1-34 8(a & c).

| <u>Type</u>          | <u>Sample</u> | <u>Errors</u> | <u>%Pass</u> | <u>Pass/Fail</u> |
|----------------------|---------------|---------------|--------------|------------------|
| 2000 Pd Auto Claims  | 97            | 2             | 98%          | Pass             |
| 2001 Pd Auto Claims  | 92            | 1             | 99%          | Pass             |
| 2002 Pd Auto Claims  | 96            | 4             | 96%          | Pass             |
| Total Pd Auto Claims | 285           | 7             | 98%          | Pass             |

**Standard 4**

The company responds to claim correspondence in a timely manner. KAR 40-1-34 6(a & d) & KSA 2404 9(f).

| <u>Type</u>          | <u>Sample</u> | <u>Errors</u> | <u>%Pass</u> | <u>Pass/Fail</u> |
|----------------------|---------------|---------------|--------------|------------------|
| 2000 Pd Auto Claims  | 97            | 0             | 100%         | Pass             |
| 2001 Pd Auto Claims  | 92            | 0             | 100%         | Pass             |
| 2002 Pd Auto Claims  | 96            | 1             | 99%          | Pass             |
| Total Pd Auto Claims | 285           | 1             | 99.7%        | Pass             |

**Standard 5**

Claim files are adequately documented. KAR 40-1-34 4, 6(a) & KAR 40-1-34 8(b).

| <u>Type</u>          | <u>Sample</u> | <u>Errors</u> | <u>%Pass</u> | <u>Pass/Fail</u> |
|----------------------|---------------|---------------|--------------|------------------|
| 2000 Pd Auto Claims  | 97            | 2             | 98%          | Pass             |
| 2001 Pd Auto Claims  | 92            | 9             | 89%          | Fail             |
| 2002 Pd Auto Claims  | 96            | 5             | 95%          | Pass             |
| Total Pd Auto Claims | 285           | 16            | 94%          | Pass             |

**Standard 6**

Claims are properly handled in accordance with policy provisions and applicable statutes, rules and regulations. KAR 40 -1-34 5(a), 8, & 9, KSA 2404 9(d, f & j), KSA 40-3110, KSA 40-2-126.

| <u>Type</u>          | <u>Sample</u> | <u>Errors</u> | <u>%Pass</u> | <u>Pass/Fail</u> |
|----------------------|---------------|---------------|--------------|------------------|
| 2000 Pd Auto Claims  | 97            | 4             | 96%          | Pass             |
| 2001 Pd Auto Claims  | 92            | 5             | 95%          | Pass             |
| 2002 Pd Auto Claims  | 96            | 9             | 91%          | Fail             |
| Total Pd Auto Claims | 285           | 18            | 94%          | Pass             |

**Standard 7**

Company uses the reservation of rights (ROR) and excess of loss letters, when appropriate.

This standard was not specifically tested for. In the normal review of the 285 paid auto claims, any ROR activity would have been reviewed, and the examiner would have noted it. There were no issues with the files that were reviewed.

**Standard 8**

Company claim forms are appropriate for the type of product.

Passed

**Standard 9**

Canceled benefit checks and drafts reflect appropriate claim handling practices. KAR 40-1-34 5(f), 8(a & c) & KSA 40-3110.

| <u>Type</u> | <u>Sample</u> | <u>Errors</u> | <u>%Pass</u> | <u>Pass/Fail</u> |
|-------------|---------------|---------------|--------------|------------------|
| Pd Checks   | 50            | 0             | 100%         | Pass             |

**Standard 10**

Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy. KSA 40-2404 9(d & f).

| <u>Type</u>         | <u>Sample</u> | <u>Errors</u> | <u>%Pass</u> | <u>Pass/Fail</u> |
|---------------------|---------------|---------------|--------------|------------------|
| 2000 Pd Auto Claims | 97            | 0             | 100%         | Pass             |
| 2001 Pd Auto Claims | 92            | 0             | 100%         | Pass             |

|                      |     |   |       |      |
|----------------------|-----|---|-------|------|
| 2002 Pd Auto Claims  | 96  | 1 | 99%   | Pass |
| Total Pd Auto Claims | 285 | 1 | 99.7% | Pass |

### **RECOMMENDATIONS**

1. FIG claim files show a lack of consistent investigation. The files at times showed inconsistent or incomplete claim procedures as spelled out in the company's manuals. KID recommends that FIG strive to maintain a consistent standard for investigation for all of their claims in the area of contact, investigation and evaluation. Per KAR 40-1-34, Sections 4, 6a, 7 and 8a & b.
2. There was a lack of consistent file documentation, and consequently the examiners had difficulty at times determining what activity was being done on the file or what was the status of the claim. KID recommends that FIG maintain a consistent standard of documentation on their claim files in the areas of contact, investigation and evaluation. This would include determining the ACV of a vehicle and any deduction for salvage if the owner is retaining the car. Per KAR 40-1-34, Section 4 and 9a3.
3. As a result of the last exam conducted in 2000 by KID on Farmers Insurance Company, Inc and Mid-Century Insurance Company, the following recommendation was made:

Recommendation 4: FIC, Inc. needs to review their claim handling procedures for settling a total automobile loss. This would include establishing a cost of a comparable automobile in the local market area if available or securing quotes from a qualified dealer(s) in the local market area per the requirements of K.A.R. 40-1-34 Sec. 9.

From the sample reviewed in this exam, it does not appear that FIG has changed its practice and is still relying on a third party vendor to establish the ACV of a total automobile. This evaluation does not necessarily take into account a local market survey. FIG had 10 cases where they did not try and establish the value of a car by looking for comparable automobile in the local market area or securing quotes from a qualified dealer(s) in that local market.

The company is still in violation of the various Sections of KAR 40-1-34 Section 9 and should immediately correct its procedures on evaluating the total loss of an automobile to bring FIG into compliance with this regulation.

### **CONCLUSION**

I would like to acknowledge the cooperation and courtesy extended to the examination team by the Claims Management Staff at Farmers Insurance Company, Inc.

The following examiners of the Office of the Commissioner of Insurance in the State of Kansas participated in the review:

**Market Conduct Division**

Lyle Behrens  
Supervisor

Michael Grover  
Market Conduct Examiner

Mary Lou Maritt  
Market Conduct Examiner

Brent Getty  
Staff Attorney

Respectfully submitted,

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Lyle Behrens, CPCU, CIE, ARM

APPENDIX I

- Unfair claims practices provides for the following guidelines to be met in the processing and investigation and settlement/denial of a claim. K.A.R. 40-1-34:

- Definitions, Sec. 3
- File and Record Documentation, Sec. 4
- Misrepresentation of Policy Provisions, Sec. 5
- Failure to Acknowledge to Pertinent communication, Sec. 6
- Standards for Prompt Investigation of Claims, Sec. 7
- Standards for Prompt, Fair and Equitable Settlements Applicable to all Insurers, Sec. 8
- Standards for Fair and Equitable Settlements Applicable To Auto Insurance, Sec. 9
- Kansas Automobile Injury Reparations Act (Payment of Benefits). K.S.A. 40-3110
- Unfair methods of competition or unfair and deceptive acts or practices. KSA 40-2404
- Interest Due On Insurance Settlements. KSA 40-2,126

**A. K.A.R. 40-1-34 - Unfair Claims Practices Act**

1. K.A.R. 40-1-34 Sec. 3 - Definitions

The definitions of "person" and of "insurance policy or insurance contract" contained in section 2 of the Unfair Trade Practice Act shall apply to this regulation and, in addition, where used in this regulation:

(a) "Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insure with respect to a claim;

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

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

(d) "Insurer" means a person licensed to issue or who issues any insurance policy or insurance contract in this State.

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

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

(g) "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 insurer; and

(h) "Worker's Compensation" includes, but is not limited to, Longshoremen's and Harbor Worker's Compensation.

## 2. K.A.R. 40-1-34 Sec. 4 - File and Record Documentation

The insurer's claim files shall be subject to examination by the (Commissioner) or by his/her duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.

## 3. K.A.R. 40-1-34 Sec. 5 - Misrepresentation of Policy Provisions

(a) No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

(b) No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(c) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

(d) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such

time limit prejudices the insurer's rights.

(e) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(f) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

4. K.A.R. 40-1-34 Sec. 6 - Failure to Acknowledge Pertinent Communications:

(a) Every insurer, upon receiving notification of a claim shall, within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(b) Every insurer, upon receipt of any inquiry from the insurance department respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry.

(c) An appropriate reply shall be made within ten working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(d) Every insurer, upon receiving notification of claim, shall 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 ten working days of notification of a claim shall constitute compliance with subsection (a) of this section.

5. K.A.R. 40-1-34 Sec. 7 - Failure to Acknowledge Pertinent Communications

Every insurer shall complete investigation of a claim within thirty days after notification of claim, unless such investigation cannot reasonably be completed within such time.

6. K.A.R. 40-1-34 Sec. 8 - Standards for Prompt, Fair and Equitable Settlements  
Applicable to All Insurers

(a) Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such 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 contain a copy of the denial.

(b) If a claim is denied for reasons other than those described in paragraph (a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.

(c) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five days from the date of the initial notification and every forty-five days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.

(d) Insurers shall 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.

(e) Insurers shall 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 notice shall be given to first party claimants thirty days and to third party claimants sixty days before the date on which such time limit may expire.

(f) No insurer shall 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 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.

(g) An insurer shall not attempt to settle a loss with a first party claimant on the basis of a cash settlement which is less than the amount the insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.

7. K.A.R. 40-1-34 Sec. 9 - Standards for Prompt, Fair, and Equitable Settlements  
Applicable to Automobile Insurance

(a) When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(1) The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

(2) The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by

The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area.

(B) One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the market area.

(3) When a first party automobile total loss is settled on a basis which deviates from *the methods described in subsections (a)(1) and (a)(2) of this section*, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deduction for salvage must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.

(b) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

(c) Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

(d) Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

(e) If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.

(f) When the amount claimed is reduced because of betterment or depreciation all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(g) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

[[The insurer shall not use as a basis for cash settlement with a first party claimant an amount which is less than the amount which the insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.]] Insurers shall include consideration of applicable taxes, license fees, and other fees incident to transfer of evidence of ownership in third party automobile total losses and shall have sufficient documentation relative to how the settlement was obtained in the claim file. A measure of damages shall be applied which will compensate third party claimants for the reasonable loss sustained as the proximate result of the insured's negligence.

**B. KSA 40-3110 - Payment of PIP benefits**

(a) Except for benefits payable under any workmen's compensation law, which shall be credited against the personal injury protection benefits provided by subsection (f) of K.S.A. 40-3107, personal injury protection benefits due from an insurer or self-insurer under this act shall be primary and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued in compliance with this act. An insurer or self-insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the insurer's policy of motor vehicle liability insurance affords the coverage required by this act. No claim for personal injury protection benefits may be made after two (2) years from the date of the injury.

(b) Personal injury protection benefits payable under this act shall be overdue if not paid within thirty (30) days after the insurer or self-insurer is furnished written notice of the

fact of a covered loss and of the amount of same, except that disability benefits payable under this act shall be paid not less than every two (2) weeks after such notice. If such written notice is not furnished as to the entire claim, any partial amounts supported by written notice is overdue if not paid within thirty (30) days after such written notice is furnished. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within thirty (30) days after such written notice is so furnished: Provided, That no such payment shall be deemed overdue where the insurer or self-insurer has reasonable proof to establish that it is not responsible for the payment, notwithstanding that written notice has been furnished. For the purpose of calculating the extent to which any personal injury protection benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery. All overdue payments shall bear simple interest at the rate of eighteen percent (18%) per annum.

**C. KSA 40-2404.** - Unfair methods of competition or unfair and deceptive acts or practices; disclosure of nonpublic personal information; rules and regulations. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(9) *Unfair claim settlement practices.* It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are: (A) Committed flagrantly and in conscious disregard of such provisions, or (B) committed with such frequency as to indicate a general business practice.

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) attempting to settle a claim for less than the amount to which a reasonable person would have believed that such person was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) 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; or

(n) 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.

**D. KSA 40-2,126 - Interest Due On Insurance Settlements,**

Except as otherwise provided by K.S.A. 40-447, 40-3110 and 44-512a, and amendments thereto, each insurance company, fraternal benefit society and any reciprocal or interinsurance exchange licensed to transact the business of insurance in this state which fails or refuses to pay any amount due under any contract of insurance within the time prescribed herein shall pay interest on the amount due. If payment is to be made to the claimant and the same is not paid within 30 calendar days after the amount of the payment is agreed to between the claimant and the insurer, interest at the rate of 18% per annum shall be payable from the date of such agreement. If payment is to be made to any other person for providing repair or other services to the claimant and the same is not paid within 30 calendar days following the date of completion of such services and receipt of the billing statement, interest at the rate of 18% per annum shall be payable on the amount agreed to between the claimant and the insurer from the date of receipt of the billing statement.