

REPORT OF MARKET CONDUCT EXAMINATION

TRADERS INSURANCE COMPANY

8916 TROOST AVE.

KANSAS CITY, MO 64131

BY

KANSAS INSURANCE DEPARTMENT

AS OF MARCH 31, 2002

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Honorable Kathleen Sebelius
Insurance Commissioner
Kansas Insurance Department
420 SW Ninth Street
Topeka, KS 66612

September 23, 2002

Dear Commissioner Sebelius:

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:

TRADERS INSURANCE COMPANY

8916 TROOST AVE

KANSAS CITY, MO 64131

hereafter referred to as “Traders” or “the Company”, and the following report as such examination is respectfully submitted,

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

SCOPE OF REVIEW

A Targeted market conduct examination of Traders claims and complaints 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

Certificates of Authority

COMPLAINT HANDLING

Record Keeping

Timely Response

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 Traders Insurance Company. The testing and file review consisted of sampling from the Company's claims processing center in Kansas City, Mo. and the complaints filed with the Kansas Insurance Department from January 1, 2000 to March 31, 2001.

General topics were covered in Interrogatories submitted to the Companies for their written response. Subjects covered were Complaints, Underwriting and Claims. The response received adequately addressed the issues presented.

DESK EXAMINATION/ON-SITE EXAMINATION

COMPANY OVERVIEW

History

Traders was incorporated in December of 1980. They began writing business on July 7, 1982. The Concannon Group of Companies (CGC) acquired Traders in 1992 and currently owns 100% of Traders and Professional Claims, Inc. (PCI). CGC acts as an MGA and is owned by Delta Plus, LLC. CGC acts as a holding company for CGC and Christopher Joseph & Co

Traders currently writes in 6 states, Indiana, Missouri, Kansas, Oklahoma and New Mexico. Their primary activity is non-standard auto. They do have a small amount of mobile home

business in Kansas. They distribute their product through Express Insurance Agency that is owned by Traders, Christopher Joseph & Company b/d/a ABIA and other independent agencies.

PCI handles all of Traders claim functions of Traders. They utilize independent appraisal companies for estimating property damage and complex third party liability claims.

Tests for Company Operations/Management

Standard 7

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 8

The company is licensed for the lines of business that are being written. KSA 40-216.

The Certificate of Authority was reviewed and found to be in order and the company was complying with it.

Standard 9

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.

COMPLAINTS

Company Insurance Department Complaint Procedures

The following are the company's complaint procedures:

1. Items and correspondence that are considered "complaints," include (i) any written communication whose primary purpose is the expression of a violation of a state's laws, (ii) all correspondence from state insurance departments where the state communicates a complaint registered with such state in connection with an insurance policy that Traders issued, and (iii) other complaints if in writing and appeal to a senior management for assistance with respect to a claim or a policy.
2. The first step in the handling of a complaint is the logging of it in the company's complaint log. The original complaint is retained with the complaint log and a copy is routed to the appropriate person for investigation, response and handling. Complaints related to

policyholder service are routed to Jennifer Saylor. Complaints related to claims are routed to Patrick Concannon. Ms. Saylor and Mr. Concannon will review the appropriate underwriting file and claim file and determine the basis for the complaint. Corrective action will be immediately taken if such is deemed necessary. A timely response is then made to the complaining party or to the insurance department if the complaint was first made to the insurance department.

3. The company maintains a database of complaints. Each complaint is immediately added to the database. The database includes the date received, the date a response is due, a description of the complaint, the line of business, the date the company responded to the complaint and the action taken. Responses to complaints related to claim handling are handled by the Chief Operating Officer and General Counsel. There is no further review. Jennifer Saylor handles responses to policyholder complaints. Ms. Saylor has intimate knowledge of the company's underwriting rules and procedures and has demonstrated a high degree of competence in the investigation, response and handling of complaints. She will involve her manager, Colleen Fowler, if a particular complaint requires attention of senior management.

Tests for Complaint Handling

Standard 1

All complaints are recorded in the required format on the company complaint register. KSA 40-2404 (10).

The complaint register was up to date and complete with the required information per Kansas statute and the Traders complaint procedures.

Standard 2

The company has adequate complaint handling procedures in place and communicates such procedures to policyholders. KAR 40 –1- 34 5(a) & 6.

The procedures written into company policy are adequate and provide control of the complaint process by the assigned people. Generally, these procedures work quite well.

Standard 3

The company takes adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations, and contract language. KAR 40-1-34 6.

The company generally meets this standard.

Standard 4

The time frame within which the company responds to complaints is in accordance with applicable statutes, rules and regulations. KAR 40- 1-34 6 & 8(a & c).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
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Complaints	31	4	87%
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Thirty-one complaints filed with the Kansas Insurance Department were reviewed at Traders headquarters. Timelines required by Kansas Regulations were met with 4 exceptions.

Recommendations:

1. Ensure that all insurance department complaints are responded to within 15 working days. Per KSA 40-2404 (10).

UNDERWRITING

Standard 12: Termination Practices

Cancellation/non-renewal notices comply with policy provisions and state laws, including the amount of advance notice provided to the insured and other parties to the contract. KSA 40-276(a), KSA 40-277, KSA 40-278, KSA 40-2,111, KSA 40-2,112, KSA 40-2,120, KSA 40-2,121, KSA 40-2,122, KAR 40-3-23, KAR 40-3-28 & KAR 40-3-15.

While the scope of the exam did not include underwriting and cancellation procedures, one complaint file did include a nonrenewal for underwriting reasons. The termination notice did not conform to KSA 40-2,112 where the specific reason or reasons were not given nor was there any notice to the insured that such information would be provided upon written request from the insured. Per KSA 40-2,112.

- (a) In the event of an adverse underwriting decision the insurance company, health maintenance organization or agent responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such persons that upon written request they may receive the specific reason or reasons in writing.

Standard 14: Terminations

Rescissions are not made for non-material misrepresentation.

This standard was not specifically tested for. However in several complaint files and claim folders, the policy was rescinded for material misrepresentation. The rescissions were handled properly in the files reviewed.

Recommendations

1. When terminating coverage for an adverse underwriting decision, Traders shall either provide the policyholder with the specific reason or reasons for the adverse underwriting decision in writing or advise the insured that upon written request they may receive the specific reason or reasons in writing. Per KSA 40-2,112.

CLAIMS

All claims are handled by the Concannon subsidiary, Professional Claims, Inc. (PCI) which is under the day-to-day direction of Andrew Jamieson. PCI consists of 2 primary departments, the Continuing Unit and the Rapid Settlement Unit. The Continuing Unit consists of five heavily experienced casualty examiners and one personal injury protection specialty examiner. The Rapid Settlement Unit consists of two experienced examiners and three examiner support staff.

PCI also maintains claims offices in Kansas City, Missouri and Oklahoma City, Oklahoma where field personnel provide outstanding service and maintain high standards for initial contact, timely investigation and claim resolution.

Claims are assigned to an examiner in the appropriate unit with specific instructions and comments regarding any special circumstances that may be involved. Each examiner has the responsibility to complete all of the investigation necessary and may utilize independent appraisers and adjusters on a limited basis in order to properly and thoroughly investigate and evaluate each claim.

After the loss report is received, it is necessary to confirm coverage and, in cases reported to us by third parties, obtain confirmation of the facts, etc. Management sets initial reserves on the file, provides appropriate instructions and comments. The file is assigned to an examiner who immediately commences contacting the involved parties and conducting such investigation as is necessary. The criterion for completion of initial investigation is fifteen days and the file is diaried accordingly. Additional investigation may be necessary dependent upon initial investigation results.

The electronic claim processing system permits, as well as requires, monitoring of all phases of activities occurring on claim files. An automated diary system allows multiple diary dates by more than one person, which assists in tracking individual files for one or many specific activities or purposes. The diary system is also utilized as a communication tool as examiners, supervisors and managers have the ability to attach notes or comments to their diaries and send them to each other immediately or for some date in the future. The features of this diary system help enhance the ease in which supervisory involvement is attained.

All reported claims, whether covered or not, are given a claim number and appropriate data is entered into the system which enables the company to retrieve all pertinent data on all reported incidents. Those situations, in which there is no involvement or policy of record, are entered into the system as a "record only".

All drafts and checks for loss payments must have the approval and signature of Ms. McCollam, Ms. Nelson or Mr. Jamieson regardless of amount. Losses in excess of \$10,000 must be submitted to the claims manager by way of a captioned report and a request for authorization to pay.

Traders strongly emphasize 24-hour contact with insureds and claimants, sound fundamental claim handling skills as well as completion of initial investigation within 15 days. Claim Department personnel have been provided with in-house training to improve their skills,

knowledge and efficiency and are encouraged and rewarded for their participation in outside industry related courses.

Claims involving litigation are assigned or reassigned to the Associate legal counsel, Joseph McMillen, who oversees all litigation along with Patrick Concannon. Defense counsel is selected based on thorough review and evaluation by the Associate legal counsel and Mr. Concannon. PCI requires a Litigation and Settlement Plan on each litigated file. This plan identifies the factors and issues driving the litigation. It categorizes them as liability, damages or coverage related. The plan assists PCI in making an early evaluation whether the case should be settled or tried.

When the handling Examiner recognizes subrogation or salvage, the subrogation or salvage specialty desk is immediately notified, and the file is placed on the specialty desk's diary with an appropriate date. The Examiner sends the first notice of subrogation to the adverse party or their carrier. The Examiner retains primary control of the file until such time as all outstanding claims have been concluded and control of the file is then transferred to the specialty desk for completion of subrogation or salvage. All recoveries are tracked in the claim computer system.

All policy benefits are explained by the individual claims examiners assigned to each file. Each examiner has a significant amount of work experience and training in the understanding and explanation of policy benefits. When a claim is reported, management reviews the circumstances of the loss to determine what potential exposures exist. Specific written handling instruction identifying those exposures and policy benefits are given to the claims examiner to whom the claim file is assigned. The claims examiner contacts the insured and any third party claimants to explain the benefits by phone. Kansas Department of Insurance approved policy forms are used to show what benefits are available. All claims are handled through the use of our electronic claim processing system

Any claim denials are made only after a through investigation of the facts surrounding the claim and a review of the policy history or status. All examiners are required to seek approval from Traders General Legal Counsel for every claim denial that will be made for any reason other than policy cancellation or expiration prior to the date of loss. Each denial is reviewed by General Counsel to assure that the denial is appropriate and correct prior to any authorization being given to the examiner to move forward with the denial.

Examiners are required to notify management of any denials that are disputed or where a request for appeal has been made. The Claims Manager will review the file to assure that the denial was appropriate and correct and that all facts have been fully investigated, given due consideration and are clearly documented in the claims file.

The company generally makes payments within 24 to 48 hours of the date that settlement is reached or the value of the damages is ascertained. Interest is paid when required pursuant to Section 40-2,126 and in accordance with this section.

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>
Denied Auto	50	0	100%
Paid Auto	48	1	98%

Passed

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>
Denied Auto	50	0	100%
Paid Auto	48	1	98%

Passed

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>
Denied Auto	50	0	100%
Paid Auto	48	2	96%

Passed

Standard 4

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

Passed

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>
Denied Auto	50	0	100%
Paid Auto	48	1	98%

Passed

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 40-3110, KSA 40-2-126.

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	50	0	100%
Paid Auto	48	6	88%

5 files did not have a local market survey or comparable vehicle offered as an offer to settle a total automobile. In 3 cases the company used NADA as the only source to calculate the loss settlement cost. In 2 other cases the file was not documented as to how the actual case value of the totaled vehicle was determined. This is a violation of KAR 40-1-34, 9(a)(2)(B) which requires the settlement cost to be determined by “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 local market area.”

1 case there was no sales tax included in the offer to the claimant as part of the actual cash value settlement per KAR 40-1-34 9(a)(2).

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 48 paid and 50 denied 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

Deductible reimbursement to insureds upon subrogation recovery is made in a timely and accurate manner. KAR 40-1-34 9(d).

This standard was not specifically tested for. In the normal review of the 48 paid auto claims, any subrogation activity would have been reviewed, and the examiner would have noted it. There were no issues with the files that were reviewed.

Standard 9

Company claim forms are appropriate for the type of product.

Passed

Standard 10

Claim files are reserved in accordance with the company’s established procedures.

Passed

Standard 11

Denied and closed-without-payment claims are handled in accordance with policy provisions and state law. KAR 40- 1-34 8(a, b & c).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	50	1	98%

Passed

1 file did not have a written nonrenewal notice sent to the claimant per KAR 40-1-34 8(a):

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.

Standard 12

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(f & g).

<u>Type</u>	<u>Sample</u>	<u>Errors</u>	<u>%Pass</u>
Denied Auto	50	0	100%
Paid Auto	48	1	98%

Passed

1 file had an offer to the claimant #1 of 20-30% due to contributory negligence of claimant #2. Through a clerical error, the company paid a 100 % of the subrogation claim from claimant #1's carrier. This is a violation of KSA 40-2404 (9)(f) "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear".

Recommendations:

1. The company should remind adjusters that they cannot use NADA as the only source to calculate the loss settlement cost. The claim file should have documentation establishing how the actual cash value of the vehicle was determined. Per KAR 40-1-34 9(a)(2)(B).
2. The company should insure that claim investigations and payments are made in a timely fashion. Per 40-1-34 7 & 8(a & b)

GENERAL COMMENTS

Complaint Handling

1. Ensure that all insurance department complaints are responded to within 15 working days. Per KSA 40-2404 (10).

Underwriting

1. When terminating coverage for an adverse underwriting decision, Traders shall either provide the policyholder with the specific reason or reasons for the adverse underwriting decision in writing or advise the insured that upon written request they may receive the specific reason or reasons in writing. Per 40-2,112.

Claims Handling

1. The company should remind adjusters that they cannot use NADA as the only source to calculate the loss settlement cost. The claim file should have documentation establishing how the actual cash value of the vehicle was determined. Per KAR 40-1-34 9(a)(2)(B).
2. The company should insure that claim investigations and payments are made in a timely fashion. Per KAR40-1-34 7 & 8(a & b).

CONCLUSION

I would like to acknowledge the cooperation and courtesy extended to the examination team by the COO and General Counsel and the staff of Traders.

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

Mary Lou Maritt
Market Conduct Examiner

Respectfully submitted,

Lyle Behrens, CPCU, CIE, ARM