



December 21, 1992

BULLETIN #543

BULLETIN TO ALL MEMBERS:

**RE: CALIFORNIA CODE OF REGULATIONS, TITLE 10. CHAPTER 5,
SUBCHAPTER 8**

On December 15, 1992, the Office of Administrative Law approved the Unfair Claims Settlement Practices Regulations directed at controlling nonadmitted insurers and surplus line brokers handling of insurance claims in California. The regulation becomes effective January 14, 1993. We have enclosed a memorandum prepared by LeBoeuf, Lamb, Leiby & MacRae to assist you in your understanding and compliance with these new regulations. We urge you to review these documents with great care. Should you need additional information, LeBoeuf, Lamb, Leiby & MacRae has kindly offered their assistance; you will find their telephone number on the last page of the document.

James S. Pugh

Assistant Manager
JSP/imb

Enclosure

December 15, 1992

FOR: Surplus Line Association of California

FROM: LeBoeuf, Lamb, Leiby & MacRae

SUBJECT: California Unfair Claims Settlement Practices Regulations

This memorandum is intended to advise you of important additions to California's insurance regulations which may directly affect how business is conducted under the California Surplus Line Law.

Today, the Office of Administrative Law approved the Unfair Claims Settlement Practices Regulations as submitted by the Department of Insurance October 29, 1992. The Regulations purport to control how non-admitted insurers and surplus line brokers handle insurance claims in California.

The regulatory requirements imposed upon "insurers" are to be binding on non-admitted insurers. Section 2695.2(j) provides in pertinent part:

The term insurer, for purposes of these regulations includes non-admitted insurers....

The regulatory requirements imposed upon "licensees" are to be binding upon surplus line brokers. Section 2695.2(n) provides in pertinent part:

The term "licensee" shall include surplus line brokers and special lines surplus line brokers.

Your members will need to begin formulating compliance programs immediately. Not only do the Regulations govern how "insurers" and "licensees" are to handle claims, they also mandate the adoption of appropriate claims handling procedures and the implementation of training programs within 90 days of the effective date of the Regulations (i.e., within 120 days of the date the Regulations are filed with the Secretary of State).

REQUIREMENTS IMPOSED ON "INSURERS"

The Regulations require that "insurers," including nonadmitted insurers, shall:

Surplus Line Association of California

December 15, 1992

Page 2

- Adopt written standards for the prompt processing of claims as mandated under the Regulations and communicate those standards to claims agents within 90 days of the effective date of the Regulations (_695.6(b))
- Maintain claim documentation as specified in the Regulations (_695.3(b), 2695.7(l))
- Disclose to first party claimants all benefits, coverages, and time limitations that might apply (_695.4(a))
- Refrain from requiring claimants to exhibit property except as is provided for in the Regulations (_695.4(c))
- Refrain from enforcing time limitations for giving notice of claims except as is provided for in the Regulations (_695.4(e))
- Refrain from requiring claimants to sign general releases except as is provided for in the Regulations (_695.4(e)(1))
- Refrain from issuing partial settlement checks accompanied by language purporting to effectuate a total release of liability (_695.4(g))
- Acknowledge receipt of a notice of claim within 15 calendar days (_695.5(a))
- Refrain from requiring that notices of claims be submitted in writing unless the policy includes such a requirement (_695.5(d))

- Respond "as soon as practicable," and no later than within 15 days, to all communications from claimants that suggest a response is expected (_695.5(g))
- Supply all necessary claim forms, instructions and "reasonable assistance" to claimants within 15 days of receipt of a notice of claim (_695.5(h))
- Commence investigation of the claim immediately, and no later than within 15 days, after receipt of a notice of claim (_695.6(a))
- Refrain from discriminatory claims practices (_695.7(a))
- Accept or deny claims, and affirm or deny liability, within 40 days of receipt of proof of claim unless notification of the need for additional time is given pursuant to the

Surplus Line Association of California December 15, 1992

Page 3

- Regulations or unless the claim is a suspected fraudulent claim within the meaning of the Regulations (_695.7(b,c,k))
- Refrain from seeking information from claimants that is not material to the resolution of a claim (_695.7(d))
- Refrain from delaying or denying settlements of first party claims on the basis that the responsibility for payment should be assumed by others (_695.7(e))
- Refrain from negotiating directly with an unrepresented claimant up to the time that the applicable statute of limitations or contractual period of limitations may run unless the claimant is notified of the limitations period at least 60 days prior to the time it expires (_695.7(f))
- Refrain from making any settlement offer that is unreasonably low (_695.7(g))
- Tender payment of claims within 30 days after the claim is resolved (_695.7(h))
- Refrain from insisting that third party claimants execute a form of release within a specific time (_695.7(i))
- Refrain from requiring insureds to submit to polygraph tests unless such tests are authorized under the policy or applicable state law (_695.7(j))
- Refrain from attempting to recover from the insured sums paid out as medical payments to providers (_695.7(m))
- Refrain from requiring unnecessary medical examinations of claimants (_695.7(n))

REQUIREMENTS IMPOSED ON LICENSEES

The Regulations require that "licensees," including surplus line brokers and special lines surplus line brokers, shall:

Surplus Line Association of California

December 15, 1992

Page 4

- Within 90 days of the effective date of the Regulations, provide thorough training concerning the Regulations to all employees and independent adjusters involved in claims handling and certify annually, under penalty of perjury, that such training has been completed (__695.6(c), 2695.17(a))
- Within 90 days of the effective date of the Regulations, adopt and communicate to all claims agents appropriate standards to be followed for the handling of claims in compliance with the Regulations (__695.17(b))
- Maintain claim documentation as specified in the Regulations (__695.3(a))
- Respond in writing within 21 calendar days of any written or oral inquiry from the Department of Insurance (__695.5(f))

In addition to the matters summarized above, the Regulations include numerous specific provisions governing the handling of automobile insurance claims (__695.8), claims under fire and extended coverage insurance policies (__695.9), surety insurance claims (__695.10), title insurance claims (__695.11), life and disability insurance claims (__695.12), and workers' compensation insurance claims (__695.13).

Violations of the Regulations are to be punished as violations of the Unfair Claims Settlement Practices Act. (Ins. Code _90 et. seg.) Pursuant to Insurance Code _04, 790.035, 790.07 and 790.08, a single such violation could subject an insurer to a monetary penalty of \$5,000 to \$65,000 and/or revocation of the insurer's certificate of authority, depending on the circumstances of the particular case and the existence of is any past history of regulatory enforcement proceedings.

The Regulations are to become effective 30 days after they are filed with the Secretary of State and are to apply to all claims handling activities after that date, whether or not the claim was submitted prior to that date. (__695.17)

Anyone who has further questions concerning the California Unfair Claims Settlement Practices Regulations or requires assistance in implementing the claims handling procedures and training programs mandated thereunder should feel free to contact James R. Woods or R. Scott Puddy at (415) 951-1100. We would also be happy to supply you with a copy of the Regulations upon request.

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