

STATE OF ARIZONA

SEP 16 1996

DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY CWB

In the Matter of)	Docket No. 96A-150
)	
AMERICAN RELIABLE INSURANCE COMPANY)	CONSENT ORDER
)	
Respondent.)	
)	

Market Conduct Examiners (the "Examiners") for the Arizona Department of Insurance (the "Department") conducted a market conduct examination of Respondent American Reliable Insurance Company ("American Reliable"), NAIC #19615. The Report of Market Conduct Examination (the "Report") prepared by the Examiners alleges that American Reliable has violated Arizona Revised Statutes ("A.R.S.") §§ 20-462, 20-1632, 20-1632.01 and Arizona Administrative Code Rule ("A.A.C. R") 20-6-801 (formerly A.A.C.R4-14-801).

FINDINGS OF FACT

1. American Reliable is authorized to transact property and casualty insurance pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a market conduct examination of American Reliable. The on-site examination was concluded on September 10, 1993.

3. The Examiners reviewed 163 personal automobile policies cancelled by American Reliable from January, 1992 through June, 1993. Of these:

a. American Reliable cancelled 11 policies (6.7%) without giving specific reasons for the cancellations.

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1 b. American Reliable failed to notify 21 insureds
2 (12.9%) of the right to complain to the Director of the actions
3 taken to cancel or non-renew their policies.

4 4. The Examiners reviewed 19 notices of non-renewal sent
5 to insureds by American Reliable after the insureds failed to
6 pay premiums due. American Reliable had non-renewed all 19
7 policies (100%) without previously notifying the insureds that
8 renewal premiums were due.

9 5. The Examiners reviewed 106 first party total loss
10 claims with loss dates from January 5, 1988 through January 10,
11 1993. Of these:

12 a. American Reliable failed to pay the full amount
13 of applicable sales taxes and/or license fees due on seven
14 claims (6.6%). The insureds were underpaid by an aggregate of
15 \$1,198.45 in sales taxes and \$72.00 in license fees.

16 b. American Reliable failed to use the cost of a
17 comparable automobile or two dealer quotations to determine
18 actual cash value ("ACV") in settling 2 first party total loss
19 auto claims (1.9%).

20 c. American Reliable reduced the stated value of
21 automobiles in six first-party total loss claims (5.7%) by the
22 amount of the \$250 deductible, rather than applying the
23 deductible to the ACV of the vehicles. As a result, these
24 insureds were underpaid by a total of \$1,500 plus additional
25 sales taxes due each claimant.

26 d. American Reliable failed to document deductions
27 taken from ACV in in settling 2 first party total loss auto
28 claims (1.9%).

1 American Reliable violated A.A.C. R20-6-801(H)(1)(b) and A.R.S.
2 § 20-461(A)(6).

3 7. By failing to document deductions taken from ACV in
4 settling first party total loss auto claims, American Reliable
5 violated A.A.C. R20-6-801(H)(1)(c).

6 8. By failing to fully disclose all available benefits to
7 first party claimants, American Reliable violated A.A.C.
8 R20-6-801(D)(1).

9 ORDER

10 American Reliable having admitted the jurisdiction of the
11 Director to enter this Order, having waived the Notice of
12 Hearing, and having consented to the entry of this
13 Order, and there being no just reason for delay:

14 **IT IS ORDERED THAT:**

15 1. American Reliable shall cease and desist from:

16 a. cancelling personal auto policies without giving
17 specific reasons for the cancellations;

18 b. failing to notify personal auto insureds whose
19 policies are non-renewed for failure to pay premium of the right
20 to complain to the Director of the cancellation;

21 c. failing to notify personal auto insureds of
22 premiums due and providing them the opportunity to pay the
23 premiums before non-renewing the policies for non-payment.

24 d. failing to pay the full amount of applicable
25 sales taxes and/or license fees due on first party automobile
26 total loss claims.

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1 e. applying deductible amounts on personal auto
2 policies to stated value, rather than ACV, unless provided for
3 by rules filed with the Department.

4 2. American Reliable shall modify its notice of
5 non-renewal to incorporate a notice of the insured's right to
6 complain to the Director of the non-renewal. A copy of this
7 notice shall be filed with the Department within 30 days of the
8 filed date of this Order.

9 3. Within 30 days of the filed date of this Order,
10 American Reliable shall submit to the Director written
11 procedures for training and monitoring its underwriting
12 personnel and monitoring personal auto policy terminations to
13 ensure that personal auto policies are cancelled and/or
14 non-renewed in accordance with A.R.S. §§ 20-1631, 20-1632 and
15 20-1632.01. These procedures shall emphasize, but need not be
16 limited to, the following:

17 a. the requirement that a specific reason be given
18 for each cancellations/non-renewals;

19 b. the requirement that personal auto insureds be
20 notified that payments are due, and be given the opportunity to
21 pay the premiums, before the policies are non-renewed for
22 non-payment.

23 c. the requirement that all personal auto insureds
24 whose policies are non-renewed for failure to pay premium be
25 notified of the right to complain to the Director of the
26 non-renewal;

27 4. Within 30 days of the filed date of this Order,
28 American Reliable shall submit to the Director a written action

1 plan for training and monitoring its claims personnel and
2 monitoring automobile total loss claims to ensure that claims
3 benefits including sales taxes and license fees are determined
4 pursuant to A.A.C. R20-6-801 and A.R.S. § 20-461.

5 5. Within 30 days of the filed date of this Order,
6 American Reliable shall refund to the claimants of the 7 total
7 loss files listed in Exhibit 12 of the Report (attached to this
8 Order as Exhibit A) the full amount of applicable sales taxes
9 and license fees not paid on first party total loss claims,
10 totalling \$1,270.45 plus interest on the unpaid amount at the
11 rate of ten percent (10%) per annum calculated from the date the
12 claims were received by Respondent to the date of repayment.

13 6. American Reliable shall reopen the first party total
14 loss automobile claims listed in Findings of Fact 5b, 5c and 5d
15 above and described on Pages 136-139 of the Report (attached to
16 this Order as Exhibit B) and determine the additional amounts
17 owing to these insureds. Within 30 days of the filed date of
18 this Order, American Reliable shall refund to the claimants the
19 amounts remaining to be paid on the claims, including applicable
20 sales taxes, plus interest on the unpaid amount at the rate of
21 ten percent (10%) per annum calculated from the date the claims
22 were received by Respondent to the date of repayment.

23 7. American Reliable shall reopen the homeowner claims
24 listed on Pages 140-145 of the Report of Examination (attached
25 to this Order as Exhibit C) and determine the additional amounts
26 owing to these insureds. Within 30 days of the filed date of
27 this Order, American Reliable shall pay to these insureds the
28 amounts due, plus interest on the unpaid amount at the rate of

1 ten percent (10%) per annum calculated from the date the claims
2 were received by the insured to the date of repayment.


3 8. The payments listed in Paragraphs 5, 6 and 7 of this
4 Order shall be accompanied by a letter to each insured
5 acceptable to the Director. A list of payments, giving the name
6 and address of each party to whom payments were made, the base
7 amount of the payment, the amount of interest paid, and the date
8 of payment, shall be provided to the Department within 45 days
9 of the filed date of this Order.

10 9. The Department shall be permitted, through authorized
11 representatives, to verify that American Reliable has fully
12 complied with all requirements of this Order.

13 10. American Reliable shall pay a civil penalty of Five
14 Thousand Dollars (\$5,000) to the Director for remission to the
15 State Treasurer for deposit in the State General Fund in
16 accordance with A.R.S. §20-220(B). The civil penalty shall be
17 provided to the Market Conduct Examinations Division of the
18 Department prior to the filing of this Order.

19 11. The September 10, 1993 Report of Examination, and the
20 letter filed in response by American Reliable, shall be filed
21 with the Department after the Director has executed this Order.

22 DATED at Phoenix, Arizona this 15th day of September, 1996.

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John King
Director of Insurance
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27
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1 COPY of the foregoing mailed/delivered
2 this 16th day of September , 1996, to:

3 Charles R. Cohen
4 Deputy Director
5 Gregory Y. Harris
6 Executive Assistant Director
7 Erin H. Klug
8 Chief Market Conduct Examiner
9 Saul R. Saulson
10 Examinations Supervisor
11 Market Conduct Examinations Division
12 Mary Butterfield
13 Assistant Director
14 Life & Health Division
15 Deloris E. Williamson
16 Assistant Director
17 Rates & Regulations Division
18 Gary Torticill
19 Assistant Director and Chief Financial Examiner
20 Corporate & Financial Affairs Division
21 Cathy O'Neil
22 Assistant Director
23 Consumer Services Division
24 John Gagne
25 Assistant Director
26 Investigations Division
27 F. Duane Avey
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22 Mary Williams, Vice President
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25 Scottsdale, Arizona 85258

25 *Carveyl Walters Burton*

AMERICAN BANKERS INSURANCE GROUP

AMERICAN BANKERS INSURANCE COMPANY
AUTOMOBILE LOSS CRITICISMS
A.A.C. R4-14-801(E) (1)

FAILURE TO ACKNOWLEDGE RECEIPT OF A CLAIM WITHIN TEN WORKING DAYS.

Claim Number

SID 0247353
SID 0188228

Claim Number

SID 0240863
SID 0188206

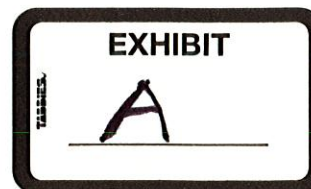


EXHIBIT 12

b. 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:

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

ii. 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.

c. When a first party automobile total loss is settled on a basis which deviates from the methods described in subparagraphs a. and b. above, 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.

The Examiners criticized seven claim files (Exhibit 12) because the Company failed to pay appropriate taxes and/or license fees on total loss settlements, an apparent violation of A.A.C. R20-6-801(H)(1)(b) as stated above.

The Examiners criticized two files (claim numbers A41273 and A37594) because the Company failed to use the cost of a comparable automobile or dealer quotations to establish the ACV of the insured automobile. This is an apparent violation of A.A.C. R4-14-801(H)(1)(b) which is stated above. The Company disagreed with the one criticism (claim number A41723) on the basis that the ACV was not less than the stated value. The Company's response is shown on page 2 of their letter (Exhibit 14). There was nothing in this file to establish the actual cash value ("ACV") of the insured automobile.

If the Company had complied with A.A.C. R20-6-801(H)(1)(b), the value of the insured automobile would have been clearly established in the file.

The Examiners criticized six claim files (Exhibit 15) where the Company misrepresented the benefits of its policies in violation of A.R.S. V 20-443(1), and calculated the amounts due the insureds in violation of A.A.C. R20-6-801(H)(1)(c). The policies included "Stated Value Endorsements" which included the following: "The most we will pay for loss of damage to you insured car, described below, is the specific amount of \$_____ or ACV whichever is less." Some of these endorsements also included the language, "Payment of the full specific amount constitutes a total loss and we retain the right to salvage. Payment of the full specific amount or full ACV constitutes a total loss. We retain the right to salvage in either case". (Emphasis in original). However, the declaration pages of each of the six policies (Exhibit 16) stated collision coverages as ACV less \$250 deductible. In each of these six cases, the stated value was less than the ACV and the Company reduced the stated value by the deductible amount. As a result, each insured was paid \$250 less than should have been paid.

This application is not modified in the policy or the stated value endorsement. The Company changed the declaration page around April 1, 1989 and a copy of these declarations are shown as Exhibit 17. The later declaration page shows clearly that the deductible will be applied to either stated value or actual cash value while the earlier declaration page does not. Therefore, in the Examiners' opinion, these criticisms are valid as written.

The Examiners criticized two files (claim numbers A33267 and A31775) because the Company took undocumented deductions. On claim number A33267 the deduction was for "detail." On claim number A31775 the deduction was due to the fact that the Company did not use the comparable automobile or dealer quotes to establish ACV of the insured automobile. These are apparent violations of A.A.C. R4-14-801(H)(1)(c).

As stated on pages 2 and 3 of their letter (Exhibit 14), the Company disagreed with the manner in which ACV was established on three files (claim numbers A40996, A36261 and A23171).

The disagreement on claim number A40996 was based on the fact that the Examiners had used better vehicles to establish ACV. The file clearly shows that the ACV of \$2,630 was established by the Company adjuster and this is the reason this figure was used by the Examiners. In the opinion of the Examiners, this is a valid criticism.

The disagreement on claim A36261 was based on the fact that the ACV used by the Examiners was higher than the value of the comparable automobiles. However, the Company established the ACV

of \$5,500 and paid the loss on this amount. Therefore, it is the proper amount for calculating the tax due on this file. In the Examiners' opinion, the criticism is correct as written.

The Company disagreed with claim number A23171 on the basis that the Examiners used a higher ACV than was established by the file. It should be noted that the Examiners used an ACV of \$2,915 and not \$2,415 as stated by the Company. There is nothing in the file to reflect that the Company made any effort to obtain dealer quotes or use a comparable automobile. In fact, value was established by the Kelley Blue Book. There were numerous automobiles in the file which could have been used as comparable automobiles if the Company had made adjustments for year, mileage and equipment. In establishing their ACV, the Examiners used three similar vehicles shown in the file all of which were older than the insured vehicle. In the Examiners' opinion, this method establishes a reasonable ACV since the Company had not done so in a manner allowed by statute and the criticism is correct as written.

A summary of automobile total losses is shown as Exhibit 18.

The Examiners also reviewed 37 loss and uninsured motorist files from the period beginning January 1, 1988 through October 14, 1992. These files were reviewed without criticism.

CLAIMS PROCEDURE AND PROCESSING

MOBILE HOMES AND DWELLINGS

All Arizona mobile home and dwelling physical damage claims are controlled by the Company's office in Scottsdale, Arizona. Claims may be reported directly to the Scottsdale office or they may be reported to the agent or MGA who then forwards them to the Company. In some cases, in outlying areas, agents are authorized to report directly to an independent appraiser. All claims are settled and paid from the Scottsdale office. If an appraisal is required, the Company uses an independent adjuster in the vicinity of the loss or one of their staff adjusters.

The Examiners reviewed 505 mobile home and dwelling physical damage losses dated from March 1986 to November 1992. All losses were handled out of the Scottsdale office. A breakdown of total loss criticisms is shown in Exhibit 19.

The Examiners criticized 40 (7.9%) of the claims reviewed. The Examiners criticized 17 files for violation of A.A.C. R4-14-801(D) (1) which states:

D. Misrepresentation of Policy Provisions.

1. 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.

1. Claim number R12257 because the Company failed to advise the insured that they were entitled to the benefit of full replacement cost upon completion of mobile home repairs.



2. Claim number R34813 because the Company failed to advise the insured that they were entitled to the benefit of full replacement cost on contents with respect to items actually replaced.

3. Claim number R21999 because the Company failed to pay for covered repairs to the insured's dwelling resulting from a burglary loss.

4. Claim number R16294 because the Company failed to advise the insured that their policy provided replacement cost coverage for contents. The Company disagrees with this criticism on the basis that the adjuster uses the term "depreciation hold back" in his report and that this term is only used in connection with replacement cost coverage. In the Examiners' opinion, these words in the adjusters report do not constitute notice to the insured of replacement cost coverage since in normal business practice the insured would not see the adjuster's report. In addition, a thorough review of the claim file failed to disclose any evidence to indicate that the insured had been notified of their replacement cost coverage. Therefore, the Examiners feel that the criticism is justified.

5. Claim number R14331 because the Company improperly applied the deductible to the policy limits as opposed to the amount of the loss resulting in the insured receiving \$250 less in settlement than he was actually entitled to receive under the terms of his insurance contract. The Company disagrees on the basis that the contents loss "may have been over paid." In the

Examiners' opinion, the disagreement does not really address the subject of the criticism. First of all, the Company's adjuster paid the loss and since he was the person on the scene, it is the Examiners' opinion that he is in the best position to determine the value of the claim. Secondly, an overpayment, which has not been proved in this case, would not negate the violation since the deductible was applied incorrectly which constitutes a violation of the statute. Thirdly, the mobile home loss far exceeded the \$13,000 limit of insurance and if the deductible had been properly applied, the insured would have received the additional \$250 in settlement to which he was entitled. Therefore, the Examiners feel that the criticism is justified.

6. Claim number R14898 because the Company failed to pay sales tax on the replacement cost of the insured's television. The Company disagreed but did not address the item in question in their disagreement. The policy provided replacement cost on contents if the contents were actually replaced. The insured replaced a television destroyed during a covered wind loss at a cost of \$629. The bill included \$42.14 in sales tax at a rate of 6.7%. Since the destroyed model was no longer available, the Company and the insured agreed to a replacement cost figure of \$400. However, the Company failed to pay any tax on the replacement cost figure. In the Examiners' opinion, sales tax is a normal part of replacement cost. This is particularly true when the Company requires replacement as a prerequisite to recovery. In addition, the Company did pay sales tax on other

items which were replaced as a result of the same loss. Therefore, in the Examiners' opinion, this criticism is valid and the Company owes 6.7% sales tax on the \$400 agreed replacement cost.

7. Claim numbers R24392 and R26227 were criticized because the Company failed to pay sales tax on total loss settlements arising out of the total loss of a travel trailer. The Company disagrees on the basis that their dealer quotes include applicable sales tax. The Examiners believe that the Company has the obligation to clearly show in the file that tax is included since sales tax would be applicable to a total loss. The files do not reflect that sales tax was paid and, in the Examiners' opinion, these criticisms are valid.

8. Four claim files, R36404, R13785, R18553 and R18396 were criticized because the Company improperly calculated the actual cash value used as a basis for settlement. In determining actual cash value the Company took depreciation from the items' original purchase price rather than from its replacement cost at the time of the loss. On claim number R18553, the Company disagreed on the basis that there was no indication in the file that "cost figures" do not represent current replacement cost. A sample page from the adjusters worksheet is shown as Exhibit 20. The third column is headed "Date of Purchase" while column 4 is headed "Cost of Purchase." The fifth and sixth columns show that depreciation was applied to the figure in the "Cost of Purchase" column. There is no column relating to current

replacement cost or current cost and, therefore, the Examiners believe that it was not considered but rather depreciation was applied to the original purchase price of the article as shown in column 5. Since the Cost of Purchase column is used in conjunction with the Date of Purchase column, in the Examiners' opinion, it refers to the cost of the item at the time of original purchase. Therefore, the depreciation was not properly applied and the Examiners feel that the criticism is valid. On claim R13785, the Company disagreed on the basis that there was no indication in the file that cost figures are original cost or that they do not reflect current replacement cost. A sample page from the adjusters worksheet is shown as Exhibit 21. The Examiners believe that the same facts as stated above with reference to claim number R18553 also apply to this claim and that the criticism is valid. On claim number R36404, the Company disagreed on the basis that deduction for depreciation was taken from current replacement cost not original purchase price. A copy of the adjuster's worksheet is shown as Exhibit 22. With respect to the 26" color TV, the present value is shown as less than the cost thereby substantiating the conclusion that cost on this file means cost as of date of purchase and not replacement cost. Since depreciation was applied to present value and not current replacement cost, the Examiners feel that the criticism is valid.

On claim number R18396, the Company disagreed on the basis that there was no basis to assume 1990 prices were greater than

the value reported by the insured. A copy of the adjuster's worksheet is shown as Exhibit 23. Column 3 is clear in that it shows the amount that the insured paid for the item in the year in which he purchased it. Depreciation was therefore improperly applied to the original purchase price and the Examiners feel that the criticism is valid.

Five files were criticized (Exhibit 24) because the Company failed to pay the insured the \$100 limit under his debris removal coverage or advise the insured of his right to collect this benefit under his insurance policy. The Company disagreed on three of the five claims on the basis that payment was based on incurred cost and the insured had not sent in bills for clean up. The numbers of the files disagreed with were R20463, R10673, and R36494. In the Examiners' opinion, the files clearly reflected a substantial debris removal expense which would exceed the \$100 coverage limit. Therefore, the debris removal could have realistically been paid at the time that the total loss was settled instead of requiring the insured to make an additional claim. In fact, many of the Company's files were handled in exactly this manner. However, the fact remains that the files did not contain documentation that the insured was ever advised of his right to make a claim under this coverage at a future date if costs were incurred. Therefore, the Examiners feel that these criticisms are valid.

The Examiners criticized 16 files (Exhibit 25) because the Company failed to send a written "denial of claim" when the claim