

STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

IN THE MATTER OF:)	
)	
UNITED SERVICES AUTOMOBILE)	
ASSOCIATION (USAA) (NAIC # 25941))	DOCKET NO. 17-010-I
)	
USAA CASUALTY INSURANCE)	
COMPANY (NAIC # 25968))	
)	
USAA GENERAL INDEMNITY COMPANY)	
(NAIC # 18600))	
)	
GARRISON PROPERTY AND CASUALTY)	
INSURANCE COMPANY (NAIC # 21253))	

STIPULATION AND CONSENT ORDER

The Insurance Division of the Vermont Department of Financial Regulation (“Department”) and United Services Automobile Association (USAA), USAA Casualty Insurance Company, USAA General Indemnity Company, and Garrison Property and Casualty Insurance Company (collectively “Respondents”) stipulate and agree:

1. Pursuant to authority contained in 8 V.S.A. §§ 11, 12, 13, 15, 4723, 4726, and Chapters 101, 129 and 131, the Commissioner of the Department (“Commissioner”) is charged with enforcing the insurance laws of the State of Vermont.

2. Pursuant to the authority contained in 8 V.S.A. § 4726, the Commissioner may examine and investigate any person engaged in the business of insurance in Vermont in order to determine whether that person is complying with Vermont insurance laws, and may suspend or revoke the license of any insurer, and/or may impose an administrative penalty for any violation of Title 8, Chapter 129.

3. Respondents are companies that are licensed to sell insurance in Vermont. Respondents’ corporate headquarters is located at 9800 Fredericksburg Road, San Antonio, TX 78288.

4. The examination of USAA and its subsidiaries and affiliates (Group Code 0200), which was initiated as a result of a referral from the Department's Consumer Section, began on May 16, 2016 and covered the period from January 1, 2013 through December 31, 2015.

5. Respondents acknowledge and admit the jurisdiction of the Commissioner over the subject matter of this Stipulation and Consent Order.

FINDINGS

6. Pursuant to 8 V.S.A. § 4724(9)(F), failing to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonable clear constitutes unfair or deceptive acts or practices in the business of insurance in violation of 8 V.S.A. § 4723 and enforceable under 8 V.S.A. § 4726. The Department identified instances where practices were counter to the requirement to adhere to fair and equitable treatment of claimants, including:

- a. accepting the initial payment recommendations made by its third-party vendor with a lack of documentation describing adjusting activities by the adjuster;
- b. advising claimants to discuss services and costs with the provider before beginning treatment;
- c. potentially creating balance billing problems for the claimant by reducing the amount of an auto medical bill by determining what constitutes a "reasonable fee" and only paying that amount;
- d. failing to disclose the amount of a "reasonable fee" until after the treatment has been performed and the billing is submitted;
- e. failing to inform insureds or providers in advance when requested, whether medical treatment is covered, leaving the claimant in the position of not knowing if the treatment is covered or how much will be paid.

7. Pursuant to 8 V.S.A. § 4724(9)(D) refusing to pay claims without conducting a reasonable investigation constitutes unfair or deceptive acts or practices in the business of insurance in violation of 8 V.S.A. § 4723 and enforceable under 8 V.S.A. § 4726. The Department finds that Respondents failed to adhere to the requirement to conduct a reasonable investigation. Examples include:

- a. Accepting the third-party vendor's determination regarding medical necessity without questioning the claimant or the provider; and
- b. Denying coverage without conducting a reasonable investigation.

8. Pursuant to 8 V.S.A. § 4724(9)(M), failing to promptly provide a reasonable explanation, based on applicable provisions, conditions, or exclusions in the insurance policy, for the denial of a claim constitutes unfair or deceptive acts or practices in the business of insurance in violation of 8 V.S.A. § 4723 and enforceable under 8 V.S.A. § 4726. Respondents' claims files contained no documentation or supporting evidence to show that claimants were informed of the applicable provisions, conditions, or exclusions in the insurance policy that resulted in the denial of the claim.

9. Pursuant to 8 V.S.A. § 3665(d), if an insurer fails to pay timely a claim, the insurer shall pay interest on the amount of the claim. Respondents were not aware of Vermont's late pay statute and the Department found instances where Respondents violated 8 V.S.A. § 3665(d) because they did not pay interest where payment of interest was required.

10. Pursuant to 8 V.S.A. § 13(b), persons are required to appear, to testify, or to produce papers or records for examination before the Commissioner, upon properly being ordered to do so. Respondents failed to respond in a timely way to the Department's requests for Respondents' "business rules" in violation of 8 V.S.A. § 13(b).

11. Pursuant to Regulation 99-1, claims records shall be maintained so as to show clearly the inception, handling, and disposition of each claim. Respondents failed to clearly and adequately document claims handling activities in violation of Regulation 99-1.

12. Pursuant to Regulation 79-2, if a claim has not been settled within 30 working days, the Insurer is required to send a letter informing the claimant of the reasons additional time is needed. Respondents' form failed to identify what was specifically needed to settle the claim, in violation of Regulation 79-2.

13. Pursuant to Regulation 76-1, a consumer complaint means either a written communication or an oral communication subsequently confirmed in writing, to an insurer primarily expressing a grievance. Claimants use the appeals process to express a grievance with respect to Respondents' claims settlement decisions but Respondents do not treat written appeals as consumer complaints in violation of Regulation 76-1.

14. Respondents have been made aware that the Department may proceed with an administrative action against them for the violations set forth herein and seek appropriate relief pursuant to the Department's statutory authority.

15. Respondents have agreed to enter into this Stipulation and Consent Order with the Department on the terms and conditions hereinafter set forth in lieu of proceeding with a hearing.

16. Respondents waive their right to a hearing before the Commissioner or the Commissioner's designee, and all other procedures otherwise available under Vermont law, the rules of the Department, the provisions of Chapter 25 of Title 3 regarding contested cases, or any right they may have to judicial review by any court by way of suit, appeal, or extraordinary remedy with respect to the terms of this Stipulation and Consent Order.

17. Respondents acknowledge their understanding of all terms, conditions, undertakings, and obligations contained in this Stipulation and Consent Order.

18. Respondents acknowledge that this Stipulation and Consent Order constitutes a valid order duly rendered by the Commissioner and agree to be fully bound by it. Respondents acknowledge that this Order constitutes a finding by the Commissioner that Respondents have violated the provisions of Vermont law set forth above and agree not to contest such findings. Respondents acknowledge that noncompliance with any of the terms of this Order shall constitute a violation of a lawful order of the Commissioner and shall subject Respondents to administrative action or sanctions as the Commissioner deems appropriate. Respondents further acknowledge that the Commissioner retains jurisdiction over this matter for the purpose of enforcing this Order.

19. The Department retains any rights it has to respond to and address any consumer complaint that may be made with regard to Respondents and a transaction in insurance, as defined in 8 V.S.A. § 3301. This includes the right to pursue any remedy authorized by law in response to such a consumer complaint.

20. Nothing herein shall be construed as a waiver of any private right of action any person may have against Respondents.

THE DEPARTMENT AND RESPONDENTS FURTHER STIPULATE AND AGREE:

21. Respondents shall pay an administrative penalty in the amount of \$85,000 within ten (10) days of the execution of this Stipulation and Consent Order.

22. Respondents shall adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. Respondents shall include guidelines and training material which emphasize the requirement to conduct a reasonable investigation prior to making a determination. This may include interviewing and/or taking recorded statements from the claimant, the provider, and any other relevant party.

23. Respondents shall properly document all USAA claims file so each file clearly shows the inception, handling, and disposition of the claim. Respondents must document the steps taken so that an examiner can review the file and it is clear what steps the adjuster took and how the steps support the ultimate determination.

24. Where Respondents fail to pay timely a claim as required by 8 V.S.A. § 3665, Respondents shall pay interest on such claims. Respondents shall include this requirement in training material and other guidance provided to its adjusters.

25. Respondents shall provide requested information to the Department in a timely manner or be subject to the \$2,000 per day penalty for failure to produce papers or records for examination pursuant to 8 V.S.A. § 13.

26. Respondents shall review its use of third party vendors to ensure that vendors performing activities requiring licensure are properly licensed or that activities delegated to third parties are only those that do not require licensure.

27. Respondents represent that they have voluntarily initiated the following corrective actions:

- a. Respondents now reimburse either the providers' agreed amount (PPO) or the charged amount for services that are related to injuries sustained in the motor vehicle accident. Respondents agree to notify the Department regarding any change to this practice.
- b. Respondents are in the process of revising communications to claimants to ensure that they are clear and comply with the law. Respondents agree to provide copies of such communications to the Department for review prior to use. This includes:
 - i. Revising the thirty-day status letter required by Vermont Regulation 79-2, to clearly identify with specificity the outstanding information required by Respondents in order to complete their investigation of the claim; and

- ii Revising letters sent to inform the consumer of the denial of a claim, whether in whole or in part, to provide appropriate reasons for the denial, including applicable policy provisions, conditions, or exclusions.
 - c. Beginning on January 12, 2017, Respondents no longer review claims for medical necessity and have discontinued the use of physician review letters. Respondents agree to notify the Department regarding any change to this practice.
 - d. Respondents will properly document consumer complaints in accordance with Regulation 76-1. Any appeal that expresses a grievance shall be classified as a complaint.
 - e. Respondents agree to document all adjuster activity in the USAA claims system even when that information is also documented in a third-party vendor system.
28. Respondents shall comply with all applicable Vermont laws, Regulation, and Bulletins.
29. The Department may continue its examination of Respondents' payment of physical damage claims since Respondents were not aware of 8 V.S.A. § 3665, which requires insurers to pay interest on claims that are not timely paid. The Department agrees that this Stipulation incorporates such investigation and that it will not seek further penalties from Respondents for violations of 8 V.S.A. § 3665. Respondents will make restitution to consumers for any additional violations of 8 V.S.A. § 3665 at the statutory rate of 12 percent.
30. Respondents hereby waive their statutory right to notice and a hearing before the Commissioner of the Department, or his designated appointee.
31. Respondents acknowledge and agree that this Stipulation and Consent Order is entered into freely and voluntarily, and that except as set forth herein, no promise was made to induce the Respondents to enter into it. Respondents acknowledge that they understand all terms and obligations in this order. Respondents acknowledge that they have consulted with their attorney in this matter and that they have reviewed this Stipulation and Consent Order and understand all terms and obligations contained herein.
32. Respondents consent to the entry of this Order and agree to be fully bound by its terms and conditions. Respondents acknowledge that noncompliance with any of the terms of this Order may constitute a separate violation of the insurance laws of the State of Vermont and may subject them to sanctions. In the event the Department alleges a violation of the terms of

this Stipulation and Consent Order, conducts any follow-up examination, and/or finds any separate violation other than those outlined in this Stipulation and Consent Order, Respondents specifically do not waive the right to an administrative hearing but instead retain that right as well as all other remedies available to Respondents.

33. The terms set forth in this Stipulation and Consent Order represents the complete agreement between the parties as to its subject matter.

34. The undersigned representative of Respondents affirms that he or she has taken all necessary steps to obtain the authority to bind Respondents to the obligations stated herein and has the authority to bind Respondents to the obligations stated herein.

UNITED SERVICES AUTOMOBILE ASSOCIATION
USAA CASUALTY INSURANCE COMPANY
USAA GENERAL INDEMNITY COMPANY
GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY

By Their Duly Authorized Agent:



Signature


5-14-18

Date

Daniel Dilley AVP - Insurance Compliance

Printed name and title

ACCEPTED BY:



Christina Rouleau, Deputy Commissioner
Insurance Division, Vermont Department of Financial Regulation

5/18/18

Date

CONSENT ORDER

1. The stipulated facts, terms and provisions of the Stipulation are incorporated by reference herein.
2. Jurisdiction in this matter is established pursuant to Chapters 101, 129, and 131 of Title 8.
3. Pursuant to the Stipulation, Respondents consent to the entry of this Consent Order.
4. Respondents shall comply with all agreements, stipulations, and undertakings as recited above.
5. Nothing contained in this Order shall restrain or limit the Department in responding and addressing any consumer complaint about Respondents filed with the Department or shall preclude the Department from pursuing any other violation of law.

Entered at Montpelier, Vermont, this 18 day of May 2018



Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation