

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

IN RE: ACADIA INSURANCE)	DOCKET NO. 21-038-I
COMPANY (NAIC #31325))	
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)	

STIPULATION AND CONSENT ORDER

WHEREAS, the Vermont Department of Financial Regulation asserts that Acadia Insurance Company (“Respondent”), through its third-party administrator, an operating unit of W.R. Berkley Corporation, has violated the insurance laws as set forth below; and

WHEREAS, Respondent and the Department wish to resolve this matter without further administrative proceedings or litigation;

NOW, THEREFORE, Respondent and the Department stipulate and agree to the terms and conditions in this Stipulation and Consent Order.

STATEMENT OF FACTS

1. Respondent Acadia Insurance Company (“Acadia”) is a foreign insurance company domiciled in Iowa with its principal place of business at One Acadia Commons, Westbrook, Maine 04092.
2. W.R. Berkley Corporation is an insurance holding company with its principal place of business in Greenwich, Connecticut with multiple insurance company subsidiaries and operating units.
3. W.R. Berkley Corporation’s NAIC group number is 98.
4. At all times relevant to this matter, Acadia held a license issued by the Insurance Division of the Department pursuant to 8 V.S.A. § 3361 authorizing Respondent to operate as an insurer in the State of Vermont.

5. Since at least 2015, Acadia has contracted with its affiliated operating units of W.R. Berkley Corporation, including Berkley Net Underwriters (“BerkleyNet”), to serve as a third-party administrator for certain workers’ compensation claims filed in Vermont.
6. In January 2020 the Insurance Division commenced an investigation into Acadia’s handling of Vermont workers’ compensation claims, including those filed by first responders involving claims for posttraumatic stress disorder (“PTSD”).
7. On or about January 31, 2020, the Insurance Division requested files for all Vermont workers’ compensation claims handled between January 1, 2015 and December 31, 2019 by Acadia and its third party administrators, including BerkleyNet.
8. Upon receipt and review of the files provided to the Insurance Division, the Insurance Division identified the following actions taken by BerkleyNet during the claims adjustment and settlement process that are out of compliance with Vermont’s Insurance Trade Practices Act, 8 V.S.A. §§ 4721-27.

Claimant 1

9. On a Wednesday in 2015, a BerkleyNet adjuster mailed a medical release form to a first responder (“Claimant 1”) for a workers’ compensation claim related to chest pains.
10. On Friday, two calendar days later, the BerkleyNet adjuster who had mailed the medical release form filed a denial of the claim with the Vermont Department of Labor (“Labor”) and sent notice of the denial to Claimant 1.
11. BerkleyNet’s denial was based partially on the failure of Claimant 1 to return the medical release form.

Claimant 2

12. On a Friday in 2015, a BerkleyNet adjuster mailed a medical release form to a social worker (“Claimant 2”) for a workers’ compensation claim involving PTSD.
13. On the following Tuesday, only four calendar days later and inclusive of a Sunday, the BerkleyNet adjuster who had mailed the medical release form filed a denial of the claim with Labor and sent notice of the denial to Claimant 2.
14. BerkleyNet’s denial was based partially on the failure of Claimant 2 to return the medical release form and partially on the assertion that “[n]o physical injury” existed in connection with the PTSD claim.

Claimant 3

15. On a Friday in 2017, a BerkleyNet adjuster mailed a medical release form to a first responder (“Claimant 3”) for a workers’ compensation claim involving PTSD.
16. On the very same Friday, counsel for BerkleyNet filed a denial of the claim with Labor and sent notice of the denial to Claimant 3.
17. BerkleyNet’s denial was based partially on the failure of Claimant 3 to return the medical release form and on an assertion that Claimant 3 had not received a PTSD diagnosis.

Claimant 4

18. On a Monday in 2019, a BerkleyNet adjuster mailed a medical release form to a first responder (“Claimant 4”) for a workers’ compensation claim involving PTSD.
19. On Wednesday, two calendar days later, counsel for BerkleyNet filed a denial of the claim with Labor and sent notice of the denial to Claimant 4.

20. BerkleyNet's denial was based partially on the failure of Claimant 4 to return the medical release form and a lack of sufficient evidence concerning the claimed injury.
21. Eighteen or fewer calendar days after filing the denial for Claimant 4, BerkleyNet received a completed medical release form from Claimant 4.
22. About one week after receiving Claimant's 4 medical release form, counsel for BerkleyNet mailed a letter to Claimant 4 thanking Claimant 4 for the medical release and requesting that Claimant 4 submit to a deposition under oath.
23. Counsel's letter identified in Paragraph 22 failed to communicate to Claimant 4 that the denial was withdrawn and the claim was being reconsidered.
24. About three weeks after mailing the letter identified in Paragraph 22, counsel for BerkleyNet informed the BerkleyNet adjuster that counsel has received mental health counseling records and that "there is a very strong likelihood the VT DOL would find this claim compensable."
25. Ultimately BerkleyNet maintained its denial and did not reach a settlement with Claimant 4.

Claimant 5

26. On a Thursday in 2019, a BerkleyNet adjuster mailed a medical release form to a first responder ("Claimant 5") for a workers' compensation claim involving PTSD.
27. On the following Monday, only four calendar days later and inclusive of a Sunday, counsel for BerkleyNet filed a denial of the claim with Labor and sent notice of the denial to Claimant 5.

28. The records provided to the Insurance Division do not include a copy of the denial but do include a letter from Berkley's counsel addressed to Labor that accompanied the denial and asserted a lack of sufficient evidence concerning the claimed injury.
29. On the same Monday as the denial letter was mailed and despite having denied the claim, counsel for BerkleyNet mailed a separate letter to Claimant 5 requesting that Claimant 5 submit to a deposition under oath.
30. Ten calendar days after filing the denial for Claimant 5, BerkleyNet's counsel received a completed medical release form from Claimant 5.
31. About two weeks after receiving Claimant 5's medical release form, counsel for BerkleyNet mailed a letter to Claimant 5 thanking Claimant 5 for the medical release and requesting that Claimant 5 respond to counsel's previous letter identified in Paragraph 29.
32. Counsel's letter identified in Paragraph 31 failed to communicate to Claimant 5 that the denial was withdrawn and that the claim was being reconsidered.
33. About two weeks after mailing the letter identified in Paragraph 31, counsel for BerkleyNet informed the BerkleyNet adjuster that counsel has received mental health counseling records and that "there is a very strong likelihood the VT DOL would find this claim compensable."
34. Ultimately BerkleyNet maintained its denial and did not reach a settlement with Claimant 5.

Claimant 6

35. On a Thursday in 2019, a BerkleyNet adjuster mailed a medical release form to a first responder (“Claimant 6”) for a workers’ compensation claim involving a mental health disorder.
36. On the following Monday, only four calendar days later and inclusive of a Sunday, counsel for BerkleyNet filed a denial of the claim with Labor and sent notice of the denial to Claimant 6.
37. BerkleyNet’s denial was based partially on the failure of Claimant 6 to return the medical release form and a lack of sufficient evidence concerning the claimed injury.
38. On the same Monday as the denial letter was mailed and despite having denied the claim, counsel for BerkleyNet mailed a separate letter to Claimant 6 requesting that Claimant 6 submit to a deposition under oath.

Additional Facts

39. The workers’ compensation claims of Claimants 2 through 6 constitute the vast majority of Vermont workers’ compensation claims involving PTSD that were handled by BerkleyNet between January 1, 2015 and December 31, 2019.
40. The workers’ compensation claims of Claimants 3 through 6 were handled by the same counsel in Vermont.
41. The workers’ compensation claims of Claimants 1 through 6 were all handled by the same adjuster.
42. Respondent has cooperated with and promptly responded to the Insurance Division’s requests and has developed corrective actions to ensure compliance with Vermont’s Insurance Trade Practices Act, including utilizing different Vermont counsel with

specific experience in PTSD and other mental health-oriented workers' compensation claims and creating a best practices document to train adjusters handling PTSD and other mental health-oriented Vermont workers' compensation claims.

LEGAL STANDARDS AND DESCRIPTION OF VIOLATIONS

43. The Commissioner of Financial Regulation is responsible for administering and enforcing the insurance laws of the State of Vermont and is authorized to investigate insurance companies to determine compliance with Vermont law and issue orders imposing remedial actions and administrative penalties, pursuant to 8 V.S.A. §§ 10-15 and 3661.
44. Pursuant to 8 V.S.A. § 3661, the Commissioner may impose an administrative penalty for each violation of Title 8, an administrative rule of the Department, or an order of the Commissioner relating to insurance.
45. Pursuant to 8 V.S.A. § 4726, the Commissioner may impose an administrative penalty for each violation of Vermont's insurance trade practices, 8 V.S.A. §§ 4721-27.
46. Pursuant to 8 V.S.A. § 4724(9)(D), it is an unfair claim settlement practice and a violation of Vermont's insurance trade practices, to refuse to pay claims without conducting a reasonable investigation based upon all available information if committed with such frequency as to indicate a business practice.
47. An investigation that does not follow settled case law or comply with the Vermont Workers' Compensation and Occupational Disease Rules ("Workers' Compensation Rules") concerning the investigation of claims is not a reasonable investigation and is a violation of 8 V.S.A. § 4727(9)(D).

48. Pursuant to 8 V.S.A. § 4724(9)(F), it is an unfair claim settlement practice and a violation of Vermont's insurance trade practices, to fail to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear if committed with such frequency as to indicate a business practice.
49. An attempt at settlement when liability has become reasonably clear that does not follow settled case law or comply with the Workers' Compensation Rules concerning the adjustment and settlement of claims is not conducted in good faith and is a violation of 8 V.S.A. § 4727(9)(F).
50. Since at least 1996, the Vermont Department of Labor has recognized claims of mental injury without a claimed physical injury, the Department's test for which was upheld in *Bedini v. Frost*, 165 Vt. 167 (1996) and subsequently superseded by the current test adopted in Act No. 80 of 2017.
51. While the test under which a mental health-oriented workers' compensation claim is adjudicated has evolved, it has been settled law since at least 1996 that a physical injury is not a prerequisite to bringing a compensable workers' compensation claim for mental health-oriented injuries in Vermont.
52. Rule 3.2220 of the Workers' Compensation Rules imposes an affirmative obligation on insurance companies to reconsider their denials when the denial is based on the lack of receipt of information requested from a claimant employee and the requested information is received by the insurance company within 45 days of the company's denial.
53. By denying claims due to a claimant's purported failure to provide a medical release and due to the purported lack of sufficient evidence concerning the injury or diagnosis

within only four or fewer calendar days of, and once on the same day as, mailing the medical release form to claimants, Respondent did not give claimants a reasonable time to receive, review, and return the form and also deterred claimants from providing completed forms or engaging with Respondent further, thereby failing to conduct a reasonable investigation in violation of 8 V.S.A. § 4724(9)(D).

54. By improperly denying a workers' compensation claim involving PTSD in 2015 for lack of a physical injury, a conclusion in conflict with settled law, Respondent failed to conduct a reasonable investigation or engage in a good faith attempt at settlement, violations of 8 V.S.A. § 4724(9)(D) and (F).

55. By failing to reconsider denials following receipt of medical release forms received within 45 days of the denials, Respondent violated Workers' Compensation Rule 3.2220 and failed to conduct a reasonable investigation, a violation of 8 V.S.A. § 4724(9)(D).

56. By failing to clearly communicate to claimants that their previously denied claims would be reconsidered, following receipt of requested information from claimants, and ultimately failing to settle claims despite their counsel's conclusions of a very strong likelihood of compensability, Respondent did not engage in good faith to effect prompt, fair, and equitable settlements, a violation of 8 V.S.A. § 4724(9)(F).

57. By taking the actions identified in Paragraphs 53 through 56 in the context of the vast majority of Vermont workers' compensation claims involving PTSD Respondent handled between 2015 and 2019, Respondent engaged in a pattern of claims adjustment and settlement practices that deterred a potentially vulnerable population of claimants from pursuing claims, which, at a minimum, constitutes the failure to conduct reasonable investigations in violation of 8 V.S.A. § 4724(9)(D).

CONSENT ORDER

58. Within 30 calendar days of the entry of this Stipulation and Consent Order by the Commissioner, Respondent shall pay an administrative penalty of \$85,000.
59. Within 30 calendar days of the entry of this Stipulation and Consent Order by the Commissioner, Respondent shall contribute \$15,000 to the Vermont Financial Services Education and Victim Restitution Special Fund.
60. The amounts identified in Paragraphs 58 and 59 shall be paid via wire or check made payable to the “Department of Financial Regulation” and mailed to:

Attn: Beth Sides
Department of Financial Regulation
Legal Division, 3rd Floor
89 Main Street
Montpelier, VT 05620-3101

61. Respondent has implemented or shall implement the following corrective actions:
- a. Respondent has contacted the Department of Labor to initiate the reopening of claims for Claimants 1, 2, 3, 4, and 5 with a different adjuster than completed the original review.
 - b. Within 60 days of entry of this Stipulation and Consent Order by the Commissioner, Respondent shall institute a training plan that addresses Vermont insurance trade practices and mental health-oriented claims to be provided to all workers’ compensation staff retained by Acadia, including through third-party administrators, to handle Vermont workers’ compensation claims.
 - c. By June 30, 2022, Respondent shall have trained all then-licensed Vermont producers retained by Respondent under the plan identified in Paragraph 61(b).

- d. On or before June 30, 2022, and quarterly through March, 2023, Respondent shall provide a report to the Insurance Division identifying the names of each individual who has received training pursuant to plan identified in Paragraph 61(b), the dates of the training, an outline of the material covered, and a copy of all documents shared in hard copy form and electronically with trainees.
62. Respondent acknowledges and admits the jurisdiction of the Commissioner over the subject matter of this Stipulation and Consent Order.
63. With respect to the facts and violations identified herein, Respondent waives its right to a hearing before the Commissioner or the Commissioner's designee and waives its right to all other administrative or judicial review otherwise available under Vermont law, including the rules of the Vermont Department of Financial Regulation and the provisions of 3 V.S.A., Chapter 25.
64. This Stipulation and Consent Order is entered into solely for the purpose of resolving the violations identified herein, and it is not intended for any other purpose.
65. Respondent understands all terms and conditions in this Stipulation and Consent Order, consents to the entry of this Stipulation and Consent Order, and acknowledges that its consent is given freely and voluntarily and that, except as set forth herein, no promise was made to induce Respondent's consent.
66. Noncompliance with any of the terms and conditions in this Stipulation and Consent Order shall be a violation of a lawful order of the Commissioner and a violation of the laws of the State of Vermont and may result in additional administrative action and the imposition of injunctive relief, sanctions, and additional penalties pursuant to applicable

provisions of Title 8, including provisions imposing enhanced penalties for willful violations.

67. Nothing herein shall be construed as limiting the Commissioner's ability to investigate Respondent for violations not resolved herein or to respond to and address any consumer complaints made with regard to Respondent.
68. Nothing herein shall be construed as having relieved, modified, or in any manner affected Respondent's ongoing obligation to comply with all federal, state, or local statutes, rules, and regulations applicable to Respondent.
69. Nothing herein shall be construed as limiting any private right of action a person may have.
70. This Stipulation and Consent Order shall be governed by and construed under the laws of the State of Vermont.

SIGNATURES

The terms and conditions set forth in this Stipulation and Consent Order are hereby stipulated and agreed to. I certify under the pains and penalties of perjury that I have taken all necessary steps to obtain the authority to bind Acadia Insurance Company to this Stipulation and Consent Order and that I have been duly authorized to enter into this Stipulation and Consent Order on behalf of the named Respondent.

ACADIA INSURANCE COMPANY

By: Scott Mansolillo 4-11-2022
Date
Printed name: Scott Mansolillo
Title: SVP + Chief Compliance Officer

The terms and conditions set forth in this Stipulation and Consent Order are hereby stipulated, agreed to, and ordered.

DEPARTMENT OF FINANCIAL REGULATION

By:  4/11/2022
Date
Michael S. Pieciak
Commissioner of Financial Regulation
Vermont Department of Financial Regulation