

**MARKET CONDUCT EXAMINATION REPORT**

**OF**

**ASSURANCEAMERICA INSURANCE COMPANY**

**AS OF**

**March 31, 2019**

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE**

**Property and Casualty Division  
Market Conduct Section**

# COMMONWEALTH OF VIRGINIA



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## STATE CORPORATION COMMISSION BUREAU OF INSURANCE

I, Melody S. Morrissette, Senior Insurance Market Examiner of the Bureau of Insurance, do hereby certify that the annexed copy of the Market Conduct Examination Report of AssuranceAmerica Insurance Company as of March 31, 2019, conducted at the company's office in Atlanta, Georgia is a true copy of the original Report on file with the Bureau and also includes a true copy of the company's response to the findings set forth therein, and a true copy of the Bureau's review letters and the State Corporation Commission's Order in Case Number INS-2020-00154 finalizing this Report.

IN WITNESS WHEREOF, I have  
hereunto set my hand and affixed  
the official seal of this the Bureau  
at the City of Richmond, Virginia,  
this 21<sup>st</sup> of August 2020.

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Examiner in Charge

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# TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	2
INTRODUCTION .....	3
COMPANY PROFILE.....	4
SCOPE OF THE EXAMINATION .....	7
STATISTICAL SUMMARY .....	8
PART ONE – THE EXAMINERS’ OBSERVATIONS .....	10
CLAIMS REVIEW .....	10
Private Passenger Automobile Claims .....	10
FORMS REVIEW .....	15
Automobile Policy Forms .....	15
Policy Forms Used During the Examination Period .....	15
PART TWO – CORRECTIVE ACTION PLAN .....	16
General.....	16
Claims Review .....	16
Forms Review.....	17
PART THREE – RECOMMENDATIONS.....	18
RECOMMENDATIONS .....	18
Claims.....	18
SUMMARY OF PREVIOUS EXAMINATION FINDINGS.....	19
ACKNOWLEDGEMENT.....	20

## **EXECUTIVE SUMMARY**

The examination was a targeted review of AssuranceAmerica Insurance Company's handling of its private passenger automobile claims and forms with dates of loss in Virginia for the period beginning April 1, 2018 and ending March 31, 2019.

This is the second Market Conduct Examination the Bureau of Insurance (Bureau) has performed on this company. The prior examination was completed in 2013. The 2013 examination was a comprehensive examination and in the area of claims there were 92 violations and four general business practices (GBP).

This examination revealed 156 total violations. There were 154 claims violations and three GBP. In contrast to the number of claims violations, it should be noted that the company only had two forms violations.

The violations that rose to the level of a GBP were failure: to document claim files sufficiently enough to reconstruct the events of the claim, to offer the insured a fair and reasonable amount, and to attach a statement setting forth the correct coverage(s) under which payment was made.

The Corrective Action Plan (CAP) requested that the company disclose all coverages applicable to the loss to the insured, offer an amount that is fair and reasonable, only pay MEB directly to providers when there is a valid Assignment of Benefits (AOB). The CAP also requested that restitution of \$16,400.15 be made to 53 Virginia consumers.

## INTRODUCTION

Pursuant to the authority of § 38.2-1317 of the Code of Virginia, a targeted examination has been made of the private passenger automobile claims and forms for AssuranceAmerica Insurance Company at its office in Atlanta, Georgia.

The examination commenced August 5, 2019 and concluded January 23, 2020. Brandon Ayers, Andrea Baytop, Melody Morrissette and Daniel Koch, examiners of the Bureau of Insurance, and Joy Morton, Market Conduct Manager of the Bureau of Insurance, participated in the work of the examination. The examination was called in the Market Action Tracking System on April 10, 2019 and was assigned the Action Number of VA-VA177-6. The examination was conducted in accordance with the guidelines included in the National Association of Insurance Commissioners (NAIC) Market Regulation Handbook.

**COMPANY PROFILE\***

The company was incorporated November 25, 2002 in the state of South Carolina and commenced business on April 1, 2003.

AssuranceAmerica, headquartered in Atlanta, Georgia, is comprised of AssuranceAmerica Insurance Company and AssuranceAmerica Managing General Agency (MGA). AssuranceAmerica companies provide insurance management services and insurance wholesale services through independent agents. The company's affiliated MGA commenced business in 1999. The MGA functioned as an insurance company in all aspects, except for the retention of risk. The MGA performed all of the underwriting, claims, and policyholder service functions associated with a book of nonstandard private passenger automobile insurance business in the states of Alabama, South Carolina, Georgia, Florida, Texas, Louisiana, Mississippi, Arizona, and Indiana. The MGA uses the independent agency system as its sole distribution channel. In late 2002, the MGA's principle owners, Guy W. Millner and Lawrence Stumbaugh, through personal investments, formed and later capitalized the insurance company in order to retain the risks that the MGA underwrites.

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\* Source: AssuranceAmerica Insurance Company Website.

The table below indicates when the company was licensed in Virginia and the line of insurance that the company was licensed to write in Virginia during the examination period. All lines of insurance were authorized on the date that the company was licensed in Virginia except as noted in the table.

<b>GROUP CODE: 4909</b>	<b>AAIC</b>
NAIC Company Number	11558
LICENSED IN VIRGINIA	1/13/2009
LINES OF INSURANCE	
Accident and Sickness	X
Aircraft Liability	
Aircraft Physical Damage	
Animal	
Automobile Liability	X
Automobile Physical Damage	X
Boiler and Machinery	
Burglary and Theft	
Commercial Multi-Peril	
Credit	
Farm-owners Multi-Peril	
Fidelity	
Fire	
General Liability	
Glass	
Homeowners Multi-Peril	
Inland Marine	
Miscellaneous Property	
Ocean Marine	
Surety	
Water Damage	
Workers' Compensation	

The table below shows the company's premium volume and approximate market share of business written in Virginia during 2018 for the line of insurance included in this examination.\* This business was developed through independent agents.

<b>COMPANY AND LINE</b>	<b>PREMIUM VOLUME</b>	<b>MARKET SHARE</b>
AssuranceAmerica Ins. Co.		
Private Automobile Liability	\$6,590,702	.2018%
Private Automobile Physical Damage	\$2,412,188	.0983%

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\* Source: The 2018 Annual Statement on file with the Bureau of Insurance and the Virginia Bureau of Insurance Statistical Report

## **SCOPE OF THE EXAMINATION**

The examination included a targeted review of the company's private passenger automobile claims with a date of loss and forms used between April 1, 2018 and March 31, 2019. The purpose of this examination was to determine compliance with Virginia insurance statutes and regulations and to determine that the company's operations were consistent with public interest.

This Report is divided into three sections, Part One – The Examiners' Observations, Part Two – Corrective Action Plan, and Part Three – Recommendations. Part One outlines all of the violations of Virginia insurance laws that were cited during the examination. In addition, the examiners cited instances where the company failed to adhere to the provisions of the policies issued in Virginia.

In Part Two, the Corrective Action Plan (CAP) identifies the violations that rise to the level of a GBP and/or are subject to a monetary penalty.

In Part Three, the examiners list Recommendations regarding the company's practices that require some action by the company. This section also summarizes the violations for which the company was cited in previous examinations.

The examiners may not have discovered every unacceptable or non-compliant activity in which the company engaged. The failure to identify, comment on, or criticize specific company practices does not constitute an acceptance of the practices by the Bureau.

**STATISTICAL SUMMARY**

The files selected for the review of the claims handling processes were chosen by random sampling of the various populations provided by the company. The relationship between population and sample is shown on the following page.

The details of the errors will be explained in Part One of this Report. General business practices may or may not be reflected by the number of errors shown in the summary.

AREA	<u>Population</u>		FILES REVIEWED	FILES NOT FOUND	FILES WITH ERRORS	ERROR RATIO
	Sample Requested AAIC	TOTAL				
<u>Private Passenger Auto Claims</u>						
Auto <sup>1</sup>	<u>2110</u> 153	<u>2110</u> <b>153</b>	151		85	56%

Footnote <sup>1</sup> One file was a New York PIP claim, and, therefore, not reviewed. One file was not a claim and the loss went straight to litigation, and therefore, not reviewed.

## **PART ONE – THE EXAMINERS’ OBSERVATIONS**

This section of the Report contains all of the observations that the examiners provided to the company. These include all instances where the company violated Virginia insurance statutes and regulations. In addition, the examiners noted any instances where the company violated any other Virginia laws applicable to insurers.

### **CLAIMS REVIEW**

#### **Private Passenger Automobile Claims**

The examiners reviewed 151 automobile claims for the period of January 1, 2018 through December 31, 2018. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. During this review, the examiners found overpayments totaling \$385 and underpayments totaling \$15,468.30. The net amount that should be paid to claimants is \$15,468.30 plus six percent (6%) simple interest.

- (1) The examiners found 11 violations of 14 VAC 5-400-30 C. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.

These findings occurred with such frequency as to indicate a general business practice.

- (2) The examiners found nine violations of 14 VAC 5-400-40 A. The company failed to disclose all pertinent benefits, coverages, or provisions of an insurance policy to the insured.
  - a. In one instance, the company failed to disclose the physical damage deductible to the insured when the file indicated that the coverage was applicable to the loss.
  - b. In one instance, the company failed to disclose Transportation Expenses

coverage to the insured when the file indicated the coverage was applicable to the loss.

- c. In seven instances, the company failed to disclose the benefits or coverages, including rental benefits, available under the Uninsured Motorist Property Damage coverage (UMPD) and/or Underinsured Motorist coverage (UIM) to the insured when the file indicated the coverage was applicable to the loss.
- (3) The examiners found one violation of 14 VAC 5-400-50 C. The company failed to make an appropriate reply, within 15 calendar days, to pertinent communications from a claimant, or a claimant's authorized representative, that reasonably suggested a response was expected.
  - (4) The examiners found one violation of 14 VAC 5-400-60 B. The company failed to notify the insured, in writing, every 45 days of the reason for the company's delay in completing the investigation of the claim.
  - (5) The examiners found three violations of 14 VAC 5-400-70 A. The company failed to deny a claim or part of a claim, in writing, and/or failed to keep a copy of the written denial in the claim file.
  - (6) The examiners found one violation of 14 VAC 5-400-70 B. The company failed to provide a reasonable explanation of the basis for its denial in the written denial of the claim.
  - (7) The examiners found 54 violations of 14 VAC 5-400-70 D. The company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim in accordance with the insured's policy provisions.
    - a. In five instances, the company failed to pay the insured's UMPD claim properly when Collision and/or UMPD coverages applied to the loss.

- b. In eight instances, the company failed to pay the insured's rental benefits available under the UMPD and/or UIM coverage.
- c. In 35 instances, the company failed to pay the proper sales and use tax, title fee, and/or license fee on a first party total loss settlement.
- d. In one instance, the company failed to pay the claim in accordance with the policy provisions under the insured's MEB coverage.
- e. In one instance, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses coverage.
- f. In three instances, the company failed to pay the insured's Collision or Other Than Collision claim properly.
- g. In one instance, the company failed to offer the insured an amount that was fair and reasonable under a uninsured motorist bodily injury (UMBI) claim.

These findings occurred with such frequency as to indicate a general business practice.

- (8) The examiners found seven violations of 14 VAC 5-400-80 D. The company failed to provide the vehicle owner a copy of the estimate for the cost of repairs prepared by or on behalf of the company.
- (9) The examiners found two violations of 14 VAC 5-400-80 E. The company failed to document all information relating to the application of betterment or depreciation in the claim file.
- (10) The examiners found one violation of § 38.2-236 A of the Code of Virginia. The company failed to notify the claimant within five business days that a settlement payment was issued to the claimant's attorney or representative.
- (11) The examiners found seven violations of § 38.2-510 A 1 of the Code of Virginia. The company misrepresented pertinent facts or insurance policy provisions

relating to coverages at issue.

(12) The examiners found eight violations of § 38.2-510 A 6 of the Code of Virginia. The company failed to attempt, in good faith, to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.

a. In two instances, the company failed to reimburse the claimant for rental expenses incurred.

b. In five instances, the company paid an incorrect amount for the DMV fees.

c. In one instance, the company paid the claimant less than the amount shown in the release documents.

(13) The examiners found 25 violations of § 38.2-510 A 10 of the Code of Virginia. The company made a claim payment to the insured or beneficiary that was not accompanied by a statement setting forth the correct coverage(s) under which payment was made.

These findings occurred with such frequency as to indicate a general business practice.

(14) The examiners found one violation of § 38.2-510 A 17 of the Code of Virginia. The company appraised the vehicle damages without a physical inspection of the vehicle.

(15) The examiners found four violations of § 38.2-510 C of the Code of Virginia. The company failed to disclose the aftermarket parts notice on the estimate or a document attached to the estimate.

a. In three instances, the company failed to disclose the notice to the insured.

b. In one instance, the company failed to disclose the notice to the claimant.

(16) The examiners found eight violations of § 38.2-2201 D of the Code of Virginia. The company incorrectly paid the health care provider instead of the insured without a valid Assignment of Benefits.

- (17) The examiners found six violations of § 38.2-2206 A of the Code of Virginia. The company applied the UMPD deductible when no deductible applied to the loss.
- (18) The examiners found three occurrences where the company failed to comply with the provisions of the insurance policy.
- a. In two instances, the company paid an insured more than the insured was entitled to receive under the terms of the policy.
  - b. In one instance, the company failed to pay an Uninsured Motorist (UM) claim properly.

Other Law Violations

The examiners found two violations of 52-40 of the Code of Virginia. The company failed to include the fraud statement on claim forms required by the company as a condition of payment.

**FORMS REVIEW**

The examiners reviewed the company's policy forms and endorsements used during the examination period. From this review, the examiners verified the company's compliance with Virginia insurance statutes and regulations.

To obtain copies of the policy forms and endorsements used during the examination period for each line of business listed below, the Bureau requested copies from the company.

**Automobile Policy Forms****POLICY FORMS USED DURING THE EXAMINATION PERIOD**

The company provided copies of 17 forms that were used during the examination period to provide coverage on policies insuring risks located in Virginia.

The examiners found two violations of § 38.2-2220 of the Code of Virginia. The company failed to have available for use standard automobile forms filed and adopted by the Bureau.

## **PART TWO – CORRECTIVE ACTION PLAN**

Business practices and the error tolerance guidelines are determined in accordance with the guidelines contained in the NAIC Market Regulation Handbook. A seven percent (7%) error criterion was applied to claims handling. Any error ratio above this threshold for claims indicates a general business practice. In some instances, such as forms, the Bureau applies a zero-tolerance standard. This section identifies the violations that were found to be business practices of Virginia insurance statutes and regulations.

### **General**

AssuranceAmerica Insurance Company shall:

Provide a CAP with their response to the Report.

### **Claims Review**

AssuranceAmerica Insurance Company shall:

- (1) Correct the errors that caused the underpayments and overpayments and send the amount of the underpayment to insureds and claimants.
- (2) Include six percent (6%) simple interest in the amount paid to the insureds and claimants.
- (3) Complete and submit to the Bureau, the enclosed file titled "Claims Underpayments Cited during the Examination." By returning the completed file to the Bureau, the company acknowledges that they have paid the underpayments listed in the file.
- (4) Document claim files so that all events and dates pertinent to the claim can be reconstructed.
- (5) Offer the insured an amount that is fair and reasonable as shown by the

- investigation of the claim and pay the claim in accordance with the insured's policy provisions.
- (6) Include a correct statement of coverage under which payments are made with all claim payments to insureds.
- (7) Based on the Bureau's examination of the Company's MEB claims, the company should conduct an internal audit of the MEB claims where the provider was paid directly without a valid AOB and make restitution to the insured where applicable. The Company should complete the Bureau prepared spreadsheet indicating the payments made as a result of the internal audit

### **Forms Review**

AssuranceAmerica Insurance Company shall:

Use the precise language of the standard automobile forms as filed and adopted by the Bureau.

### **PART THREE – RECOMMENDATIONS**

The examiners also found violations that did not appear to rise to the level of business practices by the company. The company should carefully scrutinize these errors and correct the causes before these errors become business practices.

#### **RECOMMENDATIONS**

We recommend that the company take the following actions:

#### **Claims**

- The company should properly represent pertinent facts or insurance provisions relating to the coverages at issue.
- Accept or deny a claim within 15 days of receiving an executed proof of loss.
- Notify the insured every 45 calendar days, from the date of notification of a first party claim, the reason for the delay in the investigation of the claim.
- Provide a reasonable explanation for all denials, in writing, and keep a copy in the claim file.
- Provide copies of vehicle repair estimates prepared by or on behalf of the companies to insureds and claimants.
- The company should document all information relating to the application of betterment or depreciation in the claim file.
- The company should notify the claimant within five business days when a settlement check \$5,000 or greater is sent to the claimant's attorney or representative.
- Make a prompt, fair, and equitable settlement of a claim in which liability is reasonably clear.
- The company should perform an inspection of the vehicle before developing an appraisal of the damages.
- Include the required notice on estimates containing aftermarket parts that contains language substantially similar to that provided by the statute.
- Make medical payments directly to the insured unless a valid AOB has been obtained.

- Include the fraud statement on all claim forms required by the company as a condition of payment.
- Pay an insured no more than he or she is entitled to receive under the terms of the policy.
- The company should make claim payments under the correct coverage.
- The Company should revise their claim acknowledgement letter to remove the reference to Medical Expense Benefits coverage if it is not present on the declarations page. 14 VAC 5-400-40 A of the Virginia Administrative Code requires the company to disclose to the insured the coverages that are applicable to the loss. The use of the word “may” is quite subjective and if the loss has been reported the company should know which coverages are available based on the declarations page.

#### **SUMMARY OF PREVIOUS EXAMINATION FINDINGS**

The Bureau conducted one prior market conduct examination of the private passenger automobile line of business for AssuranceAmerica Insurance Company.

During the prior examination of AssuranceAmerica Insurance Company as of December 31, 2012, the company violated §§ 38.2-305 A, 38.2-510 A, 38.2-1833, 38.2-1905 A, 38.2-1906 D, 38.2-2202 A, 38.2-2202 B, 38.2-2206 A, 38.2-2208 A, 38.2-2208 B, 38.2-2212 E, 38.2-2230, 38.2-2234 A, 38.2-2234 B, and 38.2-2234 E of the Code of Virginia, as well as, 14 VAC 5-400-30, 14 VAC 5-400-40 A, and 14 VAC 5-400-70 D of the Virginia Administrative Code.

**ACKNOWLEDGEMENT**

The courteous cooperation extended by the officers and employees of the company during the course of the examination is gratefully acknowledged.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Morrissette". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Melody S. Morrissette  
Senior Insurance Market Examiner

# COMMONWEALTH OF VIRGINIA



SCOTT A. WHITE  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
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March 26, 2020

## VIA E-MAIL DELIVERY

Eric Martinez, General Counsel  
AssuranceAmerica Insurance Company  
RiverEdge One  
5500 Interstate North Parkway, 6<sup>th</sup> Floor  
Atlanta, GA 30328  
[emartinez@aainsco.com](mailto:emartinez@aainsco.com)

RE: Market Conduct Examination  
AssuranceAmerica Insurance Company, NAIC #11558  
Examination Period: April 1, 2018 – March 31, 2019

Dear Mr. Martinez:

The Bureau of Insurance (Bureau) has conducted a market conduct examination of AssuranceAmerica Insurance Company for the period of April 1, 2018 through March 31, 2019. The preliminary examination report (Report) has been drafted for the company's review.

Attached with this letter is a copy of the Report and copies of review sheets that have been added, withdrawn, or revised since January 23, 2020. Also attached are several technical reports that will provide you with the specific file references for the violations listed in the Report.

Since there appears to have been a number of violations of Virginia insurance laws on the part of the company, I would urge you to closely review the Report. Please provide a written response. The company does not need to respond to any particular item with which they agree. If the company disagrees with an item or wishes to further comment on an item, please do so in Part One of the Report. Please be aware that the examiners are unable to remove an item from the Report or modify a violation unless the company provides written documentation to support their position. When the company responds, please do not include any personal identifiable or privileged information (names, policy numbers, claim numbers, addresses, etc.). The company should use exhibits or appendices to reference such information. In addition, please use the same format (headings and numbering) as found in the Report. If not, the response will be returned to the company to be put in the correct order. By adhering to this practice, it will be much easier to track the responses against the Report.

Secondly, the company must provide a corrective action plan that addresses all of the issues identified in the examination, again using the same headings and numberings as are used in the Report.

Thirdly, if the company has comments they wish to make regarding Part Three of the Report, please use the same headings and numbering for the comments. In particular, if the examiners identified issues that were numerous but did not rise to the level of a business practice, the company should outline the actions they are taking to prevent those issues from becoming a business practice.

Finally, we have attached an Excel file that the company must complete and return to the Bureau with their response. This file lists the review items for which the examiners identified overcharges (rating and terminations) and underpayments (claims).

The company's response and the spreadsheet mentioned above must be returned to the Bureau by April 27, 2020.

After the Bureau has received and reviewed the company's response, we will make any justified revisions to the Report. The Bureau will then be in a position to determine the appropriate disposition of the market conduct examination.

We look forward to your reply by April 27, 2020.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is fluid and cursive, with the first name "Joy" and the last name "Morton" clearly legible.

Joy Morton, AMCM  
Manager  
Market Conduct Section  
Property & Casualty Division  
(804) 371-9540  
[joy.morton@scc.virginia.gov](mailto:joy.morton@scc.virginia.gov)

JMM/pgh  
Attachment



April 27, 2020

Joy Morton, AMCM  
Manager  
Market Conduct Section  
Property & Casualty Division  
Commonwealth of Virginia  
Bureau of Insurance  
1300 E. Main Street  
Richmond, VA 23219

Re: AssuranceAmerica Insurance Company-NAIC # 11558  
Regulatory Action # 898

Dear Ms. Morton:

We have reviewed the Bureau of Insurance's Market Conduct Examination Report of AssuranceAmerica Insurance Company ("Company"). Enclosed for your review is the Company's Exam Report Response and Corrective Action Plan.

We thank you for the opportunity to respond to the Bureau and look forward to bringing this Examination closer to resolution.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eric Martinez', is written over a light blue horizontal line.

Eric Martinez  
Secretary, General Counsel  
AssuranceAmerica Insurance Company  
(770) 952-0200

Enclosures (3)



## **EXAM REPORT RESPONSE**

AssuranceAmerica Insurance Company - NAIC # 11558  
Regulatory Action # 898

AssuranceAmerica Insurance Company (“Company”) presents the following Exam Report Response to Part One of the Bureau of Insurance’s Market Conduct Examination Report (“Exam Report”):

### **PART ONE – THE EXAMINERS’ OBSERVATIONS**

#### **Claims Review**

##### **Private Passenger Automobile Claims**

Introduction: The Company disagrees with the Exam Report’s finding of underpayments totaling \$62,876.46 with interest indicated in the Claims Underpayments Cited During the Examination Report (“Claims Report”). The Company reviewed the Claims Report and made corrections by providing restitution totaling \$10,051.92 to 54 claimants. The check number, date issued and amount paid including interest are listed in the Claims Report which has been provided separately to the Bureau. The Company already remediated those claims that were paid to providers through an invalid assignment of benefits form as noted on response #9 of the Company’s Corrective Action Plan. The Company did not provide restitution on claims that are still in dispute as noted in this Exam Report Response as well as in the Claims Report.

7. CPA115, ( ) was responded to on 8/16/19 with agreement of the observation. The Bureau responded on 9/4/19. The Company further responded on 9/10/19. There was no response from the Bureau to the Company’s last response.

CPA022, ( ) was responded to on 8/12/19 with agreement of the observation. Upon further research, a revised response was submitted 9/20/19 disagreeing with the observation. There was no response from the Bureau the Company’s amended response.

CPA117 ( ) is listed as a violation on the Violation Summary; however, the Bureau withdrew the violation.

CPA053, ( [REDACTED] ) was responded to on 8/13/19 with agreement of the observation. Upon further research, a revised response was submitted 9/9/19 disagreeing with the observation. There was no response from the Bureau to the Company's amended response.

8. CPA002, ( [REDACTED] ), CPA046, ( [REDACTED] ), CPA027, ( [REDACTED] ), CPA077, ( [REDACTED] ) were all responded to with disagreement. The Bureau responded by upholding the violation. The same issue was noted on CPA108, CPA045, CPA042 & CPA007 and those violations were withdrawn with the examiner noting, "The regulation does not specify supplements." The Company agrees with this interpretation and thus, the outstanding violations related to this issue should be withdrawn.
11. The Company disagrees with the Bureau's observation that its conduct amounts to a misrepresentation of pertinent facts or insurance policy provisions relating to coverages at issue under 38.2-510 A-1. The Virginia Insurance Code does not expressly define the term 'misrepresentation.' However, it is well-settled law in Virginia that such an allegation requires, among other elements: 1) *An intent to mislead*; 2) *Reliance by the party misled*; and 3) *Resulting damage to the party misled*. See *State Farm Mut. Auto. Ins. Co. v. Remley* citing *Prospect Development Co. v. Bershader*; (quoting *Bryant v. Peckinpaugh*); *Cohn v. Knowledge Connections, Inc.*; *Davis v. Marshall Homes, Inc.*; *Winn v. Aleda Construction Co.* In addition, Black's Law Dictionary (Fifth Edition) defines 'misrepresentation' as it concerns insurance law as: "A statement of something as a fact which is untrue and material to the risk, and which assured states knowing it to be untrue and *with intent to deceive*..." [emphasis added].

The claims acknowledgement letter language in question states: "If you or any of your passengers were injured as a result of this loss you or your passengers *may* [emphasis added] be entitled to Medical Expense Benefits as a result of the loss." This generic statement is communicated to all claimants involved in an accident involving bodily injury and it is accompanied with the policy declarations page to specify which coverages are applicable to the claimant at the time of the accident. Further, the Company's standard operating procedure requires its adjusters to verbally communicate the coverages applicable to the policy and such communication is documented in the claim file.

There is no direct or indirect intent by the Company to mislead or deceive because claimants are advised on multiple occasions of the specific coverages applicable to their policy during the claims process. Company adjusters are trained to accurately describe the coverages available to each claimant and note this communication in the claims file. There is no indication that claimants relied on the alleged misrepresentation because the Company has no records, nor is aware of any instance, of a claimant incorrectly asserting that they had Medical Expense Benefits coverage based on the generic language in question. Finally, there was no damage or harm to these claimants because no Medical Expense Benefits coverage

was denied as a result of the language in question, nor was there any indication of confusion by claimants as to whether they had said coverage.

Based on the foregoing, the Company's position is that the generic language in question is not a 'misrepresentation' under Virginia law or within its plain meaning and thus, not a violation under 38.2-510 A-1. The Company's view is that this alleged violation, *which represents nearly 1/3 of the Company's total alleged violations*, would be more appropriately categorized by the Bureau as a recommendation to clarify the referenced language in the acknowledgement letter. The Company has already addressed the Bureau's concern by revising its claims acknowledgement letter as indicated in its Corrective Action Plan.

12. CPA127, ( [REDACTED] ) was responded to on 8/14/19 with agreement of the observation. Upon further research, a revised response was submitted 10/11/19 disagreeing with the observation. There was no response from the Bureau to the Company's amended response.

CPA146, ( [REDACTED] ) was responded to on 8/16/19 with agreement of the observation. Upon further research, a revised response was submitted 10/11/19 disagreeing with the observation. There was no response from the Bureau to the Company's amended response.

CPA151, ( [REDACTED] ) was responded to on 8/20/19 with agreement of the observation. Upon further research, a revised response was submitted 10/11/19 disagreeing with the observation. There was no response from the Bureau to the Company's amended response.

CPA056 ( [REDACTED] ) was responded to on 8/14/19 with agreement of the observation. Upon further research, a revised response was submitted 10/11/19 disagreeing with the observation. There was no response from the Bureau to the Company's amended response.

CPA059, ( [REDACTED] ) was responded to on 8/14/19 with agreement of the observation. Upon further research, a revised response was submitted 10/11/19 disagreeing with the observation. There was no response from the Bureau to the Company's amended response.

16. The Company conducted an internal audit as requested by the Bureau. In cases where the Company previously approved a claim and paid a medical provider through an invalid assignment of benefits form (and no other exception applied), the Company provided duplicate payments directly to individual claimants totaling \$24,941.63 including interest. The Company has taken additional remedial measures as outlined in the Company's Medical Expense Benefits Corrective Action Plan. However, the Company asserts that no claim was denied based upon an invalid assignment of benefits form.



## **CORRECTIVE ACTION PLAN**

AssuranceAmerica Insurance Company - NAIC # 11558  
Regulatory Action # 898

AssuranceAmerica Insurance Company (“Company”) presents the following Corrective Action Plan which outlines the steps the Company has taken to address the matters identified in Parts Two and Three of the Market Conduct Examination Report (“Exam Report”):

### **PART TWO – CORRECTIVE ACTION PLAN**

#### **Claims Review**

1. The Company reviewed the Claims Underpayments Cited During the Examination Report (“Claims Report”) and made corrections by providing restitution totaling \$10,051.92 to 54 claimants. The check number, date issued and amount paid including interest are listed in the Claims Report which has been provided separately to the Bureau. The Company already remediated those claims that were paid to providers through an invalid assignment of benefits form as noted on response #9 of this Corrective Action Plan. The Company did not provide restitution on claims that are still in dispute as noted in the Claims Report.
2. The Company reviewed the Claims Report and made corrections by providing restitution totaling \$10,051.92 to 54 claimants. The check number, date issued and amount paid including interest are listed in the Claims Report which has been provided separately to the Bureau. The Company already remediated those claims that were paid to providers through an invalid assignment of benefits form as noted on response #9 of this Corrective Action Plan. The Company did not provide restitution on claims that are still in dispute as noted in the Claims Report.
3. The Company reviewed the Claims Report and made corrections by providing restitution totaling \$10,051.92 to 54 claimants. The check number, date issued and amount paid including interest are listed in the Claims Report which has been provided separately to the Bureau. The Company already remediated those claims that were paid to providers through an invalid assignment of benefits form as noted on response #9 of this Corrective Action Plan. The Company did not provide restitution on claims that are still in dispute as noted in the Claims Report.

4. On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.
5. On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report. In addition, the Company updated its system in August 2019 to reflect the current title and registration fees in Virginia.
6. On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report. In addition, the Company agrees to provide supplemental repair estimates to claimants as a courtesy although this is not noted as a violation in the Exam Report.
7. As indicated in the Company's Exam Report Response, the Company maintains that the claims acknowledgement letter referenced in the Exam Report does not misrepresent

pertinent facts or insurance provisions relating to Medical Expenses Benefits coverage within the meaning of 38.2-510 A-1. The Company's standard procedure is for its adjuster to verbally communicate Medical Expense Benefits coverage eligibility to the claimant and such communication is documented in the claim notes. The Company also includes the claimant's declarations page with the acknowledgement letter. Notwithstanding, the Company has amended its acknowledgement letter to address the Bureau's observations. For those claimants who cannot be reached by phone, an acknowledgement letter is sent asking the claimant to contact the Company so the facts of the loss can be reviewed to determine which specific coverages are applicable.

8. As previously noted, the Company conducted training with its liability adjusters on August 28, 2019 which included proper issuance of checks to include the line of coverage paid under. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report. In addition, the Company will move to an electronic payment system in May 2020 which will automate the process so that the coverage under which payments are being made will accompany the claim payment.
9. The Company conducted an internal audit as requested by the Bureau. In cases where the Company previously approved a claim and paid a medical provider through an invalid assignment of benefits form (and no other exception applied), the Company provided duplicate payments directly to individual claimants totaling \$24,941.63 including interest. The Company has taken additional remedial measures as outlined in the Company's Medical Expense Benefits Corrective Action Plan. However, the Company asserts that no claim was denied based upon an invalid assignment of benefits form.

#### Forms Review

1. The Company has added the two referenced forms to its library.

### **PART THREE – RECOMMENDATIONS**

#### **Claims**

- On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required

to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.

- On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.
- On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.
- On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.

- As indicated in the Company's Exam Report Response, the Company maintains that the claims acknowledgement letter referenced in the Exam Report does not misrepresent pertinent facts or insurance provisions relating to Medical Expenses Benefits coverage within the meaning of 38.2-510 A-1. The Company's standard procedure is for its adjuster to verbally communicate Medical Expense Benefits coverage eligibility to the claimant and such communication is documented in the claim notes. The Company also includes the claimant's declarations page with the acknowledgement letter. Notwithstanding, the Company has amended its acknowledgement letter to address the Bureau's observations. For those claimants who cannot be reached by phone, an acknowledgement letter is sent asking the claimant to contact the Company so the facts of the loss can be reviewed to determine which specific coverages are applicable. The Company will further rely on training and targeted audits to ensure its representatives properly represent pertinent facts and insurance provisions relating to the coverages at issue.
- On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.
- The Company conducted an internal audit as requested by the Bureau. In cases where the Company previously approved a claim and paid a medical provider through an invalid assignment of benefits form (and no other exception applied), the Company provided duplicate payments directly to individual claimants totaling \$24,941.63 including interest. The Company has taken additional remedial measures as outlined in the Company's Medical Expense Benefits Corrective Action Plan. However, the Company asserts that no claim was denied based upon an invalid assignment of benefits form.
- On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three -

Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.

- On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.
- On August 28, 2019, the Company conducted training with its liability adjusters covering substantive matters identified in the Exam Report, including but not limited to: Uninsured motorist physical damage claims; proper issuance of checks to include the line of coverage paid under; rental coverage and benefits; providing estimates and supplements with appropriate verbiage; proper claim file documentation; title/registration fees amounts due on total loss claims; proper display of sales tax; lienholder rights; and claimant's right to rescind bodily injury claim settlements occurring within 30 days from date of loss. The Company will conduct this training on a semi-annual basis. New employees will be required to take this training as part of their onboarding process. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits covering the substantive matters identified in the Exam Report.
- As previously noted, the Company conducted training with its liability adjusters on August 28, 2019 which included proper issuance of checks to include the line of coverage paid under. The Company will conduct this training on a semi-annual basis. Any topics covered in Part Three - Recommendations of the Exam Report will be added if not already part of the training. The Company will also implement targeted quarterly audits to coincide with the quarterly training. In addition, the Company will move to an electronic payment system in May 2020 which will automate the process so that the coverage under which payments are being made will accompany the claim payment.

# COMMONWEALTH OF VIRGINIA



SCOTT A. WHITE  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE

P.O. BOX 1157  
RICHMOND, VIRGINIA 23218  
1300 E. MAIN STREET  
RICHMOND, VIRGINIA 23219  
TELEPHONE: (804) 371-9741  
[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

June 8, 2020

## VIA E-MAIL DELIVERY

Eric Martinez, General Counsel  
AssuranceAmerica Insurance Company  
River Edge One  
5500 Interstate North Parkway, 6<sup>th</sup> Floor  
Atlanta, GA 30328  
[emartinez@aainsco.com](mailto:emartinez@aainsco.com)

RE: Market Conduct Examination  
AssuranceAmerica Insurance Company, NAIC #11558  
Examination Period: April 1, 2018 – March 31, 2019

Dear Mr. Martinez:

The Bureau of Insurance (Bureau) has reviewed the April 27, 2020 response to the Preliminary Market Conduct Report (Report) of AssuranceAmerica Insurance Company (Company). The Bureau has referenced only those items in which the Company has disagreed with the Bureau's findings or items that have changed in the Report. This response follows the format of the Report.

In the Bureau's March 26, 2020 correspondence, it was requested that the Company not include any personally identifiable information in its response to the Report. The April 27, 2020 response provided by the Company included claim numbers, the Bureau will redact the claim numbers from that correspondence. We are once again requesting that that AssuranceAmerica refrain from including any personally identifiable information in any response provided. If any subsequent correspondence includes this information, it will be returned to the Company for revision.

## PART ONE – EXAMINERS' OBSERVATIONS

### Private Passenger Automobile Claims

The Report has been amended to show \$26,107.83. This amendment has been made to delete the Medical Expense Benefits (MEB) payments that are being addressed in Regulatory Action #898.

(7a) The violation for CPA115 remains in the Report. The Company contends they do not have the tools to index license plates in Virginia and since the insured did not call the

police at the time of the loss they are unable to determine if the tortfeasor was indeed uninsured. There are vendors available to search license plates in the state of Virginia. Providing the license plate number is identification of the vehicle involved. The information the Company provided made the tortfeasor identifiable.

- (7b) The violation for CPA022 remains in the Report. The Company failed to inform the insured that a comparable substitute vehicle was available under the uninsured motorist coverage. The Company covered the physical damage to the insured's vehicle under the uninsured motorist coverage and subrogated against Progressive for the payments made. The Company's failure to disclose the availability of temporary substitute transportation under the UMPD coverage indicates that the Company should contact the insured to determine if a rental was obtained during the time that the vehicle was in for repair and whether Progressive covered the cost of the rental after liability was accepted.

After further review, the violation for CPA117 has been withdrawn.

After further review, the violation for CPA053 has been withdrawn and the corresponding restitution has been removed from the restitution spreadsheet.

- (7c) The violation for CPA064 remains in the Report. The Company disagreed with the underpayment amount in the restitution spreadsheet. After further review, the underpayment amount has been revised to \$5 for the title fee violation.

- (7f) The violation for CPA029 remains in the Report. The Company stated in the spreadsheet that the lienholder was paid \$5,243.37 in January of 2020; however, the Company failed to provide the documentation of the amount owed to the lienholder, the payee, the check number, the amount of the check, or the date of check that is required on the restitution spreadsheet.

The violation for CPA132 was removed on September 4, 2019 therefore the underpayment has been removed from the grid.

- (7g) The violation for CPA036 stays in. Please provide supporting documentation for the contact attempts to the insured.

- (8) The violations for CPA002, CPA027, CPA046, and CPA077 have been withdrawn.

- (11) The 66 violations for the form letter advising the insured that Medical Expenses Benefits (MEB) "may be applicable to the loss" have been withdrawn. Copies of the withdrawn review sheets are included with this response. A recommendation has been added to Part Three of the Report, advising the Company to revise the claims acknowledgement letter to delete all reference to MEB coverage on claims where the coverage is not applicable.

The seven violations of § 38.2-510 A 1 remain in the Report.

- (12b) The violations for CPA056, CPA059, CPA127, CPA146 and CPA151 remain in the Report. The Company contends they have no obligation to pay the title and transfer fees for a third-party claimant. The third-party claimant is entitled to title and transfer

fees if the demand is made. In each of these situations the Company waived the requirement for a demand and paid what it believed was the correct amount in fees as such they underpaid the fees. The underpayments remain in the Report

- (16) The violations for the MEB underpayments remain in the Report. However, the Restitution Spreadsheet has been amended to remove the dollar amount for these claims, as the restitution is being handled in Regulatory Action #898.

### **PART THREE – EXAMINERS’ RECOMMENDATIONS**

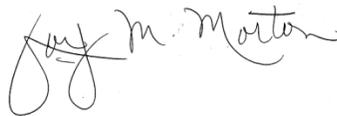
#### **Claims**

- A recommendation has been added to Part Three of the Report to address the use of a form letter that may be misleading to the policyholders.

We have made the changes noted above to the Market Conduct Examination Report. Attached with this letter is a revised version of the Report, technical reports, a revised Restitution spreadsheet, and any review sheets withdrawn, added, or altered as a result of this review. The Company’s response to this letter is due in the Bureau’s office by July 1, 2020.

Once we have received and reviewed the Company’s response to these items, we will be able to make a settlement offer. We look forward to your response by July 1, 2020.

Sincerely,



Joy M. Morton  
Manager  
Market Conduct Section  
Property and Casualty Division  
(804) 371-9540  
[joy.morton@scc.virginia.gov](mailto:joy.morton@scc.virginia.gov)

JMM/pgh  
Attachments

## Joy Morton

---

**From:** Eric Martinez <emartinez@aainsco.com>  
**Sent:** Tuesday, June 30, 2020 5:37 PM  
**To:** Joy Morton  
**Cc:** Melody Morrissette; Alan Phelps  
**Subject:** RE: BOI Response to AssuranceAmerica's Response  
**Attachments:** AA Exam Report Response 2 and Revised Claims Report 063020.pdf; UMBI call 3-20-20 (3).wav; UMBI call 3-25-20 (2).wav; UMBI call 4-6-20.wav; UMPD Call 3-20-20 (2).wav; UMPD Call 3-20-20.wav; UMPD Call 3-30-20.wav; CPA022 Contact Letter.pdf; CPA036 Contact Letter.pdf

Joy:

Please see attached Exam Report Response #2 and a revised Claims Underpayment Cited During the Examination worksheet.

We have also included supporting documentation for CPA022 ('UMPD calls' and contact letter) and CPA036 ('UMBI calls' and contact letter).

We thank you for the opportunity to respond to the Bureau and look forward to bringing this examination closer to resolution.

Eric Martinez  
General Counsel  
AssuranceAmerica  
(770) 952-0200 Ext. 6123

---

**From:** Joy Morton <Joy.Morton@scc.virginia.gov>  
**Sent:** Monday, June 8, 2020 3:50 PM  
**To:** Alan Phelps <APhelps@aainsco.com>; Eric Martinez <emartinez@aainsco.com>  
**Cc:** Melody Morrissette <Melody.Morrissette@scc.virginia.gov>  
**Subject:** BOI Response to AssuranceAmerica's Response

Good Afternoon

Attached is the Bureau's response, the revised report, technical reports, any review sheets revised since the response and the restitution spreadsheet. Should you have any questions please feel free to contact me.

JOY MORTON, AMCM  
BOI MANAGER  
P&C MARKET CONDUCT  
(804) 396-8380 (CELL)  
(804)371-9540  
[JOY.MORTON@SCC.VIRGINIA.GOV](mailto:JOY.MORTON@SCC.VIRGINIA.GOV)



July 2, 2020

Joy Morton, AMCM  
Manager  
Market Conduct Section  
Property & Casualty Division  
Commonwealth of Virginia  
Bureau of Insurance  
1300 E. Main Street  
Richmond, VA 23219

Re: Market Conduct Examination  
AssuranceAmerica Insurance Company - NAIC # 11558  
Regulatory Action # 898

Dear Ms. Morton:

We have reviewed the Bureau of Insurance's revised Market Conduct Examination Report of AssuranceAmerica Insurance Company ("Company"). Enclosed for your review is the Company's revised response to your letter dated June 8, 2020 (Part One – Examiner's Observations and Part Three – Examiner's Recommendations) and an updated 'Claims Underpayments Cited During the Examination' worksheet.

We thank you for the opportunity to respond to the Bureau and look forward to bringing this Examination closer to resolution.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eric Martinez'.

Eric Martinez  
Secretary, General Counsel  
AssuranceAmerica Insurance Company  
(770) 952-0200

Enclosures (2) Exam Report Response #2 (Revised)  
Claims Underpayments Cited During the Examination Worksheet.



## **EXAM REPORT RESPONSE #2**

AssuranceAmerica Insurance Company - NAIC # 11558

Examination Period: April 1, 2018 – March 31, 2019

AssuranceAmerica Insurance Company (“Company”) presents the following Exam Report Response (revised) to the Bureau of Insurance’s (“BOI”) letter dated June 8, 2020 relating to Part One – The Examiner’s Observations and Part Three – Examiner’s Recommendations of the BOI’s Market Conduct Examination Report (“Exam Report”):

### **PART ONE – THE EXAMINERS’ OBSERVATIONS**

#### **Claims Review**

##### **Private Passenger Automobile Claims**

Introduction: The Company disagrees with the Exam Report’s finding of underpayments totaling \$26,107.83 plus interest indicated in the revised Claims Underpayments Cited During the Examination Report worksheet (“Claims Report”). The Company reviewed the revised Claims Report and made corrections by providing restitution totaling \$10,619.96 (including interest) to 55 claimants. The check number, date issued and amount paid including interest are listed in the revised Claims Report which has been provided separately to the BOI. The Company did not provide restitution on claims that are still in dispute as noted below:

- (7b) CPA022: In response to the BOI’s comment that the Company *should contact the insured to determine if a rental was obtained during the time that the vehicle was in for repair and whether Progressive covered the cost of the rental after liability was accepted*, the Company has made attempts to call the insured to find out if they rented a vehicle. Unfortunately, the insured has not responded. The Company has provided the recordings documenting its efforts to contact the insured to the BOI separately.
- (7f) CPA029: In response to the BOI’s comment that the Company *failed to provide the documentation of the amount owed to the lienholder, the payee, the check number, the amount of the check, or the date of check that is required on the restitution spreadsheet*, the Company confirms that all payments have been made to the lienholder and has updated the Claims Report with the requested information.

- (7g) CPA036: In response to the BOI's request for *supporting documentation for the contact attempts to the insured*, the Company has provided the recordings documenting its efforts to contact the insured to the BOI separately.

Medical Expense Benefits Internal Audit

The Company already remediated those claims that were paid to providers through an invalid assignment of benefits form as noted on response #9 of the Company's Corrective Action Plan submitted on April 27, 2020. No further changes were made to the Medical Expense Benefits Internal Audit worksheet provided to the BOI on April 13, 2020.

# COMMONWEALTH OF VIRGINIA



SCOTT A. WHITE  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE

P.O. BOX 1157  
RICHMOND, VIRGINIA 23218  
1300 E. MAIN STREET  
RICHMOND, VIRGINIA 23219  
TELEPHONE: (804) 371-9741  
[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

July 10, 2020

## VIA E-MAIL DELIVERY

Eric Martinez, General Counsel  
AssuranceAmerica Insurance Company  
River Edge One  
5500 Interstate North Parkway, 6<sup>th</sup> Floor  
Atlanta, GA 30328  
[emartinez@aainsco.com](mailto:emartinez@aainsco.com)

RE: Market Conduct Examination  
AssuranceAmerica Insurance Company, NAIC #11558  
Examination Period: April 1, 2018 – March 31, 2019

Dear Mr. Martinez:

The Bureau of Insurance (Bureau) has concluded its review of the company's responses of July 1, 2020 and July 2, 2020. Based upon the Bureau's review of the company's correspondence, we are now in a position to conclude this examination. Enclosed is the final Market Conduct Examination Report of AssuranceAmerica Insurance Company (Report).

Based on the Bureau's review of the Report and the company's responses, it appears that a number of Virginia insurance laws and regulations have been violated, specifically:

Sections 38.2- 510 A 10 and 38.2-2201 D of the Code of Virginia; and 14 VAC 5-400-30 C and 14 VAC 5-400-70 D of the Virginia Administrative Code.

Violations of the laws mentioned above provide for monetary penalties of up to \$5,000 for each violation as well as suspension or revocation of an insurer's license to engage in the insurance business in Virginia.

In light of the above, the Bureau will be in further communication with you shortly regarding the appropriate disposition of this matter.

Sincerely,

Joy M. Morton  
Manager  
Market Conduct Section  
Property and Casualty Division  
(804) 371-9540  
(804)396-8380  
[joy.morton@scc.virginia.gov](mailto:joy.morton@scc.virginia.gov)

Mr. Martinez  
July 10, 2020  
Page 2

Enclosure



# AssuranceAmerica

5500 Interstate North Pkwy, Suite #600  
Atlanta, GA 30328

August 4, 2020

Rebecca Nichols  
Deputy Commissioner  
Property and Casualty Division  
Bureau of Insurance  
P. O. Box 1157 (23218)  
1300 East Main Street  
Richmond, VA 23219

RE: Market Conduct Examination Settlement Offer  
Ecase/Docket Number: INS-2020-00154



Dear Ms. Nichols:

This will acknowledge receipt of the Bureau of Insurance's letter dated July 16, 2020, concerning the above-referenced matter.

We wish to make a settlement offer on behalf of the insurance company listed below for the alleged violations of §§ 38.2- 510 A 10 and 38.2-2201 D of the Code of Virginia; and 14 VAC 5-400-30 C and 14 VAC 5-400-70 D of the Virginia Administrative Code to indicate a general business practice.

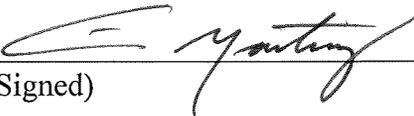
1. We enclose with this letter a check payable to the Treasurer of Virginia in the amount of \$12,000.
2. We agree to comply with the corrective action plan set forth in the company's letters of April 27, 2020 and June 30, 2020.
3. We confirm that restitution of \$16,400.15 was made to 55 consumers in accordance with the companies' letters of April 27, 2020, June 30, 2020 and July 2, 2020.

We further acknowledge the company's right to a hearing before the State Corporation Commission in this matter and waive that right if the State Corporation Commission accepts this offer of settlement.

This offer is being made solely for the purpose of a settlement and does not constitute, nor should it be construed as, an admission of any violation of law.

Sincerely,

AssuranceAmerica Insurance Company  
NAIC # 11558

  
\_\_\_\_\_  
(Signed)

Eric Martinez

\_\_\_\_\_  
(Type or Print Name)

Secretary and General Counsel

\_\_\_\_\_  
(Title)

August 4, 2020

\_\_\_\_\_  
(Date)

# COMMONWEALTH OF VIRGINIA



**SCOTT A. WHITE**  
**COMMISSIONER OF INSURANCE**  
**STATE CORPORATION COMMISSION**  
**BUREAU OF INSURANCE**

**P.O. BOX 1157**  
**RICHMOND, VIRGINIA 23218**  
**1300 E. MAIN STREET**  
**RICHMOND, VIRGINIA 23219**  
**TELEPHONE: (804) 371-9741**  
**[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)**

AssuranceAmerica Insurance Company has tendered to the Bureau of Insurance the settlement amount of \$12,000 by its check numbered 28793 and dated August 3, 2020, a copy of which is located in the Bureau's files.

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 21, 2020

CLERK'S OFFICE  
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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2020-00154

ASSURANCEAMERICA INSURANCE COMPANY,  
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance ("Bureau"), it is alleged that AssuranceAmerica Insurance Company ("Defendant"), duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia ("Virginia"), violated § 38.2-510 A 10 of the Code of Virginia ("Code") by making claims payments to insureds or beneficiaries that were not accompanied by a statement setting forth the coverage under which payments are being made; § 38.2-2201 D of the Code by failing to obtain a valid Assignment of Benefits from the insured authorizing direct payment to the health care provider; as well as 14 VAC 5-400-30 C of the Commission's Rules Governing Unfair Claim Settlement Practices, 14 VAC 5-400-10 *et seq.* of the Virginia Administrative Code ("Rules"), by failing to properly document the claim file to sufficiently reconstruct events and/or dates that were pertinent to the claim; 14 VAC 5-400-70 D of the Rules by failing to offer a fair and reasonable amount on a claim; and by failing to properly handle claims with such frequency as to indicate a general business practice as identified by 14 VAC 5-400-25.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke a

defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that a defendant has committed the aforesaid alleged violations.

The Defendant has been advised of the right to a hearing in this matter whereupon the Defendant, without admitting or denying any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has agreed to comply with the corrective action plan outlined in company correspondence dated April 27, 2020 and June 30, 2020; has confirmed restitution was made to 55 consumers in the amount of Sixteen Thousand Four Hundred Dollars and Fifteen Cents (\$16,400.15); has tendered to the Treasurer of Virginia the sum of Twelve Thousand Dollars (\$12,000); and has waived the right to a hearing.

The Bureau has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.
- (2) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

A COPY of this order shall be sent by the Clerk of the Commission by electronic mail to: Eric Martinez, Secretary and General Counsel, AssuranceAmerica Insurance Company, at [emartinez@aaainsco.com](mailto:emartinez@aaainsco.com); and a copy shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Rebecca Nichols.