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COMMISSIONER



STATE OF DELAWARE
DEPARTMENT OF INSURANCE

AUTO BULLETIN NO. 33

TO: ALL DOMESTIC AND FOREIGN CASUALTY INSURERS WRITING PRIVATE AND COMMERCIAL AUTOMOBILE INSURANCE BUSINESS IN DELAWARE and ALL CASUALTY AND MOTOR VEHICLE INSURANCE ADJUSTERS ADJUSTING DELAWARE CLAIMS

RE: CLAIMS INVESTIGATIONS AND COMPARATIVE NEGLIGENCE DETERMINATIONS

DATED: July 21, 2021

It has come to the Department's attention that, with the advent of electronic claims processing, some carriers are closing out claims prematurely without fully assessing comparative negligence liability as required by 10 *Del. C.* § 8132, Delaware's comparative negligence statute (the "Comparative Negligence Statute"). This Bulletin is being issued to the casualty insurance industry writing Delaware private passenger and commercial automobile insurance policies and to licensed adjusters who are adjusting claims in Delaware to reemphasize the statutory requirement of conducting a "reasonable investigation based upon all available information" as required by 18 *Del. C.* § 2304(16)(d) when making comparative negligence determinations.

Comparative Negligence and Unfair Claims Settlement Practices

Carriers and adjusters are reminded that Delaware is a "comparative negligence" state. 10 *Del. C.* § 8132 provides that:

[i]n all actions brought to recover damages for negligence which results in death or injury to person or property, the fact that the plaintiff may have been contributorily negligent shall not bar a recovery by the plaintiff or the plaintiff's legal representative where such negligence was not greater than the negligence of the defendant or the combined negligence of all defendants against whom recovery is sought, but any damages awarded shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

Carriers are also reminded that 18 *Del. C.* § 2304, Delaware's Unfair Trade Practices Act, and its related regulations at 18 DE Admin. Code 902 and 903 also govern prompt and fair settlement of claims.

The Department's Expectations

The Department expects carriers and adjusters to comply with both the Comparative Negligence Statute and the Unfair Trade Practices Act when settling claims, whether or not claims settlement is by electronic or other means. In addition to full compliance with both the Comparative Negligence Statute and the Unfair Trade Practices Act, the Department expects carriers and adjusters to utilize best practices when investigating and adjusting claims. Best practices include, but are not limited to, the following:

1. When a claim is reported, the licensed insurance adjuster should ascertain what evidence is or will be available as it relates to the specific loss.
2. In a timely manner, the licensed insurance adjuster assigned to the claim should obtain all evidence relevant to the claim, including but not limited to, the following information and documentation:
 - Driver's statement
 - Independent witness' statement
 - Police report
 - Scene diagram
 - Point of impact on all vehicles involved
 - Video surveillance recording
3. Before determining liability, the licensed adjuster shall consider **all** evidence obtained, including evidence of comparative liability on the part of each party to the claim.

Questions concerning Auto Bulletin No. 33 should be emailed to: compliance.resource@delaware.gov.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulations, or bulletin.



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Delaware Insurance Commissioner