# MARKET CONDUCT EXAMINATION

# QBE INSURANCE CORPORATION

## WALL STREET PLAZA
## 88 PINE STREET, 16TH FLOOR
## NEW YORK, NY 10005

## JANUARY 1, 2005 – DECEMBER 31, 2005

Order No. G 07 - 2
QBE Insurance Corporation
Exhibit A

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The Honorable Mike Kreidler
Washington State Insurance Commissioner
PO Box 40255
Olympia, Washington 98504

Dear Commissioner Kreidler:

Pursuant to your instructions and in compliance with the statutory requirements of RCW 48.03.010 and procedures promulgated by the National Association of Insurance Commissioners (NAIC) and the Office of the Insurance Commissioner (OIC), an examination of the market conduct affairs has been performed on the following Company:

QBE Insurance Corporation NAIC # 39217

This examination is respectfully submitted.

## CHIEF EXAMINER'S REPORT CERTIFICATION and ACKNOWLEDGEMENTS

This examination was conducted in accordance with Office of the Insurance Commissioner and National Association of Insurance Commissioners' market conduct examination procedures. Sally Anne Carpenter, AIE, AIC and Shirley M. Merrill of the Washington State Office of the Insurance Commissioner performed this examination and participated in the preparation of this report.

The examiners wish to express appreciation for the courtesy and cooperation extended by the personnel of the QBE Insurance Corporation and the personnel of QBE's third party administrator, American Claims Management, Inc., during the course of this market conduct examination, including those people that provided daily support to the examiners.

I certify that this document is the report of the examination, that I have reviewed this report in conjunction with pertinent examination work papers, that this report meets the provisions for such reports prescribed by the Office of the Insurance Commissioner, and that this report is true and correct to the best of my knowledge and belief.

Leslie A. Krier, AIE, FLMI
Chief Market Conduct Examiner
Office of the Insurance Commissioner
State of Washington

## FOREWORD

This examination was completed by applying tests to each examination standard. Each test applied during the examination is stated in this report and the results are reported. Exceptions are noted as part of the comments for the applied test. Throughout the report, where cited, RCW refers to the Revised Code of Washington, and WAC refers to Washington Administrative Code.

## SCOPE

Time Frame

The examination covered the Company's claim operations from January 1, 2005 through December 31, 2005. The examination was performed in the regional office of American Claims Management, Inc. in Federal Way, Washington and in the Office of the Insurance Commissioner in Seattle, Washington. QBE has contracted with American Claims Management to function as a third party administrator for QBE claims. American Claims Management is licensed as an independent adjusting firm in Washington.

Matters Examined

The examination included the following areas:

- Company Operations and Management
- General Examination Standards
- Complaints
- Claim Settlement Practices

## SAMPLING STANDARDS

Methodology

In general, the sample for each test utilized in this examination falls within the following guidelines:

| | | |
|---|---|---|
| | 92% | Confidence Level |
| +/- | 5% | Mathematical Tolerance |

These are the guidelines prescribed by the National Association of Insurance Commissioners in the Market Conduct Examiners Handbook.

Regulatory Standards

Samples are tested for compliance with standards established by the Office of the Insurance Commissioner. The tests applied to sampled data will result in an error ratio which determines whether or not a standard is met. If the error ratio found in the sample is less than 5%, the standard will be considered as 'met'.

For those standards which look for the existence of written procedures or a process to be in place, the standard will be met based on the examiner's analysis of those procedures or processes. The analysis will include a determination of whether or not the company follows established procedures.

Standards will be reported as Passed (without comment), Passed with Comment or Failed. The definition of each category follows.

| | |
|---|---|
| Passed | There were no adverse findings for this standard. |
| Passed with Comment | The records reviewed fell within the tolerance level for that standard. |
| Failed | The records reviewed fell outside of the tolerance level established for the standard. |

## COMPANY HISTORY AND OPERATIONS

| Company Name | Domiciled State | Incorporation Date | Date Admitted to WA |
|---|---|---|---|
| | | | |
| QBE Insurance Corporation | Pennsylvania | May 5, 1980 | July 13, 1984 |

QBE Insurance Corporation was incorporated May 5, 1980 in Delaware as The Victory Reinsurance Company of America, Inc. The current title was adopted January 10, 1997. The Company re-domesticated to Pennsylvania in September 2002. The Company's mailing address is Wall Street Plaza, 88 Pine Street, 16th Floor, New York, NY 10005.

The Company is a wholly owed subsidiary of QBE RE Corporation. The Company functions as the United States arm of the QBE Insurance Group Limited, which is one of Australia's largest insurance/reinsurance organizations according to A.M. Best.

QBE writes commercial property and casualty, commercial auto and non-standard auto in the United States. However, non-standard auto is the only coverage currently being sold in Washington.

Timothy M. Kenny is the President and Chief Executive Officer.

## OPERATIONS AND MANAGEMENT

### Findings

Operations and Management Standard #2 is not applicable to this examination as it only applies to domestic insurers.

The following Operations and Management Standard Passed without Comment:

| # | OPERATIONS AND MANAGEMENT STANDARD | REFERENCE |
|---|---|---|
| 1 | **The Company is required to hold a certificate of authority from the OIC prior to transacting insurance in the State of Washington.** | **RCW 48.05.030(1)** |

## GENERAL EXAMINATION PRACTICES

### Findings

The following General Examination Practices Standards Passed without Comment:

| # | GENERAL EXAMINATION PRACTICES | REFERENCE |
|---|---|---|
| 1 | **The Company made available to the examiners all requested information, and otherwise facilitated the examination in a timely manner.** | **RCW 48.03.030(1)** |
| 2 | **The Company does business in its own legal name.** | **RCW 48.05.190(1), Bulletin 78-7, Technical Assistance Advisory T 2000-06** |
| 3 | **The Company maintains full and accurate records and accounts.** | **RCW 48.05.280** |
| 4 | **The Company filed an antifraud plan with the Office of Insurance Commissioner and filed annual anti-fraud reports with the OIC.** | **RCW 48.30A.045 RCW 48.30A.060** |

## COMPLAINTS

The examiners reviewed the Company's complaint log, procedures, and complaints filed in the OIC database. There were 52 complaints filed between January 1, 2004 and October 31, 2006.

Complaints were distributed as follows: about 85% from claims and the remaining 15% from underwriting, cancellations or customer service. Claim complaints were primarily focused on delay in claim investigation or disputes over claim settlement offers.

### Findings

The following Complaint Standard Passed without Comment:

| # | COMPLAINT STANDARD | REFERENCE |
|---|---|---|
| 1 | **Response to communication from the OIC must be within 15 business days of receipt of the correspondence. The response must contain the substantial information requested in the original communication.** | **WAC 284-30-650, WAC 284-30-360(2), Technical Advisory T 98-4** |

## CLAIM SETTLEMENT PRACTICES

The examiners reviewed 100 of 1,783 claims that were closed during the exam period. The examiners reviewed an additional 20 of 74 claims that involved first party total loss settlements that were closed during the exam period.

Files were reviewed for:

- Compliance with Washington laws
- Timeliness of contact with claimants
- Promptness of payments

## Findings

The following Claim Settlement Practices Standards Passed without Comment:

| # | CLAIM SETTLEMENT PRACTICES STANDARD | REFERENCE |
|---|---|---|
| 6 | **The Company must accept or deny coverage within 15 days after receiving proof of claim.** | **WAC 284-30-380** |
| 9 | **The Company surrenders titles for total loss vehicles to the Department of Licensing or provides other authorized documentation as required.** | **RCW 46.12.070, WAC 308-56A-460** |

The following Claim Settlement Practices Standards Passed with Comment:

| # | CLAIM SETTLEMENT PRACTICES STANDARD | REFERENCE |
|---|---|---|
| 2 | **The Company claim files contain detailed log notes and work papers so as to allow reconstruction of the claim file.** | **WAC 284-30-340** |
| 3 | **The Company provided an explanation of all pertinent coverage to first party claimants.** | **WAC 284-30-350** |
| 4 | **The Company acknowledges receipt of a claim within 10 days, and responds to all communications on a claim file within the time frames prescribed.** | **WAC 284-30-360(1) (3) and (4)** |
| 5 | **The Company complies with requirement for prompt investigation of claims.** | **WAC 284-30-370** |
| 7 | **The Company settles automobile claims in accordance with standards established for prompt, fair and equitable claim settlements.** | **WAC 284-30-390, WAC 284-30-3901-3916** |

**Standard #2:**

- One (1) claim did not contain sufficient notes to explain why the claim handler did not address a rental issue with the insured.

**Standard #3:**

- One (1) claim did not contain any information to document that the claim handler had explained the rental coverage that was available to the insured.

**Standard #4:**

- Two (2) claim files did not contain a response to correspondence from an attorney within the required time frames.

**Standard #5:**

- Two (2) claim files were not investigated within the required 30 day timeframe. There was no information in either claim file to explain or support the delays.

**Standard #7:**

- Settlements on three (3) files were not handled according to the various standards for settling automobile claims.
  - One file was erroneously denied without payment and closed. The file was reviewed at the request of the examiner. $5314 was paid to the lien holder.
  - A portion of the money recovered on one subrogation file had not been sent to the insured as required. $8.04 was sent to the insured.
  - The claim handler failed to include the initial towing charges paid by the insured when the total loss was settled. $296.30 additional was paid.

See Appendix 1 for details.

The following Claim Settlement Practices Standards Failed:

| # | CLAIM SETTLEMENT PRACTICES STANDARD | REFERENCE |
|---|---|---|
| 1 | **The Company settles claims in a manner that is not in conflict with any section of the Unfair Claims Settlement Act.** | **WAC 284-30-330** |
| 8 | **The Company complies with the regulation regarding notification of PIP benefits, limitations, termination, or denial of benefits.** | **WAC 284-30-395 (1)** |

**Standard #1:**

- Two (2) claims were not handled according to the Company's internal standards.
  - File documentation in one file indicated that the claim handler failed to contact the insured when it was initially reported. There was a coverage issue that was not addressed for two months.
  - One file indicated the claim investigation was not started for 22 days.

- Nine (9) claim payments did not provide information to show under which coverage the payment was made either on the check or in an accompanying letter.

**Standard #8:**

- Three (3) PIP claims contained letters sent to PIP applicants that did not include the mandated language explaining under what situations PIP benefits can be limited, terminated or denied. The examiners determined that this failed the standard as the three claims represented 100% of the PIP files in the sample.

See Appendix 1 for detail.

## SUMMARY OF STANDARDS

**Company Operations and Management:**

| # | STANDARD | PAGE | PASS | FAIL |
|---|---|---|---|---|
| 1 | The Company is required to hold a certificate of authority from the OIC prior to transacting insurance in the State of Washington. (RCW 48.05.030(1)) | 7 | X | |
| 2 | The Company is required to file with the OIC any amendments to the Articles of Incorporation for domestic insurers or insurance holding Company. (RCW 48.07.070) | N/A | | |

**General Examination Practices:**

| # | STANDARD | PAGE | PASS | FAIL |
|---|---|---|---|---|
| 1 | The Company made available to the examiners all requested information, and otherwise facilitated the examination in a timely manner. (RCW 48.03.030(1)) | 8 | X | |
| 2 | The Company does business in its own legal name. (RCW 48.05.190(1), Bulletin 78-7, Technical Assistance Advisory T 2000-06) | 8 | X | |
| 3 | The Company maintains full and accurate records and accounts. (RCW 48.05.280) | 8 | X | |
| 4 | The Company filed an antifraud plan with the Office of Insurance Commissioner (RCW 48.30A.045) and filed annual anti-fraud reports with the OIC. (RCW 48.30A.060) | 8 | X | |

**Complaints:**

| # | STANDARD | PAGE | PASS | FAIL |
|---|---|---|---|---|
| 1 | Response to communication from the Office of the Insurance Commissioner must be within 15 business days of receipt of the correspondence. The response must contain the substantial information requested in the original communication. (WAC 284-30-650, WAC 284-30-360(2), Technical Advisory T 98-4) | 8 | X | |

**Claims:**

| # | STANDARD | PAGE | PASS | FAIL |
|---|---|---|---|---|
| 1 | The Company settles claims in a manner that is not in conflict with any section of the Unfair Claims Settlement Act. (WAC 284-30-330) | 10 | | X |

| # | STANDARD | PAGE | PASS | FAIL |
|---|---|---|---|---|
| 2 | The Company claim files contain detailed log notes and work papers so as to allow reconstruction of the claim file. (WAC 284-30-340) | 9 | X | |
| 3 | The Company provided an explanation of all pertinent coverage to first party claimants. (WAC 284-30-350) | 9 | X | |
| 4 | The Company acknowledges receipt of a claim within 10 days, and responds to all communications on a claim file within the time frames prescribed. (WAC 284-30-360(1),(3) and (4)) | 9 | X | |
| 5 | The Company complies with requirement for prompt investigation of claims. (WAC 284-30-370) | 9 | X | |
| 6 | The Company must accept or deny coverage within 15 days after receiving proof of claim. (WAC 284-30-380) | 9 | X | |
| 7 | The Company settles automobile claims in accordance with standards established for prompt, fair and equitable claim settlements. (WAC 284-30-390, WAC 284-30-3901-3916) | 9 | X | |
| 8 | The Company complies with the regulation regarding notification of PIP benefits, limitations, termination, or denial of benefits. (WAC 284-30-395(1)) | 10 | | X |
| 9 | The Company surrenders titles for total loss vehicles to the Department of Licensing or provides other authorized documentation as required. (RCW 46.12.070, WAC 308-56A-460) | 9 | X | |

# INSTRUCTIONS AND RECOMMENDATIONS

| # | INSTRUCTION | PAGE NUMBER |
|---|---|---|
| 1 | The Company is instructed to ensure that claim handlers comply with its internal standards and the requirements of WAC 284-30-330(2) and (3) to ensure all claims are acknowledged and investigated timely. The Company is further instructed to comply with WAC 284-30-330(9) to ensure that all claim checks issued to first party claimants contain information to show under which coverage a payment is made. | 10 |
| 2 | The Company is instructed to comply with WAC 284-30-395 and include the mandated language regarding the situations that permit the Company to deny, limit or terminate PIP benefits. | 10 |

| # | RECOMMENDATION |
|---|---|
| 1 | It is recommended that the Company conducts a training session with all claims personnel responsible for Washington claims to review the results of the examination and specifically focus on those areas where comments were made in the report. |

## APPENDIX 1

| **Claim Settlement Standard #1** | The Company settles claims in a manner that is not in conflict with any section of the Unfair Claims Settlement Act.<br>Ref: WAC 284-30-330 |
|---|---|
| Claim Number | Comments |
| | |
| **WAC 284-30-330(2)(3)** | |
| 5576738 | The Company failed to acknowledge the initial claim with the insured. There was a coverage question that was not addressed for 2 months. |
| 557274 | The Company failed to acknowledge or start the investigation for 22 days. |
| | |
| **WAC 284-30-330(9)** | |
| 5591962 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| 5592404 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| 5592270 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| 5595579 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| 594974 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| 5579807 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| 5587727 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| 5600174 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| 5581222 | Company did not include the information explaining under which coverage the payment was made either on the check or in an accompanying letter. |
| | |

| Claim Settlement Standard #2 | **Company claim files contain detailed log notes and work papers that allow reconstruction of the claim file.** **Ref: WAC 284-30-340** |
|---|---|
| **Claim Number** | **Comments** |
| 5587841 | The log notes did not explain why the claim handler did not handle the insured's claim for reimbursement for money paid to friends for rides. It appears there were discussions between the insured and the claim handler that were not documented. |
| | |
| **Claim Settlement Standard #3** | **The Company provides an explanation of all pertinent coverage to first party claimants.** **Ref: WAC 284-30-350** |
| **Claim Number** | **Comments** |
| 5587841 | The claim handler did not clearly advise the insured about rental coverage options. The log notes indicated that the insured said that he had paid friends for rides. The insured had purchased rental coverage. The claim handler was having some difficulties arranging a rental car for the insured, but did not explain that the coverage could reimburse the insured for the rides he had paid for out of pocket. |
| | |
| **Claim Settlement Standard #4** | **The Company acknowledges receipt of a claim within 10 days and responses to all communication on a claim file within the time frame prescribed. WAC 284-30-360 (1)(3) and (4)** |
| **Claim Number** | **Comments** |
| 5550264 | Company failed to respond to the attorney's letter of representation within the prescribed time frames. |
| 557274 | Company failed to respond to the presentation of a claim within the prescribed time frames. |
| | |
| **Claim Settlement Standard #5** | **The Company complies with requirements for prompt investigation of claims. Ref: WAC 284-30-370** |
| **Claim Number** | **Comments** |
| 5576738 | The Company failed to complete the investigation of the claim within 30 days. |
| 557274 | The Company failed to complete the investigation of the claim within 30 days. |
| | |

| Claim Settlement Standard #7 | **The Company settles automobile claims in accordance with standards established for prompt, fair and equitable claim settlements.**<br>**Ref: WAC 284-30-390 and WAC 284-30-3901-3916** |
|---|---|
| **Claim Number** | **Comments** |
| 5581689 | The Company erroneously denied a claim to the lien holder and closed the file without payment. The file was re-opened and the claim was settled. $5,314 was sent to the insured. |
| 5576936 | The Company had collected a total of $350 from the at-fault driver who was uninsured however it had not paid any portion of this amount to reimburse the insured any portion of the $100 deductible. This was brought to the attention of the Company. $8.04 was sent to insured as the "shared proportionate" amount as required by WAC 284-30-3905 (1). |
| 5577866 | The Company failed to reimburse the insured the initial towing costs of $296.30 when the insured's total loss was settled. The insured paid this amount directly to the towing company. The insured cannot be located; therefore the additional payment has been sent to the State of Washington Department of Revenue – Unclaimed Property. |
| | |
| **Claim Settlement Standard #8** | **The Company complies with the regulation regarding notification of PIP benefits, limitations, termination or denial of benefits,**<br>**Ref: WAC 284-30-395(1)** |
| **Claim Number** | **Comments** |
| 5579091 | The Company's PIP letter did not include the mandated language explaining under what situations benefits can be limited, terminated or denied. |
| 5592404 | The Company's PIP letter did not include the mandated language explaining under what situations benefits can be limited, terminated or denied. |
| 5580771 | The Company's PIP letter did not include the mandated language explaining under what situations benefits can be limited, terminated or denied. |

AMERICAN©
CLAIMS MANAGEMENT

RECEIVED
JAN 09 2007
INSURANCE COMMISSIONER
COMPANY SUPERVISION

January 4, 2007

Via Facsimile and U.S. Mail

Office of the Insurance Commissioner
James T. Odiorne, CPA, JD
Deputy Insurance Commissioner
Company Supervision Division
Post Office Box 40255
Olympia, WA 98504-0255

Dear Mr. Odiorne:

Please allow this to serve as a response to the Market Conduct Examination report and the summary of those Claims Settlement Practices Standards presented by your office.

It is our understanding that the State of Washington established regulatory compliance standards under the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC). The findings of this examination showed QBE passed 10 of 12 Washington Administrative Code standards, and failed two, which are summarized below.

During the market conduct examination, American Claims Management (ACM), on behalf of QBE Insurance, provided written responses to the individual claims identified in Appendix 1. In response to the examination findings, ACM conducted formal training on October 24, 2006 and follow-up training on October 25, 2006.

ACM's Assistant Vice President of Training, Auditing and Customer Service, Alan Kennedy, trained the Washington office staff specifically focusing on issues relating to WAC 284-30-330(a) and WAC 284-303-95(1). Under WAC -330(a), which requires coverage identification on all claim checks, ACM re-trained the staff by showing examples of issuing payments and clearly documenting and identifying the corresponding coverage codes relating to those payments. Under WAC -95(1), which requires statutory PIP benefits language on all PIP benefits letters, ACM redrafted and published a new PIP benefits explanation letter and included all mandated language. Previously, ACM retained outside legal counsel in Washington to prepare the PIP mandated letter. ACM was unaware of any changes to the regulations requiring different language until now. Fortunately, there were only 3 PIP claims in which the letters were missing the mandated language. As a result, we plan to review all form letters to ensure compliance with all statutory language under the RCW and WAC laws. Lastly, ACM trained its staff on the remaining citations to ensure future compliance.

The Manager of the Washington office, Gary Shutes, also conducted follow up training on November 7, 2006 to reiterate the issues that arose during the examination and to prevent non-compliance in the future.

ACM scheduled another follow up training for January 11, 2007 for the Washington staff. At this meeting, the AVP of Training will review the published results of this examination and will include the comments made in the report.

American Claims Management
701 B Street, Suite 2210 | San Diego, California 92101
Tel 888.799.2919 | Fax 866.380.0924 | Fax 877.895.1440 | CA #2C37446 | Email: Info@acmclaims.com | Web: www.acmclaims.com

In summary, we welcome and appreciate the examiners' feedback and recommendations to improve our personal automobile claims unit in Washington. We remain committed to continued improvement and endeavor to provide superior claims services.

Thank you for your continued professionalism and support. Please do not hesitate to contact me at (619) 744-5008 at your earliest convenience if you have any comments, questions, or concerns.

Very truly yours,

Amel Esposito

Amel Esposito
Executive Vice President & General Counsel

c: Sally Anne Carpenter, Market Conduct Examiner