

H. CARL McCALL
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 28, 2002

Mr. Gregory Serio
Superintendent
New York State Insurance Department
25 Beaver Street
New York, New York 10004

Re: Report 2001-F-58

Dear Mr. Serio:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have reviewed actions taken by officials of the State Insurance Department's Consumer Services Bureau (Bureau) as of May 23, 2002 to implement recommendations contained in our audit report *Consumer Services Bureau, Oversight of Case Processing Activities* (Report 98-S-25), issued on April 13, 2000. That audit examined the effectiveness of the Bureau's oversight of its case processing activities.

Background

The New York State Insurance Department (Department) regulates and monitors the financial and operating activities of insurance companies, as well as licensed insurance brokers, agents and adjusters. Chapter 28 of the Insurance Law authorizes the Superintendent of Insurance to examine the actions of any licensed insurer doing business in New York State. The Department's Consumer Services Bureau (Bureau) reviews, investigates, and resolves consumer complaints against licensed insurers. Bureau's examiners can recommend disciplinary actions, including warnings, license revocations, and fines, against licensed agents, brokers and adjusters who violate the Insurance Law.

At the completion of our follow-up review the Bureau had 22,206 open cases of which 7,654 were assigned and 14,552 were unassigned. These cases include complaints and investigations, as well as inquiries and referrals. Complaints involve instances when licensed insurance companies fail to act in accordance with their contract, the Insurance Law, or Department regulations. Investigations occur when licensed brokers, agents and adjusters fail to act in accordance with their contract, the Insurance Law, or regulations. Inquiries involve general questions about the Department, the licensees, the Insurance Law and regulations as well as customary practices of the insurance industry. Referrals occur when it is determined that the consumer's problem is outside the jurisdiction of the Department or Bureau, and the matter is referred to the appropriate place for resolution.

Summary Conclusion

In our prior audit we found that Bureau examiners routinely obtained the documents to resolve the cases that they close. However, we concluded that the Bureau needed to strengthen its procedures for monitoring the inventory of open cases and the timeliness of case closing. The Bureau also needed to develop an effective system to track the dollar amounts of fines levied and collected by the examiners. The Department lacked a formal program, including written procedures for monitoring the Bureau's productivity and the timeliness of case closings. The Bureau did not monitor or have a standard for the maximum amount of time a case should be awaiting assignment to an examiner. Some of the case files we requested could not be located.

Our follow-up review indicated Bureau officials have made some progress in implementing the recommendations contained in our prior audit report. They have put into effect formal procedures to monitor the productivity of the staff, the inventory of open cases, and the timeliness of case closings. In addition, they prepared a procedures manual for examiners and investigators. They have not taken steps to establish and implement formal procedures that would improve controls over fines issued to companies and brokers who violate the Insurance Law or its rules and regulations.

Summary of Status of Prior Audit Recommendations

Of the five recommendations, two were implemented, one was partially implemented, and two were not implemented.

Recommendation 1

Develop and implement formal, comprehensive procedures to periodically monitor the Bureau's productivity using functions and reports available from the Bureau's automated information systems. Specifically, monitoring procedures should address the inventory of open cases and the timeliness of case closings. The procedures should include, but not be limited to:

- *determining the inventory of open cases, as well as cases awaiting assignment, and whether the number of cases is increasing or decreasing;*
- *determining how long cases are awaiting assignment and how long cases assigned to examiners have been open;*
- *flagging cases where no processing activity has taken place for a specified time period. This could be accomplished by ensuring that sufficient check functions are imbedded in Consumers' Information and Imaging System (CIIMS); and*
- *documenting (on paper or electronically) the monitoring performed.*

Status – Implemented

Agency Action – Bureau officials prepare a monthly report that presents the number of cases that have not yet been assigned. The total case inventory is subdivided into the various insurance classifications including Automobile, Health, Property/Casualty, Life and Other. The introduction to the report identifies whether the total caseload is increasing or decreasing. The monthly reports include the number of complaints received year-to-date, the caseload assigned to each examiner, and the monthly activity for each examiner. This includes the number of cases assigned at the beginning of the month, the number of cases assigned during the month, the number of cases transferred or closed during the month and the number of cases remaining open at the end of the month.

CIIMS has command features that enable supervisors to check on the status and activity of each case. One command enables supervisors to determine who was assigned the case, to whom the case was transferred and the current status of the case. Another computer function describes the activity performed on a case, identifying when and who performed the activity on the case. CIIMS has the additional feature of generating reports based on various inquiries; e.g., Complaints Unassigned 120 Days or More (3,902 cases.) If used appropriately, we conclude these functions coincide with the intent of our recommendation.

Recommendation 2

Develop formal guidelines for documents/records that must be included in paper or electronic case files.

Status – Implemented.

Agency Action – Agency officials provided a procedures manual issued to examiners and investigators as well as the training manuals pertaining to CIIMS. The procedures manual contains topics such as examining automobile insurance, health insurance, and property/casualty insurance complaints. The procedures manuals include the various types of documentation that could be obtained in examining a complaint. However, the manuals do not require an examiner to obtain each document, as it is the Department's position that not all forms are relevant to each case. The Department believes it is the examiner's responsibility to determine the adequacy of the documentation obtained. Our review noted the procedures manual used for examining health complaints is further broken down into each type of health problem. The Manual identified the suggested documents that is needed when that type of complaint is being investigated.

Recommendation 3

As time and resources permit, conduct periodic verifications of case files (both paper and electronic) to confirm the existence and location (for paper files). This includes locating the 17 missing files identified during our audit.

Status – Not Implemented

Agency Action – The Bureau did not search for the 17 files that were misplaced. At a closing conference officials indicated that in accordance with the Department's record retention policy, the 17 files would have been destroyed because of their age as a result of the time span between the issuance of the audit report and the beginning of the follow-up review. Thus, they believe the point is moot. The Department does not believe that there is a need to periodically verify the existence of electronic files because once scanned the file becomes a permanent part of CIIMS. They are not aware of any files that were lost since CIIMS was implemented.

Recommendation 4

Establish and implement formal procedures to record and periodically summarize the imposition and collection of fines by Bureau personnel.

Status – Partially Implemented

Agency Action – Bureau officials have not changed their procedures pursuant to our prior audit. Although Bureau procedures require the examiner to record the amount of any fine or stipulation in the case file, the procedures do not include the steps requiring the updating of the Disciplinary Tracking spreadsheet. At our closing conference officials demonstrated they maintain an electronic database which identifies among other attributes the individual or company assessed a fine, the date the fine was assessed as well as the employee responsible for handling the case.

Recommendation 5

To help ensure that fines are paid timely, establish and implement formal procedures to periodically monitor the status of fines imposed in relation to fines collected. As necessary, follow up with parties that do not pay fines promptly.

Status – Not implemented

Agency Action – Bureau management stated that CIIMS provides them the capability to develop managerial summary reports with the information they need. Any detail data required by management can be obtained by either management directly accessing CIIMS or assigning staff to do the research for key information; i.e., amount of fines. However, the current CIIMS search format does not provide the amount of the fine. We believe this a significant drawback. Before implementing an additional control management should assess whether the cost to implement the control exceeds the benefits to be derived. At our closing conference, Bureau official estimated that about \$500,000 in fines is assessed annually. Thus, we conclude it would be appropriate to report periodically – possibly bi-monthly or quarterly – by company and/or individually the amount of the fine assessed, the total amount of fines outstanding and the length of time the fines have been outstanding. Such information may help in determining the probability of collecting a fine and whether further action; e.g., referral to a collection agency is warranted.

Major contributors to this report were Joseph Smith, Eric Swanson, and Abraham C. Markowitz.

We would appreciate receiving your response to this report within 30 days, indicating any action planned or taken to address any unresolved matters discussed in this report. We also thank the management of the State Insurance Department for the courtesies and cooperation extended to our auditors during the review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: Deirdre Taylor, DOB
Phyllis Linker, SID