

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF MARION        )  
  
BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE  
  
CAUSE NUMBER: 13857-CO15-0223-001

IN THE MATTER OF:                    )  
  )  
Unique Insurance Company            )  
  )  
4245 N. Knox                            )  
Chicago, Illinois 60641                )  
  )  
NAIC ID: 10655                         )

**REGULATORY SETTLEMENT AGREEMENT**

This Regulatory Settlement Agreement (“Agreement”) is executed between the Indiana Department of Insurance (the “Department”) and Unique Insurance Company (“Unique”).

**I. RECITALS**

- A. Unique is an Illinois-domiciled property & casualty insurer with its principle place of business and home office located in Chicago, Illinois.
- B. Unique was incorporated on March 21, 1996, began operating on April 4, 1996, and started marketing insurance in Indiana in 2008 to drivers who have difficulty obtaining automobile coverage within the standard insurance market.
- C. On October 3, 2012, the Commissioner issued an Examination Warrant, pursuant to the procedures in Indiana Code 27-1-3.1, and appointed Ingardus, LLC (“Ingardus”) as market conduct examiner to perform a targeted market conduct examination (the “Examination”) of Unique for the period of July 1, 2010, through August 31, 2012.
- D. On October 30, 2013, the Department tendered to Unique a draft target market conduct findings report dated October 29, 2013 (the “draft report”).

E. On November 14, 2013, Unique responded to the findings identified in the draft report.

F. On November 6, 2014, Ingardus tendered a Verified Examination Report ("Report") to the Department.

G. On December 10, 2014, Unique submitted a written response to the Report to the Department.

H. On January 9, 2015, Commissioner Stephen W. Robertson issued Findings of Fact, Conclusions of Law, and Order (the "Exam Order") resulting from his consideration and review of the verified market conduct examination report, relevant examination workpapers, and written submissions and responses from Unique. The Exam Order adopted the Report as filed.

I. On February 23, 2015, the Department, by counsel and pursuant to Indiana Code 27-4-1-5.6(c) and 27-4-1-4.5, filed its Statement of Charges based, in part, on the findings of the Examination.

J. This Agreement sets forth the required corrective and compliance actions which Unique has taken and will take pursuant to the Agreement to address the identified issues indicated in the Exam Order as well as the allegations contained within the Statement of Charges.

K. The Department agrees that this Agreement fully resolves any and all claims with respect to the matters encompassed within the scope of the Exam Order and the Statement of Charges.

L. The acceptance of this Agreement by the Commissioner and full payment of the initial fines and fees by Unique shall establish the Execution Date.

## II. AGREEMENT

1. Unique shall hire an independent arbiter (the "Arbiter") to review Indiana claims files and monitor Unique's corrective action.

a. The Arbiter shall be former regulator Mike Hessler or, if Hessler declines to accept the Arbiter duties, then the Arbiter shall be chosen by Hessler, subject to approval by the Department.

b. The Arbiter must possess the appropriate experience, qualifications, and recognized credentials necessary to perform the tasks required in the re-examination of Unique (See Section II, Paragraph 8).

c. Unique shall retain the Arbiter for a minimum period from the Execution Date until the Arbiter completes the report outlined in Section II, Paragraph 9.

d. Unique shall not terminate or replace the Arbiter without the approval and acceptance of the Department. Should a successor be deemed necessary, said replacement must be approved by the Department. Hessler shall provide to Unique and the Department a recommended list of successors for review by the Parties in the event he is unable to complete the duties outlined herein. Any successor must meet the requirements as outlined in Section II, Paragraph 1, subsection b.

2. The Arbiter shall have access to all Indiana claims files for the Examination period to review the issues raised in the Exam Order. The Arbiter shall review all claims files that were reviewed as part of the Examination to determine if reimbursements and/or corrective actions are required. The Arbiter shall have sole discretion to determine when reimbursements and/or additional corrective actions shall be warranted for claims arising during the Examination period. Unique and the Department shall abide by decisions made by the Arbiter.

3. The Arbiter shall review additional claims files for the Examination period that involve similar claims to those reviewed in the Examination, including but not limited to (i) payment of sales tax when a vehicle is a total loss; (ii) use of after-market body parts; and (iii) proper reimbursement when a claimant chose to use a non-preferred auto repair shop. The Arbiter shall determine the volume and scope of those files which shall be deemed substantially similar to warrant review. The Arbiter shall determine if reimbursements and/or corrective actions are required, and Unique and the Department shall abide by decisions made by the Arbiter in relation to the volume and scope of the files reviewed as well as reimbursements and/or corrective actions deemed warranted by the Arbiter.

4. The Arbiter shall also review Indiana consumer complaints and claims made or filed during the 2013 and 2014 calendar years. The Arbiter shall review claims files for the 2013 and 2014 calendar years that involve similar claims to those reviewed in the Examination, including but not limited to (i) payment of sales tax when a vehicle is a total loss; (ii) use of after-market body parts; and (iii) proper reimbursement when a claimant chose to use a non-preferred auto repair shop. The Arbiter shall determine the volume and scope of those files which shall be deemed substantially similar to warrant review. The Arbiter shall retain sole discretion to determine reimbursements and/or additional corrective actions required for claims files reviewed during this period. Unique and the Department shall abide by decisions made by the Arbiter.

5. The Arbiter shall further monitor Unique's ongoing claims handling procedures from the Execution Date until December 31, 2016. The Arbiter shall perform a monthly sample of all of Unique's Indiana claims and shall review an amount determined by the Arbiter to be appropriate, but not less than ten percent (10%) of the Indiana claims files. The Arbiter shall

review the files in light of the benchmarks set forth in Section II, Paragraph 10. If, after six months, the Arbiter determines that Unique's compliance is such that a reduction in the sampling frequency is warranted, he shall make a recommendation in writing to the Department. Unique shall demonstrate a compliance percentage greater than ninety percent (90%) over a period to be determined by the Arbiter to be considered for a reduction in the frequency of review. The Department will review the recommendation and approve a change to a different review period if appropriate. The Department will not unreasonably withhold such approval.

6. The Arbiter must provide monthly reports to the Department to insure Unique's compliance with this Agreement. Unique agrees that the Arbiter may provide to the Department any information requested by the Department for the purpose of determining compliance with this Agreement.

7. Unique shall develop and implement a comprehensive Claims Manual which shall address the proper procedures and protocols for the handling of Indiana claims. The Claims Manual must include among other procedures: (i) reasonable time limits to complete an investigation; (ii) reasonable time limits to contact the claimant; (iii) reasonable time periods to resolve the claim; (iv) complete documentation in the claim file; (v) documentation of appropriate training of claims staff; and (vi) evidence of appropriate managerial oversight. The claims manual shall be submitted to the Department within thirty (30) days for review. A final approved version agreeable to both Unique and the Department must be completed within sixty (60) days of the Execution Date. The Department shall use reasonable efforts to work with Unique to reach approval of the Claims Manual within the required time frame.

8. Unique shall be subject to a targeted re-examination for the period from the Execution Date until December 31, 2016. Unique shall pay all expenses related to the re-

examination within thirty (30) days of submission of an invoice from the Department. The re-examination shall be limited to the benchmarks established herein; Section II, Paragraph 10. The Arbiter shall conduct this targeted re-examination pursuant to Indiana Code 27-1-3.1.

9. The Arbiter shall issue to the Department a written re-examination verified report based upon the benchmarks contained herein, as required by Indiana Code § 27-1-3.1-10.

10. The Benchmarks for claims compliance with this Agreement shall be as follows:

a. Unique shall make reasonable efforts to acknowledge all claims communications, not otherwise specified in Section II, Paragraph 10, subsections b(ii) and b(iii), within two (2) business days.

b. Unique shall conduct reasonable claims investigations:

i. Unique shall maintain established policies and procedures to ensure reasonable claims investigation as outlined in the approved claims manual, effectively provide the policies and procedures to relevant employees, and demonstrate compliance with the written policies and procedures;

ii. Unique shall make reasonable efforts to contact insureds within one (1) business day of the first notice of loss;

iii. Unique shall make reasonable efforts to contact third-party claimants within three (3) business days of the first notice of loss;

iv. Unique shall take statements of all necessary witnesses;

v. Unique shall not deny settlement of a claim for any party based on lack of cooperation of the insured without showing substantial steps to facilitate the cooperation of the insured;

- vi. Unique shall not predicate settlement of one portion of a claim on the resolution of a separate portion of the claim; and,
  - vii. Unique shall not require insureds to use preferred repair shops or use quotes from preferred shops as the sole basis of reimbursement of a repair.
- c. Claims Settlement shall be prompt and fair:
- i. Unique shall make a settlement offer within three (3) business days of receiving sufficient evidence to make the amount of liability reasonably clear;
  - ii. Unique shall mail settlement checks within two (2) business days of acceptance by the claimant, and receipt of standard industry documents when necessary (e.g. power of attorney and title documents in the case of vehicle loss and release in settlement of bodily injury claims);
  - iii. Unique shall not settle claims significantly lower than the evidence warrants;
  - iv. Unique shall not re-write estimates without an inspection of the vehicle by a Unique employee or a third party adjuster;
  - v. Unique shall provide a detailed explanation for a denial of a claim; and,
  - vi. Unique shall not ascribe fault to a person seeking recovery from an insured where there is an obvious absence of fault.
- d. Unique shall promptly respond to all correspondence received from the Department in relation to complaints received by the Department. Unique will respond to all complaints sent by the Department within twenty (20) business days but will make reasonable efforts to respond earlier.
- e. Unique shall inform all insureds and claimants of the options provided by Indiana Code as it relates to replacement body parts.

f. Unique shall inform all insureds and claimants of the correct state's Department of Insurance which has jurisdiction over the respective policies and claims.

11. Unique shall pay an administrative fine in the amount of one hundred twenty-five thousand dollars (\$125,000.00) to the Department by March 13, 2015.

12. Unique shall reimburse the Department for the services rendered by Administrative Law Judge Reuben Hill in an amount not less than five hundred dollars (\$500.00) but not more than fifteen hundred dollars (\$1,500.00) within thirty (30) days of the Execution Date. Unique shall make payment directly to Ingardus for services rendered by Ingardus in connection with the Examination up until the Execution Date within thirty (30) days of the Execution Date. Unique shall not be responsible for services rendered by Ingardus after the Execution Date.

13. The Commissioner shall terminate the Exam Order of January 9, 2015, including the suspension of Unique's ability to write new business as outlined in the Exam Order within three (3) business days of the Execution Date.

14. The Department shall dismiss with prejudice the Statement of Charges filed February 23, 2015 within three (3) business days of the Execution Date.

15. Unique shall dismiss with prejudice its Petition for Judicial Review pending in Marion County Superior Court, cause number 49D13-1410-PL-032517 within three (3) business days of the Execution Date.

16. Should the Arbiter find that Unique has failed to maintain a ninety-three percent (93%) compliance rate based on the benchmarks established in Section II, Paragraph 10 during the re-examination (see Section II, Paragraph 8), Unique shall pay an additional administrative

fine in the amount of two hundred fifty thousand dollars (\$250,000.00) to the Department within thirty (30) days of the issuance of the Arbiter's report to the Department.

17. The Respondent understands and waives all rights to a hearing on this matter.

18. The Respondent waives all right to judicial review of this Agreement.

19. This Agreement supersedes all prior agreements, whether written or oral, between the Department and Unique with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented or otherwise modified except by a written agreement that identifies itself as an amendment to this Agreement executed by the parties.

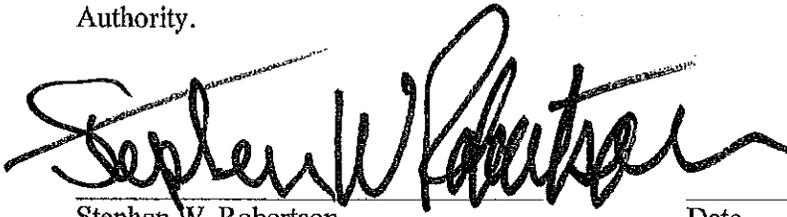
20. The Laws of the State of Indiana shall govern the creation, interpretation, construction and enforcement of and the performance under this Agreement, as well as any and all claims arising out of or relating in any way to this Agreement, notwithstanding the choice of law rules of any other state or jurisdiction. In addition, the Parties agree that any disputes regarding this Agreement shall be heard in the courts of Marion County Indiana.

21. Any delay or failure in the performance by either Party shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God; fires; floods; explosions; riots; wars; hurricane; sabotage terrorism; vandalism; accident; restraint of government; injunctions; labor strikes, other than those of Unique or its suppliers, that prevent Unique from performing its obligations under this agreement; and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's

reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events, or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement. If a Party asserts Force Majeure as an excuse for failure to perform the Party's obligation, then the nonperforming Party must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the Party substantially fulfilled all non-excused obligations, and that the other Party was timely notified of the likelihood or actual occurrence of an Act of God.

22. This Agreement shall be a public record.

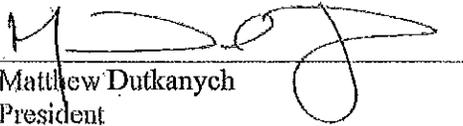
23. Failure to comply with the Agreement, other than failing to meet the compliance rate on the benchmarks of the re-examination as outlined in Section II, Paragraph 16, may result in reinstatement of the Exam Order, additional administrative action against the Respondent for additional civil penalties, and/or the permanent revocation of the Respondent's Certificate of Authority.



Stephen W. Robertson  
Commissioner  
Indiana Department of Insurance

Date

3/17/15



Matthew Dutkanych  
President  
Unique Insurance Company

Date

3/17/15