

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NUMBER: IDOI-CO03-001

IN THE MATTER OF:)
CNA Insurance Companies,)
Continental Casualty Company,)
Respondent.)
)
CNA Plaza)
333 S. Wabash)
Chicago, IL 60604)

FILED
JUL 22 2003
STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER AND APPROVAL

The Indiana Department of Insurance ("Department"), by its counsel, Robert L. Hummel, and Michael E. Brown, counsel for Respondent, and Charlotte S. Sendra, Vice President and Chief Claims Officer for Respondent, have signed an Agreed Entry which purports to resolve all issues involved in the administrative action taken by the Department against Respondent and which has been submitted to the Commissioner of Insurance ("Commissioner") for approval.

The Commissioner, after reviewing the Agreed Entry, finds it has been entered into fairly and without fraud, duress or undue influence, and is fair and equitable between the parties. The Commissioner hereby incorporates the Agreed Entry as if fully set forth herein, and approves and adopts in full the Agreed Entry as a resolution of this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Commissioner of Insurance:


1. Respondent shall to pay to the Department the amount of ten thousand dollars (\$10,000.00), payable by check or money order to the State of Indiana and due in full within thirty (30) days of this Final Order.

2. Respondent shall provide the Department, within ten (10) business days of this Final Order, a true and accurate copy of the insurance policy that applies to the Complainant.

3. Respondent shall provide the Department, within ten (10) business days of this Final Order, a summary of Respondent's current complaint handling procedure, if and how the Complainant's situation has altered that procedure, and reasonable assurances that the treatment the Complainant received will not occur again with him or future claimants.

Under Ind. Code § 4-21.5-5-5, Respondent has the right to appeal this Final Order by filing a petition for judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS ORDERED this 22nd day of July, 2003.


Sally McCarty, Commissioner
Indiana Department of Insurance

Distribution:

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AGREED ENTRY

This Agreed Entry is executed by Robert L. Hummel, Attorney for the Indiana Department of Insurance ("Department"), and Michael E. Brown, Attorney for CNA Insurance Companies, Continental Casualty Company ("Respondent"), an insurance company licensed to do business in Indiana and party to the administrative action commenced by the Department under Cause Number IDOI-CO03-001. This Agreed Entry is subject to the review and approval of Sally McCarty, Commissioner, Indiana Department of Insurance.

WHEREAS, the Department commenced an administrative action against Respondent on May 13, 2003, by filing a Statement of Charges alleging eight (8) violations of Indiana insurance law; and

WHEREAS, Respondent was mailed a copy of the Statement of Charges by certified mail on May 13, 2003; and

WHEREAS, this matter was set for administrative hearing on September 9, 2003, and the parties conversed prior to the hearing for the purpose of negotiating a settlement of the Statement of Charges; and

WHEREAS, the Department and Respondent desire to resolve their differences and settle the issues without a hearing;

IT IS, THEREFORE, NOW AGREED by and between the parties as follows:

1. The Commissioner has jurisdiction over the subject matter and the Respondent in this administrative action commenced on May 13, 2003 including issues brought to the Department's attention by Ira B. Zinman ("Complainant") in Problem Report #98-1833.
2. This Agreed Entry is executed voluntarily by the parties.
3. While the Department believes that Respondent's handling of Complainant's disability claim was improper and contrary to Indiana Law governing insurance claim settlements, Respondent admits only that its handling of Complainant's disability claim resulted in Complainant being subjected to a lengthy delay in having his claim properly paid and Respondent regrets the inconvenience and hardship this has caused Complainant.
4. As the parties remain in disagreement as stated in paragraph 3 above, and in an effort to avoid the expense to both the Department and Respondent of pursuing this matter through the administrative hearing and appeal process, the Department and Respondent agree to the following:

- a. Respondent agrees to pay to the Department the amount of ten thousand dollars (\$10,000.00), payable by check or money order to the State of Indiana and due in full within thirty (30) days of the Final Order.
 - b. Respondent agrees to provide the Department, within ten (10) business days of the Final Order, a true and accurate copy of the insurance policy that applies to the Complainant.
 - c. Respondent agrees to provide the Department, within ten (10) business days of the Final Order, a summary of Respondent's current complaint handling procedure, if and how the Complainant's situation has altered that procedure, and reasonable assurances that the treatment the Complainant received will not occur again with him or future claimants.
 - d. The Department agrees to accept Respondent's compliance with the terms of this agreement as full settlement of the issues raised.
5. Respondent is aware that failure to comply with the terms of this Agreed Entry will result in the matter being set for hearing and may result in additional penalties.
 6. Respondent has carefully read this agreement and fully understands and accepts its terms.

7.16.03

Date Signed

Charlotte S Sendra

Charlotte S. Sendra
Vice President and Chief Claims Officer.
CNA Insurance Companies

7-18-03

Date Signed

Michael E. Brown (gp)

Michael E. Brown, Attorney
Counsel for Respondent

7-21-03

Date Signed

Robert L. Hummel

Robert L. Hummel, Attorney
Indiana Department of Insurance

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MAY 13 2003
STATE OF INDIANA
DEPT. OF INSURANCE

STATEMENT OF CHARGES

The Consumer Protection Unit of the Indiana Department of Insurance (the "Department"), pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5 *et seq.* and Indiana Code § 27-4-1-4.5, hereby gives notice to CNA Insurance Companies, Continental Casualty Company ("CNA") of the following charges:

Count I

1. CNA is a licensed insurance company doing business in the State of Indiana.
2. In January 1984, Ira B. Zinman ("Complainant") purchased a disability income insurance policy with Commercial Insurance Company of Newark, New Jersey through the Indiana State Bar Association. That policy defined residual disability to mean "(1) You are unable to perform one or more of the substantial and material duties of Your occupation or (2) You are unable to perform all of the substantial and material duties of Your occupation for as much time as is normally required for the performance of such duties." *See Exhibit "A" attached hereto.*
3. Effective May 1, 1991, the policy was assumed by Commercial Life Insurance Company with no changes made to the terms of the policy. *See Exhibit "B" attached hereto.*

4. Effective November 1, 1996, the Commercial Life Insurance disability income policy was replaced by a CNA disability income policy. The notice states that “[t]he new CNA plan will provide the same monthly disability benefit and rate as the Commercial Life plan, subject to CNA’s policy wording.” *See Exhibit “C” attached hereto.*

5. The November 1, 1996 letter was not received by Complainant until April 17, 1998, when it was faxed to him by John Pearl and Associates, agent for CNA. *See Exhibit “C” attached hereto.*

4. On December 4, 1996, the Complainant suffered a hearing loss in his left ear. *See Exhibit “D” attached hereto.*

5. On or about November 1, 1997, Complainant filed a claim with CNA under his disability insurance policy. *See Exhibit “D” attached hereto.*

6. In a letter to Complainant dated December 10, 1997, CNA denied Complainant’s claim, stating that the definition of residual disability in the policy was that the insured must be “unable to perform all of the material duties of his regular occupation on a full-time basis.” *See Exhibit “E” attached hereto.*

7. In a letter to CNA dated January 13, 1998, Complainant challenged the denial of his claim. *See Exhibit “F” attached hereto.*

8. In a letter to Complainant dated January 28, 1998, CNA again denied Complainant’s claim, again citing the restrictive definition of residual disability referred to in the December 10, 1997 letter. *See Exhibit “G” attached hereto.*

9. In a letter to CNA dated February 9, 1998, Complainant again challenged the denial of his claim and pointed out that the definition of residual disability CNA was citing was different from the definition contained in the policy issued to him. Complainant requested a copy of the policy that contained the definition of residual disability CNA believed applied to his coverage. *See Exhibit “H” attached hereto.*

10. In a letter to Complainant dated April 7, 1998, CNA again denied Complainant's claim, stating that the CNA definition of residual disability is different from the definition used by Commercial Life. *See Exhibit "I" attached hereto.*

11. In a letter dated May 18, 1998, Complainant filed a complaint with the Department concerning the definition of residual disability CNA used to deny his claim and his lack of notice of any change in his policy. *See Exhibit "J" attached hereto.*

12. In a letter to the Department dated June 22, 1998, CNA responded to Complainant's May 18th complaint stating that all insureds had been notified of the change to the CNA policy and the insureds had been provided with Certificates of Insurance. The letter also states that CNA did not duplicate the exact wording or benefits of the Commercial Life plan and that the Indiana State Bar Association had selected the CNA plan to replace the Commercial Life plan. *See Exhibit "K" attached hereto.*

13. In a letter to CNA dated July 30, 1998, Complainant requested a copy of the policy in force. *See Exhibit "L" attached hereto.*

14. In a letter to Complainant dated October 1, 1998, CNA requested additional information from Complainant but indicated that it was still relying on the restrictive definition of residual disability. *See Exhibit "M" attached hereto.*

15. In a letter to Complainant dated February 16, 1999, CNA stated that Complainant was eligible for disability benefits and that payment would be sent to him for the ten (10) month period from March 1, 1997 through December 31, 1997. *See Exhibit "N" attached hereto.*

16. In a letter to CNA dated February 22, 1999, Complainant pointed out that CNA was not calculating his benefit correctly. *See Exhibit "O" attached hereto.*

17. In a letter to Complainant dated February 26, 1999, and in response to Complainant's February 22nd letter, CNA stated that the Commercial Life policy is no longer in force, that Complainant is not eligible for waiver of premium, and that the restrictive definition of residual disability is the one that applies to Complainant. *See Exhibit "P" attached hereto.*

18. On or about March 18, 1999, CNA paid the correct benefits to Complainant as Complainant had calculated them.

19. In a letter to Complainant dated June 10, 1999, CNA acknowledged that a Certificate of Insurance was never sent to Complainant and that CNA would administer his claim according to the provisions of the Commercial Life policy. *See Exhibit "Q" attached hereto.*

20. In a letter to CNA dated August 11, 1999, the Department notified CNA that the denial of Complainant's claim based on a revised policy that was never issued and taking more than eighteen (18) months to resolve the matter constituted unfair claim settlement practices. *See Exhibit "R" attached hereto.*

21. In a letter to the Department received June 6, 2000, CNA responded to the Department's August 11, 1999 letter and stated that CNA "never intended to alter the provisions of the policy as a result of the transfer and we have worked to resolve any differences since this matter was brought to our attention." *See Exhibit "S" attached hereto.*

22. Complainant has not yet received a copy of the policy that accurately reflects the coverage he has purchased from CNA.

23. CNA's misrepresentation of insurance policy provisions relating to coverage at issue is an unfair claim settlement practice under Ind. Code § 27-4-1-4.5(1).

Count II

24. The Department hereby incorporates paragraphs 1 through 23 of the Statement of Charges as if fully set forth herein.

25. CNA's failure to act reasonably promptly upon communications with respect to Complainant's claim arising under the insurance policy is an unfair settlement practice under Ind. Code § 27-4-1-4.5(2).

Count III

26. The Department hereby incorporates paragraphs 1 through 25 of the Statement of Charges as if fully set forth herein.

27. CNA's failure to adopt and implement reasonable standards for the prompt investigation of Complainant's claim arising under the insurance policy is an unfair claim settlement practice under Ind. Code § 27-4-1-4.5(3).

Count IV

28. The Department hereby incorporates paragraphs 1 through 27 of the Statement of Charges as if fully set forth herein.

29. CNA's refusal to pay Complainant's claim without conducting a reasonable investigation based upon all available information is an unfair claim settlement practice under Ind. Code § 27-4-1-4.5(4).

Count V

30. The Department hereby incorporates paragraphs 1 through 29 of the Statement of Charges as if fully set forth herein.

31. CNA's failure to affirm coverage of Complainant's claim within a reasonable time after proof of loss statements have been completed is an unfair claim settlement practice under Ind. Code § 27-4-1-4.5(5).

Count VI

32. The Department hereby incorporates paragraphs 1 through 31 of the Statement of Charges as if fully set forth herein.

33. CNA's failure to attempt in good faith to effectuate prompt, fair, and equitable settlements of Complainant's claim in which liability has become reasonably clear is an unfair claim settlement practice under Ind. Code § 27-4-1-4.5(6).

Count VII

34. The Department hereby incorporates paragraphs 1 through 33 of the Statement of Charges as if fully set forth herein.

35. CNA agreed to make benefit payments to Complainant but still adhered to the restrictive definition of residual disability it had earlier used to deny benefits to Complainant. *See Exhibit "P" attached hereto.*

36. By making claim payments to Complainant not accompanied by a statement setting forth the coverage under which the payments are being made, CNA engaged in an unfair claim settlement practice under Ind. Code § 27-4-1-4.5(10).

Count VIII

37. The Department hereby incorporates paragraphs 1 through 36 of the Statement of Charges as if fully set forth herein.

38. CNA's failure to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of Complainant's claim is an unfair claim settlement practice under Ind. Code § 27-4-1-4.5(14).

THEREFORE, pursuant to Indiana Code §§ 27-4-1-4.5, 27-4-1-5.6 and 27-4-1-6, the Department hereby requests that the Commissioner:

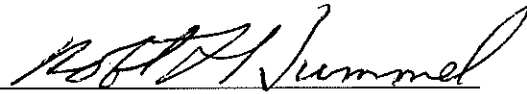
1.) Impose a civil penalty against CNA in the amount of two thousand five hundred dollars (\$2500.00) for each count of this Statement of Charges;

2.) Require CNA to submit to the Department within ten (10) business days of the Final Order a written response detailing a.) why Complainant has not yet received an accurate copy of the policy he purchased, and b.) why a determination has not yet been made regarding the length of time Complainant is entitled to disability payments;

3.) Require CNA to pay the court reporter's fee in the event of a hearing; and

4.) All other relief just and proper in the premises.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert L. Hummel", written over a horizontal line.


Robert L. Hummel
Attorney #20936-49
Enforcement Division

Indiana Department of Insurance
311 W. Washington Street, Suite 300
Indianapolis, IN 46204-2787
317 232-2385 - telephone
317 232-5251 - facsimile

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon Michael E. Brown, attorney for Respondent, by depositing a copy of same in the United States Mail, postage prepaid, Certified Mail Receipt # 7099 3400 0018 1993 7044 , Return Receipt Requested, and by FAX this 13th day of May 2003.

Michael E. Brown, Attorney
Kightlinger & Gray
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Robert L. Hummel
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