**Bulletin No. 23**

## COMPARATIVE NEGLIGENCE—UNFAIR CLAIM SETTLEMENT PRACTICES OF THE UNFAIR TRADE PRACTICES ACT

December 29, 1975

During the 1973 Legislative Session, the Legislature enacted North Dakota's Comparative Negligence Statute (S. L. 1973, Ch. 78) which is codified as Section 9–10–07 of the North Dakota Century Code. There is no need for this Bulletin to discuss the workings and applications of that statute. This Bulletin is precipitated by the number of complaints this Department has received in regard to insurance companies' application of that statute to certain situations. The purpose of this bulletin is to advise insurance companies which are licensed to write motor vehicle insurance of a possible unfair claims settlement practice under the Unfair Trade Practices Act when handling claims of a rather small nature on property damage to motor vehicles.

The problem can be stated rather simply. For example, Mr. A is traveling on a through street and Mr. B goes through a stop sign and strikes Mr. A's vehicle causing property damage in the amount of $400.00. The XYZ insurance company which insures Mr. B contacts Mr. A, advises him of North Dakota's comparative negligence statute and offers to settle the claim for $320.00. This compromise offer is based on the assumption that Mr. A was 20% negligent. From complaints received in this office, it appears that companies are not investigating the accident to any great degree (such as taking statements from the insureds or the people suffering the property damage), but merely arbitrarily applying percentages to an accident depending upon the type of accident involved (i.e. uncontrolled intersection, 60–40%; stop sign intersection, 85–15%; signal light intersection, 90–10%; etc.). Most of the cases called to our attention would have been handled without question on the basis of a 100% settlement under the old contributory negligence law.

The North Dakota Legislature passed amendments to this Unfair Trade Practices Act which were effective July 1, 1975. Section 26–30–04 (9) pertains to unfair claims settlement practices and the pertinent part of that subsection for the purposes of this Bulletin read as follows:

"The following are hereby defined as unfair methods of competition

and unfair and deceptive acts or practices in the business of insurance:

* * *

9. UNFAIR CLAIM SETTLEMENT PRACTICES. Committing any of the following acts, if done without just cause and if performed with such frequency as to indicate a general business practice:

* * *

c. failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear."

* * *

It is the opinion of this Department that any insurance company which as a general insurance practice does not investigate the facts and circumstances of an accident prior to offering a settlement based on the comparative negligence statute is in violation of the above quote provision. We are not of the opinion that there may be a violation under all situations, but only when an insurance company arbitrarily and capriciously uses the comparative negligence statutes through the application of fixed percentages for purposes of settling a particular claim.

Companies are also advised that if after a hearing and the evidence substantiates a violation of the above quoted provision, the Commissioner of Insurance is authorized to issue cease and desist orders against a company, or companies, engaging in such methods of practice. In addition, the Commissioner of Insurance is further authorized if the violation is found to be willful to require the company, or companies, to pay a civil penalty not to exceed $10,000.

This Bulletin shall be effective immediately.

J. O. WIGEN
Commissioner of Insurance