



## Consumer Federation of America

May 22, 2014

Commissioner Adam Hamm  
President  
North Dakota Insurance Department  
State Capitol, Fifth Floor  
600 E. Boulevard Avenue  
Bismarck, North Dakota 58505-0320

Commissioner Stephen W. Robertson  
Chair, Market Regulation and Consumer Affairs  
(D) Committee  
Indiana Department of Insurance  
311 W. Washington Street, Suite 103  
Indianapolis, Indiana 46204

Dear Commissioners,

As we approach the second anniversary of the release of our important report "[Low Ball: An Insider's Look at How Some Insurers Can Manipulate Computerized Systems to Broadly Underpay Injury Claims](#)" (June 4, 2012), we felt this is a good time to examine what, if any, progress has been made.

In that report we brought to your attention the flawed and ineffective multi-state market conduct exam that was initiated in March 2009 to review Allstate's Colossus practices. In particular we pointed out the fact that the multi-state agreement reached between Allstate and the 47 participating states on August 27, 2010 contained very little substantive change and did nothing further to protect consumers. The agreement did require Allstate to make some minor adjustments to its tuning process going forward. However, critical aspects of the tuning process were either missed or not understood by the NAIC and its contract examiner, InsRis Regulatory Services, Inc.

At the time we pointed out that key shortcomings include:

- NAIC's failure to require Allstate to provide a copy of the Colossus "consultation" to claimants.
- The agreement makes no mention of any NAIC analysis or review of Allstate's Colossus data entry practices, and whether these practices result in accurate and fair settlement values.
- The agreement does not address the compensation of senior claim management, many of whom are "bonus eligible" and their salaries or bonus may be partially tied to severity results.

We should also point out these additional deficiencies:

- Tuning is cumulative and any change to process does not eliminate the impact of past tuning issues. The only way to completely eliminate prior issues and their influence to current tuning would be to start over with the reinstallation and benchmark tuning process.
- The examiners did not mention if any specific tuning regions that they reviewed had remained unchanged for a number of years. The impact would be that the recommended value of a present day injury would be based upon old settlement data from years prior and there is no adjustment mechanism within the software to factor in for inflation.

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On December 1, 2012 at the NAIC Fall National Meeting, Market Regulation and Consumer Affairs (D) Committee, we addressed the NAIC to reinforce CFA's concerns regarding the flawed and ineffective multi-state market conduct exam conducted on Allstate. Once again we encouraged the NAIC to correct its inadequate market conduct review of Allstate's use of Colossus.

Unfortunately for policyholders and consumers, it does not appear that the NAIC has taken any additional steps to correct the clearly inadequate and flawed examination of Allstate. Currently the only recourse for individuals to pursue relief is insurance bad faith actions in state and federal courts. These lawsuits are expensive, time consuming and tie up our court dockets. The CFA once again urges the NAIC to undertake a truly comprehensive market conduct examination of computerized claims' assessment systems utilizing expert consultants that have used and understand how Colossus works and to regulate as advisory organizations all vendors that sell products that have a major impact on the cost of insurance and reimbursement offered for claims filed under an insurance contract.

The CFA believes that, once an in-depth and professional examination of Colossus is made, that the NAIC will see the need to consider adoption of a model bill requiring that Allstate (and other insurers utilizing such software) cease doing so. Even if the colossal biases contained in Colossus could be removed, the value of an individual's general damages should not be based upon other individuals who incurred an injury and experienced pain and suffering sometime in the past. Each human being is unique; experiences pain differently, and should not be subjected to the output of a computer software program.

Sincerely:



J. Robert Hunter  
Director of Insurance



Mark Romano  
Director of Insurance Claims Project