

JESSE LASLOVICH
NICK MAZANEC
Office of the Montana State Auditor,
Commissioner of Securities and Insurance
840 Helena Avenue
Helena, MT 59601
406-444-2040
jaslovich2@mt.gov
nmazanec@mt.gov

Attorneys for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE,
MONTANA STATE AUDITOR**

IN THE MATTER OF)	CASE NO. INS-2015-371
)	
UNIGARD INSURANCE COMPANY,)	NOTICE OF PROPOSED AGENCY
)	ACTION AND OPPORTUNITY FOR
Respondent)	HEARING
)	

Staff of the Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101 et seq. (Code), is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), that she take specific action against Unigard Insurance Company for violations of the Code. The Commissioner has authority to take such action under the provisions of §§ 33-1-102, 33-1-301, 33-1-311, 33-1-317, 33-1-318, and 33-18-224. Service of process is pursuant to § 33-1-314.

REASONS FOR ACTION

There is reason to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true, and justify and support an appropriate fine.

ALLEGATIONS OF FACT

1. Respondent Unigard Insurance Company is a foreign licensed property and casualty insurer, Certificate of Authority # 5606. Respondent is a member of QBE North America Insurance Group (QBE) and a wholly-owned subsidiary of QBE Insurance Group Limited, a foreign holding company.

2 On May 27, 2014, J.C. was rear-ended in a two-car automobile accident in Butte, Montana. J.C.'s 1997 Jeep Wrangler incurred damage. Respondent insured the responsible driver.

3 Respondent accepted liability and a representative contacted J.C. to settle the claim. Respondent dealt primarily with J.C.'s father, T.C., to resolve the claim.

4. Following the initial contact with Respondent, T.C. obtained a repair estimate from Yates Body Shop (Yates).

5. On June 10, 2014, Respondent received the estimate and damage photos from Yates. Claim system notes from that day state: "Rcvd initial \$3441.35 CV estimate and damage photos from non SOC shop, Yates Body Shop. Discussed IA assignment with IA, Heinrich, cnfrmd Yates is an undesirable shop." (Emphasis added).

6. A representative for Respondent subsequently advised T.C. that Yates was not an approved body shop, and that T.C. needed to go to a Respondent-preferred body shop. The representative informed T.C. that if Yates performed the repairs, J.C. would be responsible for any amount owed to Yates that exceeded an estimate provided by a preferred body shop.

7 The representative also provided the names of local preferred body shops from which T.C. should obtain an estimate, and asked T.C. to take the vehicle to J & C Body Shop

specifically. T.C. told the CSI that he felt “pressured to get another estimate to go to [Respondent’s] preferred shop.”

8. Claim system notes of the discussion state that the claim representative “Reassigned [covered vehicle] to SOC J and C[.]” Respondent’s claim system identifies Yates as a “non SOC shop,” while J & C Body Shop is designated an “SOC shop.” “SOC” stands for “shop of choice.”

9. T.C. obtained an estimate from J & C Body Shop, and discussed the matter with Yates. Yates subsequently contacted Respondent and advised that the practice of steering was illegal in Montana. Respondent then contacted T.C. and advised him that Yates could conduct the repairs.

10 The CSI subsequently received copies of claim comments from QBE’s claim system. The comments related to claims associated with Yates and Capital Collision Center, another non-preferred Montana body shop. In both cases, the statements “****DO NOT USE****” or “****DO NOT USE!!!****” are indicated next to each shop’s name.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to the Code.

2 An insurance company, including its adjusters, that issues or renews a policy of automobile insurance in Montana may not engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular automobile body repair business or location. § 33-18-224(1)(a)(ii).

3. An insurance claimant may use a body shop at the claimant’s sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the body shop repair services for covered damages, less any deductible under the terms of the policy. § 33-18-224(4).

4. Respondent is an “insurance company” for purposes of § 33-18-224(1)(a)(ii).
5. Respondent violated § 33-18-224(1)(a)(ii) when it coerced and threatened J.C., and induced him to use a particular body shop by:
 - a. advising that it would not pay the full value of a Yates repair claim if the cost of those repairs exceeded a Respondent-preferred body shop estimate, and
 - b. directing T.C. to use J & C Body Shop, a Respondent-preferred body shop.
6. Respondent violated § 33-18-224(4) when it informed T.C. that it would not cover the full value of a Yates repair claim if those repairs exceeded a Respondent-preferred body shop estimate, but Respondent did not demonstrate that a Yates repair claim would exceed the reasonable and necessary cost to repair the covered damages.
7. An insurer who violates the Code is subject to a fine of up to \$25,000 per violation, pursuant to § 33-1-317.
8. The CSI may enjoin violations of the Code pursuant to § 33-1-318.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. Pursuant to § 33-17-317, imposition of a fine not to exceed \$25,000 per violation of the Code
2. Pursuant to § 33-1-318, entering of an order enjoining Respondent from engaging in further violations of § 33-18-224.
3. Pursuant to § 33-2-119, suspension or revocation of Respondent’s certificate of authority.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 21 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by **writing** to Jesse Laslovich or Nick Mazanec, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, Montana 59601.

Your written notice must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of hearing.

You have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Commission on the Unauthorized Practice of Law v O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact either Jesse Laslovich or Nick Mazanec, legal counsel for the CSI, by telephone at (406) 444-2040, or by email at jlaslovich2@mt.gov or nmazanec@mt.gov. Please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 21 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 7th of January, 2016.



JESSE LASLOVICH
NICK MAZANEC
Attorneys for the CSI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of January, 2016, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, postage prepaid, return receipt requested:

CT Corporation System
3011 American Way
Missoula, MT 59808


