

**STATE OF NORTH DAKOTA
BISMARCK, NORTH DAKOTA**

REPORT OF MARKET CONDUCT EXAMINATION

OF

**NORTH DAKOTA INSURANCE RESERVE FUND
BISMARCK, NORTH DAKOTA**

**AS OF
JANUARY 31, 2024**

STATE OF NORTH DAKOTA
INSURANCE DEPARTMENT

I, the undersigned, Commissioner of Insurance of the State of North Dakota do hereby certify that I have compared the annexed copy of the Report of Market Conduct Examination of the

North Dakota Insurance Reserve Fund

Bismarck, North Dakota

as of January 31, 2024, with the original on file in this Department and that the same is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my official seal at my
office in the City of Bismarck, this 15th day of
October, 2024.



Jon Godfread
Insurance Commissioner

TABLE OF CONTENTS

SCOPE OF THE EXAMINATION	4
SUBSEQUENT EVENTS	4
HISTORY	5
OPERATIONS	5
COMPLAINT HANDLING	5
MARKETING AND SALES	6
CLAIMS	6
CONCLUSION	10
RECOMMENDATIONS	11

Honorable Jon Godfread
Insurance Commissioner
North Dakota Insurance Department
600 East Boulevard Avenue
Bismarck, ND 58505-0320

Dear Commissioner:

In accordance with your authorization and pursuant to North Dakota statutory provisions, a market conduct examination has been made of the records, business affairs and marketing practices of

North Dakota Insurance Reserve Fund
Bismarck, North Dakota

The North Dakota Insurance Reserve Fund, hereinafter referred to as the "Fund". This examination was conducted by representatives of the North Dakota Insurance Department, hereinafter referred to as the "Department." The Department initiated this examination of the Fund on February 1, 2024.

SCOPE OF THE EXAMINATION

The Department has the authority to conduct this examination pursuant to, but not limited to, North Dakota Century Code § 26.1-23.1-04. The Fund became subject to North Dakota Century Code § 26.1-04 on July 1, 2023. There is no distinction in the report between the claim files before or after July 1, 2023.

The purpose of the examination was to determine if the Fund complied with North Dakota Century Code (N.D.C.C § 26.1, et seq.), North Dakota Administrative Code (ND Admin Code § 45, et seq. The examination was also conducted to consider whether the Fund's operations are consistent with the public interest. The period covered by this review ("examination period") was February 1, 2019, through January 31, 2024, for operational procedures, claims processing, and claims handling. However, errors outside of this period, discovered during the course of examination, may also be included in the report.

In performing this examination, the Examiners reviewed a sample of the Fund's practices, procedures, products, and claims paid and claims denied. Therefore, some noncompliant events may not have been identified. As such, this report may not fully reflect all the practices and procedures of the Fund. Failure to identify or criticize improper or noncompliant business practices in this state does not constitute acceptance of such practices.

SUBSEQUENT EVENTS

Effective March 1, 2024, the Fund's CEO, Brennan Quintus resigned. Claims Director Keith Pic was named CEO effective July 16, 2024. Quintus served as CEO of the Fund throughout the entire examination period.

HISTORY

The Fund is a member-owned nonprofit insurance coverage provider for political subdivisions engaged in the underwriting and insuring of property and casualty risks. The Fund commenced business on January 1, 1986, as the North Dakota Insurance Reserve Fund under a "Pooling Agreement", executed by political subdivisions of the State of North Dakota pursuant to the provisions of N.D.C.C. § 32-12.1-07.

The provisions of the Pooling Agreement were superseded by the Bylaws of the Fund, which were adopted by its Board of Directors on November 24, 1986, and ratified by the general membership of the Fund at its annual meeting on April 20, 1987. Accordingly, the provisions of the Pooling Agreement are no longer operative. On May 4, 1990, the Fund became an authorized government self-insurance pool in which all political subdivisions in the State of North Dakota are eligible to participate in accordance with N.D.C.C. § 26.1-23.1.

The purpose of the Fund is to establish a means for self-insurance of its members against various types of property and casualty risks to which they are exposed in the ordinary course of their operations. Members include cities, counties, townships, school districts, fire districts, park districts, ambulance associations, soil conservation districts, and water districts within the State of North Dakota.

OPERATIONS

The Fund exclusively operates within the state of North Dakota, providing coverage solely for North Dakota governmental entities. During the examination, the Fund offered coverage options including auto, liability, and public assets. All coverage documents are prepared internally by the Underwriting Department, and the majority of the Fund's claims are managed internally by the Claims Department. The Fund does engage outside claim adjusters and investigators as needed, depending on internal staff's scheduling and geographic location.

COMPLAINT HANDLING

During the period under review, the Fund did have a formal policy within the Fund's Claims Guidelines for handling or tracking claims related complaints. Throughout testing, communication included in the claim files between the Fund and claimants constituting written grievances was observed but not documented within the Fund's Complaint Log. Per N.D.C.C. § 26.1-04-03(10):

Failing to adopt and implement reasonable standards for the prompt handling of written communications, primarily expressing grievances, received by the insurance company from insureds or claimants.

It is recommended that the Fund develop and implement procedures to track and ensure the prompt handling of complaints, pursuant to N.D.C.C. § 26.1-04-03(10).

MARKETING AND SALES

The Company is responsible for the development of all advertising and marketing materials. All advertisements are reviewed and approved by the Company's Marketing and Communications Manager. Examiners reviewed the advertising log for the exam period and noted that it is compliance with the North Dakota Century Code.

CLAIMS

During the examination period, the Fund had 8,058 closed claims; 2,516 or 31.2 percent were closed without payment. Examiners used various analytical tools and techniques to summarize the Fund's claims data and identified potential settlement anomalies in third party claims compared with first party claims. While 3,498 or 43.4 percent of all claims during the examination period were classified as "third party claims" (claims where a party other than a member of the Fund, such as an individual citizen or business, made a claim seeking damages on account of personal injury, property damage, or governance liability against the member's coverage), third party claims accounted for 1,799 or 71.5 percent of claims that were closed without payment.

Examiners selected a sample of 299 of the Fund's claims that occurred during the examination period to determine if the Fund's claim adjudication and file documentation practices were in compliance with the statutes and standards listed within the North Dakota Century Code and the National Association of Insurance Commissioners ("NAIC") Financial Condition Examiners Handbook and Market Regulation Handbook. The Examiners' review was not to determine whether the Fund was liable to pay specific claims or opine on the Fund's ultimate liability decisions for specific claims.

After testing, Examiners noted that an additional 21 files or 7 percent of the sample included payments for legal defense or claim adjustment costs only, so the 31.2 percent closed without payment figure noted above is potentially understated by 7 percent.

The Fund's "General Claims Philosophy" ("Philosophy") document dated August 23, 2018, included language explicitly directing adjusters to not "nickel/dime" first party claims to achieve small savings as it is a Member Pool designed to pay valid claims. This language was in place until it was removed in a January 1, 2021, revision to the Philosophy, but testing indicated that the Fund's adjusters appear to still be applying this inconsistent philosophy. Settling first party and third claims with separate, inconsistent philosophies is not a reasonable standard and is in violation of N.D.C.C. § 26.1-04-03(9)(c):

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

It is recommended that the Fund complete unbiased, fact-based claim investigations irrespective of a claimant's status as a Fund member or as a third-party claimant.

The Fund's Philosophy is that the claim file should "speak for itself", meaning that an experienced claims staff member reviewing the claim file will understand the status of the claim and any liability determination or property damage assessment. Examiners concluded that the sampled claims lacked sufficient documentation to adequately support the conclusions reached by the Fund. Files lacked components such as damage estimates, photographs, police reports, denial letters, applicable legal analysis, and, in some files, there was no documentation reflecting any form of investigation. All of the sampled claims adjusted by the Fund's staff lacked an adjuster report. Per N.D.C.C. § 26.1-04-03(9)(c):

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

It is recommended that the Fund develop and implement claim file checklists and file review procedures based on loss cause type to improve file adequacy and ensure compliance with fair claims settlement practices.

It is recommended that the Philosophy be changed to reflect that the claim file be documented so a non-experienced claims staff member reviewing the claim file will understand the status of the claim and any liability determination or property damage assessment.

This general file deficiency observed in the sampled claims prevented Examiners from definitively affirming that the Fund's claims were adjusted in compliance with various fair claim settlement practices. Examiners were unable to verify that the Fund's claim handling practices were in compliance with an additional 102 separate instances of non-compliance with statutory requirements of the unfair claim settlement practices act as listed below:

11 files - Prompt Communication Concerns per N.D.C.C. § 26.1-04-03(9)(b):

Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under insurance policies.

85 files – Prompt Payment Concerns per N.D.C.C. § 26.1-04-03(9)(d):

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

6 files – Refusing payment on member's request per N.D.C.C. § 26.1-04-03(9)(k):

Refusing payment of claims solely on the basis of the insured's request to do so without making an independent evaluation of the insured's liability based upon all available information.

Examiners also identified 5 files where the Fund directed third-party claimants to file claims for damage through their own auto insurance policies in order to recover amounts due under the Fund's policies. Examiners noted subrogated claims consistently saw higher settlement figures than those claims not subrogated through the third-party's insurer. Both of these specific practices are not considered reasonable standards under N.D.C.C. § 26.1-04-03(9)(c).

Throughout the selected sample, the Fund settled certain claims, asserting its members could not be held liable for damages because irregularities or defects that contributed to a third-party's claim for damages were previously unreported to its member. The Fund ultimately denied these claims, concluding that its members' lack of awareness of those irregularities or defects negated any negligence on behalf of the member.

Examiners analyzed this practice against North Dakota Supreme Court case, Botner v. Bismarck Parks and Recreation Dist., where one of the Fund's members advanced this specific philosophy in relation to its duty of care in a premises liability case. 782 N.W.2d 662, 665-666 (2010). Because the Examiners determined the Botner court established a governmental entity-landowner's lack of awareness of a defect in relation to their duty of care was not dispositive to the overall negligence analysis in a premises liability case, and the Fund continued to advance that philosophy in their claim settlement practices, this practice was found to be in violation of N.D.C.C. § 26.1-04-03(9)(c). In Botner, the North Dakota Supreme Court found:

[w]hile evidence of the diving board tower's long-standing, injury-free use is relevant to whether Bismarck Parks maintained its property in a reasonably safe condition, **it does not conclusively prove Bismarck Parks met its duty of care. [I]rrespective of a long history free from accidents, the likelihood of injury is determined at the time an accident occurs.** Henricksen v. State, 319 Mont. 307, 84 P.3d 38, 46 (2004). In addition, **the likelihood of injury is just one of several considerations used to determine whether Bismarck Parks acted reasonably under the circumstances.** See Groleau, 2004 ND 55, ¶ 16, 676 N.W.2d 763 (Under premises liability law, landowners owe a general duty to lawful entrants to maintain their property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to another, the seriousness of the injury, and the burden of avoiding the risk.).

782 N.W.2d at 666 (internal quotations omitted) (emphasis added). Therefore, denying a claim solely based on the finding that the issues, irregularities, or defects were previously unreported is insufficient under 26.1-04-03(9)(c). In addition, continuing to settle claims based on a philosophy that runs contrary to caselaw and not clearly outlining other relevant factors to assess whether their member met their duty of care illustrated to the Examiners that the Fund was not attempting in good faith to effectuate prompt, fair, and equitable settlements as required by N.D.C.C. § 26.1-04-03(9)(d).

It is recommended that the Fund engage a licensed attorney to conduct legal reviews of claims in which determinations of negligence, comparative negligence, or other complex legal principles are cited as the reason for a claim denial. Evidence of these reviews should be demonstrated and retained within the claim file documentation.

Examiners concluded that the Fund closed five claim files without payment after the Fund's members notified the Fund that they caused damage to a third-party's property, but the claimants never presented a claim. In each of these five files, the Fund discontinued its investigation before determining the Fund's liability position and did not conduct a thorough investigation to avoid "soliciting a claim." In these five claims, the Fund did not follow reasonable standards regarding

the conduct of an investigation before closing the claim without payment. This practice is not in compliance with N.D.C.C. § 26.1-04-03(9)(c):

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

It is recommended that the Fund document within its claim files a supervisory review which ensures the file is reasonably complete and adjudicated prior to closing.

Examiners noted three claims where the Fund demonstrated practices and procedures that did not comply with fair claim settlement standards and unclaimed property statutes. In each of these files, the Fund determined that the claims were valid, but closed them without issuing payment after it was unable to make contact with or receive damage estimates directly from the third-party claimants. In other files the Examiners reviewed, the Fund demonstrated its ability to assess and settle losses internally, without needing estimates from the claimant. This is a violation of N.D.C.C. § 47-30.2 as those valid, unclaimed claim payments, or the reserves supporting those claims, should have been remitted to the State Land Department, rather than closing them without payment. Per N.D.C.C. § 47-30.2-04:

Subject to section 47-30.2-12, the following property is presumed abandoned if it is unclaimed by the apparent owner during the period specified below:

- 1) Except as provided in this section, checks held, issued, or owing in the ordinary course of the holder's business which remain uncashed by the owner two years after becoming payable.

These three claims were also settled in a manner which violated N.D.C.C. § 26.1-04-03(9)(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 recommended that the Fund develop and implement an Unclaimed Property policy in compliance with N.D.C.C. § 47-30.2.

CONCLUSION

Acknowledgment is hereby made of the cooperation and assistance extended by the officers and employees of the Fund during this examination.

In addition to the undersigned, Cole Mork, Matt Fischer, CFE, Tyler Erickson, J.D., and Johnny Palsgraaf, J.D., participated in this examination.

Respectfully submitted,



Colton Schulz, CFE, CISA, CRISC, CFE (Fraud)
Supervising Examiner
North Dakota Insurance Department

RECOMMENDATIONS

It is recommended that the Fund develop and implement procedures to track and ensure the prompt handling of complaints, pursuant to N.D.C.C. § 26.1-04-03(10).

It is recommended that the Fund complete unbiased, fact-based claim investigations irrespective of a claimant's status as a Fund member or as a third-party claimant.

It is recommended that the Fund develop and implement claim file checklists and file review procedures based on loss cause type to improve file adequacy and ensure compliance with fair claims settlement practices.

It is recommended that the Philosophy be changed to reflect that the claim file be documented so a non-experienced claims staff member reviewing the claim file will understand the status of the claim and any liability determination or property damage assessment.

It is recommended that the Fund engage a licensed attorney to conduct legal reviews of claims in which determinations of negligence, comparative negligence, or other complex legal principles are cited as the reason for a claim denial. Evidence of these reviews should be demonstrated and retained within the claim file documentation.

It is recommended that the Fund document within its claim files a supervisory review which ensures the file is reasonably complete and adjudicated prior to closing.

It is recommended that the Fund develop and implement an Unclaimed Property policy in compliance with N.D.C.C. § 47-30.2.



October 18, 2024

Matthew Fischer, CFE
Chief Examiner
North Dakota Insurance Department
600 East Boulevard Avenue
Bismarck, ND 58505-0320

**RE: Report of Market Conduct Examination as of January 31, 2024
– North Dakota Insurance Reserve Fund**

Dear Mr. Fischer,

I acknowledge receipt of the Report of Market Conduct Examination for the North Dakota Insurance Reserve Fund (NDIRF) as filed with the Commissioner by the Insurance Department Examiners.

The NDIRF does not accept the examination report in its entirety. The following outlines NDIRF's position on each finding and recommendation made by the Insurance Department Examiners.

COMPLAINT HANDLING

Recommendation: It is recommended that the Fund develop and implement procedures to track and ensure the prompt handling of complaints, pursuant to N.D.C.C. § 26.1-04-03(10).

We accept this finding and recommendation.

CLAIMS

Recommendation: It is recommended that the Fund complete unbiased, fact-based claim investigations irrespective of a claimant's status as a Fund member or as a third-party claimant.

We accept this recommendation generally, however, as the finding refers to settlements and not investigations, coverage documents provide for additional benefits for first-party members that are not available to third-party claimants and the standards for settlement will ultimately be different between first-party and

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third-party claims. This will necessarily affect the nature and extent of any investigation. The duties the NDIRF has in relation to a first-party under coverage documents are different than duties owed to a third-party claimant.

Recommendation: It is recommended that the Fund develop and implement claim file checklists and file review procedures based on loss cause type to improve file adequacy and ensure compliance with fair claims settlement practices.

We accept this recommendation, however, without the exact nature of what the Examiners found deficient with each individual file, it is not possible to fully accept the finding as there may be a difference of opinion as to what constitutes reasonable for the context and facts of each individual file.

Recommendation: It is recommended that the Philosophy be changed to reflect that the claim file be documented so a non-experienced claims staff member reviewing the claim file will understand the status of the claim and any liability determination or property damage assessment.

We accept this recommendation and understand it will assist the Examiners in understanding the conclusions reached by the NDIRF.

Recommendation: It is recommended that the Fund engage a licensed attorney to conduct legal reviews of claims in which determinations of negligence, comparative negligence, or other complex legal principles are cited as the reason for a claim denial. Evidence of these reviews should be demonstrated and retained within the claim file documentation.

Without the exact nature of what the Examiners found deficient with each individual file regarding the eleven files with communication concerns and eighty-five files with prompt payment concerns it is not possible to fully accept the finding as there may be a difference of opinion as to what constitutes reasonable after reviewing the context and facts of each individual file.

After reviewing the six files stated as non-compliant by refusing payment on member's request per N.D.C.C. § 26.1-04-3(9)(k), it is not possible to accept the finding as it appears the adjusters took information obtained during their investigation into consideration in conjunction with the member's concerns regarding the claim. In one of the claim files, payment was made to the third-party claimant based on an adjuster's inspection. It appears that in each of the files, the member expressed concern with either the underlying facts of the claim being made by the claimant, the causation, or the amount of the damages being claimed, however, we disagree that constitutes a finding that the decision made by the adjusters was solely based on that concern.

Without knowing specifically which files the finding applies to, and without the context and facts of the file in which third-party claimants were directed to file claims for damage through their own auto insurance policies, or subrogated claims from third-party insurers seeing higher settlements, it is not possible to fully accept the finding.

Irregularities or defects that contribute to a third-party's claim for damages previously unreported to its member may be a significant defense in a claim, depending on the claim being brought by the claimant. Without the individual context and facts of the files in which the defense was used, it is not possible to fully accept the finding. The NDIRF does not agree with the recommendation, however, after discussions with the Examiners surrounding a specific example, it appears that the implementation of checklists and file review procedures will assist in showing the number of factors, such as the facts, statutes, and case law considered by adjusters when making a liability determination.

Recommendation: It is recommended that the Fund document within its claim files a supervisory review which ensures the file is reasonably complete and adjudicated prior to closing.

The NDIRF agrees with the recommendation, however, coverage documents dictate when there is a trigger of coverage. Claims against political subdivisions are also subject to N.D.C.C. § 32-12.1. Without knowing specifically which files the finding applies to, and without the context and facts of the individual files, it is not possible to fully accept the finding.

Recommendation: It is recommended that the Fund develop and implement an Unclaimed Property policy in compliance with N.D.C.C. § 47-30.2.

We accept this finding and recommendation.

CONCLUSION

While recognizing there are files with legitimate deficiencies identified by the Examiners, the full extent and number of the deficiencies is generally contested as we do not have the information to fully review all individual files in comparison with the Examiners' articulated findings of what made each file deficient. This general contest must be made after review of the six files identified as non-compliant for refusing payment solely on the basis of the insured's request to do so.

We sincerely appreciate the Insurance Department Examiners' work and communication regarding the recommendations and general reasoning for the

Matt Fischer
Page 4 of 4
October 18, 2024

findings being presented in the report. During the discussions, several files were discussed that we recognize are deficient, and it is always the goal of the NDIRF to improve its operations.

The NDIRF is committed to working with the Insurance Department to implement the agreed recommendations to provide the clarity and documentation the Examiners are requesting.

Sincerely,

A handwritten signature in black ink, appearing to be 'KP' or similar initials, written in a cursive style.

Keith Pic
CEO
NORTH DAKOTA INSURANCE RESERVE FUND