

Bulletin 2000-1

TO: All Property/Casualty Insurance Companies

FROM: Darla L. Lyon, Director, S.D. Division of Insurance

DATE: April 6, 2000

RE: Contributory Negligence

This issue was first dealt with in Bulletin 88-1 due to the number of consumer complaints the Division received relative to the assessment of contributory negligence. The problem has not diminished and continues to be a significant source of consumer complaints received by the Division.

As was stated in Bulletin 88-1, an unreasonable assessment of contributory negligence is a violation of SDCL 58-33-67. Market conduct examinations will be conducted when we suspect a general practice of not assigning a reasonable degree of contributory negligence. Furthermore, a finding of a general business practice of unjustly compelling claimants to bring suit would, by law, require the Director to suspend or revoke a Certificate of Authority.

All insurers who provide liability coverage are strongly encouraged to review their claims practices procedures to ensure that good faith assessments of contributory negligence are and/or have been made. Some examples of practices that are not acceptable include the arbitrary assumption of failure to exercise proper look out in the absence of any information supporting that conclusion and the failure to fully investigate a claim when it is known that evidence is available that would impact whether or not a claimant negligently contributed to the accident. The fact that the claimant was one of the parties involved in the accident or occurrence is not sufficient evidence to deny payment.

Consumer complaints dealing with contributory negligence need not and should not be prevalent. The Division **WILL** take administrative action against insurers who continue to fail to assess a reasonable degree of contributory negligence based on the facts of the case.