

# Market Conduct Examination

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**IFA INSURANCE COMPANY**

Clark, Ne

**STATE OF NEW JERSEY**

**DEPARTMENT OF BANKING AND INSURANCE**

Consumer Protection Services

Market Conduct Examinations and Anti-Fraud Compliance

**D. PHYSICAL AND PROPERTY DAMAGE CLAIMS 7. Improper Deductions Related Fees from Total Loss and Partial Loss Claim Settlements - 20 Files in Error – Im General Business Practice**

**N.J.A.C. 11:3-10.4(a)** states in part that, "...if the insurer elects to make a cash settlement, it must mind that the insured's position is that of a retail consumer, and that the settlement must be reasonable as a person in that position..."

Moreover, if the insurer elects to make a cash settlement, its offer is subject to applicable additional deductions plus applicable sales tax. Permissible additions and deductions include betterment and depreciation (**N.J.A.C. 11:3-10.3(i)**), prior damage and condition (**N.J.A.C. 11:3-10.3(j)**) and mileage depreciation where applicable (**N.J.A.C. 11:3-10.4(f)**). **N.J.A.C. 11:3-10.4(h)** makes these requirements applicable to total losses. Contrary to these requirements, the examiners found 19 total losses and one partial loss in which **"administrative" and/or "yard fees" from the claim settlement. These fees were charged to IFA by vendor that removed the vehicle from the location of loss. Notably, such fees do not qualify as valid deductions within the range of permissible deductions allowed in N.J.A.C. 11:3-10 and N.J.A.C. 11:3-10.4.**

IFA disagreed with these errors, stating that, "We do not allow for administrative fees, police fees (or) yard fees. These fees can't be considered a direct loss to the covered auto, they are incidental expenses that are not covered by towing coverage. Towing coverage encompasses towing and labor charges, these fees are neither towing nor labor and therefore are not covered." The examiners disagree, as the towing portion of these settlements was based not on separate coverage or endorsements as the company contends. **Rather, they were covered under that portion of IFA's policy contract (Part E-Duties After an Accident of Loss, Section D) that provides indemnity for the insured's reasonable loss mitigation efforts after a covered loss.** IFA erroneously held the insured accountable for loss mitigation efforts on all claims cited for this error. Claim number 50024 serves as an example in which \$625 was deducted from the actual cash value:

Tow Company Overcharge of Labor: \$250.00  
Law Enforcement Traffic Control: \$250.00  
Miscellaneous Shop Supplies: \$ 70.00  
Office Expense: \$ 50.00

Total Invalid Deductions \$625.00

**These deductions are not permissible as outlined above in N.J.A.C. 11:3-10.3, N.J.A.C. 11:3-10.4 and N.J.A.C. 11:3-10.4(f). Accordingly, these deductions constitute unfair settlements which are prohibited by N.J.A.C. 17:29B-4(9)(f).** The examiners found a total of \$1,636.40 in such settlement deductions that occurred or were cited for this error.