

No. 3191

Date: January 31, 1985 1:20 P.M.

Approved: Hector Luis Acevedo
Secretary of State

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
San Juan, Puerto Rico

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AMENDMENTS TO THE REGULATIONS OF THE INSURANCE CODE
OF PUERTO RICO

Section 1. - In accordance with the provisions of Section 2.040 of the Insurance Code of Puerto Rico, I hereby give notice to the insurance industry, the insurance consumers and the general public of the enactment of Rule LIII of the Regulations of the Insurance Code of Puerto Rico which shall read as follows:

"RULE LIII

DEFINITION AND PROHIBITION OF UNFAIR PRACTICES IN THE
AUTOMOBILE INSURANCE BUSINESS INCLUDING LOSS SETTLEMENTS
AND THE ADMINISTRATION OF SALVAGE AND RECOVERIES

Legal Authority: Section 2.170, 2.090, 3.070, 5.080,
12.040, 27.100 and 27.180

Section 1. - The purpose of this regulation is the following:

- a) To prohibit practices in the writing of automobile physical damage insurance which promote unfair competition among insurers.
- b) To define and prohibit practices in the handling and selling of salvage which could result in the unjust enrichment of certain persons.
- c) To prohibit those practices in the handling and selling of salvages which could lead to an undue interference or control by the automobile distribution, sale and finance business or by the used parts sale business, in the automobile insurance business.
- d) To avoid possible practices which result in unjust enrichment due to the handling of the insurer's money in cash obtained from the sale of salvage and from subrogations or from any other recovery, all this resulting in damages to the insurer's insureds.

Section 2. - The following terms shall have the meaning expressly indicated below or which could reasonably be implied in accordance with the customary usage within the insurance industry:

- a) The term "salvage" shall mean any automobile which has been subject to a total loss or to a constructive total loss

paid by the insurer under an insurance contract in accordance with the automobile loss adjustment practices prevailing in Puerto Rico.

b) The term "conversion" shall mean the illegal or dishonest appropriation of an automobile, and includes for the purpose of this rule all the coverages included in the term "conversion embezzlement or secretion" as such term appears in the insurance contract.

c) The phrase "single interest insurance" shall mean the insurance covering exclusively the interest which the financing institution or conditional vendor may have in the automobile, or of any other person having a lien on the automobile, which is transacted in accordance with the insurance forms, rate manuals and rating plans approved by the Commissioner.

d) The phrase "double interest insurance" shall mean the insurance covering both the interest of a conditional buyer and of a financing institution or conditional vendor or any other person having a lien on the automobile, transacted in accordance with the insurance forms, rate manuals and rating plans approved by the Commissioner.

e) The term "diligent measures" shall mean those measures directed to discover the whereabouts of the automobile or of the conditioner buyer carried out immediately after two installments are on arrears.

f) The term "recovery" shall mean all property over which the insurer becomes owner as a result of having paid a loss covered by an insurance contract issued by said insurer. The term recovery shall include, but is not limited to, money, securities, deeds of real property, inventories, etc., valued on the basis of their market value.

g) The phrase "administration of salvage" shall mean all necessary measures taken so that the insurers may convert in cash the unit declared as salvage. Said phrase shall

include also, but shall not be limited to the transportation from the accident site to the storage premises, the storage and related activities, the organization, sale and the procedures related to such sale.

h) The term "total constructive loss" shall mean such declared total loss due to (1) the fact that the repair cost of the vehicle will be greater than 60% of its actual cash value at the time of loss or (2) in the case of an automobile subject to a conditional sale contract, the fact that the repair cost would be greater than the unpaid balance.

Section 3.

a) No insurer or its representative or any person on its behalf, shall declare as a total loss a vehicle which has suffered an accident covered by the policy issued by such insurer, if such vehicle, pursuant to the prevailing standards in the automobile repair business in Puerto Rico, is considered repairable except:

1. As indicated in paragraph (c) of this section.
2. When the repair of the unit exceeds 60% of its actual cash value at the time of the loss (Total Constructive Loss).

For the purpose of the settlement of a claim under the automobile policy, only an adjuster duly licensed by the Commissioner of Insurance may declare a vehicle as a total loss. This must be done in writing, identifying the automobile, including the claim number and signing the corresponding report.

b) No insurer or its representative, nor any other person on its behalf shall declare an insured vehicle as total loss under the conversion coverage of a policy issued by said insurer unless:

1. The insured under the single interest policy or the loss payee under the double interest policy has taken diligent measures to locate the whereabouts of the vehicle and such measures are accounted for in the claim file, and

2. If the whereabouts of the vehicle or of the buyer of the vehicle is known, or otherwise, if the insured or the loss payee under said policy has taken measures to collect, among others, but not limited to, visits to the vehicle buyer's residence, or if he has moved, the measures taken to locate the new address, or previously has instituted a proceeding to repossess the vehicle, pursuant to the applicable laws.

3. For the purpose of claims under this coverage, the date of loss shall be considered as the one appearing in the post office cancelling stamp, or if not, the date printed by the automatic stamper on the claim notification form provided by the insurer. Said form shall be in such a way so that it may be delivered through the mail, postage included, without having to be enclosed in a postal envelope. The insured shall include in the same the policy or certificate number, a description of the vehicle and a summary of the measures taken to locate the vehicle.

c) No insurer shall pay, under the conversion coverage, installments due in excess of ninety (90) days, prior to the date of loss.

d) No insurer shall pay under a single interest policy, any loss, if the automobile has suffered a reparable loss, except in those cases in which the repair of the automobile, at the judgment of the insurer, would cause an impairment of the insurable interest of the insured or its repair exceed 60% of its actual cash value at the time of loss.

e) The Commissioner of Insurance, whenever he may deems it convenient shall employ public adjusters or vehicle repair technicians or officers of other branches of government specialized in investigations, to determine if an insurer or its representative has violated the provisions of this section or any other provision of this Rule. The cost of such employment shall be paid by the insurer.

f) Any violation to this section by an authorized adjuster shall be considered as grounds for the revocation of the corresponding license, as provided by Section 9.460 of the Insurance Code of Puerto Rico. If the violation is committed with the knowledge and consent of the insurer, said insurer shall be subject to the penalties provided in Sections 3.210 and 3.211 of the Insurance Code of Puerto Rico.

Section 4.

a) Every vehicle insurer shall maintain, assuming the corresponding costs, those exclusive premises necessary for the storage of its vehicles recovered as salvage. The address of the premises must be filed in the Office of the Commissioner of Insurance and any change in the same must be filed in said Office within five days of the date of the change. This regulation does not prohibit that two or more insurers share the same premises as long as the operations of each insurer are kept separate.

This paragraph shall not apply to insurers handling yearly less than three hundred salvages. These insurers may make the necessary arrangements for the custody and storage of the salvages. Such arrangements must be informed to the Office of the Commissioner of Insurance as well as any other change performed by them.

b) The insurer shall not permit the storage on his premises of vehicles or salvage belonging to automobiles dealers, automobile parts dealers, banks, or finance companies which are insured under any policy issued by the insurer.

c) No insurer shall store its salvage on premises belonging to persons engaged in the repair of automobiles, automobiles dealers, finance companies, commercial banks and/or automobile parts dealers, or on premises where these persons would be financially benefitted, if these are in turn insured under their policies.

d) Every unit that is recovered as salvage must have an identification number that distinguishes it from other units

recovered as salvage. This identification number must correspond to the order number in which the salvage is received, separated by a dash for the year in which the accident occurred, and whatever other form of additional codification which may produce significant information for the insurer and the Commissioner of Insurance.

Section 5.

a) Every insurer whose salvage volumen exceeds three hundred (300) units yearly will dispose of his salvage by means of auction. In spite of the aforesaid, if the insurer determines that for the sale of a determined number of salvage items the procedure of auction is not the most adequate, he may dispose of them through direct sale provided that the units thus sold will not exceed 25% of the volume and that the same will be realized under the following conditions:

1. The insurer will send notification of the sale to be hold to at least five (5) buyers recognized as active in the business.
2. The notification will include the number of the items to be sold and the estimated minimum cost for the lot.
3. The sale will be awarded to the one who makes the highest offer.
4. The insurer must maintain in his records the offers received in each case from the prospective buyers.

a) In lieu of the aforesaid method, the insurer may excercise the option to sell said percentage of its salvage by means of selling the contracts by auction complying with the following requirements:

1. The contract shall not exceed a term of one (1) year.
2. Must invite the public to submit their proposals, by means of the publication of a notice in a newspaper of general circulation once a week for two consecutive weeks. The notice must contain the due date for the submission of the proposal.

3. the contract shall be adjudged to that bidder who would offer the most favorable conditions to achieve the best economic return from the selling of the salvage.

4. The insurer shall keep the proposals submitted by the different bidders so that the Commissioner may ascertain compliance with this regulation.

Those insurers who would handle less than three hundred (300) salvages annually may dispose of the same by means of any of the two methods previously described. The insurer must send invitations for all auctions held, to the Department of Transportation and Public Works and to the Puerto Rico Police Department.

c) In all cases, the insurer must award the auction to the highest bidder. If it is impossible to obtain the corresponding payment from the highest bidder within the term granted by the insurer, the auction will then be awarded to the next highest bidder, provided the amount offered is not below the established minimum.

d) Every insurer shall, at least, four times during a calendar year, publish in a newspaper of general circulation a notice containing the dates, hours and places where it will hold its auctions. This notice must be filed with the Office of the Commissioner of Insurance in accordance with Rule XVI. For the information only of those who attend the auction, the insurer shall furnish them with a list containing all the items for auction identified by an identification number, and the minimum amount of money acceptable as the worth of each item of salvage to be auctioned. This information should indicate that the person who offers the largest amount beyond the minimum price will be entitled to the item. When the salvage is not sold as a separate unit, it will be announced by lot or group and only the minimum value will be included which will be accepted as the price of sale for the lot or group. Whatever amount recuperated in excess of the loss sustained by the insurer, including the

cost of handling the salvage, shall be returned to the conditional buyer in those cases in which the item was under a conditional sale contract and in the rest of the cases to whomever was the owner at the time of loss.

Section 6. No insurer shall accept any payment for the sale of its salvage or for recovering through subrogation or in any other manner, unless the payment be effected by check or money order in the name of the insurer. In the case of personal checks or commercial enterprises checks, the insurer shall not be obligated to deliver the salvage to the buyer until the checks has been cashed.

Section 7.

a) Insurers shall keep a record of all the recovered items of salvage and a record of all recoveries by subrogation or by other means and of all the amounts paid because of subrogations.

b) The record of salvage must show the following information:

1. Identification number
2. Motor identification number
3. License plate number
4. Description of the model and year of the unit
5. Claim number
6. Policy or certificate number and period of coverage
7. Line of insurance and coverage
8. Date of loss
9. Date of receipt of salvage
10. Place of storage including premises address
11. Indication as to total loss or total constructive loss
12. Amount paid under the policy
13. Estimated value of salvage
14. Method of disposal - auction or direct sale
15. Complete name of the person to whom salvage was sold and its residential address
16. Date of disposal of salvage
17. Amount at which it was sold or cancelled
18. Whatever other information the insurer deems convenient

c) The record of recoveries by subrogation or by other means, which information could be included in the claim records required by Section 5.080 of the Insurance Code of Puerto Rico, must show the following information for each recovery:

1.a. Policy number with effective and expiration dates, under which loss was paid.

b. The amount paid, date of payment and insurance coverage under which the loss was paid.

c. The amount received through subrogation, date of receipt of payment and number of check or draft.

d. If it is an insurer, name of insurer who made the payment; if it is a particular person, the name and address of the person who made the payment.

2.a. The amount paid to other persons for subrogation, and date of payment, number of check, name of insurer to whom the payment was made or the name and address of the person to whom the payment was made.

b. Coverage under which the payment was made.

c. Claim number assigned.

3. Whatever other information needed for the internal control of the insurer.

d) The claims record required by Section 5.080 of the Insurance Code of Puerto Rico, must show, in addition, the following in relation to the vehicle insurance:

1. If the claim is accompanied by salvage or subrogation.

2. Identification number of salvage.

3. Estimated value of salvage.

4. Payments for towing costs, legal expenses and other adjustment expenses relative to salvage.

5. Amount obtained from the sale of salvage or amount recovered by subrogation.

Section 8. No insurer shall have or maintain exclusive sales contracts for salvage with any motor vehicles parts dealer or

with any tinsmith's shop and/or mechanic of motor vehicle or with any motor vehicle dealer, or with any other person, except as permitted by Section 5(a) of this Rule. This provision does not preclude such persons from appearing as buyers in good faith in auctions held by the insurer or preclude the insurer from making a private sale of a determined number of items to these persons in accordance with Section 5.

Section 9.

a) Every insurer must require a detailed condition report with respect to the damage suffered, including missing parts and the estimated value of salvage signed by the adjuster who examines the item when the loss has been notified to the insurer, which shows the condition of the item informed as a loss. Said report will form part of the claim record.

b) Every insurer who receives a vehicle as salvage must maintain a record of the condition of the salvage at the time it is received at its premises with respect to missing parts and other damage suffered. Said report must be signed by an official, employee, or authorized representative of the insurer, and certified as correct by the person who transported the same to its place of storage. The salvage will be counted in the order in which it was received and the number of the condition report will be the same as the order number of the salvage.

Section 10. Every insurer must maintain all the records, documents and papers required by this rule, filed in separate form from its other matters and in such a way so that they may be easily accessible to the examiners of the Commissioner of Insurance.

Section 11. An insurer may effect the repairs to the salvage it deems necessary for the purpose of obtaining the best yield from the sale of the same. This activity, nevertheless, must be carried out in incidental form to its operations and transactions and cannot be understood as to permit the insurer to engage itself in the sale of automobiles as another business.

Section 12. In the adjustment of claims, the handling of salvage and subrogations and the transacting of automobile physical damage insurance, the following will be considered unfair practices and no person shall commit or engage in the same:

a) Detach employees of the insurer or its representative in the business premises of the automobile dealer or automobile finance company.

b) Deposit money of the insurer as an inducement to insurance, in current bank accounts or in savings and loan associations, in excess of that permitted by the regulation in force.

c) Permit the handling of salvage directly or indirectly by automobiles dealers, automobiles part dealers, persons engaged in the repair of automobiles, finance companies and commercial banks which at the same time are insured under any policy issued by the insurer. This subsection does not prohibit the insurer from contracting the towing services it may deem necessary for the transportation of its salvage.

d) Fail to make all efforts to recover the salvage in all cases in which the cost of recovery is less than the estimated value of the salvage.

e) To dispose of an item of salvage by means other than by the sale of the same, without the written consent of an authorized officer of the insurer.

Section 13. If any provision of this Rule or its application to any person or circumstances be declared unconstitutional or void, said nullity will no affect the remaining provisions.

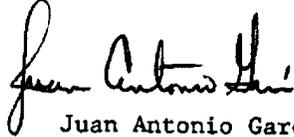
Section 14. This rule will become efective five days after notice of its approval has been published in a newspaper of general circulation, once a week for two consecutive weeks. Nevertheless, the provisions of this Rule will become effective sixty (60) days after its date of approval.

Approved: February 10, 1983

Filing Date at Department of State: March 30, 1984

Amended on: January 8, 1985

Filing Date at Department of State: January 21, 1985



Juan Antonio García
Commissioner of Insurance