

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
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No. 3191
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Approved: Hector Luis Acevedo
Secretary of State
By: Lourdes I de Pierluisi
Assistant Secretary of State

AMENDMENTS TO THE INSURANCE REGULATIONS

Section 1. – By virtue of the provisions of Section 2.040 of Public Law No. 77, enacted on June 19, 1957, as amended, I hereby notify the insurance industry, the insured public, and the public in general of the approval of Rule 53 of the Insurance Regulations which provides the following:

RULE 53

**DEFINITION AND PROHIBITION OF UNFAIR PRACTICES IN THE AUTOMOBILE
INSURANCE BUSINESS INCLUDING LOSS ADJUSTMENT AND HANDLING OF
SALVAGE OR RECOVERY**

Authority in the Law: Sections 2.170, 3.070, 5.080, 12.040, 2.090, 27.100, and 27.180

Section 1. –The purpose of this Rule is the following:

- a) To prohibit practices in the underwriting of automobile physical damage insurance that foster unfair competition among insurers.
- b) To define and prohibit practices in the handling and sale of salvage that could result in profiteering by some individuals.
- c) To prohibit practices in the handling and sale of salvage that could lead to undue interference or control by automobile distribution, sale and financing businesses or used parts sales businesses in the automobile insurance business.
- d) To avoid practices that could result in unjust enrichment due to the handling of the insurer's funds in cash from the sale of salvage and other kinds of recovery, all of which is prejudicial to the insured of the insurer.

Section 2. The following terms will have the meaning expressly set forth below or that may be reasonably understood according to customary usage in the insurance industry:

- a) The term "salvage" means any automobile that is a total loss or a constructive total loss paid by the insurer under an insurance contract in accordance with the prevailing standards for adjustment of automobile losses in Puerto Rico.
- b) The term "conversion" means the dishonest or illegal appropriation of the automobile and includes for the purpose of this rule all meanings under the term

"conversion, embezzlement or secretion" as such term is used in an insurance contract.

c) The phrase "Single Interest physical damage automobile insurance" means the insurance covering exclusively the interest of the financing entity or conditional seller in the automobile or any other person holding a lien with regard to such, transacted using the insurance forms, rating manuals and rating plans approved by the Commissioner.

d) The phrase " Double Interest physical damage automobile insurance " means the insurance covering the interest of a conditional buyer as well as the interest of a financing entity or conditional seller or any other person holding a lien with regard to such, transacted using the insurance forms, rating manuals and rating plans approved by the Commissioner.

e) The term "diligent efforts" means efforts directed at discovering the whereabouts of an automobile or a conditional buyer, made after two installments have been left unpaid.

f) The term "recovery" means any property of which the insurer becomes the owner as a result of having paid for a loss under an insurance contract issued by such insurer.

The term recovery will include, but not be limited to, funds, securities, real estate deeds, inventories, etc., valued on the basis of market value.

g) The phrase "handling of salvage" means any activity that may be necessary in order for the insurer to be able to convert into cash the unit declared to be salvage. The phrase will also included, but not be limited to, transportation from the place of the accident to the storage location, storage and related activities, as well as organization, sale and procedures of such sale.

h) The term "constructive total loss " means a total loss declared because (1) the cost of repairing the vehicle would be more than 60% of its real cash value at the time the loss occurred, or (2) in the case of an automobile subject to a conditional sales agreement, the cost of the repair would be greater than the balance owed.

Section 3.

a) No insurer or representative of any insurer, or any person on behalf of an insurer, may declare that a vehicle which has been involved in an accident covered by a policy issued by such insurer is a total loss, if such vehicle, according to the prevailing standards in Puerto Rico in the automobile repair business considers such to be repairable, except

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

Only adjusters that are licensed by the Commissioner of Insurance may declare that a vehicle is a total loss. The declaration must be made in writing, identify the automobile, and state the claim number; the report must be signed.

b) No insurer or representative thereof, or any person on behalf of the insurer will determine that an insured vehicle is a loss under conversion coverage of a policy issued by such insurer unless:

1. The single interest insured or the stated creditor or loss payee under the double interest policy has made diligent efforts to locate the whereabouts of the vehicle and said efforts are set forth in the claim record and
2. If the whereabouts of the vehicle or the purchaser of said vehicle is known or otherwise, the insured or the loss payee under in the policy has made collection efforts, including, but not limited to, visits to the residence of the buyer of the vehicle or, if the buyer has moved, the efforts made to obtain the new address, or said insured or loss payee has previously initiated procedures for the repossession of the vehicle, according to applicable law.
3. For the purposes of claims under this coverage, it will be considered that the date of the loss is the date on the cancellation stamp or else the date on the postage meter stamp, stamped on the claim form provided by the insurer. This form shall be in a format that will allow it to be mailed, postage paid, and not require placing it inside a mailing envelope. The insured will write on the form the number of the policy or certificate, a description of the vehicle, and a summary of the efforts made to locate the vehicle.

e) Under conversion coverage, no insurer will pay installments that are past due for more than ninety (90) days before the date of loss.

d) Under single interest physical damage automobile policy, no insurer will pay for any loss, if the damage to the automobile is repairable, except when in the judgment of the insurer repairing the automobile would harm the insurable interest of the insured or such repair exceeds by 60% the real cash value at the time of the loss.

e) When deemed advisable, the Commissioner of Insurance will retain public adjusters or vehicle repair technicians or officials from other branches of the government who are specialized in investigations, to determine whether an insurer or the insurer's representative has violated the provisions of this Section or any other provision of this Rule. The cost of such will be paid by the insurer.

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

Section 4.

a) All vehicle insurers shall maintain such exclusive premises as may be necessary for the storage of vehicles recovered as salvage, and assume the cost of such premises. The address of the premises shall be registered with the Office of the Commissioner of Insurance and any change thereto shall be registered with the Office within five days of such change. This Rule does not prohibit two or more insurers from sharing the same premises, provided that the operations of each insurer are kept separate.

This Section will not be applicable to insurers that handle fewer than three hundred salvages a year, and these may make arrangements as they deem appropriate for the custody and storage of such vehicles. The arrangements must be reported to the Office of the Commissioner of Insurance, as well as any change made to such arrangements.

b) The insurer will not allow storage on its premises of vehicles or salvage belonging to automobile distributors, automobile parts distributors, banks or finance companies that are also insured under any policy issued by the insurer.

e) No insurer may store salvage on premises belonging to persons engaged in the repair of automobiles, automobile distributors, finance companies, commercial banks, and/or automobile parts distributors or on premises from which such persons derive any financial benefit if they are also insured under the insurer's policies.

d) Any unit recovered as salvage shall have an identification number to distinguish it from other units recovered as salvage. The identification number will be comprised of the number of the order in which the salvage is received, separated by a hyphen from the year in

which the accident occurred, and any other additional form of coding that can provide meaningful information for the insurer and the Commissioner of Insurance.

Section 5.

a) Any insurer whose salvage volume exceeds three hundred units a year shall dispose of such salvages by auction. Notwithstanding the above, if the insurer determines that for the sale of a certain number of salvages, the auction procedure is not the most appropriate, the insurer may dispose of such by direct sale, and it is further provided that the units sold in this manner may not exceed 25% of the insurer's volume and the sale must be carried out under the following conditions:

1. The insurer will send a notice of the sale to be held to at least five (5) buyers that are recognized as being active in the business.
2. The notice will include the number of units to be sold and the estimated minimum cost of the lot.
3. The sale will be awarded to the party making the highest offer.
4. The insurer shall maintain a record of the offers received in each case for the prospective buyers.

b) In substitution for the above method or in its place, the insurer may choose to sell such a percentage of its salvages by auctioning contracts in compliance with the following requirements:

1. The contract may not exceed the term of one (1) year.
2. A request for proposals must be made to the public by publishing a notice in a newspaper of general circulation once a week for two consecutive weeks. The notice shall show the deadline for submitting the proposal.
3. The contract will be awarded to the bidder offering the most favorable conditions for obtaining the greatest financial benefit from the salvage.
4. The insurer shall keep the proposals received from the different bidders so that the Commissioner will be able to verify compliance with this Rule.

Insurers handling fewer than three hundred salvages a year may dispose of such using either of the two methods set forth above. The insurer shall send invitations to all auctions held by the insurer to the Department of Transportation and Public Works and the Puerto Rico Police.

e) In all cases, the insurer will award the auction to the bidder offering the highest

amount. If it is not possible to collect payment from such bidder within the time granted by the insurer, the auction will be awarded to the second highest bidder, provided that the amount offered is not less than the established minimum.

d) All insurers must, at least four times during a calendar year, publish in a newspaper of general circulation, a notice showing the dates, times, and place where the insurer proposes to hold the auctions. The notice shall be filed with the Office of the Commissioner of Insurance in conformance with Rule 16. Solely for the information of those attending the auction, the insurer will provide a list of all of the units to be auctioned, showing the identification number and the minimum amount of money acceptable as the value of each salvage unit to be auctioned. The information shall contain a notice that the person who offers the highest amount above the minimum price will have a right to the unit. When the salvage cannot be sold as a separate unit, it will be announced as a lot or group and the notice will include only the minimum amount that will be accepted as the sale price of the lot or group. If the unit were under a conditional sales contract, any amount recovered in excess of the loss sustained by the insurer, including handling expenses for the salvage, will be returned to the conditional buyer; otherwise the excess will be returned to the owner at the time of the loss.

Section 6. No insurer will accept any payment whatsoever for the sale of salvage or recovery by subrogation or otherwise, unless such payment is made by check or money order made out to the insurer. In the case of personal or company checks, the insurer will not have the obligation to deliver the salvage to the buyer until such checks have been cashed.

Section 7.

a) Insurers will keep records of all units recovered as salvage and a record of all recoveries by subrogation or otherwise, and of all amounts paid under subrogation.

b) The salvage record shall include the following information:

1. Identification Number of the unit
2. Motor Number
3. License Plate Number
4. Description of the model and year of the unit
5. Claim Number
6. Policy or Certificate Number and the period of time covered by such
7. Insurance line and coverage

8. Date of the loss
 9. Date on which salvage was received
 10. Place where stored, including street address
 11. Indicate whether it is a total loss or constructive total loss
 12. Amount paid under the policy
 13. Estimated value of the salvage
 14. Method of disposal - Auction or direct sale
 15. Full name of the person to whom the salvage was sold and street address
 16. Date on which salvage was disposed of
 17. Amount for which it was sold or when it was eliminated from the registry
 18. Any other information that the insurer may deem advisable.
- c) The record of recovery by subrogation or otherwise, which information may be included in the record of claims as required in Section 5.080 of the Puerto Rico Insurance Code, shall show the following information for each recovery:
- a. Policy Number with the effective date and the expiration under which the loss was paid.
 - b. Amount paid, date of payment, and insurance coverage under the which the loss was paid.
 - c. Amount received by subrogation, date of receipt of payment, and the number of the check or money order.
 - d. In the case of an insurer, the name of the insurer from whom payment was received and in the case of an individual, the name and address of the person from whom payment was received
2. a. Amount paid to other persons by subrogation, and date of payment, check number, and name of the insurer to whom payment was made or the name and address of the person to whom payment was made.
- b. Coverage under which payment was made.
 - c. Assigned Claim Number.
3. Any other information needed for the insurer's internal controls.
- d) The record of claims required in Section 5.080 of the Insurance Code of Puerto Rico shall also show the following with regard to vehicle insurance:

1. If the claim is accompanied with salvage or subrogation.
2. Identification Number of the salvage.
3. Estimated value of the salvage.
4. Payments for towing, legal expenses and other adjustment expenses related to the salvage.
5. Amount for which the salvage was sold or recovered by subrogation.

Section 8. No insurer may have or maintain exclusive sales contracts for salvage with any motor vehicle parts distributor or body shop and/or motor vehicle repair shop or any motor vehicles distributor or with any other person, except as permitted in Section 5b of this Rule. This provision will not prohibit such persons from appearing as bona fide buyers at auctions held by the insurer or the insurer from holding a private sale of a certain number of units to such persons as provided in Section 5.

Section 9.

a) All insurers shall require a detailed report of the condition of the vehicle with regard to the damage suffered, including missing parts, and the estimated value of salvage (Condition Report), showing the condition of the unit that has suffered a loss that has been reported to the insurer. Such report must be signed by the adjuster who examines the unit when the loss is notified to the insure and the report will be included in the dossier of the claim.

b) Any insurer that receives a vehicle as salvage shall keep a record of the condition of the salvage at the time it is received on the insurer's premises, with regard to missing parts and any other damage. This report must be signed by an officer, employee or authorized representative of the insurer, and be certified as correct by the person who transported the salvage to the place of storage. The salvage will be counted in the order of receipt and the number of the condition report will be the same as the order number of the salvage.

Section 10. All insurers must keep all records, documents, and papers required under this rule, filed separately from other business documents and in a manner that is easily accessible to the investigators of the Commissioner of Insurance.

Section 11. Insurers may carry out such repairs as may be deemed necessary to the salvage for the purpose of obtaining the highest possible return on the sale of such salvage. This activity, however, shall be incidental to the insurer's operations and transactions and shall not be

interpreted as allowing insurers to engage in the sale of automobiles as another business.

Section 12. In adjusting claims, handling salvage and subrogation and in transacting automobile physical damage insurance, the following will be considered unfair practices and no person will incur in such:

a) Assigning employees of the insurer or the insurer's representatives to the place of business of the automobile distributor or finance company.

b) Depositing money of the insurer in checking accounts at banks or savings and loans associations in excess of the amount permitted under current regulation, as an incentive to obtain insurance business.

c) Allowing salvage to be handled, whether directly or indirectly by automobile distributors, automobile parts distributors, persons who repair automobiles, finance companies, and commercial banks that are also insured under any policy issued by the insurer. This paragraph does not prohibit the insurer from retaining a towing service that the insurer may deem necessary for transporting salvage.

d) Failing to make all recovery efforts with regard to the salvage when the cost of recovery is less than the estimated value of the salvage.

e) Disposing of or eliminating from the registry a salvage unit by any means other than the sale of the unit, without the written authorization of an authorized officer of the insurer.

Section 13. If any provision of this Rule or the application thereof to any person or circumstance were found to be unconstitutional or invalid, such ruling will not affect any other provision herein.

Section 14. This Rule will enter into effect five days after notice is made in a newspaper of general circulation, once a week for two consecutive weeks. However, the provisions of this Rule will enter into effect sixty (60) days after the date of approval.

Approved on: February 10, 1984

Filed with the State Department: March 30, 1984

Amended: January 8, 1985

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Juan Antonio García

Commissioner of Insurance