



# **Market Conduct Examination**

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**ALLSTATE NEW JERSEY INSURANCE COMPANY  
BRIDGEWATER, NEW JERSEY**

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
Office of Consumer Protection Services  
Market Conduct Examination unit

Report Adopted: October 10, 2003

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REPORT

of the

MARKET CONDUCT EXAMINATION

Of the

ALLSTATE NEW JERSEY INSURANCE COMPANY

Located in

BRIDGEWATER, NEW JERSEY

As of

August 14, 2002

BY EXAMINERS

Of the

STATE OF NEW JERSEY

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

MARKET CONDUCT EXAMINATION UNIT

Date Report Adopted:

OCTOBER 10, 2003

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# I. INTRODUCTION

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## A. SCOPE AND PURPOSE OF THE EXAMINATION

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This is a report of the Market Conduct activities of the Allstate New Jersey Insurance Company (hereinafter referred to as Allstate or “the Company”). The scope of this examination was limited to No Fault claims and compliance with the New Jersey Fraud Prevention Act. In this report, examiners of the New Jersey Department of Banking and Insurance (NJDOBI) present their findings, conclusions, and recommendations as a result of their market conduct examination. The Market Conduct Examiners were Robert Greenfield, Examiner-in-Charge, Richard Segin, Anthony Cecere, Toni Polihrom, Denise Banks and Michael Buchinski.

The examiners conducted specific reviews placing particular emphasis on **N.J.S.A. 39:6A-5b** (No-Fault Claims), **N.J.S.A. 17:29B-4** and **N.J.A.C. 11:2-17** (Unfair Claims and Settlement Practices), **N.J.A.C. 11:3-4** (Personal Injury Protection Benefits; Medical Protocols; Diagnostic Tests), **N.J.S.A. 17:33A-1 et seq.** (Fraud Prevention Act) and **N.J.A.C. 11:16-6 et seq.** (Fraud Prevention and Detection Plans).

The examiners also conducted a limited review of the Company's new business private passenger auto underwriting practices (**N.J.A.C. 11:3-44** - duty to provide coverage upon receipt of completed written applications; **N.J.A.C. 11:3-34** - eligible person qualifications; and **N.J.S.A. 17:33B-15** - coverage for eligible persons). The examiners found no errors in this review.

In addition, this examination included a No-Fault re-examination of the NJDOBI Market Conduct Examination, adopted February 10, 1998. This examination covered the Company's New Jersey private passenger automobile insurance business activities during the period January 1, 2001 through August 14, 2002. Between June 24, 2002 and August 14, 2002 the examiners completed their field work at the Company's Woodbridge, New Jersey office. On various dates thereafter, the examiners completed additional review work and the writing of the report.

The examiners randomly selected files and records from computer listings and documents provided by the Company. The random selection process is in accordance with the National Association of Insurance Commissioner's (NAIC) Market Conduct Handbook. In addition, the examiners used the NAIC Handbook, Chapter VI - Conducting the Property and Casualty Examination as a guide to examine the Company and write this report.

## B. ERROR RATIOS

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Error ratios are the percentage of files which the examiners found to be handled in error. A file will be counted as an error when it is mishandled or the insured is treated unfairly, even if no statute or regulation is applicable. Even though the file

may contain multiple errors, the examiners counted the file only once in calculating the error ratios; however, any file that contains more than one error will be cited more than once in the report. In the event that the Company corrected an error as a result of a consumer complaint or due to the examiners' findings, the error is included in the error ratio. If the Company corrects an error independent of a complaint or NJDOBI intervention, the error is not included in the error ratios.

Most of the statutes and/or regulations cited in this report define unfair practices or practices in general as specific acts that an insurer commits so frequently that it constitutes an improper general business practice. Whenever the examiners find that the errors cited constitute an improper general business practice, they have stated this in the report.

The examiners sometimes find improper general business practices or errors of an insurer that may be technical in nature or which did not have an impact on a consumer. Although such errors or practices would not be in compliance with law, the examiners do not count each of these files as an error in determining error ratios. Whenever such business practices or errors do have an impact on the consumer, each of the files in error will be counted in the error ratio. The examiners indicate in the report whenever they did not count particular files in the error ratio.

The examiners submitted written inquiries to company representatives on the errors cited in this report. These inquiries provided Allstate the opportunity to respond to the examiners' findings and to provide exceptions to the statutory and/or regulatory errors or mishandling of files reported. In response to these inquiries, Allstate agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the individual merits of each response and gave due consideration to all comments. In some instances, the examiners did not cite the files due to the Company's explanatory responses. In others, the errors remained as cited in the examiners' inquiries. For the most part, this is a report by exception.

## C. COMPANY PROFILE

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Allstate New Jersey Insurance Company (ANJ) is an Illinois domiciled insurer licensed to write property and casualty business in New Jersey and Illinois. Allstate New Jersey Holdings, Inc. (ANJH), a wholly owned subsidiary of Allstate Insurance Company (AIC) owns all of the issued and outstanding common stock of ANJ. AIC is a wholly owned subsidiary of The Allstate Corporation (ALCORP or Allstate). In 1997, ANJ received its certificate of authority to transact insurance business from the Illinois Department of Insurance. Later that same year, ANJ was licensed in New Jersey. ANJ is a stand-alone company, separate and distinct from AIC with its own employees and management. ANJ is licensed to offer all of the major property and casualty personal product lines, primarily automobile and homeowners insurance. In 1999, AIC, along with ANJ and Allstate Floridian Insurance Company (AFIC), completed the acquisition of the personal lines auto and homeowners insurance

business of CNA, which was renamed Encompass Insurance (ENCOMPASSM ). ANJ reinsures Encompass policies written only in New Jersey.

## II. CLAIMS

### A. INTRODUCTION

This review covers New Jersey Personal Injury Protection (PIP) claims submitted under private passenger automobile insurance only. Any New Jersey PIP claim closed during the period January 1, 2001 to December 31, 2001 was subject to review. Allstate closed 119,524 PIP claims during this period. This figure represents claims closed with and without payment. In reviewing each claim, the examiners checked for compliance with all applicable statutes and regulations that govern the handling of claims and NAIC standards related to claim handling. The examiners conducted specific reviews placing particular emphasis on N.J.S.A. 17:29B-4 and N.J.A.C. 11:2-17 (Unfair Claims and Settlement Practices), N.J.S.A. 39:6A-5b (Personal Injury Protection Benefits), N.J.A.C. 11:3-4 (Personal Injury Protection Benefits; Medical Protocols; Diagnostic Tests), and NAIC standards of Chapter VI - Conducting Property and Casualty Insurance Examinations.

### B. PIP CLAIMS ERROR RATIOS

The examiners calculated the error ratios by applying the procedures outlined in the introduction of this report. Chart number 1 below (Random Review Sample) itemizes the sample population and error ratio of paid and denied claims that the examiners reviewed. This is followed by chart number 2 (Population Review – Interest Payment Review on Delayed Settlements), which is a population review of all paid claims to determine whether Allstate delayed in settlement and failed to pay interest as required by statute. These errors are addressed in the section that follows.

#### 1. Random Review Sample

| PIP Claims | Files Reviewed | Files in Error | Error Ratio |
|------------|----------------|----------------|-------------|
| Paid       | 100            | 7              | 7%          |
| Denied     | <u>81</u>      | <u>1</u>       | <u>1%</u>   |
| Totals     | 181            | 8              | 4%          |

#### 2. Population Review – Interest Payment Review on Delayed Settlements

| Paid Claim Population | Number Delayed | Delayed Exception Ratio | Interest Exceptions | Interest Exception Ratio |
|-----------------------|----------------|-------------------------|---------------------|--------------------------|
| 119,524               | 2,183          | 2%                      | 207                 | 9%                       |

## C. PERSONAL INJURY PROTECTION (PIP) CLAIMS

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### 1. PIP Claims Handled by Medical Review Vendor

As part of the Auto Insurance Cost Reduction Act (AICRA, P.L. 1998, Chapters 21 and 22), the Department of Banking and Insurance established medical protocols defined at N.J.A.C. 11:3-4. Effective March 22, 1999, insurers were required to implement these protocols to determine medical necessity with respect to treatment and diagnostic testing.

In accordance with N.J.A.C. 11:3-4.7(a), "Insurers shall file for approval policy forms that provide a plan for the timely review of treatment of identified injuries at decision points and for the approval of the administration of the diagnostic tests in N.J.A.C. 11:3-4.5(b)." Insurers may also file for approval a "Pre-Certification Plan" that provides for pre-certification of certain medical procedures, treatments, diagnostic tests, non-medical services, and durable medical equipment. Although no decision point review or pre-certification requirements apply within the first 10 days of the accident or to emergency care, all tests and treatments performed during this 10 day period must be "medically necessary" to be eligible for reimbursement. Allstate's Decision Point Review Plan/Pre-Certification Plan and their forms, became effective on April 16, 2001.

Allstate contracted with National Healthcare Resources, Inc. (NHR) to provide medical claims management services. In November 2001, Concentra Managed Care Services, Inc., (Concentra) acquired the business of NHR and now performs the necessary medical services for Allstate. Further, Concentra changed its name to Concentra Integrated Services, Inc. in April 2002.

During the examiners' review, they found that Allstate was in compliance with the above cited Act and regulations. After reviewing all documentation associated with the review sample of 181 PIP claims, the examiners found that the Company complied with N.J.A.C. 11:3-4.

### 2. Delayed PIP Payments

#### (Seven Files in Error)

N.J.S.A. 39:6A-5g states that a claim "shall be overdue if not paid within 60 days after the insurer is furnished written notice of the fact of a covered loss. . ." N.J.A.C. 11:2-17.7(b) states that "The maximum period for all personal injury protection (PIP) claims shall be 60 calendar days after the insurer is furnished written notice of the fact of a covered loss. . .; provided however, that an insurer may secure a 45-day extension in accordance with N.J.S.A. 39:6A-5." This rule equates to Standard Number 3 in the claims section of the NAIC Market Conduct Examination handbook that states the Company should take adequate steps to resolve claims in a timely manner in accordance with applicable statutes, rules and regulations. The examiners

reviewed 181 PIP claims and found that Allstate failed to settle seven claims within the maximum 60-calendar day time frame set forth by both the statute and regulation. This represents a delay rate of 4%.

| <u>Claim Number</u> | <u>Date of Receipt</u> | <u>Date Claim Paid</u> | <u>Days Over 60</u> |
|---------------------|------------------------|------------------------|---------------------|
| 1424492906          | 1/17/01                | 3/27/01                | 9                   |
| 1424495980          | 5/11/01                | 11/29/01               | 142                 |
| 1424486577          | 2/22/01                | 6/22/01                | 60                  |
| 1424493409          | 3/09/01                | 5/10/01                | 2                   |
| 1424492351          | 8/08/01                | 4/19/02                | 194                 |
| 1424542858          | 11/09/00               | 1/17/01                | 9                   |
| 1424486486          | 3/21/01                | 7/15/02                | 421                 |

### **3. Failure to Pay PIP Interest**

#### **(Five Files in Error)**

**N.J.S.A. 39:6A-5h** requires insurers to pay interest on any overdue PIP benefits. Contrary to this requirement, the examiners found five delayed claims in which Allstate did not issue the 45 day extension notice to the insured and did not pay interest on delayed settlements as required by statute. In response to the examiners' inquiries, the Company agreed that it did not make the required interest payments on the files listed below.

| <u>Claim Number</u> | <u>Claim Number</u> | <u>Claim Number</u> |
|---------------------|---------------------|---------------------|
| 1424492906          | 1424492351          | 1424486486          |
| 1424493409          | 1424542858          |                     |

### **4. Erroneously Applying a PIP Deductible to a Claimant**

#### **(One File in Error)**

**N.J.A.C. 11:3-4.4(b)1** states that "Any medical expense deductible elected by the named insured shall apply only to the named insured and any resident relative in the named insured's household, who is not a named insured under another automobile policy and not to any other person eligible for personal injury protection benefits required to be provided in accordance with **N.J.S.A. 39:6A-3.1** and **39:6A-4.**"

On claim number 1424497698, the claimant, a non-resident relative, filed a PIP claim against the insured's policy. The insured elected a \$2,500.00 medical expense deductible that was erroneously applied against the claimant's medical expenses.

Application of this deductible is contrary to **N.J.A.C. 11:3-4.4(b)1**. In response to an inquiry, the Company agreed that the claimant was not subject to the deductible. In addition, Allstate stated that "The bills where the deductible was applied will be reviewed and processed accordingly."

#### **D. COMPARISON TO THE 1998 REPORT**

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The examiners checked for compliance with the recommendations as specified in the 1998 report and found some of the same claim errors in the current examination. These include failure to pay PIP claims timely and failure to pay PIP interest. In the 1998 report, the examiners found 10 PIP files in error out of 30 files reviewed for an overall error ratio of 33%. In the current exam, however, the examiners found errors on 8 files out of 181 claims files reviewed for an overall error ratio of 4%. With respect to interest in the 1998 examination, the examiners found 7 interest errors on 30 files reviewed, for an error rate of 23%. In the current examination, the examiners found 5 interest errors on 181 files, for an error rate of 3%.

# III. ANTI-FRAUD COMPLIANCE REVIEW

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## A. INTRODUCTION

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The examiners conducted specific anti-fraud compliance reviews on claims, underlying underwriting issues and Special Investigation Unit (SIU) files. The examiners also reviewed Allstate's implementation of its claim and underwriting fraud prevention and detection plan that was filed with and approved by the Department, as well as fraud detection and prevention training records. The examiners placed specific emphasis on N.J.S.A. 17:33A-15 (Insurance Fraud Prevention) and N.J.A.C. 11:16-6 (Fraud Prevention and Detection Plans).

## B. CLAIM ERROR RATIOS

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From a population of 116,524 closed PIP claims, the examiners randomly selected and reviewed one hundred four paid and one hundred denied New Jersey PIP claims that Allstate closed during the review period of January 1, 2001 to December 31, 2001. Error ratios were calculated by applying the procedure outlined in the introduction of this report. The chart below itemizes the total number of claims reviewed.

|            | <u>Files Reviewed</u> | <u>Files in Error</u> | <u>Error Ratio</u> |
|------------|-----------------------|-----------------------|--------------------|
| PIP Paid   | 104                   | 1                     | 1%                 |
| PIP Denied | 100                   | 0                     | 0%                 |
| Totals     | 204                   | 1                     | 0.5%               |

## C. EXAMINERS FINDINGS

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### 1. Failure to Conduct Investigation of Suspicious Claim and Application Activity

#### (One File in Error)

Pursuant to N.J.A.C. 11:16-6.4(b)1, insurers are required to investigate suspicious claims and underwriting activity for the purpose of preventing and detecting insurance fraud, as well as reporting such suspicious activity to the Office of Insurance Fraud

Prosecutor, pursuant to N.J.S.A. 17:33A-9. Contrary to N.J.A.C. 11:16-6.4(b)1, the examiners found one PIP claim that contained fraud indicators that Allstate did not investigate. The examiners' findings are as follows:

a. On claim number 1424498712, the insured's sister-in-law submitted a PIP claim due to injuries sustained in a collision while driving the insured's vehicle. The examiners noted that the claimant's husband advised Allstate that he and his wife (who were uninsured) were living with the Allstate insured. Further review of policy information revealed that the claimant and the claimant's spouse were not listed as drivers under the policy. Contrary to regulation, this file was not referred to SIU for an investigation, and the examiners inquired why no attempt was made to determine if lack of disclosure was intentional or inadvertent. In response to the inquiry, Allstate advised that it would refer these facts to its underwriting department for premium adjustment. Allstate ultimately extended PIP benefits to the claimant.

## **2. Failure to Investigate Suspicious Activity on Terminated Policies**

Throughout the course of this review the examiners submitted several inquiries on the Company's policies and procedures relative to the investigation of first or third party activity deemed to be suspicious in nature. In response to examiner inquiry number 33, Allstate advised that its internal procedure does not provide for investigating claim or underwriting activity in those situations where the insured's policy terminates for non-payment of premium subsequent to the Company's discovery of a potentially fraudulent act. Allstate bases this position on the notion that the insured no longer has an obligation to cooperate once the policy terminates. The examiners disagree. N.J.S.A 17:33A-9 specifies that an insurer shall notify the Office of the Insurance Fraud Prosecutor (OIFP) when it believes that a fraudulent insurance act has or is being committed. No provision exists for an exception as posed by Allstate, either in the statute or in N.J.A.C. 11:16-6.4 and 7. Although the insured may not cooperate after policy termination, any facts that are acquired as a result of a claim investigation constitute viable information for submission to the OIFP. Otherwise, once aware of the insurer's suspicion that fraud may have been committed, an insured could effectively cause the termination of an SIU investigation simply by allowing a policy to lapse.

## **3. Failure to Provide Continuing Education Training – 7 Errors**

Pursuant to N.J.A.C. 11:16-6.5(a)2iii, insurers are required to provide a total of four Continuing Education training hours on an annual basis to all non-SIU claims personnel in the area of internal and external claim fraud detection and reporting. From a population list of 82 PIP claim representatives (55 in-house and 27 Concentra vendor claim representatives), the examiners randomly selected and reviewed 25 employee training records for compliance with the aforementioned regulation. Of these, the examiners found a total of 7 employees (4 in-house and 3 vendor) that did

not receive the minimum number of required training hours. This represents an error rate of 28%.

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**Please See Appendix A1 for Training Summary**

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In response to an inquiry, the Company advised the examiners that “A review of training records for the 25 employees in the random sample selected by the state would indicate 126 hours of training completed. Because some employees received more than the required 4 hours, the group as a whole received 26 hours more than the 100 hours needed for 126% success rate.” The examiners disagree; the regulation requires that continuing education training be provided on an individual, not an aggregate basis. The examiners cited Allstate for failure to comply with **N.J.A.C. 11:16-6.5(a)**.

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**D. REFERRALS TO THE OFFICE OF THE INSURANCE FRAUD PROSECUTOR**

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During the review period, Allstate referred a total of 78 files to the Office of the Insurance Fraud Prosecutor. The examiners randomly selected and reviewed 20 of these files and found no errors.

## IV. RECOMMENDATIONS

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Allstate New Jersey should inform all responsible personnel and third party entities that handle the files and records cited as errors in this report of the remedial measures, which follow in the report sections indicated. The examiners also recommend that the Company establish procedures to monitor compliance with these measures.

Whenever the examiners cited a single error, the report includes a "reminder" recommendation. If a single error is found, more errors may have occurred.

The examiners acknowledge that the Company has agreed with and has already complied with, either in whole or in part, some of the recommendations during the examination. For the purpose of obtaining proof of compliance and for the Company to provide its personnel with a document they can use for future reference, the examiners have included all recommendations below.

### A. GENERAL INSTRUCTIONS

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Documentation of compliance with each of the recommendations below including copies of written instructions, bulletins, procedures, reminders, etc., should be sent to the attention of Clifton J. Day, MPA, CPM, CSM, Manager, Market Conduct Examinations and Anti-Fraud Compliance, Consumer Protection Services, 20 West State Street, PO Box 329, Trenton, NJ 08625, within 30 days of the date of the adopted report.

On files reopened as recommended, the letter that provides a claim adjustment should be sent to the claimant with an accompanying cover letter containing the following first paragraph (variable language is included in parenthesis):

"During a recent review of your claim by Market Conduct Examiners of the New Jersey Department of Banking and Insurance, they found that we underpaid your claim in the amount of (indicate amount). Enclosed is our check to correct this error."

### B. CLAIMS

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1. The Company should issue written instructions to all appropriate personnel, including outside vendors that:
  - a. Personal Injury Protection claims must be settled within 60 calendar days from the receipt of written notice of the loss. Allstate must also instruct all appropriate claims personnel that if the claim cannot be settled within 60 days, they must secure a 45-day extension within this 60 day period, pursuant to **N.J.S.A. 39:6A-5g** and **N.J.A.C. 11:2-17.7(b)**.

- b. Interest is required on overdue PIP benefits when a claim payment is issued after the maximum payment period set forth under **N.J.S.A. 39:6A-5h** and where no extension has been requested.
2. The Company should remind all appropriate personnel that, pursuant to **N.J.A.C. 11:3-4.4(b)1** medical expense deductibles may not be applied to non-resident PIP claimants.
  3. Allstate should reopen the five claims cited in section II.C.3 in order to pay interest to the provider as a result of late PIP settlements.

### **C. ANTI-FRAUD COMPLIANCE**

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4. In order to comply with **N.J.A.C. 11:16-6.4(b)1**, Allstate should remind its claim and SIU staff that all instances of potential fraud must be investigated and referred to the SIU for appropriate analysis.
5. In order to comply with **N.J.S.A. 17:33A** et seq., Allstate must not exempt from investigation or referral to the Office of the Insurance Fraud Prosecutor suspicious matters regarding policies that terminate due to non-payment of premium.
6. Allstate must issue written instructions to all appropriate training and supervisory SIU personnel stating that **N.J.A.C. 11:16-6.5(a)2iii** requires insurers to provide at least 4 hours of continuing education training annually on an individual employee basis. A copy of these instructions should be provided to the Commissioner.

# V.APPENDICIES

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## APPENDIX A1 – TRAINING ERRORS

| <b>Employee<br/>Initials</b> | <b>Training Hrs<br/>Required</b> | <b>Training Hrs<br/>Recorded</b> | <b>Training Hours<br/>In Error</b> |
|------------------------------|----------------------------------|----------------------------------|------------------------------------|
| L. L.                        | 4                                | 1.5                              | 2.5                                |
| S.A.                         | 4                                | 1.5                              | 2.5                                |
| D.C                          | 4                                | 2.0                              | 2.0                                |
| C.H.                         | 4                                | 2.5                              | 1.5                                |
| F.B.                         | 4                                | 3.0                              | 1.0                                |
| J.V.                         | 4                                | 3.0                              | 1.0                                |
| S.S.                         | <u>4</u>                         | <u>1.0</u>                       | <u>3.0</u>                         |
| Totals                       | 28                               | 14.5                             | 13.5                               |

# VI. VERIFICATION PAGE

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I, Robert Greenfield, am the Examiner-in-Charge of the Market Conduct Examination of the Allstate New Jersey Insurance Company conducted by examiners of the New Jersey Department of Banking and Insurance. This verification is based on my personal knowledge as acquired in my official capacity.

The findings, conclusions and recommendations contained in the foregoing report represent, to the best of my knowledge, a full and true statement of the Market Conduct examination of the Allstate New Jersey Insurance Company as of August 14, 2002.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

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Date:

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Robert Greenfield  
Examiner-In-Charge  
New Jersey Department  
of Banking and Insurance