

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of)	
Banking and Insurance, State of New)	
Jersey, with respect to Mercer Insurance)	CONSENT
Company of New Jersey, NAIC)	ORDER
No. 43540)	

TO: Mercer Insurance Company of New Jersey
10 North Highway 31
PO Box 278
Pennington, NJ 08534

This matter, having been opened to the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon the filing of a Market Conduct Examination Report (“the Report”) containing the results of the December 1, 2009 through November 30, 2010 examination of Homeowner claims, rating and underwriting and licensing practices of Mercer Insurance Company of New Jersey, (“the Company”) performed by the Department of Banking and Insurance (“Department”) pursuant to the authority provided at N.J.S.A. 17:23-20 et seq.; and

WHEREAS, the market conduct examination revealed certain instances, as fully set forth in the Report, where the Company’s practices did not accord fully with various provisions of New Jersey insurance statutes or regulations; and

WHEREAS, based on the documentation and information submitted by the Company, the Department is satisfied that the Company has taken or will take corrective measures pursuant to the recommendations of the Report.

NOW, THEREFORE, IT IS on this 28th day of Nov, 2011

ORDERED AND AGREED that the attached Report will be adopted and filed as an official record of the Department; and

IT IS FURTHER ORDERED AND AGREED that Company shall comply with New Jersey insurance statutes and regulations and the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that pursuant to N.J.S.A. 17:23-24d(1), within 30 days of the adoption of the Report, the Company shall file an affidavit with the Department's Market Conduct Unit, stating under oath that each director received a copy of the adopted Report.



Thomas B. Considine
Commissioner

Consented to as to form, content and entry



Name

Date: 11-21-11

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MARKET CONDUCT EXAMINATION

of the

MERCER INSURANCE COMPANY OF NEW JERSEY

located in

PENNINGTON, NEW JERSEY

as of

July 8, 2011

BY EXAMINERS

of the

STATE OF NEW JERSEY

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

**MARKET CONDUCT EXAMINATIONS and ANTI-FRAUD
COMPLIANCE SECTIONS**

REPORT ADOPTED:

DECEMBER 12, 2011

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I. INTRODUCTION

This is a report of the Market Conduct activities of the Mercer Insurance Company of New Jersey (hereinafter referred to as "Mercer" or "the Company"). 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 examination.

A. SCOPE OF EXAMINATION

The scope of the examination included homeowner insurance sold by the Company in New Jersey. The examiners evaluated the Company's compliance with the regulations and statutes pertaining to homeowner and dwelling fire claims, rating, underwriting and terminations. The review period for the examination was December 1, 2009 to November 30, 2010.

The examiners conducted their fieldwork at Mercer's office in Pennington, New Jersey, between February 22, 2011 and March 25, 2011. On various dates following the fieldwork, the examiners completed additional review work and report writing in Trenton, N.J. The Market Conduct Examiners were Examiner-in-Charge Monica Koch and Robert Greenfield.

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 Regulation Handbook. The examiners used the NAIC Market Regulation Handbook, Chapters Sixteen (General Examination Standards) and Seventeen (Conducting the Property and Casualty Examination) as a guide to examine the Company and write this report.

B. ERROR RATIOS

Error ratios are the percentage of files reviewed which an insurer handles in error. A file is counted as an error when it is mishandled or the insured is treated unfairly, even if no statute or regulation is applicable. If a file contains multiple errors, the examiners will count the file only once in calculating 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 insurer corrects an error as a result of a consumer complaint or due to the examiners' findings, the error will be included in the error ratio. If the insurer corrects an error independent of a complaint or NJDOBI intervention, the error is not included in the error ratios.

There may be errors cited in this report that define practices 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. Even though 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 Mercer 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, Mercer 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

The Mercer Insurance Group consists of Mercer Insurance Company, Mercer Insurance Company of New Jersey, Inc., Franklin Insurance Company and Financial Pacific Insurance Company. The Group writes nearly \$200 million in commercial and personal lines premiums through 450 agents in New Jersey, Pennsylvania, Nevada, Arizona and other states. The Mercer Insurance Group has an A.M. Best rating of "A" Excellent.

The original Company, Mercer Mutual Insurance Company, was organized by area residents. By an Act of the New Jersey legislature, the Company began operation in March 1844 as the Mercer County Mutual Fire Insurance Company. The Company then converted to a public company, Mercer Insurance Group in December 2003.

However, in 1959, charter changes enabled the Company to begin providing insurance coverage for multiple lines of business. In 1981, a subsidiary company now called Mercer Insurance Company of New Jersey, Inc., was formed to expand such product offerings.

In 2001, controlling interest in Franklin Insurance was acquired. On October 1, 2005, the Company purchased Financial Pacific Insurance Company, a commercial insurance provider located in California. As

indicated above, this examination included only Mercer Insurance Company of New Jersey.

II. CLAIMS REVIEW

A. INTRODUCTION

This review covers paid and denied homeowner claims. During the review period of December 1, 2009 to November 30, 2010, the Company closed 1,111 claims, of which 910 were paid and 201 were denied. The examiners randomly selected and reviewed 56 paid and 32 denied claims.

In reviewing each claim, the examiners checked for compliance with all applicable statutes and regulations that govern timeliness requirements in settling first party claims. The examiners conducted specific reviews, placing particular emphasis on N.J.S.A. 17:29B-4(9) and N.J.A.C. 11:2-17 et seq. (Unfair Claim and Settlement Practices). These requirements relate to NAIC Market Conduct standards outlined in Chapters 16 and 17 of the Market Regulation Handbook.

B. ERROR RATIOS

The examiners calculated the following error ratios by applying the procedure outlined in the introduction of this report. Error ratios are itemized separately based on the review samples as indicated in the following chart.

<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Paid	56	23	41%
Denied	32	0	0
Totals	88	23	26%

C. EXAMINERS FINDINGS

1. Failure to State Correct Time Limit on Holdback Notice – 12 Files in Error - (Systemic Error) and Failure to Issue Holdback Notice to the Claimant – 1 File in Error

N.J.A.C. 11:2-17.8(e) states that, “If a claimant is actively negotiating with an insurer for settlement of a claim, and the claimant’s rights may be affected by a statute of limitations or a policy time limit, the insurer shall provide the claimant with written notice that the time limit may affect the claimant’s rights. Such notice shall be given to claimants 60 calendar days before the date on which such time limit may expire.”

The examiners found 12 claims where the insured was eligible for a holdback payment amount on replacement cost settlements. Contrary to the 60-day notice period specified in the above-referenced regulation, the

examiners found that Mercer's holdback letter provided only 30 days advance notice of the expiration date. In practice, however, the examiners found that Mercer provided at least, and often more, than 60 days for a claimant to submit additional proofs of loss. The Company ultimately reimbursed all eligible expenses.

On one claim, however, the examiners found that the Company failed altogether to provide the 60-day holdback notice on a claim involving replacement cost. Mercer agreed with the examiners' findings and confirmed that the insured eventually claimed, and the Company paid, the entire holdback amount of \$3,743.31 on September 14, 2010.

2. Failure to Provide Specific Reason for Delay in Notice - 11 Files in Error

N.J.A.C. 11:2-17.7(e) states in part that if the insurer is unable to settle a claim within the time periods required, the insurer must send the claimant written notice stating the reasons additional time is needed. On 11 claims reviewed, the Company notified the claimants that their claims were still pending but merely stated: "We are still in the investigation process of your claim." Contrary to this regulation, the Company failed to specify what aspect(s) of the claim was still under investigation. In response to an inquiry, the Company agreed with the examiners' findings.

3. Failure to Issue a Delay Notice within 30 Days from Notice of Loss – 1 File In Error

N.J.A.C. 11:2-17.7(c)1 requires an insurer to send the claimant a written notice 30 days after the initial notice of loss if the insurer is unable to settle the claim as specified in **N.J.A.C. 11:2-17.7(c)**.

On one claim, the Company received notice of loss on May 4, 2010. A review of the adjuster's diary indicated that the next contact by the Company to the insured was a delay letter sent on July 13, 2010. This letter was sent 70 days from the notice of loss contrary to the regulation. In response to an inquiry, the Company agreed with the examiners' finding.

4. Failure to Respond to Pertinent Communication within 10 Working Days - 1 File in Error

N.J.A.C. 11:2-17.6(e) states that, "An appropriate reply shall be made within 10 working days on all ... pertinent communications from a claimant which reasonably suggests that a response is expected."

The Company's system revealed on one claim that, on April 7, 2010, the insured provided Mercer with a receipt in the amount of \$5,000.00. This covered additional work to the attic, which was incurred by the insured after the original claim estimate. On April 12, 2010, the Company's diary system indicated that the file was closed. Although the \$5,000.00 amount reflected expenses associated with items outside the scope of the claim-related estimate, Mercer did not provide further correspondence addressing the claimant's April 7, 2010 letter that implied a claim for additional expenses. Contrary to this regulation, Mercer failed to respond to that pertinent communication. In response to an inquiry, the Company agreed with the examiners' finding.

III. UNDERWRITING AND RATING REVIEW

A. INTRODUCTION

The examiners reviewed randomly selected homeowner policies that were in force during the review period December 1, 2009 to November 30, 2010. The Company reported 12,684 homeowner policies, of which 992 were new business policies and 11,692 were renewal policies. The examiners checked for compliance with all applicable New Jersey statutes and regulations including N.J.S.A. 17:29A-6 and 15 (filed and approved rating methodologies), N.J.S.A. 17:23A-4 (Notice of Information Practices) and N.J.S.A. 17:29A-4(d) (Rate reductions for structures equipped with operative smoke detection devices).

B. ERROR RATIOS

The examiners calculated error ratios for each random sample by applying the procedure outlined in the introduction of this report. As indicated below, the examiners randomly selected and reviewed 100 files from the Company's in-force policy population. The examiners also conducted a select, electronic territorial rating assignment review of 4,256 policies based on findings from the random sample. Based on those results, the Company performed an electronic census territorial review of 12,684 policies at the examiners' request. Separate error ratios are reported for each review sample as indicated in the chart that follows.

<u>Review Sample</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Random New Business	50	0	0%
Random Renewal Business	<u>50</u>	<u>1</u>	2%
Random Totals	100	1	1%
Examiners Select Territory Review	4,256	15*	<1%
Company Census Territory Review	12,684	267	2%

*One of these files was also cited in the random sample.

C. EXAMINERS' FINDINGS

1. **Failure to Assign Correct Rating Territory to Insured Risk - 282 Files in Error (15 from Random and Select Sample and 267 from Company's Self Audit)**

N.J.S.A. 17:29A-6 and 15 require insurers to charge rates in strict conformity with the rating system filed with and approved by the Commissioner.

During the course of the random underwriting review, the examiners found one policy where the Company assigned the risk to an incorrect county rating territory that caused an incorrect rating territory code. Although the rating factor was the same for both territories with no premium impact, Mercer nevertheless improperly assigned and rated the risk in Territory 03, Burlington County instead of the correct physical location in Territory 08, Gloucester County.

In response to this finding, the examiners conducted a territorial rating assignment review from select New Jersey counties to identify any further errors, particularly those that would result in rating errors. As such, the examiners randomly selected and reviewed a total of 4,256 policies from Burlington, Camden, Gloucester, Hudson, Mercer, Middlesex, and Salem counties. The results of this review revealed a total of 14 additional policies assigned to incorrect territories, three of which resulted in premium undercharges. Premium was unaffected on the remaining 11 policies.

Based on the foregoing results, the examiners requested that Mercer conduct a self-audit of its entire population of 12,684 in force policies. That self-audit revealed 267 additional policies with incorrect territory assignments.

Based on these results, the examiners found that Mercer failed to properly assign 282 policies to the correct rating territory. Contrary to N.J.S.A. 17:29A-6 and 15, Mercer applied incorrect rates on 12 of these 282 policies, or 4% of all territorial assignment errors. The aggregate premium undercharge on 10 of the 12 policies was \$716, while the aggregate premium overcharge on two of the 12 policies was \$1,198.

In response to the examiners' inquiries, Mercer agreed with these findings and further stated that, "(a)... review of our database identified a few city/county/zip code combinations that had either a typographical or validation problem relating to either the rating territory code or statistical reporting code. This error occurred after we had filed and received approval in July'05 for a rate change." Mercer also indicated that it would correct each policy immediately and effectuate all premium refunds.

2. Failure to Provide at Least 30 Days Notice for Renewal Premium According to Policy Provisions and Regulatory Requirement – 1 File in error

The Company's Policy Provision, MPL 95, page 2, number 2 (Automatic Termination), states "notice of the amount of renewal premium must be mailed or delivered by *us* to *you* at least 30 days but not more than 120 days before the date the premium is due."

On one policy, the Company sent a renewal notice to the insured on June 21, 2010. However, the policy renewal date is July 3, 2010. Contrary to the Company's Policy Provision, Mercer provided only 12 days notification to the insured. In response to an inquiry, the Company agreed with the examiners' findings. The examiners also cited N.J.A.C. 11:1-20.2(c), which requires renewal premium notice of at least 30 days prior to the due date, as well as a statement advising the effect of nonpayment of premium.

IV. TERMINATION REVIEW

A. INTRODUCTION

During the review period December 1, 2009 to November 30, 2010, Mercer cancelled 28 policies within 60 days, declined 40 quotes, mid-term cancelled 42 policies and non-renewed 266 policies. The examiners checked for compliance with applicable statutes and regulations including N.J.A.C. 11:1-20.2 (Non-renewal and cancellation notice requirements), N.J.A.C. 11:1-20.3 (policy provisions relating to cancellation or nonrenewal) and N.J.A.C. 11:1-20.4 (cancellation and non-renewal underwriting guidelines).

B. ERROR RATIOS

The examiners calculated error ratios for the termination review by applying the procedure outlined in the introduction of this report. The following chart itemizes the review sample, the number of errors and the error ratio by type of termination.

<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Nonrenewals	50	0	0%
Mid-Term Cancellation	15	0	0%
60-Day Cancellations	21	1	5%
Declinations	<u>30</u>	<u>0</u>	0
Totals	116	1	0.86%

C. EXAMINERS' FINDINGS

1. Failure to Provide Factual Basis for 60-Day Cancellation – 1 File in Error

N.J.A.C. 11:1-20.2(g) states that, “No nonrenewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis upon which the insurer relies.”

On one policy, Mercer cancelled coverage within the first 60 days because the insured owned a breed of dog that was included on the Company's list of prohibited dog breeds. The Company failed, however, to identify the breed of dog on the notice as required by the above-stated regulation.

V. RECOMMENDATIONS

Mercer should inform all responsible personnel and third party entities who handle the files and records cited as errors in this report of the examiners' recommendations and remedial measures that follow in the report sections indicated. The examiners also recommend that Mercer establish procedures to monitor compliance with these measures.

Throughout this report, the examiners cite and/or discuss all errors found. If the report cites a single error, the examiners often include a "reminder" recommendation because if a single error is found, additional errors may have occurred.

Non-compliant activity was identified in this report which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to New Jersey law and regulations. When applicable, corrective action for other jurisdictions should be addressed.

The examiners acknowledge that during the examination Mercer agreed and already complied with, either in whole or in part, some of the recommendations. 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 listed all recommendations below.

A. GENERAL INSTRUCTIONS

All items requested for the Commissioner and copies of all written instructions, procedures, recommended forms, etc., should be sent to the Commissioner, c/o Clifton J. Day, Manager of the Market Conduct Examinations and Anti-Fraud Compliance Unit, Mary Roebling Building, 20 West State Street, PO Box 329, Trenton, N.J. 08625, within thirty (30) days of the date of the adopted report.

On all policies to be reopened for premium refunds, the Company should provide the insured with a cover letter that contains the following first paragraph (variable language is included in parentheses):

"During a review of our policy files by market conduct examiners of the New Jersey Department of Banking and Insurance, they found that we failed to correctly rate your policy due to an incorrect territory assignment. Enclosed is our (payment/credit) in the amount of (insert amount) to correct our error. We have rerated your policy to provide you with the correct premium."

B. CLAIMS

1. Pursuant to N.J.A.C. 11:2-17.8(e), Mercer must revise its current holdback payment notice so that it states that claimants have 60 days and not 30 days in which to provide all documentation necessary to substantiate claims.
2. The Company should remind all appropriate claims personnel of the need to issue a 60-day holdback notice pursuant to N.J.A.C. 11:2-17.8(e).
3. Mercer must issue written instructions to all appropriate claims personnel stating that when sending a notice of delay, the specific reason for that delay must be included in the written notice pursuant to N.J.A.C. 11:2-17.7(e).
4. In order to comply with N.J.A.C. 11:2-17.7(c)1, the Company must remind all appropriate personnel that a delay notice must be sent at the expiration of the 30-day settlement period and every 45 days thereafter until all elements of the claim have been honored.
5. Pursuant to N.J.A.C. 11:2-17.6(e), the Company should remind all claims personnel that an appropriate reply shall be made within 10 working days on all pertinent communication from a claimant which reasonably suggests that a response is expected.

C. UNDERWRITING AND RATING

6. Mercer must issue written instructions to all underwriting personnel stating that N.J.S.A. 17:29A-6 and 15 require an insurer to charge rates in strict conformity with its rating system as filed with and approved by the Commissioner.
7. Mercer must issue a credit/refund for policies listed in Appendix B-1, where the incorrect territory assignment resulted in a premium overcharge. Verification and proof that a refund or credit was issued to the insureds for all policy periods should be sent to the Commissioner.
8. Mercer must continue to monitor its approved territorial definitions to ensure that each new and renewal policy is assigned to the correct territory and county. Additionally, the Company must provide the Commissioner with documentation attesting to correction of the territorial rating overcharges outlined in the report, including policy number, amount refunded, date of refund and total policy periods in error.
9. The Company must remind all underwriting personnel that Mercer's policy contract and N.J.A.C. 11:1-20.2(c) require at least 30 days but not more than 120 days advance notice to the insured of the premium due date.

D. TERMINATIONS

10. The Company should issue a written reminder to all appropriate personnel stating that, pursuant to N.J.A.C. 11:1-20.2(g), “No nonrenewal or cancellation shall be valid unless the notice contains the standard or reason upon which the termination is premised and specifies in detail the factual basis upon which the insurer relies.” Specifically, the Company must issue written reminders to all appropriate personnel stating that the breed of dog must be included on termination notices when terminating due to a dog that is prohibited in the Company’s underwriting guidelines.

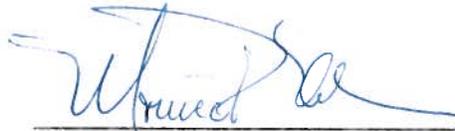
VI. VERIFICATION PAGE

I, Monica Koch, am the Examiner-in-Charge of the Market Conduct Examination of Mercer Insurance Company, and Mercer Insurance Company of New Jersey 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 Mercer Insurance Company, and Mercer Insurance Company of New Jersey as of July 8, 2011.

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.

September 28, 2011
Date



Monica Koch
Examiner-In-Charge
New Jersey Department
of Banking and Insurance