



Market Conduct Examination

Travelers Auto Insurance Company of NJ
and
First Trenton Indemnity Company

Marlton, New Jersey

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND
INSURANCE

Office of Consumer Protection Services

Market Conduct Examinations and Anti-Fraud Compliance
Section

Date Report Adopted: January 23, 2009

MARKET CONDUCT EXAMINATION

of the

Travelers Auto Insurance Company of NJ

and

First Trenton Indemnity Company

Located in

Marlton, New Jersey

as of

December 12, 2007

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
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Travelers Auto Insurance Company of NJ
First Trenton Indemnity Company

Market Conduct Examination

I. INTRODUCTION

A. SCOPE AND PURPOSE OF THE EXAMINATION

This is a report of the Market Conduct activities of the Travelers Auto Insurance Company of New Jersey and the First Trenton Indemnity Company, hereinafter referred to as TAICNJ, FTIC or collectively, 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 market conduct examination. The Market Conduct Examiners included Examiner-in-Charge Robert Greenfield, Ralph Boeckman and Thomas Goehrig.

The scope of the examination included homeowner and dwelling fire insurance sold by the Company in New Jersey. The examiners evaluated Travelers Auto Insurance Company's and the First Trenton Indemnity Company's compliance with the regulations and statutes that pertain to homeowner and dwelling fire insurance. The review period for the examination was April 1, 2006 through March 31, 2007. The examiners completed their fieldwork at the Company's Marlton, New Jersey office between August 27, 2007 and October 19, 2007. On various dates thereafter, the examiners completed additional review work and report writing.

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 VIII – 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 containing 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.

Whenever the examiners find that a company commits a type of error with sufficient frequency, they will cite the errors as an improper general business practice. If an error constitutes an improper general business practice, the examiners have stated this in the report that follows.

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

The examiners submitted written inquiries to Company representatives on the errors cited in this report. This provided the Company the opportunity to respond to the examiners' findings and to provide exception to the statutory and/or regulatory errors or mishandling of files reported herein. In response to these inquiries, the Company 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 of its 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.

C. COMPANY PROFILE

First Trenton Indemnity Company was incorporated under the laws of New Jersey on July 5, 1991 and began business on March 1, 1992. First Trenton is a wholly owned subsidiary of Travelers Indemnity Company, which itself is wholly owned by Travelers Property Casualty Corp. This Company was formed to write personal lines property and casualty business in New Jersey.

Beginning on May 1, 1992, First Trenton commenced the renewal of the New Jersey personal lines business of Travelers Indemnity. In 1997, First Trenton began absorbing additional business associated with Aetna business operations that were purchased by Travelers Property Casualty Corp. in 1996. The company's new subsidiary at that time, Red Oak Insurance Company, handled part of this volume. Specifically, Red Oak was established in 1997 to assume that segment of Aetna's business that came from National Consumer Insurance Company (NCIC).

In January 2001, Red Oak Insurance Company withdrew from writing private passenger auto insurance in New Jersey pursuant to a Consent Order. That Order allowed Red Oak to withdraw its remaining auto policies,

terminate its agents and withdraw its rating system for private passenger auto insurance on April 16, 2002.

On June 8, 2005, the Department issued a Consent Order allowing Red Oak Insurance Company to recommence writing private passenger automobile insurance business in New Jersey under the new name of Travelers Auto Insurance Company of New Jersey (TAICNJ). All new private passenger automobile insurance business was underwritten through TAICNJ and existing private passenger business remained under First Trenton Indemnity Company. In April 2006, TAICNJ began underwriting new homeowner insurance, and existing homeowner business remained with First Trenton.

Both the First Trenton Indemnity Company and Travelers Auto Insurance Co. of New Jersey book of business consists primarily of private passenger automobile and homeowner multi-peril policies and a small amount of worker's compensation coverage. First Trenton Indemnity Company's book of business also includes a small amount of personal umbrella and inland marine. Both Companies sell their products through independent agencies, as well as on a direct basis.

II. UNDERWRITING AND RATING

A. INTRODUCTION

First Trenton Indemnity Company (FTIC) and Travelers Auto Insurance Company of New Jersey Insurance Company (TAICNJ) write homeowner policies. New Jersey dwelling fire policies are written by FTIC only. The examiners reviewed randomly selected policy files from First Trenton Indemnity and Travelers Insurance Company of New Jersey's book of business that was in force during the review period April 1, 2006 to March 31, 2007. As of April 23, 2006 all FTIC new business policies were written into TAICNJ. Prior to that transition, FTIC had 130,923 homeowner policies, 2,072 dwelling fire policies and 5,552 Homesaver policies for a total of 138,547 in-force contracts. Travelers Insurance Company of New Jersey had 24,007 homeowner policies in-force during the same review period. The examiners checked for compliance with all applicable New Jersey statutes and regulations including N.J.S.A. 17:29A-6 & 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), and N.J.S.A. 17:29B-3 (Fair Trade Practices).

B. ERROR RATIOS

The examiners calculated error ratios for each random sample by applying the procedure outlined in the introduction of this report. Error ratios are itemized separately for the review samples as indicated in the chart that follows on the following page.

Error Ratio Chart

<u>Review Category</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
<u>New Business</u>			
TAICNJ	49	28	57%
HOMESAVER*	<u>25</u>	<u>0</u>	0%
Subtotal	74	28	38%
<u>Renewals</u>			
FTIC	98	0	0
FTIC - DWF	25	0	0
HOMESAVER	<u>25</u>	<u>2</u>	8%

Subtotal	148	2	1%
TOTALS	222	30	14%

* Homesaver policies are dwelling fire policies in an HO format. Liability coverage is available but optional. A Homesaver policy is a basic, named peril policy available on rental or owner occupied, single and multi-family dwellings of up to four families.

C. EXAMINERS' FINDINGS

1. Failure to Properly Underwrite New Business Applications in Order to Determine Eligibility for Newly Purchased Home Buyer Credit - 27 Files in Error (Improper General Business Practice) and Failure to Provide Home Buyer Credit (One File in Error)

N.J.S.A. 17:29A-6 & 15 requires an insurer to file its rating system with the Department and to observe those rates. Travelers Auto Insurance Company of New Jersey provides a “Home Buyer Credit” to applicants that have purchased a home during the last 12 months prior to the effective date of the new business policy. In addition to the initial credit, the Company also provides a decreasing percentage credit for every renewal period up to and including the fourth year renewal. The examiners found that Travelers failed to determine on 27 new business policies the date of purchase of the applicant’s home. In response to an inquiry the Company disagreed with this error, stating that it relies on the agent to determine if the applicant is eligible for the discount. However, the Company is ultimately responsible for properly underwriting all applications.

The examiners did find one policy (980573545 633 1) in which the Company failed to provide the Home Buyer Credit even though the Company obtained documentation that the property was in fact eligible for this credit. In response to an inquiry the company stated that it would correct this premium overcharge by providing a credit.

These Files are also Listed in APPENDIX A-1

2. Failure to Follow Filed Underwriting Guidelines – 1 File in Error

Pursuant to **N.J.S.A. 17:22-6.14a1**, “All property and casualty insurers doing business in New Jersey shall, upon request of the Commissioner of Insurance, file with the Department of Insurance a copy of their current underwriting guidelines, together with any amendments thereto or modification thereof...” While reviewing renewal files, the examiners found

on policy number 633 0618691 that, inconsistent with its filed underwriting guidelines, FTIC issued a dwelling policy on a primary residence even though the application form clearly noted that the residence was a secondary dwelling. This is contrary to the Company's filed new business underwriting guidelines that prohibit coverage on a secondary dwelling unless the Company provides coverage on a primary dwelling. In response to an inquiry, the Company agreed that its marketing representative erroneously effectuated coverage on this dwelling.

This File is Also Listed in APPENDIX A-2

3. Failure to Comply With Underwriting Guidelines and Approved Rating Plan - 1 File in Error

N.J.S.A. 17:29A-6 & 15 requires an insurer to file its rating system with the Department and to observe those rates. On renewal policy number 633 0365780 (inception date April 26, 2002), the policyholder declared a gas heating system on the application. The file also contained a completed oil tank questionnaire (dated October 28, 2002) confirming the existence of an inactive underground tank. Notwithstanding these facts, the Company erroneously and unnecessarily charged the policyholder an annual \$25.00 oil tank liability coverage fee. From inception, this error accumulated to \$125 in premium overcharges. The Company agreed with this error.

This File is Also Listed in APPENDIX A-3

4. Fire and Burglar Protection Devices - 222 Files Reviewed - 0 Files in Error

N.J.S.A. 17:29A-6 & 15 require an insurer to file its rating system with the Department and to observe those rates. N.J.S.A. 17:29A-4(a) requires an insurer to provide a rate reduction for fire insurance on structures equipped with operative smoke detection devices approved by the Commissioner. The examiners reviewed a total of 197 homeowner and 25 dwelling fire policies to confirm that the Company provided required protective premium discounts. The Company provides fire protection credits for homes equipped with fire/smoke detectors, sprinklers and/or burglar alarm systems. These credits range from 2% to 13%. The examiners found that the Company provided the proper discounts to all policyholders who qualified for the burglar and fire system discounts.

III. TERMINATIONS

A. INTRODUCTION

During the review period of April 1, 2006 to the present, TAICNJ reported that it cancelled 84 new business policies within the first 60 days and mid-term cancelled 87 policies. In the same period, TAICNJ cancelled 579 policies for nonpayment of premium. FTIC nonrenewed 852 policies, mid-term cancelled 364 policies and cancelled 182 new business policies within the first 60 days. In the same period, FTIC cancelled 1,673 policies for nonpayment of premium. The examiners randomly selected and reviewed 102 nonrenewals, 186 cancellations, and 14 non-pay cancellations for a total of 302 files reviewed. The examiners checked for compliance with applicable statutes and regulations including N.J.A.C. 11:1-20.2 (nonrenewal 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 nonrenewal underwriting guidelines).

B. TERMINATION 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.

Error Ratio Chart

<u>Review Category</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Nonrenewals			
First Trenton	102	52	51%
Travelers	0	0	0%
Subtotal	102	52	51%
Cancellations-First 60 Days			
First Trenton	50	8	16%
Travelers	<u>32</u>	<u>0</u>	0%
Subtotal	82	8	10%
Cancellations-Midterm			

First Trenton	50	4	8%
Travelers	<u>54</u>	<u>9</u>	17%
Subtotal	104	13	13%
Non-pay Cancellations			
First Trenton	10	1	10%
Travelers	<u>4</u>	<u>3</u>	75%
Subtotal	14	4	29%
Total	302	77	25%

C. EXAMINERS' FINDINGS

1. Failure to Identify the Factual Basis for Terminating Policies Due to Oil Tanks; Failure to Identify the Correct Underwriting Guideline on Termination Notices – 47 Files in Error (Improper General Business Practices)

On 43 nonrenewals and four first 60 day cancellations, the examiners found termination notices that stated “Risk is ineligible for our Homeowner program due to the fact that it has an underground oil tank over 10 years old or less than 10 years old but no city water/sewer” (emphasis added). The examiners found that this language does not comply with N.J.A.C. 11:1-20.2(g) because it does not specify which of the two possible reasons applies, i.e., an underground tank older than 10 years, or an underground tank less than 10 years of age where water and sewage is supplied by a well and septic system, respectively. Accordingly, the Company failed to provide the factual basis and the actual standard or reason upon which these policies were terminated.

In response to an inquiry, the Company disagreed with the examiners’ findings and stated that this reason “...provides more than adequate information to the insured to understand the factual basis for the action to nonrenew and to refute the nonrenewal. It was an underground oil tank and it did not meet one of the two requirements stated.” The Company’s response confirms the examiners’ conclusion that this language does not provide the insured with a definitive reason for termination; it merely provides two possible reasons where either one or both may apply.

Furthermore, the examiners learned that FTIC has not established a procedure for capturing either the age of an oil tank or whether the property is serviced by city water/sewer or by a well/septic system. The examiners confirmed this finding through an inquiry response in which the Company stated “Information regarding city water/sewer is not currently captured by the company.” Consequently, that portion of the notice that references a risk void of city water and sewer is on its face assumptive and arbitrary.

Utilized as justification for termination, this reason is capricious, contrary to **N.J.A.C. 11:1-20.4(a)**.

FTIC further stated that “The determination whether a tank was less than 10 years old or more than 10 years old was based on the year of dwelling construction in the policy record.” The examiners note that this policy fails to account for older dwellings in which an oil tank is replaced with a newer tank that is less than 10 years of age. Reliance upon this reason for termination without collecting actual information on oil tank age results in assumption and thus arbitrary and capricious terminations that are prohibited by **N.J.A.C. 11:1-20.4(a)**. The examiners cited these errors as improper general business practices.

See Appendix B-1 for a List of Files in Error

2. Unfair Terminations Due to Misapplication of Lead Abatement Underwriting Guideline - 4 Files in Error

The examiners found four policies (two midterm cancellations and two first 60-day cancellations) that the Company cancelled within the first 60 days because the “[R]isk is ineligible due to the fact it was built prior to 1960 and has not been certified lead free by an abatement inspector.” Contrary to this actual reason, the examiners found that all four dwellings were indeed certified as lead free by licensed lead abatement inspectors. The Companies were in fact in possession of these certifications at the time of termination.

In response to an inquiry, the Company agreed in principal that certifications issued by a licensed inspector should be accepted provided that the inspector applies certain lead hazard levels in certifying a residence to be lead free. However, the Companies’ underwriting guidelines do not identify any such lead hazard levels or any other unacceptable thresholds. Moreover, the Companies’ underwriting guidelines state very clearly that, “Dwellings prior to 1960 should be certified ‘lead free’ by an abatement inspector.” As stated above, these residences were in fact certified “lead free” by licensed abatement inspectors.

Pursuant to the above, the Companies failed to comply with **N.J.A.C. 11:1-20.4(a)**, which states that “No insurer may cancel or nonrenew a policy based upon underwriting guidelines which are arbitrary, capricious or unfairly discriminatory.” On all four files, FTIC and TAICNJ applied “lead hazard levels” as underwriting factors that were not quantified in the Companies’ underwriting guidelines. These terminations were therefore arbitrary and inherently unfair. The Companies also failed to comply with **N.J.A.C. 11:1-20.4(g)**, which states that an insurer may terminate a policy based only on those guidelines that are in effect during the policy period. Contrary to this regulation, FTIC and TAICNJ amended the existing lead

free underwriting requirement to include a lead hazard level threshold that was not included in the original guidelines. FTIC and TAICNJ also failed to comply with N.J.A.C. 11:1-20.4(f) because it implemented guidelines that were neither written nor identified with an effective date.

See Appendix B-2 for a List of Files in Error

3. Unfair Oil Tank Termination due to Failure to Rely on Pertinent Facts – 1 File in Error

FTIC cancelled policy 633 0635018 at midterm for the following reason: “Risk is not eligible for our Homeowner program due to the fact the underground fuel tank is not properly disconnected. Documentation was not provided for soil test for contamination.” The examiners noted that the prior owner removed the oil tank in question. In addition, the file contained appropriate documents from the township approving the work performed by the contractor who removed the oil tank. File documents also show that the contractor backfilled the excavation site with “clean material and rough material” and that the tank contained no leaks.

Since the reason stated on the notice is erroneous and does not include a valid, factual standard or reason upon which the Company premised this cancellation, the examiners cited this termination as invalid and inconsistent with N.J.A.C. 11:1-20.2(g). This termination is further contrary to N.J.A.C. 11:1-20.4(a), which prohibits capricious terminations; the factual record was such that the oil tank was indeed disconnected and the soil was deemed to be free from contamination.

This File in Error is Also Listed in Appendix B-3

4. Unfair Cancellation and Nonrenewal due to Misapplication of Ocean Proximity and Flood Zone Underwriting Guidelines – 2 Files in Error

FTIC midterm cancelled policy 633 0625547 for the following reason: “Preferred pricing for a dwelling is less than 2 miles to ocean. No flood insurance provided.” In addition, FTIC nonrenewed policy number 663 0609537 for the following reason: “Risk is ineligible for our Homesaver program due to the fact it is located in flood zone A and has no flood insurance or adequate flood insurance.”

On cancelled policy number 633 0625547, the examiners reviewed FTIC’s underwriting guidelines and did not find any requirement stipulating that a dwelling must be at least two miles from an ocean or any other tidal waters. The examiners also reviewed the Federal Emergency Management Administration Flood Hazard Boundary Map and noted that the insured’s dwelling is located in flood zone C. As such, the insured was not required to maintain a flood insurance policy.

In response to an inquiry, the Company stated it relied upon the agent to determine the correct flood zone for the dwelling. Nevertheless, FTIC is ultimately responsible for proper underwriting decisions. The examiners cited the Company for failure to comply with N.J.A.C. 11:1-20.4(g), which states that an insurer may terminate a policy based only on those guidelines that are in effect during the policy period. Contrary to this regulation, First Trenton applied a two mile eligibility cutoff when its current guidelines required only one. FTIC also failed to comply with N.J.A.C. 11:1-20.4(f) because it implemented guidelines that were neither written nor identified with an effective date. This termination is therefore invalid pursuant to N.J.A.C. 11:1-20.2(a).

On nonrenewed policy number 663 0609537, the examiners found that the insured's dwelling is located in Flood Zone C and not A as erroneously stated by the Company. Notably, Flood Zone C does not require flood insurance as outlined by FEMA flood guidelines. In response to an inquiry the Company stated that the incorrect reason on the notice was due to a clerical error. The examiners note that this clerical error resulted in an erroneous denial of coverage, contrary to N.J.A.C. 11:1-20.4(g), N.J.A.C. 11:1-20.4(f) and N.J.A.C. 11:1-20.2(a) as outlined above.

These Files in Error are Also Listed in Appendix B-4

5. Invalid Mid-term Cancellation Due to Agent's Failure to Submit Underwriting Costimator Form – 1 File in Error

The examiners found one policy in which FTIC cancelled coverage at midterm due to, among other reasons, the agent's failure to return a "Costimator" form which provides information necessary to establish replacement cost. Since responsibility for this omission rests with the agent and not the applicant, and since the Company's underwriting guidelines do not mandate a Costimator form to the extent required by N.J.A.C. 11:1-20.4(f) and (g), these terminations are invalid within the context of N.J.A.C. 11:1-20.2(g). Accordingly, these terminations are inconsistent with N.J.A.C. 11:1-20.2(a) because this language misstates the factual basis for this termination.

In response to an inquiry regarding this error, the Company stated that, "... we listed all identifiable reasons on the notice... Although the costimator is completed by the agent, it is still needed to rate the policy ... We don't believe that the addition of the costimator language falls outside the intent of the regulation..." The examiners disagree, as the relevant intent is to ensure that terminations are supported by valid underwriting guidelines and that notice of such terminations include an accurate or true description of the basis for termination. It should be noted that the examiners do not

disagree that these applicants may have been otherwise ineligible. However, the validity of these terminations is ultimately dependent upon the efficacy of the notice issued to the insured because it provides the basis for subsequent appeal rights.

See Appendix B-5 for a List of Files in Error

6. Invalid Terminations due to Failure to Include Specific Reason for Termination on Notice to Insured- 6 Files in Error

Pursuant to **N.J.A.C. 11:1-20.2(g)**, “no nonrenewal or cancellation shall be valid unless the notice “... specifies in detail the factual basis upon which the insurer relies.” On the following six policies the Company failed to comply with this requirement, thus invalidating these terminations.

On policy numbers 633 0625406 and 633 0624887, FTIC cancelled coverage within the first 60 days because the insured owned a breed of dog that was included on the company’s prohibited list. However, contrary to **N.J.A.C. 11:1-20.2(g)**, the Company failed to identify the breed of dog on the notice. Consequently, these terminations are invalid pursuant to **N.J.A.C. 11:1-20.2(a)**. This regulation invalidates nonrenewals that fail to comply with that subchapter. FTIC nonrenewed policy 663 0624009 because coverage on new construction may not extend beyond a construction period of six months. In its notice to the insured, FTIC stated merely that the risk is “...No longer eligible for builder’s risk coverage.” Contrary to **N.J.A.C. 11:1-20.2(g)**, FTIC failed to state that construction delays beyond 6 months was the actual reason for coverage ineligibility.

TAICNJ cancelled policy 979541025 633 1 at midterm stating, “Risk is ineligible for our homeowner program because combined coverage A, B, C, D and valuable items is \$2,000,000 or greater.” Contrary to **N.J.A.C. 11:1-20.2(g)**, the Company failed to provide the insured with the specific dollar amounts that make this policy ineligible for coverage.

On midterm cancellation policy number 633 0223582 and nonrenewed policy number 633 0610705, FTIC issued termination notices stating that the insureds were ineligible for coverage because the insured residences were for sale. However, FTIC failed to include a statement identifying these dwellings as unoccupied, contrary to **N.J.A.C. 11:1-20.2(g)**.

The Company agreed with the examiners’ findings on all six policies sited above.

These Files in Error are Also Listed in Appendix B-6

7. Invalid First 60 Day Cancellation due to Applicant's Celebrity Status – 1 File in Error

FTIC cancelled policy 663 0622234 within the first 60 days because the insured was a professional football player and therefore an attractive and ineligible nuisance. However, a review of the Company's filed underwriting guidelines failed to identify any prohibition on celebrities that pose attractive nuisance risks. Therefore, this is an invalid cancellation within the context of **N.J.A.C. 11:1-20.2(a)**, as well as **N.J.A.C. 11:1-20.4(f)** and **(g)** which require all underwriting guidelines to be dated, actually in effect and in writing. In response to an inquiry, the Company agreed with the examiners' finding.

This File is Also Listed in Appendix B-7

8. Failure to Retain Proof of Mailing – 11 Files in Error

Pursuant to **N.J.A.C. 11:1-20.2(i)2**, "No nonrenewal or cancellation shall be valid unless notice thereof is sent; By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice."

Contrary to the regulation stated above, FTIC and TAICNJ failed to retain the required proof of mailing on 11 policies that were either nonrenewed or cancelled. In response to the examiners' inquiries the Company advised that it was unable to locate the required Post Office proof of mailing.

See Appendix B-8 for a List of Files in Error

9. Failure to Retain a Duplicate Copy of the Mailed Notice – 5 Files in Error

Pursuant to **N.J.A.C. 11:1-20.2(i)2**, "No nonrenewal or cancellation shall be valid unless notice thereof is sent; By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice."

The examiners were unable to locate the required duplicate copies of the termination notices on five policies. The Company was also unable to locate these notices. Accordingly, the Company failed to comply with **N.J.A.C. 11:1-20.2(i)2**.

See Appendix B-9 for a List of Files in Error

10. Issuing Notices that Contain Untrue Statement – 2 Files in Error - Improper General Business Practice

TAICNJ has a mass marketing plan in which the Company sells insurance directly to consumers through the internet. The Company sends an applicant a Quote Acceptance form that the applicant completes, signs and returns to TAICNJ. The examiners reviewed two files in which the applicant did not return the signed Quote Acceptance form. The Company sent the applicants a form letter requesting the applicant return the quote document. The form letter states, “New Jersey insurance regulations require the Quote Acceptance form and state coverage form be signed by you and kept on file in our office.” This is an untrue statement because New Jersey regulations do not require this information. Use of such statements is a violation of **N.J.S.A. 17:29B-4(2)**, which prohibits untrue statements in the course of conducting insurance business. The examiners cited this error on mid-term policy numbers 9802702736331 and 9803944896341 and as an improper general business practice since this statement is included on a form letter that the Company issues to all direct mass marketing applicants.

See Appendix B-10 for a List of Files in Error

IV. RECOMMENDATIONS

FTIC/TAICNJ 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 FTIC/TAICNJ 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, more errors may have occurred.

Various non-compliant practices were identified in this report, some of 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.

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 Roebing 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 with premium credits or refunds, FTIC/TAICNJ should provide the insured with a cover letter that contains the following first paragraph (variable language is included in parentheses):

Premium Refunds

"During a review of our policy files by market conduct examiners of the New Jersey Department of Banking and Insurance, they found that we overcharged your policy. Enclosed is our (payment/credit) in the amount of (insert amount) to correct our error. We have rerated your policy to reflect this premium adjustment."

Offer of Coverage

“During a recent review of our policy files by market conduct examiners of the New Jersey Department of Banking and Insurance, they found that we should not have canceled your (homeowner/ dwelling fire insurance). We are now offering you a new policy to correct our error.”

B. RATING

1. Travelers must issue written instructions to appropriate personnel and its agents stating that, pursuant to **N.J.A.C. 17:29A-6** and **15**, insurers are required to follow their filed and approved rating plan when, among other things:
 - a. Determining eligibility for the Home Buyer Credit;
 - b. Assessing the applicability of oil tank surcharges. The Company should provide documentation that it remediated the \$125 overcharge on policy number 633-0365780.
2. Subject to any agreed, substantially similar course of remediation for the period April 1, 2006 to the present, the Company must review all new and renewal policies to identify all policies that qualify (or qualified) for the new home discount. The Company must then issue the appropriate refund or credit and assure that this discount is provided for all future years of eligibility. Once completed, the Company must provide a summary list of all remediated policies, including policy number, date of dwelling construction, date of payment of credit and amount of credit. See General Instructions for appropriate cover letter to the insured.

C. UNDERWRITING AND TERMINATIONS

3. To the extent that **N.J.S.A. 17:22-6.14a1** requires an insurer to file its underwriting guidelines with the Department of Banking and Insurance, the Company must remind all underwriting personnel and agents that they must follow those guidelines when evaluating new business applications. Specifically, the company must adhere to those guidelines that prohibit homeowners insurance on a secondary residence when the primary residence is insured elsewhere.
4. 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.” In order to comply with this regulation, the

Company must issue written instructions to all appropriate personnel stating that:

- a. the use of the phrase “Risk is ineligible for our Homeowner program due to the fact that it has an underground oil tank over 10 years old or less than 10 years old but no city/water sewer” is not specific and does not refer to the applicable underwriting guideline because it does not differentiate one reason over the other;
- b. the specific breed of vicious dog or pet must be included on the termination notice;
- c. the phrase “No longer eligible for builder’s risk coverage” is vague and insufficiently detailed, as it does not specify those factors that caused ineligibility, such as the period of construction extending beyond a maximum period of six months;
- d. the phrase “Risk is ineligible for our homeowner program because combined coverage A, B, C, D and valuable items is \$2,000,000 or greater” is not specific and sufficiently detailed to the extent that this language does not state the actual value that exceeded the \$2,000,000 threshold;
- e. the phrases “House for Sale” or “Risk is ineligible for our Homeowner program due to the fact it is for sale” are insufficiently detailed because they do not include that portion of the underwriting guideline that requires such dwellings to also be unoccupied.

For items 4.a through e above, the Company should offer coverage to all policyholders included in Appendixes B.1 (see also recommendation number 5.a below) and B.6 of this report. See General Instructions for appropriate cover letter.

5. In order to assure accurate new and renewal business underwriting that complies with written guidelines as outlined in **N.J.A.C. 11:1-20.4(e)** and **(f)**, and to avoid arbitrary and capricious application rejections and policy terminations prohibited by **N.J.A.C. 11:1-20.4(a)** and **(d)**, the Company must:
 - a. develop and utilize written procedures to capture age of oil tanks and to determine whether or not a dwelling is serviced by private well/septic or public water/sewer systems. These procedures must be provided to all applicable staff. Accordingly, the Company should offer coverage to all policyholders included in Appendix B.1 of this report. See General Instructions for appropriate cover letter;
 - b. issue written instructions to all applicable staff stating that, pursuant to current, written underwriting guidelines, the Company must accept lead free certifications provided by certified lead

- abatement inspectors, and that quantified lead hazard levels may not be applied as acceptance thresholds unless such quantified levels are in writing and included in applicable underwriting guidelines. Accordingly, the Company should offer coverage to all policyholders included in Appendix B.2 of this report. See General Instructions for appropriate cover letter;
- c. review all pertinent risk characteristics to assure that underwriting decisions are consistent with the factual record surrounding risk characteristics. Specifically, the company may not terminate a policy for failure to properly disconnect an oil tank when in fact the oil tank was removed in accordance with local ordinances. Accordingly, the Company should offer coverage to the policyholder included in Appendix B.3 of this report. See General Instructions for appropriate cover letter.
 - d. remind all applicable underwriting staff that the Company may not terminate a policy due to a dwelling's location in a flood zone when in fact the dwelling is not located in a flood zone. These instructions should further state that application of a two mile ocean proximity eligibility criterion is prohibited when current, written guidelines specify a one mile ocean proximity eligibility criterion. Accordingly, the Company should offer coverage to all policyholders included in Appendix B.4 of this report. Once completed, the Company must provide the Commissioner with a list of all policy numbers in which coverage was offered. See General Instructions for appropriate cover letter.
 - e. issue written instructions to all applicable staff stating that, use of the term "Costimator" as a reason to mid-term cancel, may not be included in the notice of cancellation because the insured is not responsible for forwarding this form to the Company and because applicable underwriting guidelines do not require the applicant to submit this form to the Company. Accordingly, the Company should offer coverage to the policyholder listed in Appendix B.5 of this report. See General Instructions for appropriate cover letter.
 - f. remind all applicable underwriting and termination staff that the Company's guidelines do not identify a celebrity as an ineligible, attractive nuisance. Accordingly, the Company should offer coverage to all policyholders included in Appendix B.7 of this report. See General Instructions for appropriate cover letter.
6. In order to assure compliance with N.J.A.C. 11:1-20.2(i)2, Travelers must provide written reminders to all appropriate personnel stating that they must:
- a. retain a date stamped proof of mailing showing the name and address of the insured on all terminations;

- b. retain a duplicate copy of the mailed notice of termination for each policy that the Company terminates.
- 7. The Company must revise the form letter that requests applicants to return the Quote Acceptance form. Specifically, the form letter must not contain the statement, “New Jersey insurance regulations require the Quote Acceptance form and state coverage form be signed by you and kept on file in our office”. The Company should provide a copy of the revised form to the Commissioner.

APPENDIX A - UNDERWRITING AND RATING ERRORS

1. Failure to Properly Underwrite New Business Applications in Order to Determine Eligibility for the Newly Purchased Home Buyer Credit - 27 Files in Error (Improper General Business practice) and Failure to Provide New Home Buyer Credit- One File in Error

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
980671572 633 1	980008804 633 1	980669496 633 1
980060260 633 1	980015793 633 1	980388221 633 1
980565721 633 1	980304309 633 1	980939482 633 1
980728706 633 1	980315783 633 1	979856332 633 1
*980573545 633 1	980364453 633 1	980818290 633 1
980866390 633 1	980369812 633 1	980445723 633 1
980434013 633 1	980408506 633 1	980676932 633 1
980724642 633 1	980758332 633 1	980528663 633 1
980031879 633 1	980849659 633 1	980773785 633 1
980524947 633 1		

* New home status known to company, but failed to provide applicable credit.

2. Failure to Follow Filed Underwriting Guidelines – 1 File in Error

Policy Number

633 0618691

3. Failure to Comply With Underwriting Guidelines and Approved Rating Plans - 1 File in Error

Policy Number

633 0365780

APPENDIX B - TERMINATIONS

1. Failure to Identify the Factual Basis for Terminating Policies due to Oil Tanks; Failure to Identify the Correct Underwriting Guideline on Termination Notices – 47 Files in Error (Improper General Business Practice)

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
633 0801601*	633 4872549*	633 0800466*
633 2220396*	633 0828377*	633 7937934*
633 5031371*	633 0796708*	633 9904213*
633 0625495^^	633 4163575*	633 0230631*
633 0801611*	633 0807504*	633 0817780*
633 0321258*	633 0811433*	633 3658210*
633 0817447*	633 1189160*	633 0829716*
633 0796553*	633 0801553*	633 0795840*
633 0812445*	633 0816617*	633 0816591*
633 9905259*	633 1281837*	633 0807412*
633 0823602*	633 3448032*	633 0811737*
633 6056147*	633 5019541*	633 0829916*
633 0812453*	633 0800388*	633 0811739*
633 0801895*	663 0630363^^	633 0823394*
633 0817407*	663 0630716^^	633 0811462*
633 0623299^^	633 0796919*	

*=nonrenewals

^^= First 60-Day Cancellations

2. Unfair Terminations Due to Misapplication of Lead Abatement Underwriting Guideline – 4 Files in Error

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
663 0629028^^	661 0628965^^	980 166345 633 1 **
980 133699 633 1**		

^^ = First 60-Day Cancellation

**=Midterm Cancellation

3. Unfair Oil Tank Termination due to Failure to Rely on Pertinent Facts – 1 File in Error

Policy Number

633 0635018**

**=Midterm Cancellation

4. Unfair Cancellation and Nonrenewal due to Misapplication of Ocean Proximity and Flood Zone Underwriting Guidelines – 2 Files in Error

<u>Policy Number</u>	<u>Policy Number</u>
633 0625547**	663 0609537*

*=Nonrenewal
**=Midterm Cancellation

5. Invalid Midterm Cancellations Due to Agent’s Failure to Submit Underwriting Costimator Form – 1 File in Error

<u>Policy Number</u>
**663 0628972

**=Midterm Cancellation

6. Invalid Terminations due to Failure to Include Specific Reason for Termination on Notice to Insured – 6 Files in Error

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
663 0625406^^	633 0624887^^	663 0624009*
979541025 663 1**	633 0223582**	633 0610705*

**=Midterm Cancellation
^^=First 60-Day Cancellation
*=Nonrenewal

7. Invalid First 60 Day Cancellation due to Applicant’s Celebrity status – 1 File in Error

<u>Policy Number</u>
633 663 0622234^^

^^=First 60-Day Cancellation

8. Failure to Retain Proof of Mailing – 11 Files in Error

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
633 0273119^	633 0800446 *	980027504 633 1^
633 0551062 *	980748722 633 1**	979571324 633 1* *
661 0615631 *	979662531 633 1**	979652963 633 1^
633 0604425 *	979655981 633 1^	

**=Midterm Cancellation

*=Nonrenewal

^=Nonpay Cancellation

9. Failure to Retain a Duplicate Copy of the Mailed Notice – 5 Files in Error

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
979655981 633 1^	980027504 633 1^	980748722 633 1**
661 0615631*	633 0551062*	

**=Midterm Cancellation

*=Nonrenewal

^=Nonpay Cancellation

10. Issuing Notices that Contain Untrue Statement – 2 Files in Error - Improper General Business Practice

<u>Policy Number</u>
980270273 633 1**
980394489 634 1**

**=Midterm Cancellation

VERIFICATION PAGE

I, Bob Greenfield, am the Examiner-in-Charge of the Market Conduct Examination of Travelers of New Jersey Insurance Company /First Trenton Indemnity 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 Travelers of New Jersey Insurance Company /First Trenton Indemnity Company

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.

Date

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