

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of)
Banking and Insurance, State of New) CONSENT
Jersey, with respect to Esurance Insurance) ORDER
Company of New Jersey, NAIC No. 27141)
)

TO: Esurance Insurance Company of New Jersey
PO Box 2890
Rockland, CA 95677

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 January 1, 2010 to December 31, 2010 examination of personal automobile claim settlements, underwriting and rating, licensing and new business quotes for Esurance 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 the company's practices contained certain instances where the frequency of error was such as to constitute an improper general business practice; 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 31st day of May, 2012

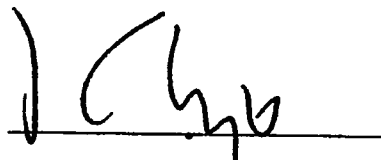
ORDERED AND AGREED that the attached Report will be adopted and filed as an official record of the Department; and

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 the Department will commence a reexamination of the company within two years of the date of this Consent Order to determine if the company has complied with the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that in the event the reexamination determines that the company has not fully implemented the recommendations and complied with New Jersey insurance statutes and regulations, the company will be subject to appropriate penalties and administrative sanctions; 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 its directors have received a copy of the adopted Report.



Kenneth E Kobylowski

Acting Commissioner

Consented to as to form, content and entry


Name Christopher M Henon

Date: 5-31-12

MARKET CONDUCT EXAMINATION

of the

Esurance Insurance Company of New Jersey

located in

Rocklin, California

as of

July 22, 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**

ADOPTED DATE : JUNE 26, 2012

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I. INTRODUCTION

This is a report of the Market Conduct activities of Esurance Insurance Company of New Jersey (hereinafter referred to as Esurance 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 private passenger automobile insurance sold by the Company in New Jersey. The examiners evaluated Esurance's compliance with the regulations and statutes pertaining to private passenger automobile claims. The review period for the examination was January 1, 2010 to December 31, 2010.

The examiners conducted their fieldwork at Esurance of New Jersey's office in Rocklin, California between March 13, 2011 and March 25, 2011. On various dates following the fieldwork, the examiners completed additional review work and report writing. The Market Conduct Examiners were Examiner-in-Charge Marleen Sheridan, Ralph J. Boeckman, and Richard Segin.

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.

For purposes of database or spreadsheet electronic analyses conducted during this review, the examiners define an exception as a file or record in a database or spreadsheet that does not meet specified regulatory criteria as set forth in electronic queries. The file or record has not been reviewed in depth by an

examiner. However, the frequency, type or severity of these exceptions may result in the examiners extracting sub-populations and review samples for further, detailed analysis.

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 Esurance 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, Esurance 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

Esurance Insurance Company of New Jersey (ENJ) is a monoline insurance company domiciled in Wisconsin that writes private passenger automobile insurance policies produced through its agency affiliate, Esurance Insurance Services, Inc. The insurer is a wholly owned subsidiary of Esurance Insurance Company (EIC).

ENJ was incorporated pursuant to the laws of Iowa on October 27, 1919 as Interstate Liability Insurance Company of Rock Rapids, Iowa. The name was changed in 1923 to Hawkeye Casualty Company and was changed again on July 1, 1950 to Hawkeye-Security Insurance Company (Hawkeye), concurrent with the absorption by merger of the Security Fire Insurance Company. Hawkeye was owned by affiliates of the CGU companies from July 1991 until June 1, 2001. CGU is an Australian based insurance company that was formed through a global merger of Commercial Union and General Accident.

On June 1, 2001, White Mountains Insurance Group, Ltd. (White Mountains) acquired CGU Corporation and shortly thereafter changed the name of CGU Insurance Company to OneBeacon Insurance Company (OneBeacon). As a result of this acquisition, White Mountains became Hawkeye's ultimate controlling parent. Hawkeye's name was changed to Homeland Central Insurance Company (HCIC) on November 21, 2001. On July 31, 2006, OneBeacon sold HCIC to Esurance Holdings, Inc., which contributed HCIC to EIC on November 22, 2006. On December 28, 2006, HCIC re-domiciled in Wisconsin and changed its name to Esurance Insurance Company of New Jersey.

ENJ is licensed in the District of Columbia and the following 24 states: AZ, CO, ID, IL, IA, IN, KS, MI, MN, MO, MT, NE, NM, NV, NJ, ND, OH, OK, SD, TX, UT, VA, WI and WY. ENJ issues policies solely in the state of New Jersey.

II. CLAIMS REVIEW

A. INTRODUCTION

This review covers paid and denied Personal Injury Protection (PIP), collision, comprehensive and property damage claims submitted under private passenger automobile insurance. Any such New Jersey claim closed between January 1, 2010 and December 31, 2010 was subject to review. During the review period, Esurance Insurance Company of New Jersey closed a total of 9,828 claims as follows: 1,747 PIP claims, 666 comprehensive claims, 3,327 collision claims and 4,088 property damage claims. The examiners randomly selected and reviewed 96 paid and 76 denied claims as well as 25 select total loss claims, for an overall random sample review of 197 claims. The examiners also conducted an electronic review of all 11,391 PIP claim events assigned to the total PIP claim population of 1,747. The examiners define a claim event as one discreet date of service for a particular type or level of treatment associated with a claim number that represents a specific date of loss.

In reviewing each claim, the examiners checked for compliance with all applicable statutes and regulations that govern timeliness requirements in settling first and third 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 (Unfair Claims Settlement Practices), N.J.A.C. 11:3-10 (Auto Physical Damage Claims), N.J.S.A. 39:6A-5 (Personal Injury Protection Claims), N.J.A.C. 11:3-4 (PIP Benefits/Medical Protocols) as well as N.J.A.C. 11:3-37.10(a) 5 (Explanation of Benefits). These requirements relate to Chapter Sixteen (General Exam Standards) and Chapter Seventeen (Property and Casualty Insurance Examinations) as outlined in the NAIC 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.

1. Random and Select Review Samples

	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Paid Claims			
PIP	50	14	28%
Collision	16	2	13%
Comprehensive	15	3	20%
Property Damage	<u>15</u>	<u>3</u>	20%
Subtotal	96	22	23%
Denied Claims			
PIP	30	1	3%

Collision		15	2	13%
Comprehensive		15	2	13%
Property Damage		<u>16</u>	<u>2</u>	13%
	Subtotal	76	7	09%
Random Totals		172	29	17%
Select Total Loss Review		<u>25</u>	<u>3</u>	12%
Review Totals		197	32	16%

2. PIP Electronic Population-wide Time Study and Interest Review

a. Population Review of Delayed PIP Bill Settlements

	<u>PIP Population</u>	<u>PIP Delayed Exceptions</u>	<u>Exception Ratios</u>
Paid Claims	6,093	429	7%
Denied Claims	<u>5,298</u>	<u>698</u>	13%
Review Totals	11,391	1,127	10%

b. Population Review of Interest Errors on Delayed Paid PIP Bill Settlements

	<u>PIP Delayed Exceptions</u>	<u>PIP Interest Exceptions</u>	<u>Exception Ratios</u>
Failure to Pay Interest	429	48	10%

C. PERSONAL INJURY PROTECTION

1. Failure to Settle PIP Claims Timely – 15 Random Sample Files in Error (14 Paid Errors and 1 Denied File in Error) and 1,127 Population-wide Exceptions (429 Paid Claims and 698 Denied Claims). Improper General Business Practice

N.J.S.A. 39:6A-5(g) 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.” Where such an extension is requested, the maximum settlement period may not exceed 105 days.

The examiners reviewed 50 paid and 30 denied PIP claims and found that Esurance failed to settle 12 paid claims within the maximum 60 calendar day time frame without securing the 45 day extension for additional time to investigate.

Delays ranged from a low of 3 days beyond 60 days to a high of 113 days beyond 60 days with an average delay of 63 days.

Furthermore, the examiners found two additional paid claims where the Company requested a 45-day extension but failed to settle the claims within 105 days. Delays ranged from a low of 21 days beyond 105 days to a high of 23 days beyond 105 days with an average delay of 22 days. The examiners also found that Esurance failed to deny one PIP claim within 60 days. The Company denied that claim 135 days after receipt for a delay of 75 days beyond the required 60 days.

On the random sample review, the examiners found an overall 28% rate of delay (14 delayed paid PIP claims out of 50 reviewed) on paid PIP claims. Accordingly, the examiners cited paid PIP claim delays as an improper general business practice. The examiners found an overall 3% error ratio on denied PIP claims. On the population-wide electronic review of all 11,391 files that comprised the universe of PIP settlements, the examiners found 1,127 settlements (both paid and denied) that exceeded the maximum allowable settlement period of 105 days, for an exception ratio of 10%.

SEE APPENDIX A-1 FOR A LIST OF FILES IN ERROR

2. Failure to Pay Interest on Delayed PIP Payments - 2 Random Files in Error and 48 Population-wide Exceptions (\$707.90 in Unpaid Interest). Improper General Business Practice.

N.J.S.A. 39:6A-5(h) requires the payment of interest on all overdue benefits. Contrary to this requirement, Esurance failed to pay interest on claim numbers NJS0013316 and NJS0015405. Esurance agreed with these errors and issued interest checks to the providers.

The examiners also conducted an electronic review of the Company's entire population of 429 paid PIP bill settlements that occurred beyond the maximum 105 day settlement period. The examiners found that Esurance failed to pay \$707.90 in interest on 48 such bills, or 10% of all paid delayed bills where interest was due.

THESE RANDOM FILES IN ERROR ARE LISTED IN APPENDIX A-2

D. PHYSICAL DAMAGE AND PROPERTY DAMAGE CLAIMS

3. Settlement Delays and Failure to Issue Delay Notices - 6 Files in Error

N.J.A.C. 11:3-10.5(a) and N.J.A.C. 11:2-17.7(c) state that unless clear justification exists, the maximum payment period for physical damage claims shall be 30 calendar days and 45 calendar days for property damage claims.

N.J.A.C. 11:3-10.5(b) and **N.J.A.C. 11:2-17.7(e)** state that, if the insurer is unable to settle a claim within the time periods specified, the insurer must send the claimant written notice by the end of the payment periods. This notice must specify the reason for the delay. **N.J.A.C. 11:3-10.5(b)** and **N.J.A.C. 11:2-17.7(e)** also require an insurer to send an updated, written notice of delay on collision and property damage claims every 30 and 45 days, respectively, until all elements of the claim are paid or denied.

The examiners reviewed 46 paid and 46 denied first and third party claims and found that Esurance failed to settle six claims (1 paid collision, 2 paid comprehensive, 2 denied collision and 1 denied property damage) within the correct time frame. The Company also failed to issue any delay notices on five of the cited claims. On one of these paid comprehensive claims, the Company sent the initial delay letter timely but failed to send the additional delay letters that were required. Delays ranged from a low of 7 days beyond 30 to a high of 62 days beyond 30 for first party claims and 233 days beyond 45 for the third party claim.

SEE APPENDIX A-3 FOR A LIST OF FILES IN ERROR

4. Failure to Provide Notice of Right of Recourse - Two First Party and Three Third Party Claims (Improper General Business Practice Third Party Claims)

N.J.A.C. 11:3-10.4(c) requires insurers to provide first and third party claimants with a written notice of the rights of recourse at the time a total loss settlement draft is issued, and to retain a copy of the notice in the claim file. Contrary to this regulation, the examiners found that Esurance failed to provide the required written right of recourse notice on two first party claims. The examiners also found this error on three third party claims. In response to the examiners' inquiry, the Company disagreed with this error on third party claims and stated that **N.J.A.C. 11:3-10.4(c)** does not apply to third party claims. The examiners note, however that **N.J.A.C. 11:2-17.10(a)** makes **N.J.A.C. 11:3-10.4(c)** applicable to third party claims. Therefore, Esurance failed to comply with this disclosure requirement on its entire population of third party total losses.

SEE APPENDIX A-4 FOR A LIST OF FILES IN ERROR

5. Failure to Adjudicate and Deny Claims – 3 Files in Error

Pursuant to **N.J.S.A. 17:29B-4(9)(e)**, insurers must affirm or deny coverage for a claim within a reasonable time period. In addition, **N.J.S.A. 17:29B-4(9)(n)** requires an insurer to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement. Lastly, **N.J.A.C. 11:2-17.8(b)**

requires insurers to confirm all denials to the claimant in writing and to maintain a copy in the appropriate claim file. The examiners found that Esurance failed to adjudicate three claims (2 comprehensive and 1 property damage). In each situation, the examiners found no indication that the Company either denied the claim or notified the claimant of a claim denial. As such, the Company failed to comply with the above-referenced statutes and regulation.

SEE APPENDIX A-5 FOR A LIST OF FILES IN ERROR

6. Failure to Report the Sale of Salvage to the National Insurance Crime Bureau - 2 Files in Error

N.J.A.C. 11:16-2.4(a)2 requires an insurance company to report all vehicle salvage losses to the National Insurance Crime Bureau (NICB) or its member companies within five working days after the salvage sale; or, if the insured is permitted to retain salvage, within five working days after the loss payment date.

During the claim review, the examiners found one comprehensive claim and one property damage claim where the Company failed to report the sale of salvage to the NICB as required by the regulation.

SEE APPENDIX A-6 FOR A LIST OF FILES IN ERROR

7. Improper Total Loss Sales Tax Calculation – 1 File in Error

N.J.A.C. 11:3-10.4(a) states in part that, "...if the insurer elects to make a cash settlement, it must bear in mind that the insured's position is that of a retail consumer, and that the settlement must be reasonable and fair for a person in that position..." Moreover, "... if the insurer elects to make a cash settlement, its offer is subject to additions and deductions plus applicable sales tax."

On total loss claim number NJS0016765, the third party claimant chose to retain salvage. However, Esurance incorrectly reduced the pre-tax actual cash value by the amount of the salvage retention deduction. As such, the Company's cash offer and settlement did not include the required sales tax on this value, ultimately resulting in a claim underpayment. This method of settlement is contrary to the approved deduction and settlement calculation methodology outlined in **N.J.A.C. 11:3-10.4(a)**, and is inconsistent with Bulletin 09-23 that this Department issued on July 27, 2009.

The following chart illustrates Esurance's incorrect salvage retention settlement methodology (Column A) that resulted in a \$13.34 underpayment on claim NJS0016765, as well as the correct settlement (Column B).

Incorrect Company Evaluation (Column A)		Correct Evaluation (Column B)	
Actual Cash Value	\$ 1925.00	Actual Cash Value	\$ 1925.00
Salvage Retention	- 200.75	Sales Tax (7% - NJ)	+ 134.75
Subtotal	\$ 1724.25	Subtotal	\$ 2059.75
Sales Tax (7% - NJ)	+ <u>120.70</u>	Salvage Retention	- <u>200.75</u>
Subtotal	\$ 1844.95	Settlement	\$1859.00
- 5% liability	92.24	- 5% liability	92.95
Settlement	\$ 1752.71	Settlement	\$1766.05
			Total Underpayment
			(\$13.34)

THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX A-7

8. Failure to Pay Sales Tax on Total Losses - 4 Files in Error (1 Random and 3 Select Reviews)

N.J.A.C. 11:3-10.4(a) states in part that, "...if the insurer elects to make a cash settlement, it must bear in mind that the insured's position is that of a retail consumer, and that the settlement must be reasonable and fair for a person in that position..." Moreover, "... if the insurer elects to make a cash settlement, its offer is subject to additions and deductions plus applicable sales tax."

Contrary to **N.J.A.C. 11:3-10.4(a)**, the examiners found one claim from the random review (NJS0020009) in which the company issued a settlement offer letter to a third party claimant stating that tax is not paid on owner retained vehicles. Failure to pay sales tax on this owner retained total loss resulted in a Company underpayment of \$291.48. Esurance agreed with this error and stated that this file was handled incorrectly by its Atlanta, Georgia office.

In order to test the extent of this error, the examiners identified a total of 25 New Jersey owner retained third party total loss claims that were adjusted at the Atlanta claims branch office during the review period. The examiners found three additional claims in which Esurance's Atlanta, Georgia office failed to pay tax on the evaluation. Total underpayment for each claim is summarized in the following chart.

<u>Claim Number</u>	<u>Incorrect Evaluation Without Sales Tax</u>	<u>Correct Evaluation With Sales Tax</u>	<u>Amounts Underpaid</u>
NJS0020009	\$3,705.45	\$3,996.93	\$291.48.
NJS0015129*	\$1,174.05	\$1,276.88	\$102.83
NJS0017820*	\$3,097.39	\$3,340.64	\$243.25

FXP0021901*	\$2,485.74	2,776.31	<u>\$290.57</u>
Total			\$928.13
* Select File Review			

THESE FILES IN ERROR ARE ALSO LISTED IN APPENDIX A-8

III. UNDERWRITING AND RATING

A. INTRODUCTION

The examiners reviewed randomly selected policy files from Esurance of New Jersey's database run of 21,806 renewals and 40,041 new business policies that were in force during the period January 1, 2010 through December 31, 2010. The examiners checked for compliance with specific statutes and regulations, including N.J.S.A. 17:29A-6 and 15 (filed and approved rating methodologies), N.J.A.C. 11:3-14.5 and N.J.S.A. 39:6A-4 (option to choose health care insurance as primary), N.J.S.A. 39:6A-4.1 (multi-car discounts on PIP premium) and N.J.S.A. 17:29B (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. Separate error ratios are determined for each review sample as indicated in the chart that follows.

Random Sample Error Ratio Chart

<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
New Business	25	0	0
Renewals	<u>25</u>	<u>0</u>	0
Total	50	0	0

C. EXAMINERS' FINDINGS

Rating and Underwriting

The examiners reviewed a random sample of 50 files and found no files in which the Company failed to comply with N.J.S.A. 17:29A-6 and 15 (filed and approved rating methodologies), N.J.A.C. 11:3-14.5 and N.J.S.A. 39:6A-4 (option to choose health care insurance as primary), N.J.S.A. 39:6A-4.1 (multi-car discounts on PIP premium) and N.J.S.A. 17:29B (Trade Practices). The company correctly underwrote and assigned risks to the appropriate rating factors and rating territories. Territorial assignment and base rates were also correct.

IV. NEW BUSINESS QUOTES AND COVERAGE SELECTION

A. INTRODUCTION

While conducting the Rating and Underwriting review in Section III above, the examiners discovered that 24 out of 25 randomly selected new business policies (96%) were written with minimum \$15,000 PIP Medical Expense Limits. The examiners also found that 19 out of 25 randomly selected renewal business policies (76%) were written with minimum \$15,000 PIP Medical Expense Limits. Among both categories, Esurance wrote 43 out of 50 policies with minimum \$15,000 PIP Medical Expense Limits. As such, policies with minimum PIP limits represent 86% of the entire population of randomly selected files reviewed.

To test the reliability of these observations, the examiners compared the 86% random file selection statistic with the Company's most recent overall census data for 2010 and 2011 and found similar results. For the period ending December 2010, policies with the \$15,000 PIP limit represented 87.06% of Esurance's entire inforce population. For the period ending June 2011, the \$15,000 PIP limit represented 86.68% of Esurance's entire inforce population. Statewide for all private passenger auto writers; however, only 13% of the entire New Jersey market chose minimum PIP medical expense limits

These results prompted the examiners to review Esurance's on-line quoting methodology that was utilized at the time of the exam. Upon completion, the examiners concluded that Esurance failed to comply with N.J.S.A. 39:6A-4.3a and N.J.A.C. 11:3-14.3(a), which require that if an applicant does not affirmatively select optional medical expense benefits limits in writing, then the policy shall provide a \$250,000 medical expense benefits coverage. This error is addressed in section B below.

B. EXAMINERS' FINDINGS

1. Default Selection of Minimum PIP Limits in the Application Process (Improper General Business Practice due to Systemic Error)

Pursuant to N.J.S.A. 39:6A-4.3e and N.J.A.C. 11:3-14.3(a), an insurer is required to make available *as an option* medical expense benefits in amounts of \$150,000, \$75,000, \$50,000 and \$15,000. This statute and regulation require that if none of these options is affirmatively chosen in writing, the policy shall provide \$ 250,000 medical expense benefits coverage. .

While conducting this review, the examiners found that Esurance's initial quote screen permits the applicant to enter current policy bodily injury, property damage and uninsured motorist liability limits, as well as collision and comprehensive deductibles. No opportunity exists on the initial quote, however, for the applicant to select current PIP coverage (med pay only or full PIP),

deductibles or coverage limits. Notably, the initial quote defaults to the lowest possible coverage limit of \$15,000.

After the quote is presented, but without any disclosure, the software does at this point permit the applicant the ability to increase PIP coverage limits up to \$250,000. The Company's inordinately high proportion of \$15,000 PIP limits (86.68% of its in force population) may be due to its automatic first quotation of \$15,000 PIP limits.

As outlined above, Esurance's quote software defaults to the \$15,000 limit denying the applicant's opportunity to affirmatively choose the PIP medical expense limit upon which the quote, and ultimately the premium, is based. Where the applicant does not override this default on subsequent screens but nevertheless binds coverage later in the quote process, the applicant still has not affirmatively chosen a \$15,000 PIP medical expense limit, contrary to N.J.A.C. 11:3-14.3(a) and N.J.S.A. 39:6A-4.3e. The examiners found that this error occurred at the time of the exam.

Esurance disagreed with this error, stating that applicants have the ability to modify coverage levels prior to purchasing a policy. As indicated above, however, the Company's web-based quoting system that pre-populates the PIP limit and disallows an exact premium comparison or quote based on higher PIP limits at the onset of the application process is not in accordance with N.J.S.A. 39:6A-4.3e and N.J.A.C. 11:3-14.3(a).

V. LICENSING OF STAFF

According to **N.J.S.A. 17:22A-29**, a person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for that line of authority. Esurance provided the examiners with a list of persons who responded to telephone and internet quotes and applications. The list contained 226 names of agents that reply to requests from New Jersey consumers. All 226 agents were licensed to sell property and casualty insurance in New Jersey.

N.J.S.A. 17:22A-42c requires that any insurer appointing an agent shall file with the Commissioner a notice of appointment providing the names and business addresses of its agents. The examiners determined that the Company notified the New Jersey Department of Banking and Insurance of the appointments of all 226 agents.

VI. RECOMMENDATIONS

Esurance 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 Esurance 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.

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 Esurance 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 from Section II to be reopened with additional claim payments, Esurance should provide the insured with a cover letter that contains the following first paragraph:

"During a review of your claim by Market Conduct Examiners of the New Jersey Department of Banking and Insurance, they found that we (failed to pay interest on your Personal Injury Protection claim/failed to pay the correct sales tax on your total loss claim). Enclosed is our payment in the amount of (insert amount) to correct our error."

On all policies subject to Section IV of this report, Esurance should provide the insured with a cover letter that contains the following First paragraph:

“During a review of your claim by Market Conduct Examiners of the New Jersey Department of Banking and Insurance, they found when your policy was written that we failed to provide you the opportunity to affirmatively select the Personal Injury Expense Limit that best fits your need. To correct this error, we are providing a coverage selection form to you for completion. You have the option to retain your current Personal Injury Expense Limit; however, if you decide to increase your Personal Injury Expense Limit, your premium will increase. If you return the enclosed coverage selection form within 30 days, we will add the Limit that you have selected. If you do not return the coverage selection form within 30 days, your current limit will remain as is and your premium will not increase. Alternatively, you may complete a coverage selection form electronically by contacting us on our web site, at xxxxxxxx.xxx ” within 30 days of this notice.

B. CLAIMS

1. Esurance must issue written instructions to all appropriate claims personnel stating that:

- a. pursuant to N.J.S.A. 39:6A-5 and N.J.A.C. 11:2-17.7(a), all PIP claims must be settled (paid, denied, compromised) within 60 days unless an extension of 45 days is requested in writing, within this 60-day period, for a total period not to exceed 105 days from the notice of loss;
- b. pursuant to N.J.S.A. 39:6A-5h, the Company must correctly calculate and pay interest on PIP claims settled beyond the time frames specified in this report.

2. Esurance must reopen and review the PIP claims listed in Appendix A-2 of this report. The Company should calculate and pay the correct interest due for the period of delay as required by N.J.S.A. 39:6A-5(h). A list including claim numbers, additional amount of interest paid, principal and dates utilized to calculate the actual delayed period should be provided to the Commissioner to verify compliance with this recommendation. See general instructions for language to be included in the cover letter sent with each interest payment.

3. Esurance must issue written instructions to all appropriate claims personnel stating that:

- a. N.J.A.C. 11:3-10.5(a) and N.J.A.C. 11:2-17.7(c) state that unless clear justification exists, the maximum payment period for physical damage claims shall be 30 calendar days and 45 calendar days for property damage claims. N.J.A.C. 11:3-10.5(b) and N.J.A.C. 11:2-17.7(e) state that, if the insurer is unable to settle the claim within the time periods specified, the insurer must send the claimant written notice by the end of the payment periods. This notice must specify the reason for the delay. N.J.A.C. 11:3-10.5(b) and N.J.A.C. 11:2-17.7(e) also require an insurer to send an updated, written notice of delay every 30 and 45 days, respectively, until all elements of the claim are paid or denied;
 - b. pursuant to N.J.A.C. 11:3-10.4(c), insurers must provide first and third party claimants with a written notice of the right of recourse at the time of settlement on total loss claims and that a copy of this notice must be retained in the claim file;
 - c. in accordance with N.J.A.C. 11:2-17.8(b) insurers must adjudicate all claims and confirm all denials to the insured and claimant in writing and maintain a copy in the appropriate claim file;
 - d. pursuant to N.J.A.C. 11:16-2.4(a)2, the company must report all vehicle salvage loss sales to the National Insurance Crime Bureau within five working days of the salvage sale or loss payment date if the insured or claimant retains salvage.
4. Esurance should issue written instructions to all appropriate personnel stating that, where the first or third party claimant takes possession of a total loss vehicle, interest must be included on that portion of the claim that represents a salvage retention deduction. These instructions should also emphasize the need to calculate and pay tax as required by N.J.A.C. 11:3-10.4(a). The Company should also provide all applicable claim settlement staff with a copy of Department of Banking and Insurance Bulletin 09-23 dated July 27, 2009.
 5. Esurance must reopen and review the claims listed in appendices 7 and 8 of this report and either calculate or recalculate sales tax properly in order to pay the insured or claimant the correct tax owed pursuant to the settlement methodology outlined in N.J.A.C. 11:3-10.4(a) and this report. A list including each claim number and the additional amount of sales tax paid should be provided to the Commissioner to verify compliance with this recommendation.

C. NEW BUSINESS QUOTES, COVERAGE SELECTION AND MARKETING

6. In order to comply with N.J.A.C. 11:3- 14.3(a) and N.J.S.A. 39:6A-4, the company must revise its online quoting system to permit the applicant's affirmative selection of PIP and all other coverages subject

to a Coverage Selection Form. A revised methodology must be provided to the Commissioner for review. Specifically, the applicant must be given the ability to select or deselect any value for any coverage on the coverage selection form during the quote process. If a default value is used for medical expense benefits in lieu of an affirmative selection, it should be \$250,000 medical benefit limit.

7. Upon receipt of the adopted market conduct examination report, Esurance must either issue coverage selection forms to all policyholders, at no cost and in a manner that permits an affirmative selection of coverage, or invite all policyholders to make coverage selections via the Company's corrected web site. See appropriate cover letter language that appears in section VI.A above.

APPENDIX A – Claim Errors

1. Failure to Settle PIP Claims Timely – 15 Files in Error (14 Paid Files in Error and 1 Denied File in Error)

<u>Claim Number</u>	<u>Date Bill Received</u>	<u>Date Bill Paid</u>	<u>Total Days to Pay</u>	<u>Days Beyond 60/105</u>
NJS0015009	4/8/10	9/15/10	160*	100
NJS0017344	7/16/10	12/1/10	138*	78
NJS0017337	6/28/10	10/27/10	121*	61
NJS0015405	4/12/10	8/18/10	128+	23
NJS0017509	7/1/10	12/21/10	173*	113
NJS0012777	9/21/09	1/7/10	108*	48
NJS0013315	10/16/09	3/24/10	159*	99
NJS0013316	1/11/10	5/05/10	114*	54
NJS0013550	10/30/09	3/31/10	152*	92
NJS0013634	9/29/09	1/7/10	100*	40
NJS0013814	10/9/09	3/3/10	145*	85
NJS0014270	11/17/09	1/19/10	63*	3
NJS0014159	1/4/10	4/28/10	114*	54
NJS0014395	4/28/10	9/1/10	126+	21
NJS0010452	4/28/10	9/10/10	135^	75

* = Paid between 60 and 105 days.

+ = Paid beyond the 105-day time frame.

^ = Denied beyond 60 days

2. Failure to Pay Interest on Delayed PIP Payments - 2 Files in Error

<u>Claim #</u>	<u>Amount Paid</u>	<u>Interest Owed</u>
NJS0013316	\$1,608.37	\$3.57
NJS0015405	\$11,799.18	\$11.15

3. Settlement Delays and Failure to Issue Delay Notices - 6 Files in Error

<u>Claim Number</u>	<u>Claim Type</u>	<u>Receipt Date</u>	<u>Date Paid</u>	<u>Total Days to Pay</u>	<u>Days Beyond 30/45</u>
NJS0016316	Collision	4/14/10	6/17/10	64	34
NJS0016687	Comprehensive	5/10/10	7/23/10	74	44

NJS0018620	Comprehensive	9/6/10	12/7/10	92	62
NJS0014298*	Collision	10/29/09	1/23/10	86	56
NJS0017966*	Collision	7/28/10	9/3/10	37	7
NJS0015926*	Property Damage	3/17/10	12/20/10	278	233

*Denied Claim

4. Failure to Provide Notice of Right of Recourse - 5 Files in Error

<u>Claim Number</u>	<u>Coverage</u>
NJS0018355	Comprehensive
NYA0055376	Collision
NJS0016765	Property Damage
FXP0009875	Property Damage
NJS0020009	Property Damage

5. Failure to Deny or Adjudicate Claims – 3 Files in Error

<u>Claim Number</u>	<u>Coverage</u>
NJS0015236	Comprehensive
NJS0017865	Property Damage
NJS0015531	Comprehensive

6. Failure to Report the Sale of Salvage to the National Insurance Crime Bureau - 2 Files in Error

<u>Claim Number</u>	<u>Coverage</u>
NJS0018620	Comprehensive
FXP0009875	Property Damage

7. Improper Total Loss Sales Tax Calculation on Salvage Retention Value– 1 File in Error

<u>Claim Number</u>	<u>Incorrect Evaluation without Sales Tax</u>	<u>Correct Evaluation with Sales Tax</u>	<u>Underpayment</u>
NJS0016765	\$1,752.71	\$1766.05	\$13.34

8. Failure to Pay Sales Tax on Total Losses - 4 Files in Error (1 Random and 3 Select Reviews)

<u>Claim Number</u>	<u>Incorrect Evaluation without Sales Tax</u>	<u>Correct Evaluation with Sales Tax</u>	<u>Underpayment</u>
NJS0020009@	\$3,705.45	\$3,996.93	\$291.48
NJS0015129*	\$1,174.05	\$1,276.88	\$102.83
NJS0017820*	\$3,097.39	\$3,340.64	\$243.25
FXP0021901*	\$2,485.74	2,776.31	\$290.57

@ Random Review
* Select Review

VI. VERIFICATION PAGE

I, Marleen Sheridan, am the Examiner-in-Charge of the Market Conduct Examination of Esurance 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 Esurance Insurance Company of New Jersey as of July 22, 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.

November 4, 2011
Date

Marleen Sheridan
Marleen Sheridan
Examiner-In-Charge
New Jersey Department
of Banking and Insurance