



# **Market Conduct Examination**

Franklin Mutual Insurance Company  
Fidelity Mohawk Insurance Company  
FMI Insurance Company

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: June 25, 2009

MARKET CONDUCT EXAMINATION  
of  
FRANKLIN MUTUAL INSURANCE COMPANY  
FIDELITY MOHAWK INSURANCE COMPANY  
FMI INSURANCE COMPANY

Located in  
Branchville, New Jersey

as of  
January 10, 2007

BY EXAMINERS

of the  
STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

**OFFICE OF CONSUMER PROTECTION SERVICES**

**MARKET CONDUCT EXAMINATIONS AND ANTIFRAUD COMPLIANCE SECTION**

**DATE REPORT ADOPTED: JUNE 25, 2009**

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# I. INTRODUCTION

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## A. SCOPE OF EXAMINATION

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This is a report of the Market Conduct and Anti-Fraud Compliance activities of the FMI Insurance Group, which includes Franklin Mutual Insurance Company, Fidelity Mohawk Insurance Company and FMI Insurance Company (hereinafter referred to as FMI, the Companies or the FMI Companies). In this report, examiners of the New Jersey Department of Banking and Insurance (hereinafter referred to as NJDOBI or the Department) present their findings, conclusions and recommendations as a result of their examination.

The purpose of this examination was to evaluate FMI Insurance Company's compliance with certain regulations and statutes that pertain to homeowner and dwelling fire insurance. Areas of review included complaints, rating, underwriting and terminations. This examination covered the Company's New Jersey homeowner and dwelling fire insurance business activities during the period July 1, 2004 to June 30, 2005. Between January 3, 2006 and March 24, 2006, the examiners completed their field work at the Company's Branchville, New Jersey office. On various dates thereafter, the examiners completed additional review work and report writing. The Market Conduct Examiners included Robert Greenfield, Examiner-in-charge, Esther Turner 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 NAIC Market Conduct Handbook.

## B. ERROR RATIOS

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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 which 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 are 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 constitute 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 FMI 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, FMI agreed with some of the errors cited in this report. On those errors with which the Companies 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 Companies' explanatory responses. In others, the errors remained as cited in the examiners' inquiries.

## C. COMPANY PROFILE

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The FMI Insurance Group conducts business solely in New Jersey through three companies, Franklin Mutual Insurance Company, FMI Insurance Company and Fidelity Mohawk Insurance Company. Franklin Mutual was incorporated on May 26, 1879 under the laws of New Jersey and commenced operations on June 2, 1879 with the title Franklin Farmers Mutual Fire Assurance Association. The present title was adopted on August 12, 1937. FMI Insurance Company was incorporated on February 1, 1979 and began business on August 1, 1979. Fidelity Mohawk Insurance Company was incorporated on May 11, 1983, and commenced active operations on May 24, 1996. FMI Insurance Company and Fidelity Mohawk Insurance Company are both 100% owned by FMI, Inc., a downstream holding company owned 100% by Franklin Mutual.

The majority of the direct business written by the group is split approximately 90% between Franklin Mutual and FMI Insurance, with approximately 10% handled by Fidelity Mohawk. All of the business written by FMI Insurance and Fidelity Mohawk is reinsured by Franklin Mutual.

The group's business is approximately 40% commercial and 60% personal lines with the commercial book consisting of business owners, multiple-peril, general liability and workers compensation. The personal lines book is mainly comprised of homeowners and dwelling fire, including two books of personal lines homeowners, scheduled inland marine, dwelling fire and liability and personal umbrella.

The majority of the group's business is written in Bergen, Morris, Ocean and Hudson counties. Approximately 320 producers write for the group.

## II. COMPLAINTS

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### A. INTRODUCTION

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During the review period of July 1, 2004 to June 30, 2005, FMI's complaint register indicated that consumers filed a total of 17 complaints: sixteen with the New Jersey Department of Banking and Insurance and one direct complaint with the Company. Of the 17, the examiners reviewed 13 homeowner complaint files selected from this population of which one was both a direct and DOBI complaint and the remaining 12 were DOBI complaints. In reviewing these complaints, the examiners checked for compliance with applicable statutes and regulations, with emphasis on N.J.S.A. 17:23-1 (prompt responses to complainant), N.J.A.C. 11:2-17.6(d) and (e) and N.J.S.A. 17:29B-4 (complaint handling procedures). (The remaining 4 complaints that were not reviewed are General Liability policies which are not in the scope of our review.)

### B. COMPLAINT ERROR RATIOS

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<u>Complaint Category</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Underwriting	13	6	46%

### C. EXAMINERS' FINDINGS

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#### 1. Maintenance of Complete Complaint Records

N.J.S.A. 17:29B-4(10) requires an insurer to maintain complete records of all the complaints it receives. These records are to include the total number of complaints, their classification by line of insurance, the nature and disposition of each complaint, and the time it took to process each complaint.

The examiners reviewed the Company's complaint record and found that FMI's complaint log did not contain the total or aggregate number of complaints. In response to a written inquiry, FMI stated that it maintains complaint records on a calendar year basis that includes a running total. FMI further stated that the log provided in response to this examination spanned two partial calendar years (the review period July 1, 2004 to June 30, 2005) and that the total number of complaints was inadvertently omitted when the log was produced on an off-calendar year basis for this examination. The Company provided the examiners with a revised copy of the complaint log that complied with this requirement.

## **2. Failure to Promptly Respond to Direct Complaint (1 File in Error)**

**N.J.A.C. 11:2-17.6(e)** requires that a response be provided to a claim-related communication received directly from an insured within 10 working days. Although this regulation applies when the subject matter is a claim, it also establishes a workable guideline for responding to non-claim related inquiries from insureds.

On Policy Number HOP2826872, the examiners found that the Company failed to respond to the insured on this non-claim complaint dated January 12, 2005. It wasn't until the insured filed a complaint with the Department on February 2, 2005 that FMI responded.

In response to a written inquiry, FMI stated that, "It has been our interpretation that this chapter pertains only to inquiries or complaints presented by a claimant regarding a submitted claim. However, we do agree that all inquiries or direct complaints should be answered in a timely manner."

## **3. Failure to Respond Promptly to DOBI Complaints (5 Files in Error)**

**N.J.A.C. 11:2-17.6(d)** states that, "Every insurer, upon receipt of any inquiry from the Insurance Department respecting a claim shall, within 15 working days of receipt of such inquiry furnish the Department with, based on the information available to the insurer, a complete and accurate written response to the inquiry."

Contrary to the regulation, the examiners found on three homeowner policies and two dwelling fire policies that the Company failed to respond to the Department within the required timeframe. In response to an inquiry, FMI agreed that complaints should be responded to promptly.

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**PLEASE SEE APPENDIX A1 FOR FILES IN ERROR**

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# III. RATING, UNDERWRITING AND POLICYHOLDER SERVICE

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## A. INTRODUCTION

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The examiners reviewed randomly selected homeowner and combination dwelling policy files from the Company's book of business that was in force during the review period of July 1, 2004 to June 30, 2005. During this period, the Company reported a total of 46,149 homeowner and 16,981 dwelling fire policies in force. Among the dwelling fire policies, 665 were written in FMI Insurance Company, 4,048 were written in Fidelity Mohawk and 12,268 were written in Franklin Mutual Insurance Company. Among the homeowner policies, 561 were written in FMI Insurance Company, 10,961 were written in Fidelity Mohawk and 34,627 were written in Franklin Mutual Insurance Company.

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

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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.

<b>Company Reviewed</b>	<b>Files Reviewed</b>	<b>Files in Error</b>	<b>Error Ratio</b>
<b><i>Rating</i></b>			
FMI Ins Co	203	0	0%
Franklin Mutual Ins Co	146	2	1%
Fidelity Mohawk Ins Co	96	1	1%
Random Sample Totals	445	3	<1%
<b><i>Underwriting/Policyholder Service</i></b>			
FMI Ins Co	203	0	0%



Franklin Mutual Ins Co	146	0	0%
Fidelity Mohawk Ins Co	96	0	0%
Random Sample Totals	445	0	0%

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## C. EXAMINERS' FINDINGS

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The examiners selected and reviewed a total of 445 homeowner and dwelling fire policies to verify that the Company followed its written underwriting guidelines. Utilizing the same 445 files, the examiners also conducted a targeted rating review and checked for proper assignment to protection classification codes, as well as proper application of protective device premium discounts. The results of this review are as follows.

### A. Rating Errors

#### 1. **Failure to Provide Rating Discounts - 3 Files 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. Contrary to this requirement, the examiners found three policies in which the Company failed to provide discounts for which the insured qualified.

On Franklin Mutual Insurance Company policy number HOP2840713, the Company incorrectly assigned the insured to Protection Class Code B when the correct code was A. This resulted in an overcharge of \$39.00. In response to an inquiry, the Company endorsed the policy to reflect the correct class code and issued a premium credit for \$39.00.

On Fidelity Mohawk policy number HOP2282132, the Company incorrectly assigned a 2% protective device discount when the policyholder qualified for a 10% discount. This resulted in an overcharge of \$54 for the inception policy period and one renewal, for a total overcharge of \$108.00. See recommendations section.

On Franklin Mutual Insurance Company policy number HOP2342432, the Company failed to provide the policyholder with a 5% base rate new home credit for 10 policy periods. This error resulted in a premium overcharge of over \$200.00. See recommendations.

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### **THESE FILES ARE ALSO LISTED IN APPENDIX B1**

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### B. Underwriting and Policyholder Service Errors

The examiners found no underwriting or policyholder service errors.

# IV. TERMINATIONS

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## A. INTRODUCTION

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During the review period July 1, 2004 to June 30, 2005, the FMI Companies cancelled 1,649 new business policies within the first 60 days and cancelled 8,675 policies beyond the first 60 days. During this time period, the Company non-renewed 421 policies. From these populations, the examiners randomly selected and reviewed 268 terminations in the distributions outlined below. 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

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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>Review Category</u>	<u>Review Sample</u>	<u>Number Errors</u>	<u>Error Ratio</u>
<b>FMI Insurance</b>			
Nonrenewals	65	19	29%
60 Day Cancellations	62	0	0%
Declinations	<u>56</u>	<u>0</u>	0%
Subtotals	183	19	10%
<b>Franklin Mutual</b>			
Nonrenewals	60	15	25%
60 Day Cancellations	0	0	0%
Declinations	<u>23</u>	<u>0</u>	0%
Subtotals	83	15	18%
<b>Fidelity Mohawk</b>			
Nonrenewals	2	0	0%
60 Day Cancellations	0	0	0%
Declinations	<u>0</u>	<u>0</u>	0%
Subtotals	2	0	0%
<b>Overall Totals</b>	<b>268</b>	<b>34</b>	<b>13%</b>

## C. EXAMINERS' FINDINGS

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The examiners selected and reviewed a total of 268 terminations to verify that the Company followed its written underwriting guidelines and applicable statutes and regulations governing cancellations and nonrenewals. The results of this review are as follows.

### **1. Failure to Issue Proper Notice of Nonrenewal - 34 Files in Error**

Pursuant to **N.J.A.C. 11:1-20.2(g)** no notice of nonrenewal is valid unless it “contains the standard or reason upon which termination is premised and specifies in detail the factual basis upon which the insurer relies.” The examiners found 34 nonrenewals in which the Companies stated simply that the policy “is being nonrenewed request of agent.” The company disputed the findings indicating the request was made by the terminated agent; however nonrenewals pursuant to agency terminations must be made in accordance with **N.J.A.C. 11:1-20.4(b)13.**

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**PLEASE SEE APPENDIX C-1 FOR FILES IN ERROR**

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## V. RECOMMENDATIONS

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The FMI Companies should inform all responsible personnel and, where applicable, third party entities that 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 the Companies 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.

The examiners acknowledge that during the examination, the FMI Companies agreed and had already complied with, either in whole or in part, some of the recommendations stated below. 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.

Various non-compliant practices were identified in this report, some of which where applicable, 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 laws and regulations. Where applicable, corrective action for other jurisdictions should be addressed.

### A. GENERAL INSTRUCTIONS

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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, Market Conduct Examinations and Anti-Fraud Compliance Section, New Jersey Department of Banking and Insurance, Mary Roebing Building, 20 West State Street, P.O. Box 329, Trenton, NJ 08625, within thirty (30) calendar days from the date of the final, adopted report.

On files to be reopened as recommended, a letter that offers coverage or premium refunds should be sent to the insured with an accompanying cover letter containing the following first paragraph (variable language is included in parentheses):

"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 have provided you with a (insert type of discount) premium discount. We are now (refunding the premium owed/crediting to your policy with the premium owed) for all applicable policy periods."

## B. COMPLAINTS

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1. The Company must issue written instructions to all appropriate personnel stating that **N.J.A.C. 11:2-17.6(e)** requires a response within 10 working days to direct complaints on claim related matters, and that direct complaints on non-claim related matters should also be responded to within a 10-working day period to assure promptness, whether the subject matter is a claim or non-claim related complaint.
2. FMI must issue written instructions to all appropriate personnel stating that **N.J.A.C. 11:2-17.6(d)** requires insurers to respond to all DOBI claim complaints within 15 working days. This same time period establishes a prompt response that should also be applied to non-claim DOBI complaints.

## C. RATING, UNDERWRITING AND POLICYHOLDER SERVICE

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3. The Company must issue written instructions to all appropriate personnel stating that, pursuant to **N.J.S.A. 17:29A-4(d)**, dwellings equipped with protective devices/alarms qualify the insured for discounts as specified in the insurer's rate manual. The Companies should either credit or provide refunds on the three policies listed in section III.C.1 of this report.

## D. TERMINATIONS

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4. The FMI Companies must issue written instructions to all applicable personnel stating that, pursuant to **N.J.A.C. 11:1-20.2(g)** no notice of nonrenewal is valid unless it "contains the standard or reason upon which termination is premised and specifies in detail the factual basis upon which the insurer relies." These instructions should also state that nonrenewals pursuant to agency terminations must be made in accordance with **N.J.A.C. 11:1-20.4(b)13**.

# APPENDIX A – COMPLAINT ERRORS

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## 1. Failure To Respond Promptly to DOBI Complaints (5 Files in Error)

<b>Policy Number</b>	<b>Date of Notice</b>	<b>Date of Response</b>	<b>Business Days in Excess of 15</b>
HOP2829610	7/06/04	8/13/04	13
HOP2829492	7/06/04	8/13/04	13
CDP2833249	10/05/04	11/24/04	20
CDP2843880	4/14/05	6/6/05	21
HOP2838000	11/17/04	1/6/05	17

# APPENDIX B – RATING, UNDERWRITING AND POLICYHOLDER SERVICE

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## 1. Failure to Provide Rating Discounts (3 Files in Error)

Policy Number
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HOP2840713
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HOP2282131
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HOP2342432
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# APPENDIX C – TERMINATIONS

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## 1. Failure to Maintain Documentation that Insured Authorized Nonrenewal on Agency Replacements - 34 Files in Error

<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>	<u>Policy Number</u>
CDP2544494	HOP2380369	HOP2801193	HOP2373104
CDP2544700	HOP2818076	HOP2222759	HOP2368336
CDP2544636	HOP2343934	HOP2204273	HOP2368407
CDP2537145	HOP2820921	HOP2221957	HOP2369301
CDP2544785	HOP2382463	HOP2203382	HOP2373736
CDP2544892	HOP2368914	HOP2199917	HOP2350315
CDP2544610	HOP2345962	HOP2822079	CDP2544809
CDP2540641	HOP2382778	HOP2217893	CDP2800040
HOP2818288	CDP2544919		



# VERIFICATION PAGE

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

The findings, conclusions and recommendations contained in the foregoing report represent, to the best of my knowledge, a full and true statement of the Market Conduct Examination of Franklin Mutual Insurance Company, Fidelity Mohawk Insurance Company and FMI Insurance Company.

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

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Date

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Bob Greenfield  
Examiner-in-Charge  
New Jersey Department  
Of Banking and Insurance