

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of )  
Banking and Insurance, State of New Jersey, ) CONSENT  
with respect to IDS Property Casualty Insurance ) ORDER  
Company (NAIC No: 29068) )

TO: IDS Property Casualty Insurance Company  
3500 Packerland Drive  
Deperre, WI 54115-9070

This matter, having been opened by the Commissioner of Banking and Insurance of the Department of Banking and Insurance ("Department"), State of New Jersey, upon information that IDS Property Casualty Insurance Company ("IDS"), incorporated under the laws of the State of Wisconsin and admitted to transact property and casualty insurance in New Jersey pursuant to N.J.S.A. 17:17-1 through 20, may have violated provisions of New Jersey insurance law: and

WHEREAS the Department filed a Market Conduct Examination Report ("Report") containing the results of the examination of IDS's third party liability automobile claim settlement practices during the period January 1, 2016 to April 30, 2017, performed pursuant to N.J.S.A. 17:23-20 through 26; and

WHEREAS the market conduct examination revealed certain instances where IDS's practices did not accord fully with various provisions of New Jersey insurance statutes or regulations. These instances, as fully set forth in the Report, are incorporated herein by reference; and

IT FURTHER APPEARING that, as a result of the Department's examination, IDS has taken or will take corrective measures pursuant to the recommendations contained in the Report to address the instances of nonconformance set forth in the Report; and

IT FURTHER APPEARING that this matter can be resolved upon the consent of the parties to these proceedings without resort to a formal hearing,

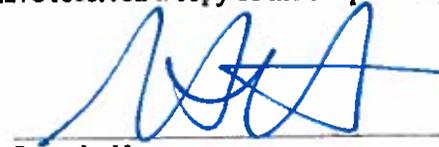
NOW, THEREFORE, IT IS on the 17<sup>th</sup> day of APRIL, 2018

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

IT IS FURTHER ORDERED AND AGREED that IDS will continue to monitor claims settlement activity in order to identify instances of nonconformance with New Jersey insurance statutes and regulations and the recommendations contained in the Report; and

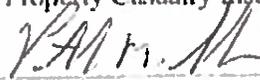
IT IS FURTHER ORDERED AND AGREED that IDS shall comply with New Jersey insurance statutes and regulations and the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that pursuant to N.J.S.A. 17:23-24 d (1), within thirty days of the adoption of this Report, IDS shall file affidavits with the Department's Market Conduct Unit, stating under oath that each of its directors have received a copy of the adopted Report.



Peter L. Hart  
Director of Insurance

Consented to as to form, content and entry  
IDS Property Casualty Insurance Company

By:   
[Signature]

Printed Name: PATRICK M. SWINE

Title: General Counsel

Date: 4-17-18



**State of New Jersey**

**DEPARTMENT OF BANKING AND INSURANCE  
CONSUMER PROTECTION SERVICES  
PO Box 329  
TRENTON, NJ 08625-0329**

**PHIL MURPHY**  
*Governor*

**MARLENE CARIDE**  
*Acting Commissioner*

**SHEILA OLIVER**  
*Lt. Governor*

TEL (609) 292-5316  
FAX (609) 292-5865

**PETER L. HARTT**  
*Director*

April 18, 2018

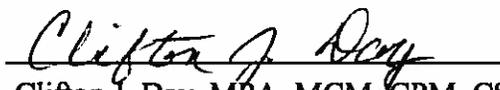
Honorable Marlene Caride  
Acting Commissioner of Insurance  
State of New Jersey  
Department of Banking and Insurance  
20 West State Street  
P.O. Box 329  
Trenton, N.J. 08625

Dear Acting Commissioner Caride,

Pursuant to the authority provided in N.J.S.A. 17:23-20 through 17:23-26 and N.J.S.A. 17:29B-5, and in accordance with your instructions, a market conduct examination of the business practices and affairs was conducted on:

IDS Property Casualty Insurance Company, NAIC Code 29068  
Domiciled in De Pere, Wisconsin

hereinafter referred to as "IDS." The field work for the IDS examination was conducted in our Trenton, N.J. office and at the company's office in De Pere, Wisconsin. The following report is respectfully submitted on behalf of the examination team. Through a deliberative process, I certify the accuracy of the findings presented herein.

  
Clifton J. Day, MPA, MCM, CPM, CSM  
Chief of Market Regulation and Consumer  
Protection Services

**TARGETED**

**MARKET CONDUCT EXAMINATION  
(Exam Tracking Number NJ090-24)**

**of the**

**IDS Property Casualty Insurance Company  
(NAIC Company Number 29068, Group Number 4)**

**Examination at Statutory Home Office at  
3500 Packerland Drive, De Pere, WI 54115-9070**

**as of**

**October 10, 2017**

**BY EXAMINERS**

**of the**

**STATE OF NEW JERSEY**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF INSURANCE**

**OFFICE OF CONSUMER PROTECTION SERVICES**

**MARKET REGULATION SECTION**

**MARKET CONDUCT EXAMINATIONS UNIT**

**DATE ADOPTED: APRIL 18, 2018**

# TABLE OF CONTENTS

|  |                  |
|--|------------------|
| <b>I. INTRODUCTION.....</b>                              | <b>1</b>         |
| A. SCOPE OF EXAMINATION.....                             | 1                |
| B. ERROR RATIOS .....                                    | 1                |
| C. COMPANY PROFILE .....                                 | 2                |
| D. EXECUTIVE SUMMARY .....                               | 2                |
| <b>II. CLAIMS REVIEW.....</b>                            | <b>4</b>         |
| A. INTRODUCTION.....                                     | 4                |
| B. ERROR RATIOS .....                                    | 4                |
| C. PRIVATE PASSENGER PROPERTY DAMAGE CLAIMS REVIEW ..... | 4                |
| <b>III. RECOMMENDATIONS.....</b>                         | <b>12</b>        |
| A. GENERAL INSTRUCTIONS.....                             | 12               |
| B. CLAIMS.....   | 12               |
| <b>APPENDIX A .....</b>                                  | <b>15</b>        |
| <b>IV. VERIFICATION PAGE .....</b>                       | <b>LAST PAGE</b> |

## **I. INTRODUCTION**

This is a report of the Market Conduct activities of IDS Property Casualty Insurance Company (hereinafter referred to as “IDS” or “the Company”). Authority for this examination is found at N.J.S.A. 17:23-20 to 17:23-26. In this report, examiners from 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 the Company’s compliance with statutes and regulations applicable to third party automobile claims. Unless otherwise indicated, the review period for the examination was January 1, 2016 to April 30, 2017.

The examiners conducted their fieldwork at the Company’s office in De Pere, Wisconsin, between August 21, 2017 and August 31, 2017. On various dates following the fieldwork, the examiners completed additional review work and report writing in Trenton, N.J. The Market Conduct examiners were Examiner-in-Charge Robert Greenfield, Erin Porter and Michael Wise.

The examiners randomly selected files and records from computer listings and documents provided by the Company. The random selection process was conducted in accordance with the National Association of Insurance Commissioner’s (“NAIC”) Market Regulation Handbook. The examiners used the NAIC Market Regulation Handbook, Chapters Sixteen (General Examination Standards) and Seventeen (Conducting the Property and Casualty Examination) as a guide to examine the Company and write this report.

### **B. ERROR RATIOS**

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

There may be errors cited in this report that define practices as specific acts that an insurer commits with such frequency 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 Company errors 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 these files as errors 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 IDS the opportunity to respond to the examiners' findings and to provide exceptions to the statutory and/or regulatory errors or mishandlings reported herein. In response to these inquiries, IDS 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, i.e., it notes only the errors found by the examiners.

### **C. COMPANY PROFILE**

The Company was incorporated on December 15, 1972 under the laws of Wisconsin. IDS began business on January 24, 1973 under the name Wisconsin No-Fault Insurance Company, Inc. until November 7, 1979 when the name was changed to Wisconsin Employers Casualty Company. IDS acquired Wisconsin Employers Casualty Company of Green Bay, WI in 1986.

In 1995, the Company began underwriting business as AMEX Assurance Company under parent company American Express. In 2005, the Company was spun off and resumed writing property and casualty insurance under the name IDS Property Casualty Insurance Company. The Company began writing private passenger auto insurance in New Jersey on July 1, 2005. The Company also writes personal lines home and umbrella products. The Company is licensed to write in all states and the District of Columbia.

### **D. EXECUTIVE SUMMARY**

This examination included a review of the Company's claim settlement practices, with particular emphasis on third party property damage liability investigations and settlements. The examiners randomly selected and reviewed a total of 99 paid and 49 denied property damage claims. The total number of claims reviewed was 148 claims.

The overall paid and denied claim error ratio was 45%. The examiners reported five improper general business practices: 1) failure to advise of claimant rental rights; 2) failure to provide rental vehicles that are comparable to the damaged vehicle; 3) failure to notify claimant of settlement delays; 4) failure to send rights of recourse letter on total losses; and 5) failure to document claim files. Additional errors include, but are not limited to, failure to conduct reasonable liability investigation, failure to effectuate prompt, fair, equitable settlement when liability is clear, failure to issue written notice of claim denial, failure to notify the claimant of rights if unable to sell salvaged vehicle and failure to commence a timely investigation. Detailed descriptions of all findings appear in the sections that follow.

## II. CLAIMS REVIEW

### A. INTRODUCTION

This review covers paid and denied property damage claims submitted under private passenger automobile insurance. Any such New Jersey claim closed between January 1, 2016 and April 30, 2017 was subject to review through a random file selection process. During the review period, IDS closed a total of 1,632 property damage claims (1,264 paid and 368 denied). Of these, the examiners randomly selected and reviewed 99 paid and 49 denied claims, for an overall random sample review of 148 claims.

In reviewing each claim, the examiners checked for compliance with all applicable statutes and regulations that govern liability investigation and timeliness requirements in settling 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) and N.J.A.C. 11:3-10 (Auto Physical Damage Claims). See N.J.A.C. 11:2-17.10(a) which makes the requirements for automobile physical damage first party claims found in N.J.A.C. 11:3-10.1 through 10.4 applicable to automobile property damage third party claims from the time that liability becomes reasonably clear. 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.

#### ERROR RATIO CHART

| <u>Property<br/>Damage Claims</u> | <u>Files<br/>Reviewed</u> | <u>Files<br/>in Error</u> | <u>Error<br/>Ratio</u> |
|-----------------------------------|---------------------------|---------------------------|------------------------|
| Paid                              | 99                        | 42                        | 42%                    |
| <u>Denied</u>                     | <u>49</u>                 | <u>24</u>                 | <u>49%</u>             |
| Total                             | 148                       | 66                        | 45%                    |

### C. PRIVATE PASSENGER PROPERTY DAMAGE CLAIMS REVIEW

- 1. Failure to Advise Claimant of Rental Rights at Time of Claim Acknowledgement – 20 Paid Files and 19 Denied Files in Error (Improper General Business Practice)**

Pursuant to N.J.A.C. 11:2-17.10(a)8, when an insurer acknowledges receipt of an automobile property damage liability claim, or sooner if the claimant inquires, it shall inform the claimant whether and to what extent he or she will be entitled, if the insurer's liability later becomes reasonably clear, to payment for the rental of an automobile or other substitute transportation.

Contrary to the above regulation, the examiners found 20 paid claims and 19 denied claims where IDS failed altogether or failed to adequately or timely advise claimants of rental rights at the time of claim acknowledgement. IDS disagreed with many of these findings. As an example, IDS stated that it does not advise third party claimants of rental rights when they pursue repairs through their own carriers. No such exception is found in N.J.A.C. 11:2-17.10(a)8, and this practice is particularly problematic when third party claimants do not have first party rental coverage.

**Please See Appendix A1 for a list of Files in Error**

**2. Failure to Offer Comparable Vehicle Type on Loss of Use Rental Claims – 12 Paid Files and 2 Denied Files in Error (Improper General Business Practice)**

Pursuant to N.J.A.C. 11:2-17.10(a)8, insurers are required to offer rental vehicles that are "... comparable (for example, sedan, minivan, sport utility vehicle, etc.) to the type of the damaged vehicle..." The examiners identified 14 claims where the Company failed to offer a comparable vehicle type and instead offered compact rentals to claimants who did not own compact vehicles. As an example of this error on claim numbers 2306457 and 2322529, IDS informed the claimant that, "In NJ, we only owe you basic transportation to get you from point A to point B, so we will be setting you up with a Compact size vehicle." The examiners note, however, that only in those instances where claimants disputed the vehicle size did IDS offer a comparable vehicle type. This practice is codified in the Company's claim manual, which states that IDS will cover "up to a comparable sized vehicle if requested." The examiners cited this error as an improper general business practice.

**Please See Appendix A2 for a list of Files in Error**

**3. Settlement Delays and Failure to Issue Delay Notices – 7 Paid and 2 Denied Files in Error (Improper General Business Practice)**

Pursuant to N.J.A.C. 11:2-17.7(c), all third party property damage claims have a maximum payment period of 45 calendar days unless there is a clear justification as to why a claim cannot be paid within that time period. Additionally, N.J.A.C. 11:2-17.7(e) states that, if the insurer is unable to settle the claim within this 45-day period, the insurer must send the claimant

written notice by the end of the 45-day payment period. The written notice must state the reasons additional time is needed, and must include the address of the office responsible for handling the claim and the insured's policy number and claim number. Contrary to N.J.A.C. 11:2-17.7(c), the examiners found 9 property damage claims that were settled beyond 45 days where a delay notice, meeting the requirements of N.J.A.C. 11:2-17.7(e), was not sent to the claimant. Due to frequency, the examiners cited this error as an improper general business practice.

IDS disagreed with many of the claims found in error by providing copies of several different types of correspondence that it mailed or emailed to claimants. Upon review, the examiners determined that most failed to serve as valid delay notices. Some were issued one week after notice of claim, while others contained ambiguous language that failed to specify a reason for the delay. As an example on claim number 2217174, IDS provided the examiners with an email stating that, "All other aspects of this claim including coverage, liability, and amount of damages may still be under investigation. This email is not an admission of liability or a promise to pay your claim." This language failed to provide the claimant with a specific reason as to why the claim could not be settled timely.

**Please See Appendix A3 for a list of Files in Error**

**4. Failure to Conduct Reasonable Liability Investigation and Unfair Settlement – 4 Files in Error**

N.J.S.A. 17:29B-4(9)(c) requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. N.J.S.A. 17:29B-4(9)(d) specifies that an insurer shall not refuse to pay a claim without conducting a reasonable investigation based on all available information. Additionally, N.J.S.A. 17:29B-4(9)(f) requires insurers to attempt to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. IDS failed to comply with these requirements on the four claims identified below.

On claim number 2184362, IDS received a notice of loss on June 15, 2016 from a third party claimant. The Company received a police report on July 9, 2016 clearly indicating that its insured was liable due to a citation for failure to maintain his lane. This was followed by a claims system note stating that the police report and damage type were adverse to the IDS insured. Despite this knowledge, and contrary to N.J.A.C. 11:2-17.6(b), IDS never acknowledged receipt of this claim. The Company's failure to initiate an investigation is also in violation of N.J.S.A. 17:29B-4(9)(c) and N.J.S.A. 17:29B-4(9)(d) as outlined above. Ultimately, the claimant abandoned this third party claim in favor of a first party claim with his carrier. Upon receipt of an arbitration claim from the claimant carrier, IDS paid 100% of the

damages because, according to a February 20, 2016 claim system note, we "...did not counter as (we) don't see how we could possibly win a counter (proposal) given preponderance of evidence against us." Arbitration was eventually paid on March 30, 2017, or 264 days after receipt of the police report. The examiners further cited this claim as an unfair settlement in violation of N.J.S.A. 17:29B-4(9)(f).

On claim number 2255984, a third party claimant filed a liability claim against the IDS insured on November 3, 2016. The IDS insured rear ended the claimant. Notably, IDS never acknowledged this claim. Moreover, the Company made no attempt to secure a statement from the claimant, and further failed to obtain a police report. Lacking any substantive investigation, IDS denied this claim on November 23, 2017. In response, the claimant pursued repairs through his first party carrier. IDS ultimately reopened and paid this claim in response to the claimant carrier's subrogation demand. The examiners cited this claim in error pursuant to the above statutes and regulation.

On claim number 2250832, the IDS insured rear ended a third party. The IDS insured reported this loss on October 24, 2016, and advised that a police report was available. On November 22, 2016, 29 days after notice of loss, IDS closed this claim without payment despite never requesting a police report or attempting to contact the third party for a loss description. The company ultimately reopened this claim to pay a subrogation demand from the claimant's first party carrier. The examiners cited this claim in error pursuant to the above statutes and regulation.

On claim number 2225724, the IDS insured was responsible for an at-fault hit and run collision involving a third party vehicle. The IDS insured reported this loss on September 2, 2016, and advised that he was charged with leaving the scene of an accident. On October 4, 2016, the company received a police report that confirmed liability and hit and run status of the insured. Subsequently, and contrary to the above statutes and regulation, IDS denied this claim despite its insured's liability. The claimant pursued repairs through his carrier, and IDS paid an ensuing subrogation demand on March 8, 2017. The examiners cited this claim in error pursuant to the above statutes and regulation.

**Please See Appendix A4 for a list of Files in Error**

**5. Failure to Confirm Liability Denials in Writing – 4 Files in Error**

Pursuant to N.J.A.C. 11:2-17.8(b), any denials or offers of compromise shall be confirmed in writing and be kept in the appropriate claim file. The examiners found four property damage claims where IDS failed to issue written denials. The Company agreed with these errors.

**Please See Appendix A5 for a list of Files in Error**

**6. Failure to Provide Specific Reason for Denial – 1 File in Error**

Pursuant to N.J.S.A. 17:29B-4(9)(n) an insurer shall 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 offer of a compromise settlement. N.J.A.C. 11:2-17.8(a) provides that no insurer shall deny or offer to compromise a claim because of a policy provision, including any concerning liability, a condition, or an exclusion without providing a specific reference to such language and a statement of the facts which make that language operative. The denial letter for loss of use on claim 2257417 states that, "We are unable to pay the loss as requested." This does not provide a specific reason for the denial and is therefore in violation of the statute and regulation above.

**Please See Appendix A6 for File in Error**

**7. Failure to Commence Investigation within 10 Working Days – 4 Files in Error**

Pursuant to N.J.S.A. 17:29B-4(9)(c), insurers are required to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. N.J.A.C. 11:2-17.7(a) states every insurer shall commence an investigation on all claims other than auto physical damage within ten working days of receipt of notification of claim. Contrary to this statute and regulation, the Company failed to commence an investigation within ten working days on four property damage claims.

**Please See Appendix A7 for a list of Files in Error**

**8. Failure to Acknowledge Claim within 10 Working Days – 5 Files in Error**

According to N.J.A.C. 11:2-17.6(b), every insurer, upon receiving notification of claim shall, within 10 working days, acknowledge receipt of such notice unless payment is made within such period of time. This acknowledgement shall include the address and telephone number of the insurer claims office or authorized claims representative which will handle the claim. The Company failed to timely acknowledge claimants on five property damage claims, contrary to the regulation stated above.

**Please See Appendix A8 for a list of Files in Error**

**9. Failure to Send Rights of Recourse Letter – 3 Files in Error  
(Improper General Business Practice)**

N.J.A.C. 11:3-10.4(c) requires insurers to advise the insured or claimant in writing of the rights of recourse at the time the settlement draft is issued, and to retain a copy of the notice in the claim file. The examiners found two error types: 1) total loss claims where salvage was retained by the owner and IDS did not advise of rights of recourse; and 2) rights of recourse letter was provided but the notice did not meet the regulatory informational requirements.

**a. Failure to Send Rights of Recourse Letter – 2 Files in Error**

The Company failed to provide the required written notice of the right of recourse on two total loss property damage claims. IDS responded to the examiners' inquiries that this regulation did not apply to owner retained vehicles, and that IDS provides this notice only on non-owner retained settlements. This practice essentially disallows vehicle valuation recourse disputes for those claimants who retain salvage. Notably, the vehicle valuation process precedes the decision to retain salvage. As such, notice of the right of recourse is essential in order to make an informed decision to retain or not retain salvage. Moreover, N.J.A.C. 11:3-10.4(c) does not distinguish between owner retained and owner non-retained settlements. This improper business practice is codified in the Company's Claim Manual, under "Components of Owner Retained Settlements."

The examiners cited this error as an improper general business practice as this systemically affects the entire population of IDS owner-retained total loss first and third party claims. Although IDS disagreed that N.J.A.C. 11:3-10.4 was intended for owner retained vehicles, the Company advised that it would reevaluate its stated procedures to ensure that claimants who retain salvage will be aware of these valuation dispute rights.

**b. Deficient Notification of Rights of Recourse – 1 File in Error**

Pursuant to N.J.A.C. 11:3-10.4(b), "If the insurer is notified in writing within 30 calendar days of the receipt of the claim draft that the insured cannot purchase a comparable vehicle at the market value established by the insurer, the insurer shall reopen its claim file and the following procedures will apply: 1. The insurer may locate a substantially similar vehicle...; 2. The insurer shall either pay the difference between the market value before applicable deductions and the cost or the market value as determined by (a)2 above of a substantially similar vehicle located by the insured or negotiate and effect purchase of this vehicle for the insured; 3. The insurer may elect to offer a replacement vehicle in accordance with the provisions as in (e) below; or 4. The insurer or insured may conclude the loss settlement as provided for

under the appraisal section of the insurance contract...” Also, N.J.A.C. 11:3-10.4(c) requires insurers to provide claimants with a written notice of the rights of recourse at the time a total loss settlement draft is issued.

While reviewing the property damage claim on claim 2243240, the examiners observed that the insured vehicle was a total loss. Contrary to N.J.A.C. 11:3-10.4(b) and (c), the insured was not informed of all four options as required. The Company provided an email that was sent to the insured stating merely that, “If within 30 days from receipt of the settlement check, you cannot purchase a comparable vehicle of like kind and quality for the settlement amount or a comparable vehicle was located but is in excess of the settlement amount, you can request that the claim file be reopened.” This content of this email does not address all recourse options outlined in N.J.A.C. 11:3-10.4(b). Although the collision portion of this claim was in error, it was not included in the error ratios. However, IDS applies the erroneous right of recourse methodology on both first and third party losses. Consequently, the examiners cited this error as an improper general practice with respect to third party liability claims.

**Please See Appendix A9 for a list of Files in Error**

**10. Failure to Notify the Claimant of Rights if Unable to Sell Salvaged Vehicle - 1 File in Error**

Pursuant to N.J.A.C. 11:3-10.4(j)3, if the insurer is deducting salvage from the settlement, the insurer must provide written notice to the claimant at the time of the offer or settlement stating that, if the insurer is notified in writing by the insured within 30 days of the loss settlement that the salvage cannot be sold for the amount of the deduction, and the salvage has not significantly deteriorated or been altered between the time of notice to the insurer by the insured, the insurer shall pay additional proceeds up to the amount that the insured can actually sell the vehicle or provide the claimant with information necessary to obtain that salvage value. Contrary to this regulation, IDS failed to provide this notification on one total loss property damage claim. The Company agreed with the examiners’ findings.

**Please See Appendix A10 for File in Error**

**11. Referral of Third Party to First Party – 1 File in Error**

Pursuant to N.J.A.C. 11:2-17.10(a)1, where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claims under their own policies solely to avoid paying claims under such insurer’s policy. Contrary to this regulation on claim 2257417, the examiners found language in a claim acknowledgment letter stating that, “If we do not hear from you in 10 days, we suggest you contact your insurance

company and file a claim with them for your damages.” In response to an inquiry, IDS stated that this was an isolated error by one claim handler.

**Please See Appendix A12 for File in Error**

**12. Failure to Document Claim File - 1 File in Error (Improper General Business Practice)**

N.J.A.C. 11:2-17.12(b) and (c) state that detailed documentation and/or evidence shall be contained in each claim file in order to permit the Commissioner or his designated examiners or investigators to reconstruct the company's activities relative to the claims settlement; every insurer shall maintain records of all pertinent communications relating to a claim.

The examiners observed inconsistent documentation and retention of letters throughout the examination. The Company responded to an examiner inquiry that representatives have the option of copying/pasting letters into the Claim Notes or saving them into the Document Retrieval System. The examiners reviewed claim 2217174 and found that letters to the claimant were not retained in entirety. In response to inquiries, the Company provided blank template letters and explained that only the body template of the letter is copied into the Claim Notes. Contrary to N.J.A.C. 11:2-17.12(b) and (c), the Company failed to maintain documentation that would allow for reconstruction of the claim. Maintaining only the body template of the letter is not evidence of the actual letter being created and sent to the claimant, nor that the contents of the letter meets all statutory and regulatory requirements.

The Company disagreed with this error and responded to additional inquiries that upon a “deeper review”, and inferred that the emails for claim 2217174 were located in the claim representatives’ email outboxes. The examiners note that N.J.A.C. 11:2-17.12(a) states each insurer’s claim files are subject to examination and inspection by the Commissioner. These letters were not maintained in the claim file. Employee email outboxes and inboxes are not necessarily accessible and auditable by the examiners and are not part of the claim file.

The examiners cited this error as an improper general business practice as the Company’s procedure of maintaining incomplete letters does not allow for reconstruction of the claim file.

**Please See Appendix A12 for File in Error**

### **III. RECOMMENDATIONS**

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

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

Non-compliant activity was identified in this report which may extend to other jurisdictions. The Company should 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 IDS 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, Chief of Market Regulation, 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.

#### **B. CLAIMS**

1. IDS must issue written instructions to all appropriate claims personnel stating that, pursuant to N.J.A.C. 11:2-17.10(a)8, when an insurer acknowledges receipt of an automobile property damage liability claim, or sooner if the claimant inquires, it shall inform the claimant whether and to what extent he or she will be entitled, if the insurer's liability later becomes reasonably clear, to payment for the rental of an automobile or other substitute transportation. Such payment will be for the rental of a vehicle comparable to the type of the damaged vehicle.
2. IDS should issue written instructions to all appropriate claims personnel stating that:

- a. According to N.J.A.C. 11:2-17.7(c), unless clear justification exists, the maximum payment period for property damage claims is 45 calendar days;
  - b. Pursuant to N.J.A.C. 11:2-17.7(e), an insurer must send the claimant a written delay notice by the end of the 45-day payment period specified by N.J.A.C. 11:2-17.7(c). This notice must specify the reason for the delay.
3. IDS must issue written instructions to all appropriate claims personnel stating that:
  - a. N.J.S.A. 17:29B-4(9)(c) requires insurers to adopt and implement reasonable standards for prompt investigation of claims arising under insurance policies;
  - b. N.J.S.A. 17:29B-4(9)(d) prohibits an insurer from refusing to pay a claim without conducting a reasonable investigation based on all available information;
  - c. N.J.S.A. 17:29B-4(9)(f) prohibits insurers from not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.
4. IDS should remind all appropriate personnel that N.J.A.C. 11:2-17.8(b) requires all denials to be confirmed in writing. Furthermore, N.J.S.A. 17:29B-4(9)(n) and N.J.A.C. 11:2-17.8(a) require denials and compromises to provide specific reasoning for the denial.
5. IDS should remind all appropriate personnel that:
  - a. Pursuant to N.J.A.C. 11:2-17.7(a), every insurer shall commence an investigation on all claims other than auto physical damage within ten working days of receipt of notification of claim;
  - b. Per N.J.A.C. 11:2-17.6(b), every insurer, upon receiving notification of claim shall, within 10 working days, acknowledge receipt.
6. IDS should issue written instructions to all appropriate personnel stating that:
  - a. 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 of settlement on total loss claims and that a copy of this notice must be retained in the claim file;

- b. The written notification required by N.J.A.C. 11:3-10.4(c) must include the four rights of recourse outlined by N.J.A.C. 11:3-10.4(b)1-4;
  - c. Pursuant to N.J.A.C. 11:3-10.4(j)1-3, the insurer must provide written notice to the claimant stating that, if the claimant cannot sell the salvaged vehicle for the amount of the salvage deduction, the insurer shall pay additional proceeds up to the amount that the claimant can actually sell the vehicle; or, provide the claimant with information necessary for the claimant to obtain that value for the salvaged vehicle;
  - d. According to N.J.A.C. 11:2-17.10(a)1, where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claims under their own policies.
7. IDS should issue written instructions to all appropriate claims personnel stating that, pursuant to N.J.A.C. 11:2-17.12(b), detailed documentation and/or evidence shall be contained in each claim file in order to permit the Commissioner or his designated examiners or investigators to reconstruct the company's activities relative to the claims settlement. Additionally, N.J.A.C. 11:2-17.12(c) states every insurer shall maintain records of all pertinent communications relating to a claim.

**APPENDIX A**  
**Private Passenger Automobile Claims Errors**

**1. Failure to Advise Claimant of Rental Rights at Time of Claim  
Acknowledgement – 20 Paid and 19 Denied Files in Error (Improper  
General Business Practice)**

| <u>Claim</u> | <u>Review Sample</u> | <u>Claim</u> | <u>Review Sample</u> |
|--------------|----------------------|--------------|----------------------|
| 2092880      | Paid PD              | 2102938      | Denied PD            |
| 2190724      | Paid PD              | 2131569      | Denied PD            |
| 2116174      | Paid PD              | 2134301      | Denied PD            |
| 2223262      | Paid PD              | 2217174      | Denied PD            |
| 2269203      | Paid PD              | 2131448      | Denied PD            |
| 2265249      | Paid PD              | 2179883      | Denied PD            |
| 2257417      | Paid PD              | 2150155      | Denied PD            |
| 2244922      | Paid PD              | 2046499      | Denied PD            |
| 2223508      | Paid PD              | 2138845      | Denied PD            |
| 2238175      | Paid PD              | 2221083      | Denied PD            |
| 2239700      | Paid PD              | 2083610      | Denied PD            |
| 2199000      | Paid PD              | 2107411      | Denied PD            |
| 2242587      | Paid PD              | 2157483      | Denied PD            |
| 2243240      | Paid PD              | 2188999      | Denied PD            |
| 2206743      | Paid PD              | 2241774      | Denied PD            |
| 2321319      | Paid PD              | 2176879      | Denied PD            |
| 2119796      | Paid PD              | 2160982      | Denied PD            |
| 2266567      | Paid PD              | 2143588      | Denied PD            |
| 2237492      | Paid PD              | 2047669      | Denied PD            |
| 2243962      | Paid PD              |              |                      |

**2. Failure to Offer Comparable Vehicle Type on Loss of Use Rental  
Claims – 12 Paid Files and 2 Denied Files in Error (Improper  
General Business Practice)**

| <u>Claim</u> | <u>Review Sample</u> | <u>Claim</u> | <u>Review Sample</u> |
|--------------|----------------------|--------------|----------------------|
| 2245068      | Paid PD              | 2306457      | Paid PD              |
| 2170114      | Paid PD              | 2250145      | Paid PD              |
| 2288909      | Paid PD              | 2291991      | Paid PD              |
| 2206758      | Paid PD              | 2132169      | Paid PD              |
| 2217784      | Paid PD              | 2322529      | Paid PD              |
| 2275528      | Paid PD              | 2316729      | Denied PD            |
| 2182278      | Paid PD              | 2161289      | Denied PD            |

**3. Settlement Delays and Failure to Issue Delay Notices – 7 Paid and 2 Denied Files in Error (Improper General Business Practice)**

| <u>Claim</u> | <u>Review Sample</u> | <u>Date Claimant Known</u> | <u>Date Paid/Denied</u> | <u>Days Beyond 45</u> | <u>45 Day Delay Letter Sent Y/N</u> |
|--------------|----------------------|----------------------------|-------------------------|-----------------------|-------------------------------------|
| 2081352      | Paid PD              | 11/24/15                   | 1/12/16                 | 4                     | N                                   |
| 2266567      | Paid PD              | 12/8/16                    | 1/30/17                 | 8                     | N                                   |
| 2188970      | Paid PD              | 6/24/16                    | 10/12/16                | 65                    | N                                   |
| 2019097      | Paid PD              | 8/4/15                     | 4/28/16                 | 223                   | N                                   |
| 2140032      | Paid PD              | 3/23/16                    | 5/12/16                 | 5                     | N                                   |
| 2223262      | Paid PD              | 9/14/16                    | 11/4/16                 | 6                     | N                                   |
| 2184362      | Paid PD              | 7/9/16                     | 3/30/17                 | 219                   | N                                   |
| 2134301      | Denied PD            | 3/22/16                    | 6/23/16                 | 48                    | N                                   |
| 2217174      | Denied PD            | 8/17/16                    | 10/23/16                | 22                    | N                                   |

**4. Failure to Conduct Reasonable Liability Investigation and unfair Settlement – 4 Files in Error**

Claim  
 2255984  
 2250832  
 2225724  
 2184362

**5. Failure to Confirm Liability Denials in Writing – 4 Files in Error**

|              |              |              |              |
|--------------|--------------|--------------|--------------|
| <u>Claim</u> | <u>Claim</u> | <u>Claim</u> | <u>Claim</u> |
| 2118693      | 2150155      | 2279746      | 2184362      |

**6. Failure to Provide Specific Reason for Denial – 1 File in Error**

Claim  
 2257417

**7. Failure to Commence Investigation within 10 Working Days – 4 Files in Error**

|              |              |
|--------------|--------------|
| <u>Claim</u> | <u>Claim</u> |
| 2225724      | 2184362      |
| 2255984      | 2250832      |

8. **Failure to Acknowledge Claim within 10 Working Days – 5 Files in Error**

Claim  
2225724  
2255984  
2141574

Claim  
2184362  
2250832

9. **Failure to Send Rights of Recourse Letter – 3 Files in Error (Improper General Business Practice)**

a. **Failure to Send Rights of Recourse Letter – 2 Files in Error**

Claim  
2092880  
2255416

b. **Deficient Notification of Rights of Recourse – 1 File in Error**

Claim  
2243240

10. **Failure to Notify the Claimant of Rights if Unable to Sell Salvaged Vehicle - 1 File in Error**

Claim  
2255416

11. **Referral of Third Party to First Party – 1 File in Error**

Claim  
2257417

12. **Failure to Document Claim File - 1 File in Error (Improper General Business Practice)**

Claim  
2217174

#### IV. VERIFICATION PAGE

I, Robert Greenfield, am the Examiner-in-Charge of the Market Conduct Examination of IDS Property Casualty 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 IDS Property Casualty Insurance Company as of October 20, 2017.

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.

December 27, 2017  
Date

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