



State of New Jersey  
DEPARTMENT OF BANKING AND INSURANCE  
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Lt. Governor

August 18, 2011

Ms. Cynthia Hardy Young  
Encompass Insurance Company of New Jersey  
Encompass Property and Casualty Insurance Company of New Jersey  
2775 Sanders Road  
Northbrook, IL 60062-6127

**Re: Adopted New Jersey Market Conduct Examination Report**

Dear Ms. Young,

I am enclosing a copy of the adopted Market Conduct Examination report of Encompass Insurance Company of New Jersey and Encompass Property and Casualty Insurance Company of New Jersey. This report contains the findings of the Department's examiners based on their recent examination. The examiner-in-charge filed and verified the report on October 27, 2010 pursuant to N.J.S.A. 17:23-24c. The New Jersey Commissioner of Banking and Insurance has adopted the report pursuant to accompanying Order No. E11-51 dated July 18, 2011.

In adopting this report, the Commissioner gave due consideration to all comments that your staff provided to the Department. These comments include inquiry responses during the fieldwork and your company's written response to the filed report.

Please note that all items requested in the Recommendation section of the report, as well as all affidavits required pursuant to N.J.S.A. 17:23-24d(1) which requires the Company to file an affidavit with the Department's Market Conduct Unit stating under oath that its directors have received a copy of the adopted report, should be sent to my attention within 30 days of receipt of the report attached hereto. The Department expects the company's cooperation in complying with all recommendations. We believe that once our recommendations are implemented, the company's compliance efforts will be significantly improved. I look forward to receiving your response in this regard.

On behalf of the Market Conduct Examiners, I would like to thank you and your staff for their courteous efforts in facilitating this examination.

Very truly yours,

Clifton J. Day, MPA, CPM, CSM  
Manager, Market Conduct Examinations and  
Anti-Fraud Compliance Unit

c: Mark Thompson  
Wyomissing, PA

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of )  
Banking and Insurance, State of New )  
Jersey, with respect to Encompass Insurance )  
Company of New Jersey, NAIC No. 11599 )  
and Encompass Property and Casualty )  
Company of New Jersey, NAIC No 12496 )

CONSENT  
ORDER

TO: Encompass Group  
One Meridian Blvd.  
Wyomissing, PA 19610

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 April 1, 2008 through March 31, 2009 examination of personal automobile insurance physical damage, property damage and personal injury protection claims handling practices of Encompass Insurance Company of New Jersey and Encompass Property and Casualty Company of New Jersey, ("the Companies") 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 Companies practices did not accord fully with various provisions of New Jersey insurance statutes or regulations; and

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

NOW, THEREFORE, IT IS on this 18<sup>th</sup> day of July, 2011

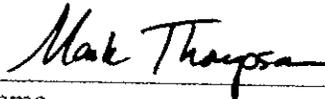
ORDERED AND AGREED that the attached Report will be adopted and filed as an official record of the Department; and

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

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

  
\_\_\_\_\_  
Thomas B. Considine  
Commissioner

Consented to as to form, content and entry

  
\_\_\_\_\_  
Name

Date: 6/27/11

encompassexamorder/amm

# **Market Conduct Examination**

**ENCOMPASS INSURANCE COMPANY OF  
NEW JERSEY**

**and**

**ENCOMPASS PROPERTY AND CASUALTY  
COMPANY OF NEW JERSEY**

**STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE**

Consumer Protection Services

Market Conduct Examinations and Anti-Fraud Compliance

Report Adopted: August 18, 2011

MARKET CONDUCT EXAMINATION

of the

ENCOMPASS INSURANCE COMPANY OF NEW JERSEY

and ENCOMPASS PROPERTY & CASUALTY COMPANY OF NEW JERSEY

located in

MONMOUTH JUNCTION, NEW JERSEY

as of

August 20, 2009

BY EXAMINERS

of the

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

CONSUMER PROTECTION SERVICES  
MARKET CONDUCT EXAMINATION AND ANTI-FRAUD COMPLIANCE

**DATE REPORT ADOPTED: August 18, 2011**

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# I. INTRODUCTION

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This is a report of the Market Conduct activities of Encompass Insurance Company of New Jersey and Encompass Property and Casualty Company of New Jersey (hereinafter collectively referred to as Encompass, the Company or the Companies). In this report, examiners of the New Jersey Department of Banking and Insurance (NJDOBI or the Department) present their findings, conclusions and recommendations as a result of their examination.

## A. SCOPE AND PURPOSE OF THE EXAMINATION

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The scope of the examination included private passenger automobile insurance sold by the Companies in New Jersey. The examiners evaluated compliance with revised territory definitions, rating discounts and updated underwriting criteria subject to P.L 2003, Chapter 89 that superseded the Fair Automobile Insurance Reform act of 1992. In addition the examiners reviewed physical damage, property damage and personal injury protection claims.

The review period for the examination was April 1, 2008 to March 31, 2009. The examiners conducted their fieldwork at the Companies' New Jersey office between June 9, 2009 and July 17, 2009. On various dates thereafter, the examiners completed additional review at the Department's Trenton, N.J. office. The examiners also checked the Company's compliance with regulations and statutes that govern automobile paid and denied claims, terminations, underwriting, and proper application of new and renewal business rating and underwriting. The team consisted of Bob Greenfield, Examiner in Charge, Marleen Sheridan and Thomas Goehrig.

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. In addition, the examiners used the NAIC 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

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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 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 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 cited constitute an improper general business practice, they have stated this in the report.

The examiners sometimes find improper general business practices or insurer 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 applicable law, the examiners do not count 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 Encompass 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, Encompass 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 certain errors 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

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Encompass specializes in personal insurance, selling products exclusively through independent agencies. The Company's signature product is the Universal Security Policy (USP) which allows the insured to obtain auto, residence, landlord, boat and umbrella liability on one package policy with four coverage levels. The USP is underwritten by one or more underwriting companies, two of which are Encompass Insurance Company of New Jersey and Encompass Property and Casualty Company of New Jersey, whose home offices are in Northbrook, Illinois.

Encompass Insurance products and services are offered exclusively in the United States of America and are available in 41 states. There are more than 1.2 million customers through more than 2,800 independent insurance agents and more than \$1.7 billion in personal insurance written premium.

Encompass began in the 1950s as part of a product portfolio for CNA, a large multi-line insurer that wrote through independent agencies. Encompass became a distinct business unit in the mid-1990s after CNA's merger with Continental Insurance Company. Allstate assumed operational control of Encompass in 1999 via a reinsurance contract and assumed the business outright in October 2005.

## II. TERMINATIONS

### A. INTRODUCTION

During the review period of April 1, 2008 to March 31, 2009, Encompass Property and Casualty Insurance Company of New Jersey and the Encompass Insurance Company of New Jersey declined 1,781 new business applications and cancelled 9 policies within the first 60 days. The examiners checked for compliance with applicable statutes and regulations related to terminations, including N.J.S.A. 17:33B-16 (specific reason of declination), N.J.S.A. 17:29A-6 and 15 ( approved rating system), N.J.S.A. 17:29A-38 (rate reductions for senior citizens), N.J.S.A. 17:29A-46.1 and N.J.A.C. 11:3-19A.1 (tier underwriting rules), N.J.S.A. 39:6A-4.3 and N.J.A.C. 11:3-14.5 ( PIP discount rating), and N.J.S.A. 17:29C-7 (automobile insurance cancellations), all of which relate to NAIC standards outlined in Chapter Sixteen – General Examination standards and Chapter Seventeen - Conducting Property and Casualty Insurance Examinations of the Market Regulation Handbook. The examiners reviewed samples of randomly selected declined applications and cancellations within 60 days.

Effective January 1, 2009, P.L. 2003 c. 89 repealed N.J.S.A. 17:33B-15 that required all insurers to provide coverage to eligible persons. Based on P.L. 2003 c.89, insurers were required to develop new and renewal business acceptance criteria in accordance with N.J.A.C. 11:3-8.11(a) through (c). This review focuses in part on the Companies' compliance with this regulation and its acceptance criteria in general.

### B. ERROR RATIOS

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

<u>Review</u>	<u>Files Reviewed</u>	<u>Files in</u>	<u>Error Ratio</u>
Declined Applications	41	1	2%
60 Day Cancellations	9	3	33%
<b>Total</b>	<b>50</b>	<b>4</b>	<b>8%</b>

### C. EXAMINERS' FINDINGS

#### 1. Invalid Reason for Policy Declination – 1 File in Error

On application number 000184827585289, the Company declined the applicant because “Applicant’s insurance score does not meet our minimum underwriting guidelines.” This declination is invalid because an applicant’s insurance score is not included as an eligibility factor in the company’s acceptance criteria. Moreover, utilization of an insurance score in an insurer’s acceptance criteria is prohibited by N.J.A.C. 11:3-8.11(a)3.

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THIS FILE ALSO APPEARS IN APPENDIX A-1

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## 2. Invalid Reasons for 60 Day Cancellations – 3 Policies in Error

### a. Deficient Application Acceptance Criterion

Based on Encompass’ acceptance criteria established under N.J.A.C. 11:3-8.11(a) through (c), whenever an applicant submits insufficient information on a new business application, the Company is required to issue a written notice to the applicant that describes the deficiency. Moreover, Encompass’ acceptance criteria require agents to maintain copies of all such documents. Contrary to these acceptance criteria, the examiners found three policies (281257777, 281251218 and 281249650) in which Encompass cancelled coverage for insufficient information but failed to retain the deficiency notice to the applicant.

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THESE FILES ALSO APPEAR IN APPENDIX A-2.a

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### b. Coverage Continuity Acceptance Criterion

On policy 281249650, also referenced in item 2.a above, the Company canceled coverage due to “[L]ack of proof of continuous insurance for 36 months without lapse of coverage.” However, the examiners found that the Companies’ acceptance criteria specifies only a 12-month coverage continuity period. The examiners note that the notice did include other valid reasons for termination (Undisclosed Driver Certification Form, proof of insurance for undisclosed driver); however, the actual notice mischaracterized Encompass’ coverage continuity acceptance criterion.

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THIS FILE ALSO APPEARS IN APPENDIX A-2.b

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# III. UNDERWRITING REVIEW

## A. INTRODUCTION

Encompass Property and Casualty Insurance Company of New Jersey and the Encompass Insurance Company of New Jersey reported a total of 67,569 in-force exposures for the period April 1, 2008 to March 31, 2009. The examiners randomly selected and reviewed 100 policies from this population. The examiners checked for compliance with all applicable statutes and regulations, including N.J.S.A. 17:29A-6 and 15 (filed and approved rating methodologies), N.J.S.A. 17:29A-38 (reduction of rates for operators 65 years or older), N.J.S.A. 17:29A-46 (uniform application of underwriting guidelines), N.J.A.C. 11:3-15 (coverage selection forms), N.J.A.C. 11:3-35; (automobile insurance underwriting rules), N.J.S.A. 39:6A-4.3 and N.J.A.C. 11:3-14.5 (PIP rate discounts). N.J.S.A. 17:33B-44 and N.J.A.C. 11:3-39.4 (rate reductions with anti-theft devices). These requirements are related to NAIC standards Chapter Sixteen – General Examination standards and Chapter Seventeen - Conducting Property and Casualty Insurance Examinations of the Market Conduct Examination Handbook.

## B. ERROR RATIOS

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

### Error Ratio Chart

<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
New Business	38	1	3%
Renewals	<u>62</u>	<u>0</u>	0%
<b>Total</b>	<b>100</b>	<b>1</b>	<b>1%</b>

## C. EXAMINERS' FINDINGS

### 1. Failure to Provide Required Physical Damage Discount – 1 File in Error

N.J.S.A. 17:33B-44 and N.J.A.C. 11:3-39.4 require every insurer writing physical damage coverage to provide a rate reduction for private passenger vehicles

equipped with one or more anti-theft devices. On policy number 281236097, the Company failed to provide a base rate reduction for a 2003 Cadillac CTS that was equipped with an anti-theft device. After several inquiries, the Company agreed with this error and endorsed the policy back to the inception date to include the Category III anti-theft discount. The insured received a refund of \$9.00.

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PLEASE SEE APPENDIX B-1 FOR FILES IN ERROR

# IV. CLAIMS

## 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 April 1, 2008 and March 31, 2009 was subject to review. During the review period Encompass closed 5,078 PIP claims, 1,271 comprehensive claims, 8,750 collision claims and 7,277 property damage claims. The examiners randomly selected and reviewed 271 paid and denied claims.

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 and 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 Seventeen - Property and Casualty Insurance Examinations of the NAIC Market Regulation Handbook.

## B. ERROR RATIOS

The examiners calculated the 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 charts. The chart below itemizes all randomly selected paid and denied claims reviewed, along with total files in error and error ratio by category.

### 1. Paid Claims

<u>Review Sample</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
PIP	80	2	3%
Collision	61	11	18%
Comprehensive	37	14	38%
Property Damage	36	14	39%
<b>Subtotal</b>	<b>214</b>	<b>41</b>	<b>19%</b>

## 2. Denied Claims

<u>Review Sample</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
PIP	29	5	17%
Collision	8	2	25%
Comprehensive	7	1	14%
Property Damage	13	1	8%
Subtotal	57	9	16%
<b>Random Totals</b>	<b>271</b>	<b>50</b>	<b>18%</b>

## C. PERSONAL INJURY PROTECTION CLAIMS

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### 1. Failure to Settle PIP Claims Timely – 3 Files in Error

According to N.J.S.A. 39:6A-5(g) and N.J.A.C. 11:2-17.7(b), 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. However, an insurer may secure a 45-day extension in accordance with N.J.S.A. 39:6A-5(g) and N.J.A.C. 11:2-17.7(b). Where such an extension is requested, the maximum settlement period may not exceed 105 days.

The examiners reviewed 80 paid PIP claims and found that Encompass issued the 45-day delay letter where required but failed to pay two claims within 105 days, contrary to N.J.S.A. 39:6A-5g and N.J.A.C. 11:2-17.7(b). Days delayed beyond 105 ranged from 53 to 147 days.

On a third claim, Z7054240, the Company issued a denial notice pending “results of an investigation into the provider’s eligibility.” In response to an inquiry regarding the propriety of this denial, the Company reversed its denial and paid the claim (\$1,041.25) with interest (\$5.45).

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SEE APPENDIX C1 FOR FILES IN ERROR

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

N.J.S.A. 39:6A-5(h) requires the payment of interest on all overdue benefits. Contrary to this requirement, Encompass failed to pay interest on two PIP claims cited in the previous section.

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SEE APPENDIX C2 FOR FILES IN ERROR, RATE OF DELAY AND INTEREST OWED

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**3. Incorrect Settlement Due to Improper Retrospective Claim Denial (\$315 Claim Underpayment) - 1 File in Error**

Pursuant to N.J.A.C. 11:3-4.7(g), an insurer shall not retrospectively deny payment for treatment when a precertification request for the treatment was properly submitted to the insurer. Contrary to this requirement on claim number Z7039304, the examiners found that Encompass erroneously denied payment due to a lack of precertification. However, the examiners' review of the Company's claim records confirmed that the procedure was in fact certified by Encompass as medically necessary. The examiners note that the Company did pay for one non-precertified service that did not occur within the approved date range; however, only that service was technically deniable under N.J.A.C. 11:3-4.7(g).

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THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX C-3

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**4. Failure to Deny PIP Claim Timely - 1 File in Error**

N.J.S.A. 39:6A-5(g) and N.J.A.C. 11:2-17.7(b) require that within 60 calendar days of receipt of notice of claim, an insurer must notify the claimant in writing of the denial of the claim or the need for additional time, not to exceed 45 days, to investigate the claim. The examiners found one denied PIP file, Z7045143 where the Company issued the required 45 day extension letter but failed to deny the claim within the maximum 105 day settlement period.

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THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX C-4

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**5. Failure to Provide Specific Reason for Denial on Explanation of Benefits Form – 1 File in Error**

N.J.A.C. 11:2-17.8(b) states that any denial or offers of compromise to the claimant shall be confirmed in writing and shall be kept in the appropriate claim file. N.J.A.C. 11:3-37.10(a)5 requires all explanation of benefits (EOB) forms to provide a concise explanation as to why any claim-related expense is considered ineligible. On one EOB Encompass stated, "Reviewed by Medical Director - Medical Necessity could not be established." This reason fails to state what type of documentation was required to establish medical necessity. That information may have been available for purposes of medical necessity.

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SEE APPENDIX C-5 FOR FILE IN ERROR

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## D. PHYSICAL DAMAGE AND PROPERTY DAMAGE CLAIMS

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### 6. Failure to Notify Claimant of Rights if Unable to Sell Salvaged Vehicle – 3 Files in Error

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. Contrary to the regulation, Encompass failed to provide this notification on 3 total loss files reviewed.

SEE APPENDIX C-6 FOR FILES IN ERROR

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### 7. Failure to Advise the Claimant of Right of Recourse – 10 Files in Error - Improper General Business Practice

N.J.A.C. 11:3-10.4(c) requires insurers to provide first and third party claimants with a written notice of the right of recourse at the time a total loss settlement draft is issued, and to retain a copy of the notice in the claim file.

The examiners reviewed paid collision, comprehensive and property damage claims and found that Encompass failed to provide the appropriate written right of recourse letter on 10 total loss claims.

SEE APPENDIX C-7 FOR FILES IN ERROR

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### 8. Failure to Report Sale of Salvage to the National Insurance Crime Bureau (NICB) – 34 Files in Error - Improper General Business Practice

N.J.A.C. 11:16-2.4(a)2 requires all insurers to report to the National Insurance Crime Bureau (NICB) or its applicable service organization all losses involving motor vehicle salvage, however sustained, including salvage retained by either an insured or third party claimant. This regulation further states that salvage shall be reported to the NICB within five working days after the sale of salvage; or, if the insured is permitted to retain salvage, within five working days after the date of loss payment.

During a review of collision, comprehensive and property damage claims, the examiners found 34 claims where the Company failed to report the sale of salvage to the NICB as required by the regulation.

SEE APPENDIX C-8 FOR FILES IN ERROR

**9. Failure to Report Theft of Motor Vehicle to the National Information Crime Bureau (NICB) within Two Days – 2 files in Error**

N.J.A.C. 11:16-2.4(a) requires all insurers to report to the National Insurance Crime Bureau (NICB) all thefts of a motor vehicle within two working days from receipt of notification by the insured. The examiners found two files where Encompass failed to report the theft of a motor vehicle within two working days to the NICB. Delays ranged from 6 to 18 working days.

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SEE APPENDIX C-9 FOR FILES IN ERROR

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**10. 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 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, thereafter until all elements of the claim are paid or denied.

The examiners found that Encompass failed to settle four property damage claims within 45 days and two collision claims within 30 days. Additionally, the Company failed to issue the appropriate delay letter. Delays ranged from a low of 23 days beyond 45 to a high of 49 days beyond 45 for third party claims a low of 25 days beyond 30 to a high of 39 days beyond 30 for first party claims.

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SEE APPENDIX C-10 FOR FILES IN ERROR

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**11. Failure to Apply Correct Deductible – 1 File in Error**

N.J.S.A. 17:29B-4(9)(f) requires insurers to effectuate fair and equitable settlements of claims in which liability has become reasonably clear. The examiners found one comprehensive claim where Encompass failed to apply the correct deductible. On claim Z7051555, the Company applied a \$500 deductible instead of the \$100.00 deductible that the claim system indicated. After receiving the examiners' inquiry, Encompass issued a \$400 reimbursement to the insured.

**12. Underpayment of Total Loss Claim – 1 File in Error**

N.J.A.C. 11:3-10.4(a) states 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...”

N.J.S.A. 17:29B-4(9)(f) requires insurers to effectuate fair and equitable settlements of claims. The examiners found one total loss collision claim number Z7059302 where Encompass used an incorrect actual cash value to calculate the payment of the claim. As a result, the Company underpaid the claim by \$1,043.25 including sales tax. After receiving the examiners’ inquiry, the Company refunded \$1,043.25 to the insured.

**13. Failure to Issue Payment within 10 Days of Agreed Settlement – 1 File in Error**

According to N.J.A.C. 11:2-17.7(f), an insurer shall pay an amount agreed upon in settlement of a claim no later than 10 working days from receipt of agreement. For property damage claim Z7059724, Encompass received a copy of the police report on December 17, 2008. The content of that report assigned liability to the Encompass insured. On January 13, 2009 the Company received the third party claimant’s estimate from an Encompass preferred shop. As of January 13, 2009, liability was reasonably certain and repair costs were assessed in accordance with the shop’s preferred status with Encompass. Notwithstanding the insured’s failure to cooperate over a three month period, this claim was otherwise payable within ten working days from January 13, 2009. However, Encompass did not issue payment until 32 working days later, on March 12, 2009 when the insured finally contacted the claim representative.

**14. Failure to Reply to Communications within 10 Working Days – 1 File in Error**

N.J.A.C. 11:2-17.6(e) requires that an appropriate reply shall be made within 10 working days from receipt on all pertinent communications from a claimant which reasonably suggest that a response is expected. Encompass received a copy of an estimate for claim file number Z7059724 on December 17, 2008. But the Company did not respond to the body shop until January 13, 2009, seven working days beyond the required ten, to inform the shop that the preferred shop labor rates were applicable.

**15. Failure to Confirm Denial of Claim in Writing – 1 File in Error**

N.J.A.C. 11:2-17.8(b) requires insurers to confirm all denials or offers of compromise to the claimant in writing and to maintain a copy in the appropriate claim file. The examiners found one denied comprehensive claim where the Company failed to confirm the denial of the claim in writing and maintain a copy in the claim file.

SEE APPENDIX C-15 FOR FILE IN ERROR

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**E. MISCELLANEOUS FINDINGS**

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**16. Issuing Form Letter with Untrue Statements – 2 Files in Error**

Pursuant to N.J.S.A. 17:29B-4(2), no insurer may provide false information in the form of a letter or notice with respect to the business of insurance which is untrue, deceptive or misleading. In addition, N.J.S.A. 11:2-17.5(a) prohibits an insurer from failure to disclose all pertinent benefits, coverages of other provisions of an insurance policy. On denied PIP claim Z7050504, the examiners found that Encompass sent a letter to the insured regarding her PIP claim which stated, “The statute of limitations in NJ is 1 year from the date of loss.” This statement is inconsistent with N.J.S.A. 39:6A-13.1, which specifies a two year statute of limitations.

The examiners found the same form letter during the property damage claim review. On claim number Z7062147, the Company notified the third party claimant that the statute of limitations in New Jersey is one year from the date of loss when the statute of limitations for property damage claims is actually six years pursuant to N.J.S.A. 2A:14-1.

THESE FILES IN ERROR ARE ALSO LISTED IN APPENDIX C-16

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## V. RECOMMENDATIONS

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Encompass 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 the Company establish procedures to monitor compliance with these measures.

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

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

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

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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 of the Market Conduct Examinations and Anti-fraud Compliance Unit, Mary Roebling Building, 20 West State Street, PO Box 329, Trenton, N.J. 08625, within thirty (30) days of the date of the adopted report.

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

"During a review of our policy files by market conduct examiners of the New Jersey Department of Banking and Insurance, they found that we failed to discount your premium due to (an anti-theft device in the vehicles(s) on your policy)/(PIP health insurer option). Enclosed is our (payment/credit) in the amount of (insert amount) to correct our error. We have rerated your policy to provide you with this discount."

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

"During a review of 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)/(we overcharged your deductible)/(we miscalculated your total loss claim). Enclosed is our payment in the amount of (insert amount) to correct our error."

## **B. TERMINATIONS**

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1. Pursuant to the Company's new business acceptance criteria, Encompass must issue written instructions to all appropriate personnel stating that, when cancelling a policy within the first 60 days:
  - a. the Company must provide the insured with a written request for the additional information necessary for underwriting an application before issuing a termination notice for failure to submit required information;
  - b. the Company must instruct its agents to adhere to its new business acceptance criteria and document retention obligations when processing new business applications.

## **C. UNDERWRITING**

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2. The Companies must issue written instructions to all underwriting personnel advising that, pursuant to N.J.A.C. 11:3-39.4, the Company must apply anti-theft device discounts to all eligible vehicles.

## **D. CLAIMS**

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3. Encompass 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(b), 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-5(h), the Company must pay interest on PIP claims settled beyond the required time frames.
4. Encompass must issue written instructions to all appropriate claims personnel stating that:

- a. N.J.A.C. 11:3-4.7(g) prohibits retrospective medical necessity claim denials where the provider or insured properly seeks precertification for treatment;
- b. N.J.A.C. 11:3-37.10(a)5 requires all Explanation of Benefit (EOB) forms to provide a concise explanation as to why any item of expense is considered ineligible.

5. In order to comply with N.J.A.C. 11:3-10.4(j)1-3, Encompass must submit to for the Commissioner's review a claim letter stating that if the claimant cannot sell the salvaged vehicle for the amount deducted from the claim payment, the insurer shall pay the additional proceeds up to the amount the claimant can actually sell the vehicle. Alternately, the company may include this language in existing claim-related correspondence.
6. Encompass should revise the right of recourse letter to substantially include the following information:

"...If the insured cannot purchase a comparable vehicle at the market value established by the insurer, the following will apply:

- The insurer may locate a similar vehicle by same manufacturer;
- The insurer will either pay the difference between the settlement and cost of the vehicle or negotiate purchase for the insured;
- The insurer may elect to offer a replacement vehicle; or
- The insurer or insured may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at time of loss."

The Company must forward a copy of the revised right of recourse letter to the Commissioner.

7. Encompass must issue written instructions to all appropriate claims personnel stating that:
  - a. N.J.A.C. 11:16-2.4(a)2 requires that all losses involving motor vehicle salvage, however sustained by either an insured or a third party claimant, shall be reported to the NICB within five working days after the sale or retention of the salvaged vehicle;
  - b. N.J.A.C. 11:16-2.4(a)1 requires all insurers to report to the National Insurance Crime Bureau (NICB) all thefts of a motor vehicle within two working days from receipt of notification by the insured;
  - c. pursuant to N.J.A.C. 11:3-10.5(a), insurers are required to settle first party claims within 30 calendar days from receipt and that pursuant to N.J.A.C. 11:3-10.5(b), if an insurer is unable to settle claims within

the time periods specified, the insurer must send written notices of delay every 30 days as appropriate, until settlement is completed;

- d. N.J.A.C. 11:2-17.7(e) states the maximum payment period for property damage claims is 45 calendar days from receipt and pursuant to N.J.A.C. 11:2-17.7(e) if an insurer is unable to settle claims within the time periods specified, the insurer must send a written notice of delay every 45 days as appropriate, until the settlement is completed.

8. Encompass must issue written reminders to all appropriate claims personnel stating that:

- a. the proper physical damage deductible must be applied to all applicable claims pursuant to N.J.S.A. 17:29B-4(9)(f), which requires insurers to effectuate fair and equitable settlements of claims in which liability has become reasonably clear;
- b. pursuant to N.J.A.C. 11:3-10.4(a) and N.J.S.A. 17:29B-4(9)(f), the Company must use the correct ACV when computing cash settlements for total losses;
- c. N.J.A.C. 11:2-17.7(g) requires insurers to pay any amount finally agreed upon in settlement of all or part of any claim not later than 10 working days after the receipt of such agreement;
- d. N.J.A.C. 11:2-17.6(e) requires an appropriate reply shall be made within 10 working days on all pertinent communications from a claimant which reasonably suggest that a response is expected;
- e. in accordance with N.J.A.C. 11:2-17.8(b) insurers must confirm all denials or offers of compromise to the claimant in writing and to maintain a copy in the appropriate claim file.

9. The Company should issue written instructions to all appropriate claims personnel stating that, in accordance with N.J.S.A. 17:29B-4(2) and N.J.S.A. 17:29B-4(9)(a), no false information or misrepresented facts may appear on letters that are sent to an insured or claimant, and no insurer may fail to fully disclose applicable policy benefits. Specifically, Encompass must revise its form letters that notify claimants of incorrect statutes of limitation relative to claims.

# APPENDIX A - TERMINATIONS

## 1. Erroneous Reason for Declination of Policy – 1 File in Error

Application Number
000184827585289

## 2.a Invalid Reasons for 60 Day Cancellations– 3 Files in Error

Policy Number	Error Description
281251218	Co. failure to provide copy of written request
281257777	Co. failure to provide copy of written request
281249650	Co. failure to provide copy of written request

## 2.b Incorrect Reason for Cancellation on Notice – 1 File in Error

Policy Number
281249650

# APPENDIX B – UNDERWRITING

## 1. Failure to Provide Rate Discounts – 1 File in Error

<b>Policy Number</b>	<b>Type of Discount Required</b>	<b>Policy Type</b>
281236097	Anti- Theft Device	New

# APPENDIX C – CLAIMS

## 1. Failure to Settle PIP Claims Timely – 3 Files in Error

Claim Number	Date Bill Received	Date Paid	Days Settled Beyond 105
Z7039801	1/23/08	10/1/08	147
Z7047050	6/16/08	11/21/08	53
Z7054240	2/20/09	6/23/09	18

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

Claim Number	Date Bill Received	Date Paid	Days Paid Beyond 105	Interest Owed
Z7039801	1/23/2008	10/1/2008	147	\$1.59
Z7047050	6/16/2008	11/21/2008	53	\$2.92

## 3. Unfair Settlement Due to Improper Retrospective Claim Denial – 1 File in Error

Claim Number	Date of Service	Service Codes	Amount Denied
Z7039304	6/19/08	20553/64999	\$315.00

## 4. Failure to Deny PIP Claim Timely – 1 File in Error

Claim Number	Date Bill Received	Date Denied	Days Denied Beyond 105
Z7045143	7/8/08	10/23/08	2

**5. Failure to Provide Specific Reason for Denial on Explanation of Benefits Form – 1 File in Error**

Claim Number	Dates of Service	Denial Reason on EOB	Notice Deficiency
Z7042454	4/11/08-4/24/08	Reviewed by Medical Director - Medical Necessity could not be established	This reason fails to state what type of documentation is required to establish Medical Necessity.

**6. Failure to Notify the Claimant if Unable to Sell Salvaged Vehicle – 3 Files in Error**

Claim Number	Claim Number	Claim Number
Z7052889 - +	Z7046218 - @	Z7048377 - @

\*=Collision - +=Comprehensive - @=Property Damage

**7. Failure to Advise the Claimant of Right of Recourse – 10 Files in Error- Improper General Business Practice**

Claim Number	Claim Number	Claim Number	Claim Number
Z7058857 - @	Z7047756 - @	Z7048377 - @	Z7051446 - @
Z7050763 - +	Z7047466 - +	Z7046218 - @	Z4037756 - +
Z8066991 - @	Z7053427 - @		

\*=Collision - +=Comprehensive - @=Property Damage

**8. Failure to Report the Sale of Salvage to the NICB – 34 Files in Error - Improper General Business Practice**

Claim Number	Claim Number	Claim Number	Claim Number
Z7058857 - @	Z7057482 - @	Z7048377 - @	Z7058376 - *
Z7059962 - *	Z7058510 - @	Z7046218 - @	Z7051446 - @
Z7059302 - *	Z7047513 - +	Z7045079 - +	Z7045447 - *
Z7046062 - *	Z7056981 - *	Z7050542 - +	Z7052889 - +
Z7047461 - +	Z7047756 - @	Z7047466 - +	Z7050763 - +
CH020770 - +	Z7050110 - *	Z7051711 - *	Z7063034 - +
Z7053364 - +	Z7052809 - *	Z4037756 - +	Z7962513 - *
Z7062011 - *	Z7049573 - @	Z8066991 - @	Z7060643 - @
Z7051163 - @	Z7053427 - @		

\*=Collision - +=Comprehensive - @=Property Damage

**9. Failure to Report Theft of Motor Vehicle to the National Information Crime Bureau (NICB) within Two Days – 2 files in Error**

Claim Number	Date Co. Received Notice	Date Co. Notified NICB of Theft	Working Days Over 2
Z4038936 - +	11/22/2008	12/3/2008	6
Z4038938 - +	11/22/2008	12/19/2008	18

\*=Collision - +=Comprehensive - @=Property Damage

**10. Settlement Delays and Failure to Issue Delay Notices – 6 Files in Error**

Claim #	Date Claim Received	Date Claim Settled	Total Days Beyond 45
Z7047756 - @	6/3/08	8/19/08	32
Z7048377 - @	6/5/08	8/12/08	23
Z7059724 - @	12/17/08	3/12/09	40
Z7057625 - @	10/27/08	1/29/09	49
Z7057170 - *	10/15/08	12/23/08	39
Z7058106 - *	11/5/08	12/30/08	25

\*=Collision - +=Comprehensive - @=Property Damage

**11. Failure to Apply Correct Deductible – 1 File in Error**

Claim Number	Amt. of Ded. Error
Z7051555 - +	\$400.00

\*=Collision - +=Comprehensive - @=Property Damage

**12. Underpayment of Total Loss Claim – 1 File in Error**

Claim Number	Claim Underpayment Amount
Z7059302 - *	\$1,043.25

\*=Collision - +=Comprehensive - @=Property Damage

**13. Failure to Issue Payment within 10 Days of Agreed Settlement – 1 File in Error**

Claim Number	Date Claim Payable	Date Claim Paid	Working Days Beyond 10
Z7059724 - @	1/13/08	3/12/09	32

\*=Collision - +=Comprehensive - @=Property Damage

**14. Failure to Reply to Communications within 10 Working Days – 1 File in Error**

<b>Claim Number</b>	<b>Date Documentation Received</b>	<b>Date Company Responded</b>	<b>Total Days Beyond 10</b>
Z7059724 - @	12/17/08	1/13/09	7

\*=Collision - +=Comprehensive - @=Property Damage

**15. Failure to Confirm Denial of Claim in Writing – 1 File in Error**

<b>Claim Number</b>
Z7059755 - +

\*=Collision - +=Comprehensive - @=Property Damage

**16. Issuing Form Letter with Untrue Statements – 2 Files in Error**

<b>Claim Number</b>	<b>Claim Number</b>
Z7050504-#	Z7062147-@

\*=Collision - +=Comprehensive - @=Property Damage - #=PIP

## V. VERIFICATION PAGE

I, Bob Greenfield, am the Examiner-in-Charge of the Market Conduct Examination of Encompass Insurance Company of New Jersey and Encompass Property & Casualty 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 Encompass Insurance Company of New Jersey and Encompass Property & Casualty Company of New Jersey as of August 20, 2009.

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.

October 27, 2009

Date:

Bob Greenfield

Bob Greenfield

Examiner-In-Charge

New Jersey Department

of Banking and Insurance