

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 High Point Preferred)	
Insurance Company; NAIC No. 28959; High Point)	CONSENT
Property and Casualty Insurance Company,)	ORDER
NAIC No. 10930 and High Point Safety and)	
Insurance Company NAIC No. 10931)	

TO: High Point Insurance Companies
PO Box 906
Lincroft, NJ 07738-0906

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 October 1, 2008 through September 30, 2009 examination of total loss claim settlements processed by High Point Preferred Insurance Company; High Point Property and Casualty Insurance Company, and High Point Safety and Insurance Company (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.

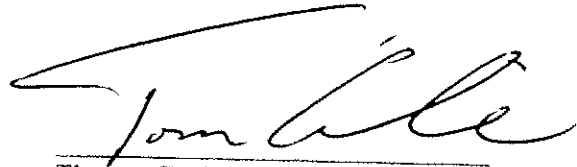
NOW, THEREFORE, IT IS on this 2d day of June, 2010

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 affidavits with the Department's Market Conduct Unit, executed by each of its directors stating under oath that they have received a copy of the adopted Report; and

IT IS FURTHER ORDERED AND AGREED that in accordance with N.J.S.A. 17:23-24e (1) the Department shall hold the content of the examination confidential for a period of 90 days.


Thomas B. Considine
Commissioner

Consented to as to form, content and entry


Name

Date: 5/24/10

examorder/amm

MARKET CONDUCT EXAMINATION

of

**HIGH POINT PREFERRED INSURANCE COMPANY,
HIGH POINT PROPERTY AND CASUALTY INSURANCE
COMPANY**

and

HIGH POINT SAFETY AND INSURANCE COMPANY

located in

RED BANK, NEW JERSEY

as of

November 19, 2009

by EXAMINERS

of the

STATE of NEW JERSEY

DEPARTMENT of BANKING and INSURANCE

DIVISION of ENFORCEMENT and CONSUMER PROTECTION

MARKET CONDUCT EXAMINATION UNIT

DATE REPORT ADOPTED: JUNE 4, 2010

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I. INTRODUCTION

This is a report of the Market Conduct activities of High Point Group (hereinafter referred to as High Point or the Company). The group is comprised of three companies: 1) High Point Preferred Insurance Company; 2) High Point Property and Casualty Insurance Company; and 3) High Point Safety and Insurance Company. In this report, examiners of the New Jersey Department of Banking and Insurance (hereinafter referred to as NJDOBI or the Department) present their findings, conclusions and recommendations as a result of their examination.

A. SCOPE OF EXAMINATION

The scope of the examination included private passenger automobile insurance sold by the Company in New Jersey. The examiners evaluated High Point's compliance with the regulations and statutes pertaining to automobile total loss claims. The examiners placed specific emphasis on total loss claims that the Company settled after the Department issued Bulletin 09-23, dated July 27, 2009. This Bulletin advised insurers that New Jersey sales tax must be applied to salvage deductions incident to an owner's retention of a vehicle deemed to be a total loss. The review period for application of sales tax purposes on total loss settlement was July 27, 2009 to the present. The examiners also included a general review period of October 1, 2008 to September 30, 2009 solely for purpose of checking for proper settlement and informational disclosures to first and third party claimants.

The examiners conducted their fieldwork at High Point's office in Red Bank, New Jersey between November 4, 2009 and November 6, 2009. On various dates following the fieldwork, the examiners completed additional review work and report writing. The Market Conduct Examiners were Examiner-in-Charge Ralph J. Boeckman and Thomas H. Goehrig. Monica Koch performed as team supervisor.

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

B. ERROR RATIOS

Error ratios are the percentage of files reviewed which an insurer handles in error. A file is counted as an error when it is mishandled or the insured is treated unfairly, even if no statute or regulation is applicable. If a file contains multiple errors, the examiners will count the file only once in calculating error ratios. However, any file that contains more than one error will be cited more than once in the report. In the event that the insurer corrects an error as a result of a consumer complaint or due to

the examiners' findings, the error will be included in the error ratio. If the insurer corrects an error independent of a complaint or NJDOBI intervention, the error is not included in the error ratios.

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 errors of an insurer that may be technical in nature or which did not have an impact on a consumer. Even though such errors or practices would not be in compliance with law, the examiners do not count each of these files as an error in determining error ratios. Whenever such business practices or errors do have an impact on the consumer, each of the files in error will be counted in the error ratio. The examiners indicate in the report whenever they did not count particular files in the error ratio.

The examiners submitted written inquiries to Company representatives on the errors cited in this report. These inquiries provided High Point 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, High Point agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the individual merits of each response and gave due consideration to all comments. In some instances, the examiners did not cite the files due to the Company's explanatory responses. In others, the errors remained as cited in the examiners' inquiries. For the most part, this is a report by exception.

C. COMPANY PROFILE

High Point was formed when Palisades Safety and Insurance Association purchased The Prudential Property and Casualty Insurance Company of New Jersey on November 1, 2003. The High Point Group consists of three companies: High Point Preferred Insurance Company, High Point Property and Casualty Insurance Company and High Point Safety and Insurance Company. High Point Preferred primarily writes private passenger automobile insurance and maintains an existing book of homeowners insurance although it does not currently write new homeowner business. The Company is also authorized to transact multi-peril, personal catastrophe liability, inland marine and dwelling fire insurance business. High Point Property and Casualty and High Point Safety and Insurance only write private passenger automobile coverage. Business is developed primarily through an agency force.

II. CLAIMS

A. INTRODUCTION

This review covers property damage, collision and comprehensive total loss claims submitted under private passenger automobile insurance. Any New Jersey total loss claim closed from October 1, 2008 to September 30, 2009 was subject to review. During the review period, High Point paid 19,165 collision claims, 11,102 comprehensive claims and 16,720 property damage claims. Of these, 3,692 were total loss claims. The examiners selected for review a total of 25 owner-retained total loss settlements that occurred after July 27, 2009 for purposes of testing High Point's sales tax calculation methodology. The examiners selected and reviewed an additional 25 total loss claims (total of 50) to test the Company's compliance with total loss disclosure requirements.

In reviewing each total loss claim, the examiners checked for compliance with N.J.S.A. 17:29B-4(9), N.J.A.C. 11:2-17 (Unfair claim and settlement practices), N.J.A.C. 11:3-10 (automobile physical damage claims) and New Jersey Department of Banking and Insurance **Bulletin #09-23** issued July 27, 2009 (which reminds insurers that exclusion of sales tax on salvage retention deduction values results in total loss claim underpayments in a manner that is inconsistent with N.J.A.C. 11:3-10.4(a)).

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.

Owner Retained Property Damage Total Losses

<u>Random Sample</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Total Loss Claims Sales Tax Review After Issuance of Bulletin #09-23	25	6	24%*

* Error Ratio does not include the Right of Recourse Improper General Business Practice that would have yielded a 100% error ratio on all 50 pre and post Bulletin total losses reviewed that were settled between October 1, 2008 to September 30, 2009

C. EXAMINERS' FINDINGS

1. Exclusion of Salvage Retention Value from Sales Tax Calculation on Total Losses – 4 Files in Error (Random Sample July 27, 2009 to Present)

N.J.A.C. 11:3-10.4(a) states in part that, "...if the insurer elects to make a cash settlement, it must bear in mind that the insured's position is that of a retail

consumer, and that the settlement must be reasonable and fair for a person in that position...” Moreover, “... if the insurer elects to make a cash settlement, its offer is subject to additions and deductions plus applicable sales tax.” Permissible additions and deductions include betterment and depreciation (N.J.A.C. 11:3-10.3(i)), prior damage and condition (N.J.A.C. 11:3-10.3(j)) and mileage depreciation where applicable (N.J.A.C. 11:3-10.4(f)), or otherwise specified in N.J.A.C. 11:3-10.4(a) and (b).

High Point utilizes Certified Collateral Corporation (CCC) to establish the actual cash value and cash settlement offer referenced above. N.J.A.C. 11:3-10.2 defines actual cash value as a value for which the damaged vehicle can be replaced with one that is substantially similar. N.J.A.C. 11:3-10.2 further defines a substantially similar vehicle as one that is the same make, model, year and condition of the damaged vehicle at the time of loss.

If the insurer elects to make a cash settlement in lieu of providing an actual replacement, its offer (actual cash value as defined under N.J.A.C. 11:3-10.2 and as further established by the company’s use of CCC pursuant to N.J.A.C. 11:3-10.4(a) and 3), is subject to valuation additions and deductions plus applicable sales tax.

The examiners found on four out of 25 claims settled after the Department’s issuance of Bulletin 09-23 that High Point reduced the pre-tax actual cash value by the amount of the salvage retention deduction. As such, and contrary to N.J.A.C. 11:3-10.4(a), High Point’s cash offer did not include the required sales tax on this value, ultimately resulting in a claim underpayment. This method of settlement is inconsistent with the approved deduction and settlement calculation methodology outlined in N.J.A.C. 11:3-10.4(a) and N.J.A.C. 11:3-10.2. The examiners note through discussion and inquiry responses that High Point intends to comply with the regulations and subject matter outlined in Bulletin 09-23.

The following chart illustrates High Point’s incorrect settlement methodology (Column A) that resulted in a \$175.00 underpayment on claim 043000136830, as well as the correct settlement (Column B).

A. Incorrect Company Evaluation		B Correct Evaluation	
Actual Cash Value	\$ 16,053.00	Actual Cash Value	\$ 16,053.00
Salvage Retention	- 2,500.00	Sales Tax (7% - NJ)	+ 1,123.71
Subtotal	\$ 13,553.00	Subtotal	\$ 17,176.71
Sales Tax (7% - NJ)	+ <u>948.71</u>	Salvage Retention	- <u>2,500.00</u>
Settlement	\$ 14,501.87	Settlement	\$14,676.71
		Total Underpayment	(\$175.00)

See Appendix A-1 for a List of all Files in Error

2. Failure to Advise Claimants of All Options Available Under Right of Recourse - 38 Files in Error - Improper General Business Practice

N.J.A.C. 11:3-10.4(c) requires insurers to provide 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. N.J.A.C. 11:3-10.4(b)1-4, which includes the content of the required right of recourse, identifies procedures that will apply if the insured is unable to purchase a comparable vehicle at the market value established by the insurer.

In response to an inquiry, High Point provided the examiners with right of recourse letters on 38 out of 50 total loss files that were reviewed. The notice contained a statement which advised the claimants that they had the right to contact the insurer within 30 days if they were unable to purchase a comparable vehicle at the established market value. However, the letters failed to identify additional rights available to the claimant in the manner specified in N.J.A.C. 11:3-10.4(b)1-4. These rights include in part, first party notification of policy provisions regarding appraisal rights, and reevaluating and reconsidering first and third party settlement offers by attempting to locate or, where appropriate, purchasing a substantially similar vehicle as an alternative to an actual cash value settlement.

High Point disagreed with this error, stating that the right of recourse language identified in N.J.A.C. 11:3-10.4(b)1-4 applies only after a first party insured notifies an insurer that a comparable vehicle cannot be purchased within 30 days from receipt of the claim draft. The examiners reiterate, however, that High Point's position disregards the insurer's obligation to affirmatively notify both first and third party claimants of all applicable rights at the time of payment.

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

3. Failure to Provide Right of Recourse Notice in Total Loss Claim Files- 12 Files in Error - Improper General Business Practice

N.J.A.C. 11:3-10.4(c) requires insurers to provide 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 prior Market Conduct Examination report for High Point, adopted in October of 2007, cited as an improper general business practice the Company's failure to retain the right of recourse notices. Accordingly, the report included a recommendation that required the Company to provide first and third party claims with a written notice of the Right of Recourse. In response to the recommendation, the Company agreed to comply with this requirement and provided DOBI with a copy of a memo dated November 8, 2007 that High Point issued to all claim staff instructing them to provide the Right of Recourse notice on total losses.

However, on the current field examination, the examiners reviewed 50 total loss claim files and found that as an improper general business practice, the Company has failed to include the right of recourse notice on 12 out of 50 claims for an error rate of 24%. Failure to provide this notice is contrary to the regulation cited in this report and is further inconsistent with the Company's post-examination compliance initiatives relative to the 2007 Market Conduct Examination Report.

See Appendix A-3 for a List of Files in Error

4. Failure to Apply Correct Sales Tax on Out of State Total Loss Claim Settlement – 1 File in Error

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

From the sample of 50 total loss claims reviewed, the examiners found six third party total loss claims where the claimant resided in a state other than New Jersey. Of these six, the examiners found one claim (045600140356) in which High Point applied a sales tax rate of 7% instead of the applicable 6% on a claimant vehicle registered and garaged in Pennsylvania. This resulted in an overpayment of \$57.57.

This File in Error is also listed in Appendix A-4

5. Failure to Properly Calculate New Jersey State Sales Tax on Total Loss Valuation – 1 File in Error

N.J.A.C. 11:3-10.4(a) states in part that, "...if the insurer elects to make a cash settlement, it must bear in mind that the insured's position is that of a retail consumer, and that the settlement must be reasonable and fair for a person in that position..." Moreover, "... if the insurer elects to make a cash settlement, its offer is subject to additions and deductions plus applicable sales tax." On claim 051200119412 High Point utilized an average of the CCC valuation and the NADA valuation to determine the actual cash value of the third party vehicle. However, and contrary to **N.J.A.C. 11:3-10.4(a)**, the Company applied sales tax only to the NADA valuation and not on the CCC valuation. High Point's failure to calculate sales tax on the entire settlement amount resulted in an underpayment of \$105.42.

This File in Error is also listed in Appendix A-5

6. 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. On claim 075200108752, the examiners found that High Point inappropriately reduced the actual cash value of the claimant’s vehicle. Contrary to the statute and regulation, the evaluation failed to include a power driver’s seat option that was included in the adjuster’s condition evaluation report. The reduction resulted in an underpayment of \$89.88 including sales tax.

This File in Error is also listed in Appendix A-6

III. RECOMMENDATIONS

High Point Group 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 High Point establish procedures to monitor compliance with these measures.

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

The examiners acknowledge that during the examination High Point had agreed and had already complied with, either in whole or in part, some of the recommendations. For the purpose of obtaining proof of compliance and for the Company to provide its personnel with a document they can use for future reference, the examiners have listed all recommendations below.

A. GENERAL INSTRUCTIONS

All items requested for the Commissioner and copies of all written instructions, procedures, recommended forms, etc., should be sent to the Commissioner, c/o Clifton J. Day, Manager of the Market Conduct Examinations and Anti-fraud Compliance Unit, Mary Roebling Building, 20 West State Street, PO Box 329, Trenton, N.J. 08625, within thirty (30) days of the date of the adopted report.

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

Underpaid claims

"During a review of your claim by Market Conduct examiners of the New Jersey Department of Banking and Insurance, they found that we (did not include sales tax on the salvage retention value of your settlement/ underpaid your total loss claim by omitting a vehicle option). Enclosed is our payment in the amount of (insert amount) to correct our error."

B. CLAIMS REVIEW

1. High Point must issue written reminders to all appropriate personnel stating that, pursuant to N.J.A.C. 11:3-10.2, N.J.A.C. 11:3-10.4(a), N.J.A.C. 11:3-10.4(a)2 and 3, and as outlined in **Bulletin 09-23**, sales tax must be paid on the amount of the salvage retention deduction value where the first or third party claimant takes possession of a total loss vehicle.

- a. The Company must reopen and review the four total loss claims cited in Appendix A.1 of this report in order to recalculate the total loss claims using the correct settlement methodology outlined in this report and issue to the claimant the applicable sale tax calculated on the salvage retention deduction value. See general instructions for appropriate cover letter;
 - b. A listing of all files reopened and the amount paid including a grand total should be generated and provided to the Commissioner to verify compliance with this recommendation.
2. The Company must revise its current right of recourse letter to include the settlement options available to the claimant as specified in **N.J.A.C. 11:3-10.4(b)1-4**. Please provide a copy of the revised letter to the Commissioner for review.
3. High Point Insurance Company should issue written instructions to all appropriate personnel stating that, pursuant to **N.J.A.C. 11:3-10.4(c)**, insurers must provide first and third party claimants with a written notice of the right of recourse at the time of payment on total loss claims and that a copy of this notice must be retained in the claim file.
4. The Company should issue a written reminder to appropriate claims personnel that the payment of a total loss auto property damage claim is subject to the state tax rate where the resident owner/vehicle is registered, and not the tax rate of the state where the loss occurred, nor the location where it was inspected if different from place of registration.
5. In accordance with **N.J.A.C. 11:3-10.4(a)**, High Point should remind all appropriate personnel that the applicable state sales tax must be applied to all total loss settlements. The Company should reopen claim 051200119412 to issue a credit/refund to the claimant for the correct amount of sales tax. Verification should be provided to the Commissioner showing the amount of the credit/refund. See general instructions for appropriate cover letter.
6. The Company should remind all appropriate personnel that all vehicle options and equipment items must be properly noted and/or deducted without discrepancies to assure fair and accurate settlement.
7. High Point should reopen claim 075200108752 to issue a credit/refund to the claimant for the improper reduction on the evaluation plus the applicable sales tax. Verification should be provided to the Commissioner showing the amount of the credit/refund. See general instructions for appropriate cover letter.

APPENDIX A- CLAIM ERRORS

1. Exclusion of Salvage Retention Value from Sales Tax Calculation of Total Losses – 4 Files in Error (Random Sample July 27, 2009 to Present)

<u>Claim Number</u>	<u>Settlement Date</u>	<u>Company Sales Tax</u>	<u>Examiner Calculated Sales Tax</u>	<u>Underpayment/Overpayment</u>
045700134857	8/3/2009	\$119.00	\$140.00	(\$21.00)
043000136830	8/7/2009	\$948.71	\$1,123.71	(\$175.00)
048400138184	8/4/2009	\$250.53	\$261.03	(\$10.50)
051200135212	8/5/2009	\$203.00	\$238.00	(\$35.00)
Total Underpayment				<u>(\$241.50)</u>

2. Failure to Advise Claimants of All Options Available Under Right of Recourse - 38 Files in Error - Improper General Business Practice

Claim Number	Claim Number	Claim Number	Claim Number
000033A05681	046400135664	043000136830	052400136124
041500117615	048400128184	019900140199	919300138693
918200131182	051200119412	077700096977	070400142104
076100138861	074000138040	058300103483	070700143207
084300142143	041300135913	050800101208	045600140356
079000108690	024400141544	089000111790	041700133517
081200099312	048800137588	052300126123	048800098188
075200108752	070000126100	048400138184	057600134376
045600121156	056000115660	043900129239	
045700121157	058900104889	078600141686	

3. Failure to Provide Right of Recourse Notice in Total Loss Claim Files- 12 Files in Error - Improper General Business Practice

Claim Number	Claim Number	Claim Number	Claim Number
042700141327	046300137463	049500134595	048300143583

075300138553	045700134857	051200135212	086000142860
078600144686	076300123863	077600117476	073800142638

4. Failure to Apply Correct Sales Tax on Out of State Total Loss Claim Settlement – 1 File in Error

<u>Claim Number</u>	<u>State</u>	<u>Sales Tax Rate Applied</u>	<u>Correct Sales Tax Rate</u>	<u>Over/Underpayment</u>
045600140356	PA	7%	6%	\$57.57

5. Failure to Properly Calculate New Jersey State Sales Tax on Total Loss Valuation – 1 File in Error

<u>Claim Number</u>	<u>Company Calculated Sales Tax</u>	<u>Examiner Calculated Sales Tax</u>	<u>Under/Overpayment</u>
051200119412	\$114.63	220.05	(\$105.42)

6. Underpayment of Total Loss Claim – 1 File in Error

<u>Claim Number</u>	<u>Amount of Reduction</u>	<u>Sales Tax</u>	<u>Amount of Underpayment</u>
075200108752	\$84.00	\$5.88	(\$89.88)

IV. VERIFICATION PAGE

I, Ralph J. Boeckman, am the Examiner-in-Charge of the Market Conduct Examination of High Point Group 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 High Point Group as of November 19, 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.

Date: _____

1/6/2010



Ralph J. Boeckman
Examiner-In-Charge
New Jersey Department
of Banking and Insurance