REPORT

of the

PROFORMANCE INSURANCE COMPANY

located in

FREEHOLD, NEW JERSEY

as of

JULY 20, 1999

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:

January 3, 2003

PROFORMANCE INSURANCE COMPANY

MARKET CONDUCT EXAMINATION REPORT

TABLE OF CONTENTS

I. INTRODUCTION

This is a report of the Market Conduct activities of the Proformance Insurance Company (hereinafter referred to as “Proformance” or “the company”). In this report, examiners of the New Jersey Department of Banking and Insurance (the “Department” or “NJDBI”) present their findings, conclusions and recommendations as a result of their market conduct examination. The Market Conduct Examiners were Phyllis A. Sabino, Examiner-In-Charge, Judy Suarez, Vivien Cosner and Robert Only.

A. SCOPE OF EXAMINATION

The scope of the examination included private passenger automobile insurance business and homeowner’s insurance underwriting guidelines for the State of New Jersey. The review period of this examination was January 1, 1998 through July 20, 1999. The examiners completed their fieldwork between April 6, 1999 and July 20, 1999 at the company’s New Jersey office in Freehold, New Jersey. On various dates thereafter, the examiners completed additional review work and the writing of this report. 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 Market Conduct Handbook.

B. ERROR RATIOS

Error ratios are the percentage of files reviewed which an insurer handles in error. Each file either mishandled or not handled in accordance with applicable state statutes or regulations is an error. A file will also be counted as an error when it is mishandled or the insured/claimant is treated unfairly, even if no statute or regulation is applicable. If a file contains multiple errors, the examiners 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 this report. In the event that a company corrects an error as a result of a consumer complaint or due to the examiners’ findings, the error is included in the error ratio. If the company corrects an error independent of a complaint or Department of Banking and Insurance (NJDBI) intervention, the error is not included in the error ratios. For the most part, this report is a report by exception.

The examiners sometimes find an improper business practice of an insurer which may be technical in nature or which had little or no impact on the consumer. Even though such a practice would not be in compliance with the law, the examiners do not count each of these files as an error in establishing the error ratios. The examiners indicate in the report whenever they did not count a particular file in the error ratio. Some of the statutes and regulations cited in this report define unfair practices, or practices in general as specific acts, which an insurer commits with enough frequency as to constitute a general business practice. Whenever the examiners found errors that are cited in this report which constitute a general business practice, they have stated this in the report. When an improper business practice is cited, the errors found are listed as examples of the improper practice, unless the examiners have reviewed the entire population.

The examiners submitted approximately 200 written inquiries to company representatives on the errors cited in this report. The inquiry process provided the company with the opportunity to respond to the findings and to provide exceptions or explanations to any statutory or regulatory error or mishandling. In response to these inquiries, Proformance agreed with most of the errors cited in this report. On those errors where 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 file due to the company's explanation. In other cases, the errors remained as cited in the examiners' inquiries.

C. COMPANY PROFILE

Proformance Insurance Company was incorporated on September 26, 1994 in the State of New Jersey as a property and liability insurance company. The company received its Certificate of Authority from the NJDBI on October 25, 1994. Proformance is a wholly owned subsidiary of the National Atlantic Holdings Corporation. The company was organized to provide comprehensive, packaged personal lines property and casualty policies to New Jersey consumers; marketed exclusively through licensed independent insurance agents who are also shareholders of the company. Proformance relies on the premise that because its agents are also shareholders in the company, the agents will have a greater incentive to place their profitable risks with the company.

Proformance offers a packaged personal lines policy called the "High Proformance Policy". This package can contain various combinations of the following coverages:

- Private passenger auto, including bodily injury and property damage liability, uninsured motorist coverage, personal injury protection, extended medical payments, comprehensive fire and theft, collision, rental reimbursement, towing and labor, and miscellaneous electronic device and mobile telephone coverages.
- All categories of homeowners' and condominium insurance policies, including various endorsements for extended coverage for eligible property and liability exposures;
- Personal excess liability insurance as excess over all liability coverage; and
- Personal specialty property lines such as jewelry, furs, fine arts, cameras, EDP equipment, boats under 26 feet in length and other items meeting the inland marine definition.

II. COMPLAINTS

A. INTRODUCTION

During the period of January 1, 1998 through December 31, 1998, consumers filed a total of 28 complaints with the Department of Banking and Insurance against Proformance. The examiners reviewed 26 complaint files, which represented all of the NJDBI personal auto complaints. The examiners found two files in error for an error ratio of 8%; in addition, several record keeping errors were found. In reviewing the complaints, the examiners checked for compliance with several statutes and regulations with emphasis on N.J.A.C. 11:2-17.6(d) & (e) and N.J.S.A. 17:23-1 (Prompt response to inquiries) and N.J.S.A. 17:29B-4 (Complaint handling procedures). The chart below summarizes the examiners' findings in the complaint review.

B. COMPLAINT HANDLING ERROR RATIOS

Complaint Category	Files Reviewed	Files In Error	Error Ratios
Automobile			
Claims	14	1	7%
Underwriting/Rating	6	0	0
Policyholder Service	6	1	17%
Total	26	2	8%

C. COMPLAINT HANDLING ERRORS

1. Incomplete and Inaccurate Complaint Records

N.J.S.A. 17:29B-4(10) requires insurers to maintain complete records of all consumer complaints. These records shall indicate the total number of complaints, their classification by line of insurance, the nature and disposition of each complaint and the time it took to process each complaint. The examiners found that Proformance failed to comply with the requirements listed below. The Company agreed with these findings in response to an examiner's inquiries. The examiners did not count these errors in the error ratio.

a) Failure to Log Direct Complaints – Improper General Business Practice

Pursuant to N.J.S.A. 17:29B-4(10), insurers are required to maintain complete records of all the complaints it receives. Proformance failed to comply with this requirement. According to the company, it did not log direct complaints until

March 1999.

b) Failure to Maintain Complete Complaint Record – 3 Errors

Proformance did not record in its Complaint Log, the following three NJDBI complaints received, contrary to the aforementioned statute.

98-16878 97-05877 97-02201

c) Failure to Properly Log Complaint Receipt and Response Dates – Improper General Business Practice – 19 Errors

Contrary to N.J.S.A. 17:29B-4(10), Proformance did not maintain accurate complaint log receipt and response dates on 19 of the 23 complaints logged and reviewed. On all 18 files in error for receipt date, Proformance used the date on the NJDBI complaint letter instead of the receipt date by the company. In addition, seven files were in error for response date as the company recorded an earlier response date than indicated in the file. These errors created an inaccurate complaint record contrary to the above mentioned statute by failing to indicate the actual time it took to process each complaint. See Appendix A1 & A2 for files in error.

2. Delayed Response to Department of Banking and Insurance – 1 Error

N.J.S.A. 17:23-1 requires insurers to respond promptly in writing to all inquiries from the Commissioner. The prompt response requirements of this statute apply to all aspects of an insurer's operation. In addition, N.J.A.C. 11:2-17.6(d) requires insurers to provide complete and accurate responses within 15 working days to claim related inquiries from the NJDBI. Contrary to this statute and regulation, Proformance failed to respond to the Department within the required time frame on one claim complaint file. A review of auto claim, P558J054, (NJDBI # 98-10207) revealed that the company received the NJDBI complaint on April 20, 1998, but did not respond until May 15, 1998; 19 working days after receipt of the complaint. Proformance agreed with the examiner's findings.

3. Failure to Maintain Pertinent Communications – 1 Error

A review of policy number PC1200970031, (NJDBI # 98-09123) revealed that the file did not contain a copy of the NJDBI complaint letter. In response to an examiner's inquiry, Proformance responded that it misplaced the Department complaint letter for this file. Proformance's inability to provide the examiners with a copy of the Department's complaint letter prevented the examiners from reviewing the file to determine whether the company handled it properly.

III. CLAIMS REVIEW

A. INTRODUCTION

This review covers claims submitted under private passenger automobile insurance. Any New Jersey claim closed during calendar year 1998 was subject to review. Proformance closed 6,606 paid private passenger automobile claims and 245 claims were closed without payment. In reviewing each claim, the examiners checked for compliance with all applicable statutes and regulations that govern the handling of claims. The examiners placed particular emphasis on N.J.S.A. 17:29B-4 and N.J.A.C. 11:2-17 (Unfair Claims and Settlement Practices), and N.J.A.C. 11:3-10 (Auto Physical Damage Claims) and N.J.S.A. 39:6A-5 (No Fault Claims).

B. ERROR RATIOS

The examiners calculated the error ratios by applying the procedure outlined in the introduction of this report. The chart below itemizes the total number of claims reviewed by type of coverage and errors found.

TYPE OF CLAIM	FILES REVIEWED	FILES IN ERROR	ERROR RATIO
Collision	24	24	100%
Comprehensive	11	11	100%
Property Damage	19	15	79%
PIP	25	18	72%
Totals	79	68	86%

C. CLAIMS CLOSED WITHOUT PAYMENT

The examiners reviewed a random sample of 60 files closed without payment, from a population of 245 claims. This review was undertaken to determine how Proformance handles claim denials. Of the 60 files reviewed, six contained claim denials. These six files were included under the appropriate coverage above as part of the claim review. The remaining 54 claims closed without payment (see breakdown below) were not claim denials, and they contained no errors.

23 - Insured collected from the third party carrier
14 - Damages below deductible
12 - Record Only – No claim presented
3 - Insured paid claimant directly, no claim presented
1 - Duplicate file, no claim payment
1 - Third party claim reopened and paid upon receipt of subrogation

D. EXAMINERS' FINDINGS

1. Failure to Include Deductible on Appraisals - 35 Errors - Improper General Business Practice

N.J.A.C. 11:3-10.3(c) requires an insurer to specify all appropriate claim deductions on the appraisal form. The examiners found that the company did not specify the amount of the insured's deductible on the appraisal form on all 24 collision and all 11 comprehensive claim files. This is contrary to the cited regulation and constitutes an improper general business practice. In an inquiry response, the company agreed with these findings and has taken the appropriate measures to ensure compliance with the regulation. See Appendix B1 for a list of files in error.

2. Improper Statement on Claim Settlement Checks - 29 Errors - Improper General Business Practice

N.J.A.C. 11:2-17.5(e) states no insurer shall issue checks or drafts in partial settlement of a loss or claim using language which releases the insurer or its insured from its total liability. The examiners found statements on 29 claim settlement checks stating payment was "full and final" even though the possibility of supplemental payment existed. In response to examiners' inquiries, Proformance indicated that its computer system automatically defaults to the phrase "full and final settlement" on all physical damage claim checks. The company also stated that it does pay supplemental damages and rental charges after the issuance of the initial check, even if the "full and final" statement appears on the initial claim check. The examiners reviewed multiple claim files in which this occurred. However, the automatic use of the phrase is contrary to the cited regulation and constitutes an improper business practice. See Appendix B2 for a list of files in error.

3. Failure to Settle Claims in a Timely Manner (Physical Damage, Property Damage and PIP) - 36 Errors - Improper General Business Practice

N.J.S.A. 39:6A-5g and N.J.A.C. 11:2-17.7(b) require payment of PIP claims within 60 days of receipt and provide that if a company cannot settle the claim in a timely manner, it may obtain a 45 day extension by sending a written request for additional time to investigate. The examiners reviewed 25 PIP claims and found that Proformance failed to settle 22 within the maximum 60-day time frame. The examiners also found that the company did not issue 45-day extensions to its claimants on any PIP claim settled beyond 60 days. See Appendix B3 for a list of files in error.

In addition, N.J.A.C. 11:3-10.5(a) and N.J.A.C. 11:2-17.7(c)2 state that unless clear justification exists, or unless otherwise provided by law, the maximum payment periods for physical damage claims shall be 30 calendar days and 45 calendar days for all property damage claims. Contrary to the requirements of these regulations, Proformance failed to pay the 14 claims listed in Appendix B3.1 within the appropriate time frames; the company agreed.

The combined results of these findings reflect 36 errors from the review of 79 claims, for an error ratio of 46% specifically for claim delays. Due to the high number of errors, this constitutes an improper general business practice.

4. Failure to Issue Delay Notices - 14 Errors - Improper General Business Practice

N.J.A.C. 11:3-10.5(b) and 11:2-17.7(f) state that if the insurer is unable to settle the property or physical damage claim within the time periods specified, the insurer must send to the claimant a written notice by the end of the payment periods specified, with the reason for the delay. The regulations also require insurers to send a written notice of delay every 30 or 45 days thereafter until all elements of the claim are honored or rejected. The company failed to send the required notices of delay in fourteen incidents, contrary to the above regulations.

In addition, all fourteen files cited for delayed settlements as stated in item #3 above are also cited for failure to provide the required delay letters. During the review, the examiners did not see a delay letter in the file of any delayed settlement; therefore, this error is considered to be an improper general business practice. See Appendix B3.1 for claims in error.

5. Failure to Pay Interest on Overdue PIP Payments - 22 Errors – Improper General Business Practice

N.J.S.A. 39:6A-5h requires insurers to pay interest on any overdue PIP benefits. In the 25 PIP claims reviewed, the examiners found a total of 22 delayed PIP payments (as noted above) on which interest was owed but not paid. In response to written inquiries, Proformance agreed with these errors. As a result of this market conduct examination, the company paid a total of $144.43 in interest on most of the cited PIP claims, which appear in Appendix B3**.** Proformance stated that its consistent failure to pay PIP interest was not an intended business practice but was due to lack of staff, lack of supervision, and problems with its computer system. The company further advised the examiners that it has taken corrective measures such as implementing a diary system, correcting its computer problems, and hiring a PIP supervisor and additional staff. The examiners found that Proformance did not pay interest or request 45-day extensions on any delayed PIP claim. This consistent failure to pay interest represents an improper general business practice contrary to the statute.

6. Failure to Advise Claimants of Right of Recourse - 6 Errors - Improper General Business Practice

N.J.A.C. 11:3-10.4(c) requires insurers to provide a first or third party claimant 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. Contrary to this requirement, the examiners found that Proformance did not provide this notice on any of the six total losses reviewed by the examiners. The company agreed with the errors, admitted that it does not provide the Right of Recourse notice on total losses and advised the examiners that it will take corrective measures such as re-training its claim staff to ensure future compliance with this regulation. This practice significantly impairs a claimant's ability to evaluate and challenge the fairness of the company's claim payouts. Proformance's failure to provide the Right of Recourse notice is an improper general business practice contrary to the regulation noted above.

Claim Number	Coverage	Claim Number	Coverage
P1040980001	Physical Damage	P1141980010	Property Damage
P1990980009	Physical Damage	P1220980047	Property Damage
P1141980001	Physical Damage	P2500980022	Property Damage

7. Failure to Pay Claim When Benefits Due - 18 Errors on 14 Claim Files

N.J.A.C. 11:2-17.8(i) states, "No insurer shall deny payment of a claim when it is reasonably clear that either full or partial benefits are payable." Contrary to this regulation, Proformance failed to pay the 14 claims listed in Appendix B4 when it was clear that benefits were due on each. The company agreed with the examiners' findings on all of these claims.

As a direct result of this Market Conduct Examination, Proformance paid $4,358.66 plus interest in previously unpaid or underpaid PIP claim bills.

8. Failure to Inform Claimants of Rental Rights - 12 Errors

N.J.A.C. 11:2-17.10(a)8 requires an insurer to inform a property damage claimant whether and to what extent payment for automobile rental is available under the terms of an auto policy. On the 12 claims listed on Appendix B5, the company received property damage claims but failed to send the claimants any notice regarding the rental of a replacement vehicle. In response to an inquiry, the company agreed with the errors and advised the examiners that corrective measures will be taken to ensure compliance with this regulation.

9. Failure to Pay Agreed Amount Within 10 Days - 10 Errors

N.J.A.C. 11:2-17.7(g) requires the insurer to pay any amount finally agreed upon in settlement of all or part of any claim not later than 10 working days from the date of such agreement. Contrary to this regulation, Proformance did not pay the agreed amount within 10 working days on 10 claims. The company agreed that these errors occurred. See Appendix B6 for a list of the files in error.

10. Failure to Begin Investigation Within 10 Days - 10 Errors

N.J.A.C. 11:2-17.7(a) requires the insurer to commence investigation on all claims other than auto physical damage within 10 working days of receipt of notification of claim. Contrary to this regulation, Proformance failed to initiate its investigations within 10 days on 10 claims. See Appendix B7 for the files in error.

11. Failure to Date &/or Date Stamp Claim Documentation - 10 Errors on 7 claims

N.J.A.C. 11:2-17.12(b) and N.J.A.C. 11:3-10.10, state that detailed documentation and/or evidence shall be contained in each claim file in order to permit the Department to reconstruct the company's activities relative to claims settlement. All papers in the file must be dated accurately by the insurer. The company either failed to date or failed to date stamp documentation in each of the six claim files listed below, contrary to the regulations. The examiners did not count these errors in the error ratio.

P1390980019A	Appraisal not date stamped
PA13700383	Rental bill not date stamped
P1060980053A	PIP bill not date stamped
P1141980001A	Letter and appraisal not date stamped (2 errors)
P3600980016	Appraisal not date stamped
P1241980020A	Appraisal not date stamped
P1060980040A	PIP bills not date stamped (3 errors)

12. Failure to Send Denial Letters - 3 Errors

N.J.A.C. 11:2-17.8(b) requires that the insurers confirm all denials or offers of compromise to the claimant in writing and keep a copy in the appropriate claim file. Proformance agreed with the examiners that it failed to provide the claimants with written denials on the following claims, contrary to this regulation:

ClaimNumber	Date of Loss	Type of Claim
P1150980007A	04/08/98	Property Damage
P1241980019A	05/21/98	Property Damage
P1150980017A	05/17/98	Property Damage

In response to an inquiry, the company agreed with the errors and stated that it would train its claim staff to ensure compliance with this regulation.

13. Failure to Acknowledge Claim Within 10 Working Days - 8 Errors on 7 Files

N.J.A.C. 11:2-17.6(b) states that 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. Contrary to this regulation, Proformance failed to acknowledge eight separate PIP claims in seven files within 10 days after it was apparent that such claims existed; this included five PIP lost wage claims. See Appendix B8 for a list of the files in error.

14. Failure to Provide Required Claim Form Within 10 Working Days - 8 Errors on 7 Files

N.J.A.C. 11:2-17.6(c) states that every insurer, upon receiving notification of claim, shall promptly provide first party claimants within 10 working days with the necessary claim forms, instructions, and reasonable assistance so that claimants can comply with the policy conditions and the insurer's reasonable requirements. Proformance failed to promptly provide the necessary claim forms for eight separate PIP claims in seven files, contrary to the regulation. See Appendix B8 for a list of the files in error.

15. Failure to Set Forth Coverage - 4 Errors

N.J.A.C. 11:2-17.8(k) states that an insurer shall make claim payments by check or draft with a statement setting forth the coverage under which payment is made and in sufficient detail so that first party claimants can reasonably understand the benefits included within the claim payment. The details should include an explanation of how the benefit payment was calculated. Contrary to the regulation, Proformance either failed to provide the first party claimants with a statement setting forth coverage details and an explanation of the benefit calculation, or provided an incorrect statement of coverage details on the following four claims:

PA13700383A P199098009A P2430980016A P3060980017A

16. Failure to Retain Accurate Claim Check or Voucher in Appropriate Claim File - 3 errors

N.J.A.C. 11:2-17.12(b) and 11:3-10.10 require that complete claim file documentation be retained in each claim file, including but not limited to all payment vouchers. When discussed with the company, officials stated that Proformance’s claims computer system reflects an accurate facsimile of the payments issued, and the company relies on that system to document payments made. The examiners and the NJDBI are aware that companies are increasingly reliant on electronic means to retain documents and to verify their claim activities.

During the file review at Proformance, three claim files reviewed contained payment records that reflected information not applicable to the claims in question. To comply with the regulation, retained payment vouchers should be accurate representations of the claim payments made. An insurer may use electronic retention methods; however, the information must be reliable, accurate and complete. The payments specified below on the claim files noted are inaccurate as stated and thereby contrary to the regulation above.

Claim Number	Amount & Date of Check	Incorrect Payment Detail
P3090980002	$4,690.65 – 06/01/98	Payee/Mail To Box is incorrect
P3600980016	$ 744.15 – 06/10/98	Payee/Mail To Box is incorrect
PA13700383	$1,203.39 – 04/27/98	Payee/Mail To Box is incorrect

17. Failure to Pursue Subrogation Claim - 2 Errors

N.J.A.C. 11:3-10.7(d) states if an insurer has paid a physical damage claim that is subject to a deductible, and it elects not to pursue its subrogation claim where the probability of recovery exists, the insurer shall so notify the insured in writing within 60 days after it has paid the claim, except that the notification shall be given at least 30 days prior to the running of any applicable statute of limitations or period required for notice of claim. If an insurer does not notify its insured within the time periods prescribed above and the statute of limitations or period required for notice or claim has expired, the insurer shall forthwith remit to its insured the full amount of the insured's deductible. On claim numbers P1150980007A and P4000980014, the company failed to advise the insured in writing that it did not pursue subrogation even though the probability of recovery existed in both claims. In an inquiry response, the company agreed with the errors and stated that it is aggressively pursuing subrogation in all cases in which the probability of recovery exists.

18. Miscellaneous Single Errors - 4 Errors

a. Failure to Include Lienholder on Claim Check – 1 Error

On collision claim number P2500980013A, the company paid the insured without including the lienholder on the claim check. This is contrary to the Proformance auto policy language, which requires payment of a claim to include as a payee any lienholder named on the policy.

b. Rental Payment Made Against Wrong Policy – 1 Error

On comprehensive claim number PA13700383, Performance paid a $240.00 rental bill to the correct insured, but under the wrong insured's policy.

c. Failure to Maintain PIP Payment Log in PIP Claim File – 1 Error

On PIP claim number PA10400120, Proformance failed to maintain a PIP payment log in the file.

d. PIP Claim Overpaid By Paying Bill Twice – 1 Error

On PIP claim number P2560980009A, the company overpaid the physician's bill for the service date of October 30, 1998 by $122.00 by incorrectly paying the same bill twice.

19. Mail Review

The examiners conducted two outgoing claim mail reviews and examined eighty-four claim checks. Proformance does not retain a copy of the payment voucher in the claim file. Therefore, the examiners reviewed the outgoing mail to verify the check date contained in the company's Diamond system, the timeliness of mailing and the statement contained on the check to determine compliance with the appropriate regulations. This review verified and supported the findings as reported in this section of the report.

E. SUMMARY AND GENERAL FINDINGS

The examiners found 222 errors on 68 files out of 79 randomly selected claims for a high error ratio of 86%. In this section of the report, five improper general business practices are included. Throughout this examination, company personnel made it clear to the exam team that the company was aware of its problems. Proformance informed the examiners that its philosophy during its first five years in business has been to hire experienced staff and to allow them "free rein to get the job done." The examiners reviewed Proformance's claim files and found them to be disorganized. Many files were found in disarray and documentation inconsistent. Papers found in the claim files were often loose and out of sequence.

IV. UNDERWRITING AND RATING REVIEW

A. INTRODUCTION AND SCOPE

The examiners reviewed 27 randomly selected policies from Proformance's population of 12,374 personal auto policies in force as of December 31, 1998. Of these, 3,682 were new business written in 1998. The examiners checked for compliance with all applicable laws and regulations including N.J.S.A. 17:29A-6, 15, 36 & 38 (filed and approved rating methods); N.J.A.C. 11:3-39.4 (anti-theft discounts); N.J.S.A. 17:29A-46 (uniform application of underwriting guidelines); N.J.A.C. 11:3-39.6 (safety features discount); N.J.A.C. 11:3-15 (coverage selection forms); N.J.A.C. 11:3-36 (physical damage inspection); N.J.A.C. 11:3-35 (automobile insurance underwriting rules) and N.J.S.A 39:6A-4.1 and N.J.A.C. 11:3-21 (PIP rate discounts). The examiners reviewed private passenger auto policies from random samples of policies written or renewed by Proformance between January 1, 1998 and December 31, 1998.

The company uses a package policy form, the High Proformance Policy, for all coverages offered. On the coverage summary page, Proformance indicates the applicable coverage(s) afforded by stating the premium next to the appropriate coverage. The company assigns a single policy number to its insureds for all coverages that it offers. Proformance differentiates between the policies by using a suffix; for example, the letter "A" for auto.

B. ERROR RATIOS

The examiners calculated error ratios for each sample reviewed by applying the procedure outlined in the introduction of this report. The 20 passive restraint policy files reviewed came from the random in force underwriting policy files. Various other safety discount reviews were completed as part of the overall underwriting review. Error ratios for each sample are as follows:

Review	Files Reviewed	Files in Error	Error Ratio
Auto In-force	27	14	52%
Select Reviews			
Passive Restraint	20	2	10%
Mail Review	42	29	69%

C. EXAMINERS' FINDINGS

1. Billing Notice Errors

a) Insufficient Renewal Billing Notice Time – Improper General Business Practice – 27 Errors

N.J.A.C. 11:3-8.3(b) states that each renewal offer shall be either a renewal policy, a certificate, or a renewal bill. With respect to payment of the renewal premium, notice shall be given not more than 45 days or less than 30 days prior to the due date of the premium. Throughout the examination, the examiners reviewed outgoing mail to check for compliance with the above requirement. The examiners randomly selected and reviewed 27 automobile renewal billing notices. The results of this review indicate that Proformance failed to provide 30 to 45 days notice on all 27 of the renewal billing notices for a 100% error ratio.

In response to an examiner's inquiry, the company agreed that the renewal billings did not provide the minimum required notice timeframe of 30 days. However, the company did not agree that this was an improper general business practice. Proformance stated, "it experienced a system problem in early July which set its production back a few days." In addition, the company provided the examiners with one automobile renewal billing dated July 20th 1999 which it stated provided the required 30-day notice. Allowing two days for mailing time, this notice too did not meet the time requirement. The examiners conducted several mail reviews revealing that Proformance neither meets the required minimum time nor allows for mailing time on its renewal billing notices. See Appendix C1 for files in error. Correction of the mailing process requires the company's immediate attention. See the recommendations section for the corrective measures to be undertaken.

b) Deficient Renewal Billing Notice – Improper General Business Practice – 6 Errors

Pursuant to N.J.A.C. 11:3-8.3(b), the renewal billing notice shall clearly state the effect of nonpayment of premium by the due date. During the course of several mail reviews, the examiners noted that Proformance's renewal billing notices did not contain a statement indicating the effect of nonpay. Six renewal billing notices from the May mail review did not state the effect of non-payment of the renewal premium by the due date. The company's renewal billing notices generated July 20, 1999 did state "if the amount due is not paid by the due date, a notice of cancellation will be released." In response to an inquiry dated July 2, 1999, Proformance advised the examiners that prior to June 24, 1999, the notices did not contain the effect of non-pay statement. Therefore, no renewal notices issued by Proformance during the review period of 1998 contained the required statement of the effect of non-payment of premium. This failure constituted an improper general business practice. See Appendix C1 for the renewal billing notices found to be in error. The examiners believe this mailing deficiency may have contributed to the non-payment of premium cancellation notice issue discussed later in this report.

2. Deficient Coverage Selection Forms – Improper General Business Practice

N.J.A.C. 11:3-15.7 in effect in 1998 prescribed the required contents of the New Jersey Coverage Selection Form (CSF). The examiners reviewed the specimen CSF provided in advance of the exam, plus a different edition contained in a policy file, and noted the following discrepancies.

a) Pre-Exam Specimen: **Form # UA 131b (Ed. 4-94)** - The regulation required under "PIP Medical Expenses Only", that insurers must include both the range of percentage savings and (emphasis added) the base, i.e., the basic PIP premium. This CSF contained the range of percentage savings, but did not include the base, contrary to the regulatory requirements. In addition, the regulation required the inclusion of at least four of the most popular coverage limits offered, including the lowest offered. The CSF provided did not include the list of offered limits; they were left blank to be filled in by the applicant or agent. As a result of the deficiencies noted, this CSF was non-compliant with the regulation noted above.

b) Policy file CSF: **Form # 231-1085 (9-95)** – As noted above, the regulation requires insurers to list at least four of the most popular liability coverage limits it offers, including the lowest limits offered by the company. The mandatory minimums in New Jersey are 15/30/5. This CSF does not include the lowest limits available, contrary to the regulation. If a company does not list all available coverage limits on its CSF, N.J.A.C. 11:3-15.7 also requires a statement in the Liability Coverage section that other liability limits are available. This Proformance CSF does not include the additional limit statement contrary to the regulation. As cited above on the pre-exam specimen, the regulation requires the range of percentage savings plus the base to be included under PIP Medical Expenses Only. The range of percentage savings is included, but not the base as required.

In response to a written inquiry itemizing the deficiencies, the company responded that it utilizes updated editions regularly and relies on the form printing service it uses to be in compliance with all current regulatory requirements. The examiners advised Proformance that it is always the insurer's responsibility to ensure that vendor-generated materials are in full compliance with all applicable statutes and regulations prior to their use. The result is that all Proformance Coverage Selection Forms issued in calendar year 1998 were deficient according to the requirements of N.J.A.C. 11:3-15.7. This constitutes an improper general business practice; the practice is not included in the error ratios of the report.

The examiners also requested the company's current CSF to review due to several recent changes to the New Jersey regulation. The company provided both their standard policy CSF, form # PIC299SPCSF, and their basic policy CSF, form # PIC299BPCSF. These editions correctly include all recent regulatory changes;

the examiners found no errors in the current editions of the forms.

3. Failure to Maintain Physical Damage Inspection Waiver – Improper General Business Practice - 7 Errors

N.J.A.C. 11:3-36.3 requires insurers to conduct a physical damage inspection whenever physical damage coverage is requested. N.J.A.C. 11:3-36.4 allows insurers to waive a mandatory inspection if certain criteria are met and they maintain a record of the waiver in the insured's file. On the seven policies noted below, Proformance waived the mandatory inspections but, contrary to N.J.A.C. 11:3-36.4(c), failed to retain a record of the waiver. In response to an examiner's inquiry, Proformance stated that, "although not consistently, Proformance does have inspection waivers in our underwriting files". The company provided three inspection waivers as examples; none were from the review period as all were dated mid-year 1999. On all files reviewed in which Proformance waived inspection, the examiners found no waiver; consequently, the examiners cite this error as an improper general business practice. The seven errors are as follows:

Policy Number	Policy Number	Policy Number
PC1060970423	PC1020970221	PC1060975001
PC1200970270	PC1330970186	PC1370970217
PC1060970355		

4. Failure to Grant Anti-Theft Discount – Improper General Business Practice – 5 Errors

N.J.A.C. 11:3-39.4 requires every insurer writing physical damage coverage to provide a reduction in the base rates for private passenger vehicles equipped with one or more anti-theft or vehicle recovery devices. In addition, the rate manual that the commissioner has approved for use by Proformance, requires the company to discount premiums for physical damage coverage whenever a vehicle has an anti-theft device, pursuant to N.J.S.A. 17:29A-6 & 15.

Of the 27 underwriting files reviewed, seven files had documentation that the vehicles were equipped with an anti-theft device. The examiners found that Proformance failed to apply the anti-theft discount on three policies: PC1330970114, PC1060970375 and PC1330970186. In addition, a new business application and a policy endorsement from a mail review performed on 5/7/99 contained evidence of eligibility for an anti-theft discount that was not applied. These two errors are counted in the mail review. Policy number, PC3600980104, contained a window sticker indicating securilock, anti-theft and policy number, PC33600990110, contained a "tracker plus" theft deterrent program.

In response, the company advised the examiners that it does not provide an anti-theft discount if the agent does not indicate on the application or endorsement that one is applicable. None of the five policies in error indicated on the application or endorsement that an anti-theft device was applicable. However, it is the insurer's responsibility to follow through on any information it receives that indicates the presence of an anti-theft device, and to obtain the information needed to provide the appropriate discount. The insured should not be penalized because of an agent's oversight or the company's belief that it is the agent's responsibility to indicate such. The company agreed and credited the two policies noted below.

Policies:	PC1060970375	PC1330970186
Credit Issued:	$30.00	$141.00

The three remaining policies are addressed in the Recommendations section of this report; Proformance has not provided proof of corrections on these policies.

5. Noncompliance with Mandatory Inspection Requirement – 5 Errors

Pursuant to N.J.A.C. 11:3-36.3(a), no insurer shall provide physical damage insurance coverage prior to conducting an insurance inspection. Each of the files in error that are listed below included the acknowledgement of requirement for insurance inspection, but not the inspection report. Contrary to the above stated regulation, Proformance provided coverage for five vehicles on three separate policies without prior inspection. The company agreed with these findings in their response to an examiner's inquiry. None of the vehicles qualified for waiver of the inspection, as stated in N.J.A.C. 11:3-36.4.

Policy Number	Vehicle(s)
PC1330970114	1995 Ford Taurus
PC1330970114	1996 Toyota Camry
PC1241970168	1989 Mercury Sable
PC1241970168	1992 Ford Tempo
PC1331970102	1994 Toyota Tercel

6. Failure to Obtain/Retain Coverage Selection Form – 4 Errors

N.J.A.C. 11:3-15.9(a) requires a signed Coverage Selection Form for all new policies indicating the insured's coverage choices. Coverage shall not become effective until the signed CSF is received from the named insured. Contrary to this regulation, Proformance did not obtain a signed CSF from the named insured on four policies. On two, PC1060970423 and PC1060975001, Proformance's agent submitted the declaration page from the insureds' prior carrier; a third policy file, PC1370970217 contains a CSF from the insured's former company. On policy number, PC1390970044, the company was unable to provide the examiners with the signed CSF.

7. Failure to Provide Passive Restraint Discount – 2 Errors

According to the rate manual that the commissioner has approved for use by

Proformance, the Company is required to discount premiums for Personal Injury Protection (PIP) coverage by 20% or 30%, whenever a vehicle has passive restraint devices. On the following two files, Proformance agreed that it did not provide the required passive restraint discounts for either the current or prior policy periods that the company insured the eligible vehicles. This is contrary to N.J.S.A. 17:29A-6 & 15, which require insurers to charge rates in strict conformity with its approved rate manual. These errors were corrected as a result of the findings of this examination. Premium credits resulted from the overpayment to the company.

Policies:	PC1060975001	PC1020970221
Credit Issued:	$108.00 credit	$136.00 credit
Discount Required:	20%	30%

8. Miscellaneous Errors – 4 Errors

a) Failure to Provide Requested Liability Limits – 1 Error

N.J.A.C. 11:3-15.9(c)1 requires the implementation of the insured's coverage selection choices by the insurer. On policy number PC1200980034, the insured requested liability limits of 15/30/5; however, Proformance incorrectly applied limits of 50/100/50, contrary to the aforementioned regulation. A review of the system notes screen for this policy indicated that Proformance does not write/offer the minimum limits requested. This issue is discussed in greater detail under the General Findings section, Minimal Writing of Policies with Minimum Liability Limits.

b) Failure to Apply Correct Class Code – 1 Error

N.J.S.A. 17:29A-6 & 15 require every insurer to charge rates in strict conformity with the rating system filed and approved by the commissioner. Contrary to these statutes, Proformance assigned an incorrect classification code 8113 instead of 8112 on policy number, PC1241970416. The company amended the classification code as a result of the findings of this examination; the correction reflected an overpayment to the company and a premium credit of $508.00 resulted.

c) Failure to Comply with the Forgiveness Program – 1 Error

Effective January 10, 1996, New Jersey Department of Banking and Insurance Bulletin #96-01 and N.J.S.A. 17:33B-14.1 require an insurer to forgive minor speeding violations. On policy number PC1060970355, the insured incurred a 2 point speeding violation on 2/29/96. Proformance incorrectly charged for this infraction for policy periods beginning April 1, 1997, October 1, 1997 and April, 1 1998. The company's system notes screen indicates that for the October 10, 1998 policy period, the 2-point surcharge was removed due to the forgiveness program. As a result of this examination, the company corrected the rates for all applicable policy terms, removed the surcharge from the prior terms, and credited the insured the $218.00 overpayment. The Forgiveness Program is discussed in greater detail later in this section.

d) Improper Insurance Identification Card – 1 Error

N.J.A.C. 11:3-6.2 requires that permanent insurance cards be issued in accordance with the specifications of N.J.A.C. 11:3-6.2(b) and (c). The permanent identification card issued by Proformance's partner agent on policy PC1130980245 is not in compliance with N.J.A.C. 11:3-6.2(b) 4viii, x and xi. It does not contain the following: State of New Jersey Insurance Identification Card as the heading; the signature of an agent or other authorized representative of the company; and the assignment of form number IV2A (1/96) in the upper left corner. The examiners reviewed this identification card as the result of findings of the Enforcement staff of the NJDBI.

In response to an inquiry from the Market Conduct examiner, Proformance advised that the Partner Agency who issued the permanent ID card does not have the authority to do so. The company stated that this was an isolated error; the Partner Agent did not issue any other permanent ID cards in the company name. Its agencies issue temporary ID cards with a two month expiration; the company itself issues permanent cards which are generated by its Diamond System. Proformance advised the examiners that it addressed this issue with its agency and provided it with copies of Bulletin Number 98-13 and regulation N.J.A.C. 11:3-6.1 et seq. concerning insurance identification cards. The examiners informed the Enforcement staff of the NJDBI of these findings.

D. GENERAL FINDINGS

1. Potential Discriminatory Practice - Homeowner Minimum Value Requirement

Proformance's Underwriting Guidelines for homeowners insurance require replacement value coverage to be at least $140,000. This number is quite high, exceeding the minimums of most other homeowner insurers that maintain such minimums. In response to an examiner's written inquiry, the company stated that in 1994, when Proformance incorporated, $140,000 was the average cost in New Jersey of a modest single family dwelling. Proformance stated that its policy is not attractive to homeowners with properties valued at below $140,000.

By instituting a required minimum of $140,000, Proformance targets the high-end market while circumventing a large market segment. New Jersey has many towns and cities in which the majority of properties are valued below that level; the properties are well maintained and are insurable. However, with the minimum in place, homeowners of such properties are not provided the opportunity to purchase coverage with Proformance. This eliminates the availability of Proformance homeowner policies for a large segment of New Jersey's population. In addition, the guideline unfairly excludes insurable homes in lower cost neighborhoods including those in urban areas. N.J.S.A. 17:22-6.14a1 states that underwriting "guidelines …shall not be arbitrary, capricious, or unfairly discriminatory." See Recommendation section for corrective measures and the Marketing Section for additional discussion of this issue later in this report.

2. Forgiveness Program

On January 10, 1996, a forgiveness program for minor speeding violations, N.J.S.A. 17:33B-14.1, (P.L.95, C. 386) was enacted into law. The Act provides that if an insured is convicted of speeding 1 to 14 miles over the limit, no surcharge or rate differential, can be imposed by an insurer. Pursuant to N.J.S.A. 17:29A-14 & 15, insurers must refile their manual rules and/or underwriting guidelines and rating information form to include a provision for compliance with the Act.

The underwriting manual provided to the examiners did not incorporate the forgiveness program. During the standard underwriting review, the examiners found that Proformance did not refile their manual rules and/or underwriting guidelines and rating information form to include a provision for compliance with the Act. As a result, the Forgiveness Program was implemented occasionally when an underwriter realized that an insured qualified for the two-point forgiveness.

In its response to the examiners, the company replied that its procedure was to present a copy of the Commissioner's order to all of the underwriters. A training session was conducted with its underwriting department in late April 1996 when Proformance received the Order. There are no formal written procedures available, contrary to the aforementioned statute.

3. Minimal Writing of Policies with Minimum Liability Limits

Although the company's underwriting manual includes the New Jersey mandatory minimum limits of 15/30/5, the examiners found indications throughout this examination that Proformance does not usually write policies with minimum limits. The examiners requested documentation from the company showing that it offers and writes minimum limits as required by New Jersey statute. Proformance provided the examiners with the requested in-force run of policies written with 15/30/5 limits. The examiners' review revealed that the company wrote 32 policies with minimum limits during the 1998 review period. Of these 32 policies, Urban Zone Assigned Risk (UZAR) agents wrote 29 policies and 3 partner agents wrote one policy each. In addition, on a specific policy, PC1200980034, the underwriter's notes indicated that the company did not offer minimum limits of 15/30/5. This issue is discussed in greater detail earlier in this section under 8a, miscellaneous errors. By the company's admission, its pricing of minimum limits is not competitive in the marketplace, effectively limiting Proformance's writing of the mandatory liability limits.

4. Passive Restraint System Rating Error

The review of the NJDBI complaint files brought to the examiners' attention Proformance's misapplication of the passive restraint discount on a system-wide basis. The discount was erroneously applied to the liability coverage.

The company discovered this error shortly after implementing its new Diamond computer system. Proformance advised the examiners that approximately 2033 policies were affected during the timeframe April through July 1997. A notice was sent to each affected policyholder with an explanation of the error and an apology for the inconvenience. The company reprogrammed the Diamond System to correct the error and issued endorsement billing for the additional premium; this generated several complaints from policyholders. The errors are not included in the error ratios as the company corrected them on its own prior to the examination.

5. The Diamond System

While processing corrective endorsements resulting from the market conduct examination, Proformance encountered a rating system problem. On policy #PC1060970375, the company attempted to issue an endorsement for the anti-theft credit. When the system processed this correction, it calculated the wrong premium. Proformance had to manually reverse all transactions previously inputted to issue this credit.

As a result of attempting to correct the anti-theft credit on prior policy periods, the company discovered that the Diamond System will not allow changes to be made on policy periods prior to 1999. Although retroactive endorsements are not a frequent occurrence, they do occur and are necessary. The computer system must be able to accommodate the underwriting activities that are required. The company advised the examiners that it is looking into why this is happening and will provide the NJDBI with verification of what is being done to correct this.

6. New Jersey Urban Zone Assigned Risk Plan

Pursuant to N.J.A.C. 11:3-46, the New Jersey Urban Zone Assigned Risk Plan (UZAR) has been established in coordination with the Automobile Insurance Urban Enterprise Zone Program to make private passenger automobile insurance available in the voluntary market for automobiles owned or operated by eligible persons in designated under-served urban areas. This plan went into effect June 1, 1998. Insurers participating in the UEZ program are required to write at least the same percentage of potential eligible members in the UEZ's as its market-share percentage of eligible members located outside the UEZ's, or the NJDBI will distribute these risks to the company so that it meets its share. The insurer's UEZ share is based on its in-force exposures in these zones as reported by survey for the period ended September 30, 1997. Subsequent UEZ shares are based on in-force exposures for the period ended September 30 of each year thereafter.

Contrary to N.J.A.C. 11:3-46.13, Proformance neither responded to the initial survey nor maintained its goal following the establishment of the UEZ share, based on its reports of in-force exposures filed for calendar year 1998. This subjected the company to subsequent distributions by the NJDBI in an amount required for Proformance to meet its goal and, monitoring by the Department to determine whether it maintains its goal numbers or continues to be subject to assignments. Proformance attained its UZAR market-share April 30, 1999.

7. Mail Review

The 27 renewal billing notices reviewed did not comply with either requirement of N.J.A.C. 11:3-8.3(b), timeliness of mailing and inclusion of the effect of nonpay statement. These errors are addressed under billing notice errors in this section of the report. Proformance informed the examiners that these notices are computer-generated by date.

In addition, the examiners pulled 10 automobile and one UZAR new business applications for the purpose of following-up to establish how the company processes new business. All eleven policies were written promptly and remained in effect. Four endorsements were also reviewed. The examiners found in the mail review, one new business application and one endorsement that each contained documentation supporting anti-theft discounts. Neither policy received the discount because the applications did not specifically request these discounts. These errors are discussed in this section of the report.

E. SUMMARY AND GENERAL FINDINGS

Again, the examiners found high error ratios of 52% on the automobile insurance in-force sample and 69% in the mail review. Most of the errors resulted from the five improper general business practices that are included in this section of the report.

The underwriting staff at the home office has become overly dependent on its partner agents to request premium discounts that are due. The problems and glitches experienced with the Diamond (computer) System have also created, and continue to create, difficulties for the company. At times, the system is unable to accommodate the company’s needs or it may not be properly programmed.

Proformance needs to focus on its lack of compliance with New Jersey statutes and regulations as the examiners found several improper general business practices. The company must also address its inconsistent handling of underwriting files. Proformance should institute written procedural guidelines and develop quality control methods to alleviate these conditions. In addition, the company needs to take a proactive approach rather than its current reactive stance. The examiners believe that adequate staffing and comprehensive training could substantially alleviate most of the errors and improper practices uncovered during this market conduct examination. The types of errors the examiners found in conjunction with the company’s responses throughout this examination support these conclusions.

Proformance is going through an ongoing internal assessment of its own strengths and weaknesses and is reorganizing itself accordingly which could help to improve its compliance problems. See the Recommendations Section of this report for the additional corrective measures to be implemented.

V. POLICY TERMINATIONS

A. INTRODUCTION

Proformance reported that as of December 31, 1998, it had 35,431 new and renewal personal auto policies in force. During the review period January 1, 1998 to December 31, 1998 Proformance Insurance Company cancelled 1,454 policies beyond the first 60 days and declined 32 new business applications within the first 60 days. In the same period, the company nonrenewed no policies. As a result, the examiners reviewed only cancellations and declinations. Errors, described by type, are listed below. The examiners checked for compliance with applicable statutes and regulations including, N.J.A.C. 11:3-8 (nonrenewal of automobile policies), N.J.S.A. 17:33B-15 and 16 ("Take All Comers" laws), N.J.A.C. 11:3-34 (eligible persons), N.J.A.C. 11:3-44 (rules for effecting auto insurance coverage), N.J.S.A. 17:29C-7 and 10 (automobile insurance cancellations) and N.J.A.C. 11:3-8.7 (nonrenewal reporting requirements).

B. ERROR RATIOS

The examiners calculated error ratios for the termination review by applying the procedures outlined in the introduction to this report. The following chart itemizes the review sample, the number of errors and the error ratio by type of termination. Proformance did not nonrenew any policies in 1998.

ERROR RATIO CHART

	Files Reviewed	Files in Error	Error Ratio
Auto Cancellations	19	2	11%
Auto Declinations	32	32	100%
Random totals	51	34	67%

C. EXAMINERS' FINDINGS - NONRENEWALS

One of the items requested in the examination call letter was a computer database of policies nonrenewed by Proformance during the review period. The company advised the examiners that it did not nonrenew any policies during the review period, calendar year 1998. The company stated, "In accordance with Bulletin #97-07 released by the New Jersey Department of Banking and Insurance, Proformance ceased non-renewing policies effective July 1, 1997." This bulletin states, "insurers should immediately cease issuing notices of nonrenewal that do not satisfy the Act's criteria, and should promptly rescind any notices of nonrenewal issued on or after June 30, 1997 that do not meet these standards." The Act changes N.J.S.A. 17:29C-7-1 by limiting the right of insurers to nonrenew insureds under the statute's 2% and "two for one" provisions.

1. Late and Inaccurate Filing of Nonrenewal Reports with NJDBI – Improper General Business Practice

N.J.A.C. 11:3-8.7(b) states, "An insurer shall submit summary reports of their nonrenewals for the year to date on or before February 15 and August 15 of each year to [the Department]." The examiners requested the Nonrenewal Reports for 1998. In addition to the standard review, the examiners crosschecked that no nonrenewals had occurred. In response to the examiners' request, the company provided the report for the first half of 1998. The examiners again requested the report for the second half of 1998. The company determined it had not submitted the report for the second half of 1998 to the NJDBI, contrary to the regulation quoted above. Proformance submitted the overdue report to both the NJDBI and the examiners in May of 1999.

The Nonrenewal Report for the first half of 1998 included 163 nonrenewals for underwriting reasons. The examiners questioned the company closely about these terminations because of the company statement that no nonrenewals took place in 1998. The Underwriting Manager from the company personally reviewed the 163 files and issued a report to the examiners itemizing the results. All 163 were cancellations of various types. The examiners randomly tracked several on the Diamond system and verified that they were cancellations and not nonrenewals. Proformance explained the reporting error by stating that the employee responsible for submitting the Nonrenewal Report to the NJDBI was unfamiliar with the reporting requirements and misinterpreted the categories.

The report for the second half of 1998, due at the NJDBI by February 15, 1999, also contained underwriting nonrenewals as well as a small number of 2% nonrenewals. The examiners continued to question the company about its reporting of terminations that it insisted did not occur in 1998. Once again, the company explanation of the underwriting nonrenewals was that the person filing the report did not understand it. The 2% nonrenewals reported for the second half of 1998 actually occurred in 1999. Because Proformance ran the report in May of 1999 in response to the examiners' request, the report incorrectly captured the 2% nonrenewals that occurred early in 1999.

D. EXAMINERS' FINDINGS – DECLINATIONS

Proformance declined 32 new business applications during the review period of calendar year 1998. Since all applications were bound, the company issued a cancellation notice within the first 60 days of coverage to effect the declination. This review has a 100% error ratio due to the company's failure to provide the required Appendix B form with every declination. However, the error ratio remains high (65%) without the 100% error count for not including all required forms.

If a company has multiple legitimate reasons to decline a new business application, it can list any one specific reason on the notice, or it can list multiple reasons; nothing currently in New Jersey statute or regulation limits the company in this way. Proformance chose to include as many reasons as applied to the application in question. If any one correct and supported reason is on the declination notice, the declination will stand. However, if all reasons listed are not specific or sufficiently detailed the declination is invalid and will be reported as such. When a valid reason is on the notice with an invalid or incomplete reason, the file will be cited as an error for the invalid or incomplete reason(s).
During the declination review, the company responded to most of the inquiries that it agreed with the examiners' findings and included the following paragraph:

> "Generally, from what we are seeing emerge from the examiners' review, we probably need to do re-training of our staff to ensure that the information they provide on declination notices are more thorough and the reasons for declination are more consistently compliant with statute and regulatory requirements. It has not been the policy of the company to decline to write business that shouldn't be so declined."

The errors found in the review of the Declination population are as follows:

1. <u>Failure to Provide Appendix B with Declinations – 32 errors – Improper General Business Practice</u>

<u>N.J.A.C.</u> 11:3-33.4(c) requires insurers to include Appendix B, an appeal form, with all written denials. The company agreed with the examiners' findings that Proformance does not include the Appendix B form as required. Proformance's cancellation notice included Appendix A, as required. This error occurred on the entire population of declined policies. See Appendix D1 for a list of the policy files reviewed.

2. <u>Failure to Provide Specific Reason for Declination on Termination Notice – 21 errors – Improper General Business Practice</u>

<u>N.J.S.A.</u> 17:33B-16 and <u>N.J.A.C.</u> 11:3-33.4(a) & (b) require an explanation of the reason for a declination to be included on the termination notice; the reason must be specific, comprehensive and provide "…the specific basis for which the applicant fails to qualify as an eligible person." Proformance declined the 21 applications for the reason, "failure to meet underwriting guidelines." This reason is devoid of the specific detail about what guideline had not been met and why. This failure to provide specific detail does not meet the requirements of the statute and regulation above. Every declination in which Proformance used its underwriting guidelines as the basis, did not include the specific detail required for compliance with the statute and regulation. In addition, the error occurred on 66% of the company's declinations. Therefore, this constitutes an improper general business practice. See Appendix D2 for the list of policies in error.

3. Improper Declination of Potentially Eligible Persons – 16 errors

N.J.S.A. 17:33B-15 states that no insurer shall refuse to insure, for automobile insurance, an eligible person as defined in N.J.A.C. 11:3-34.4. Fourteen of the sixteen declinations the examiners cited include the phrase "incomplete application" as a reason for declination. Proformance only occasionally makes a separate attempt to obtain missing information before issuing a declination; rather, the company declines the policy because the insured failed to submit a complete application. This occurs even though the applications are received bound from the company's agency force; and even if, upon consideration of the missing information, the risk may still be eligible.

The company's declination of these policies unfairly penalizes the insureds for the failure of company agents to forward sufficient information to verify the applicants' eligibility for coverage. Before declining the risk, Proformance should write to the insureds to provide them the opportunity to forward any missing information. By not attempting to obtain missing information prior to terminating the policy, the company did not prove the applicants were ineligible under N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34, making these fourteen declinations invalid. The position of the NJDBI is that insurers must first send a written request for any missing information or resolve any other discrepancy noted in the application. Insurers may decline the risk only when the missing information is of such a nature that would render the insured to be ineligible. If the missing information would place the insured in a higher rating category, then the company should rerate the policy. See Appendix D3 for the invalid declinations and the information missing on each.

The fifteenth invalid declination, Policy # PC3600980051, was declined for "does not meet underwriting guidelines" (as discussed above). However, Proformance told the examiners that it actually declined the policy for an incomplete application. Once again, Proformance did not elect to request the missing information, and instead immediately terminated the policy. This is an invalid declination for failure to determine eligibility as described above and for not including the true reason for the declination.

Proformance declined the final policy #PC1220980059 listing several reasons. The termination notice stated, "Does not meet underwriting standards. Incomplete application. Undisclosed operators. Insufficient deposit and insured has not had continuous auto insurance." The problem with underwriting standards is addressed above. The incomplete application refers to the undisclosed operators, also listed separately on the notice. The agent informed the company, prior to the declination, that the undisclosed operators are residents of the same building, not the insured's household. The file also shows that the agent did not request the full premium from the insured; this is required whenever the insured was previously cancelled due to non-payment of premiums. Despite obtaining the information to determine eligibility, Proformance would not reinstate this policy. This declination was improper for several reasons; ultimately, the company failed to prove this applicant to be an ineligible person. This declination is cited throughout this section for multiple errors.

4. Unfair Discrimination Against Youthful Operators – 2 errors

N.J.S.A. 17:29A-46 requires an insurer to apply its underwriting rules uniformly and without exception throughout the state so that every applicant or insured conforming with the underwriting rules will be insured or renewed, and so that every applicant not conforming with the underwriting rules will be refused insurance. In addition, N.J.S.A. 17:29B-4(7)(e) defines unfair methods of competition and unfair and deceptive acts or practices in the business of insurance, partly as, making or permitting any unfair discrimination solely because of age in the issuance, withholding, extension or renewal of any policy or contract of automobile liability insurance or in the fixing of the rates, terms or conditions therefor, or in the issuance or acceptance of any application therefor. Proformance's underwriting guidelines do not permit the company to reject a youthful applicant.

The examiners reviewed two declinations of youthful operators. Both of these declinations referenced the youthful operator either directly or indirectly, as business the company was not interested in writing, contrary to the statutes detailed above. Policy # PC3110980057 was declined for "failure to meet underwriting guidelines". Within this policy file, the examiners found a notation stating,

> "sent notice due to policy does not meet underwriting guidelines, no prior insurance and requested 25/50/25 liability limits."

These reasons are not included in the company's underwriting guidelines. Proformance did not write an insured who conformed to its underwriting rules, contrary to N.J.S.A. 17:29A-46. This applicant had no prior insurance because he/she was a newly licensed young driver; this also may explain the request for lower limits. Neither of these reasons is valid to decline an applicant. Declining an applicant on the basis of age constitutes a discriminatory practice that fails to meet the requirement of N.J.S.A. 17:29B-4(7)(e). The examiners also cited the above policy for providing a non-specific termination notice regarding the underwriting guidelines and for an invalid termination.

The second youthful operator declination occurred on policy # PC1220980059. The policy was declined for the following reasons: "Does not meet underwriting standards. Incomplete application. Undisclosed operators. Insufficient deposit and insured has not had continuous coverage." The company computer system revealed the following message,

> "edna from agency called concerning the cancellation issued. She said that the insd lives in an apt bldg and those are the undisclosed operators. [The underwriter] explained that [the company] would not reinstate. This is a monoline auto, with low limits of coverage, and old vehicle and a young

driver. [The underwriter] explained also that this is not the type of business that [the company is] looking for and suggested that they replace coverage elsewhere. They also did not send in the full premium as this was a canc for non pay in 1/98. She said that the person writing the app made an error. [The underwriter] explained that was the responsibility of the agency and again, [the company] would not reinstate."

The only reason this application could have legitimately been declined, the insufficient deposit, was resolved by the agent and should not have been considered. To continue to refuse reinstatement constitutes discriminatory actions against a youthful operator, contrary to the statutes referenced above. As with the previous policy, this one was also cited for insufficient detail regarding the underwriting guideline not met, and for an invalid declination of a potentially eligible risk.

In response to an examiner's inquiry, Proformance provided a list of 63 policies that it wrote on drivers aged 17-19 in 1998.

5. Untimely Provision of Declination Notice – 1 error

N.J.S.A. 17:29C-8 states that no notice of cancellation of a policy shall be effective unless mailed or delivered by the insurer to the insured at least 20 days prior to the effective date of cancellation. On declined policy # PC3600980051, the cancellation (declination) notice was mailed on March 10, 1998 and became effective on March 13, 1998, only three days later contrary to the statutory requirements. The company agreed that this error occurred.

E. EXAMINERS' FINDINGS – CANCELLATIONS

Proformance Insurance Company cancelled 1,454 policies beyond the first 60 days during the review period of 1998. The examiners reviewed 71 cancellations and found two in error for a 3% error ratio. The breakdown of this review is as follows:

Cancellation Reason	Files Reviewed
Insured Request Cancellations	26
Non-Pay Cancellations	43
Policy Rewrites	2
Total Reviewed	71

The examiners found that on all of the insured-request cancellations, every file contained Lost Policy Releases or written, signed requests. The terminations occurred as requested and refunds were prompt and accurate. The two policy rewrites contained no errors or lapses in coverage. On two files, itemized in #2 below, the company failed to retain the certified true copy of the notice.

1. <u>Multiple Non-Payment Cancellation Notices</u>

The examiners reviewed a larger than usual sample of non-pay cancellations because it was discovered throughout this exam that a large majority of policy files inexplicably contained several notices of non-pay cancellation. There were often multiple sequential policy terms in which non-pay notices were issued, usually at renewal. The examiners reviewed an unusually large amount of non-pay cancellations in an effort to understand this situation.

The examiners traced many of the policies containing multiple notices on the underwriting system to determine whether the non-pay terminations took place, or the premium was paid. In most instances the premium was paid and the coverage stayed in effect. This situation concerned the examiners, as an inordinate number of non-pay termination notices may indicate other problems, such as delayed billings. When questioned, the company stated,

"The reason that Proformance is seeing a multiple number of non-pay cancellations is because of the six-month policy. The reason that our system is generating several non pay notices because our insureds are not paying there[sic] premium on or before the due date on their invoice but they are paying before the final cancellation date."

While this is obviously true, it does not address the underlying reason(s) why so many non-pay cancellation notices are generated in the first place. As discussed and cited in the Underwriting section of this report, Proformance does not mail its renewal billings with adequate time for payment of the premium as required by statute and regulation. In addition, the renewal packages, until recently, did not contain the required notice providing the effect of non-payment of the renewal premium. The combined effect of these deficiencies could easily result in late premium payments that would generate non-pay notices even if the cancellation does not take effect. Correction of the timing of renewal mailings as recommended by this report, as well as the inclusion of the effect of non-pay, will help to reduce the number of non-pay cancellation notices issued

2. <u>Fai1ure to Retain Certified True Copy of Cancellation Notice – 2 errors</u>

<u>N.J.S.A.</u> 17:29C-10 states that no notice of cancellation will be effective unless it is sent by certified mail, or a dated proof of mailing is obtained. In addition, the insurer must retain a duplicate copy of the notice certified as a true copy. On policies, <u>#PC1370970284</u> and #<u>PC3600970360</u>, the company failed to certify the retained copy as true duplicate copies of the cancellation notices. The company agreed with this finding.

3. <u>Mail Review</u>

The examiners reviewed 39 termination notices for nonpayment that Proformance processed on several different dates. The examiners found no errors in this review.

F. SUMMARY AND GENERAL FINDINGS

As with the other reviews, the examiners found a high random error ratio (67%). Three improper general business practices are also reported in this section of the report.

VI. LICENSING, MARKETING AND ADVERTISING

A. INTRODUCTION

Proformance had 79 active agents for the year 1998; 41 of the active agents are partner, or shareholder, agents who have invested in the company. The examiners reviewed company records of agency appointments and terminations including the proper notification and timeliness requirements of N.J.S.A. 17:22A-15b and N.J.S.A. 17:22-6.14a. The examiners also reviewed several randomly selected active agency contract files and the daily correspondence included in the file(s). These files were examined for indicators reflective of Proformance's marketing patterns and practices. In addition, the examiners obtained copies of all advertising pieces used in New Jersey, as well as accessing the company's Internet site and evaluating all materials for compliance with N.J.S.A. 17:29B-4(1) & (2) which prohibit false advertising.

B. ACTIVE AGENCY REVIEW

The examiners requested a random selection of 30 active agency files for the review. A total of 64 files were reviewed; the company maintains two or more files per agency; one contains the signed agency agreement, and another one or more contains the daily working correspondence between the agency and the company. Those agencies with more than one daily file are those with more than one location; each location has its own daily correspondence file. All active agency files reviewed contained the original signed agency agreement as required.

The examiners also discovered various documents in the agency correspondence files, which initiated further investigation, or which provided support for other findings of this examination as referenced throughout this report.

In addition to the random agent file review, the examiners compared the lists of agents as provided by Proformance to the master licensing records of the NJDBI. As a result of this comparison, several discrepancies were noted. An examiner returned to the company location and reviewed all agent records that could not be reconciled with both sources. The following represents the findings of this review.

1. Payment Of Commission On Inexperienced Operator Surcharges – Improper General Business Practice

N.J.S.A.17:29A-40 states no producer commission shall be paid on the additional premium generated by an inexperienced operator surcharges. In response to an inquiry, Proformance admitted that contrary to the statute, it paid commission on the additional premium resulting from inexperienced driver surcharge points throughout the review period. The company stated it was not its intention to act contrary to the requirements of the statute. Rather, the company stated its newest computer system was not yet able to withhold paying this portion of a commission. The company stated that it would work to correct the problem.

Proformance stated that as soon as the problem was corrected, it would immediately discontinue the paying of commission on the inexperienced operator surcharge points. In addition, once the problem was corrected, the company would also circulate a memo to its agents advising them of this change.

With the implementation of tier rating in October 1998, surcharging is no longer permitted and the statute has no application with regard to commissions paid since that date.

2. Failure to File Appointments with NJDBI - 2 errors

N.J.S.A. 17:22A-15c states, "Any insurance company appointing an agent ...shall file with the commissioner, on a form prescribed by the commissioner, a notice of appointment providing the names and business addresses of its agents, including notice of any limitations on the agent's authority."

The following agents appear on the database of agents provided to the examiners, and/or are included on the list of partner agents provided in response to a written inquiry for the review period 1998. However, the master licensing records of the NJDBI do not list them as being appointed by Proformance, contrary to the statute quoted above. In response to an examiner's inquiry, the company agreed with these findings.

AGENCY	AGENCY ID #
1. Abel Insurance Agency	(2470)
2. Malsbury & Carter Division	(2470)

Eleven additional agency files were not handled in compliance with N.J.S.A. 17:22A-15c. These errors occurred before the review period therefore, the files will not be cited.

AGENCY	AGENCY ID #
1. W C Horton Agency	(1221)
2. Stern & Dragoset	(1222)
3. The Dittmar Agency	(2430)
4. Mark Anthony Associates	(3600)
5. Patgo Insurance Agency	(4020)
6. The Kennedy Agency	(1141)
7. Regional Ins. Agency D/B/A Sondheim & Laughlin, Inc.	(3100)
8. Regional Ins. Agency D/B/A Mark Dobbins	(3090)
9. Regional Insurance Agency, LLC	(3110)

10. The Rork Agency (3060)
11. Sage Insurance Services (2410)

C. TERMINATED AGENT REVIEW

During calendar year 1998, Proformance advised that it terminated two agencies; the examiners reviewed the files of both agencies and their respective terminations. In addition, as noted above, the examiners reconciled the lists of company agents with the master licensing records of the NJDBI. The additional errors noted below came from that comparison review.

- Boynton Brothers Agency (ID# 2550 & 2551) of Perth Amboy, NJ, (territory 8) was terminated January 1, 1998 due to the sale of the agency to a national concern with which Proformance chose not to do business.
- PFI Premier Financial Services (ID# 3800 & 4000) of Westbury, NY and Bedminster, NJ, (territory 25) was terminated December 12, 1998 due to the agency's "Failure to adhere to our Underwriting Guidelines."

1. Agent Termination Errors

a. Failure to Provide 90 days Notice of Termination to Agent and/or NJDBI - 3 errors

N.J.S.A. 17:22-6.14a(d) states that an agency termination will be effective after not less than 90 days advance notice of the termination in writing to the agent and to the NJDBI; two separate written notices are required. Proformance terminated the following agents without the appropriate notifications

ID #	Agent Name	Missing Notices
2550/2551	Boynton Brothers Agency	No 90-day notice to NJDBI or agent
3800/4000	PFI Agency	No 90-day notice to NJDBI

During the examination, the examiners found an additional six agents that were terminated prior to the 1998 review period. Although these terminations were not handled in compliance with N.J.S.A. 17:22-6.14a(d), the examiners did not cite them as they occurred outside of the review period. The six agents listed below were terminated either in late 1996 or 1997 without the required notices.

ID #	Agent Name	Missing Notices
3030	P A Post Agency LLC	No 90-day notice to NJDBI or agent
1210	Buckelew Associates	No 90-day notice to NJDBI or agent
1210	Commerce National Ins Svcs.	No 90-day notice to NJDBI or agent
3350	Global Coverage Inc.	No 90-day notice to NJDBI or agent
3700	Deegan Associates Inc.	No 90-day notice to NJDBI or agent
3350	Rosenthal, Philip J (IP)	No 90-day notice to NJDBI or agent

b. Failure to Notify NJDBI Within 15 Days of Termination – 2 errors

N.J.S.A. 17:22A-15b requires written notice to the NJDBI within 15 days of the actual termination. The notice is to include the effective date of the termination as well as the reason for the termination. The termination files of the Boynton Brothers Agency (#2550 & #2551) and of PFI Agency (ID#3800/4000) did not contain the 15-day notifications to the NJDBI. Proformance could not produce the required documentation on either file. NJDBI records also fail to indicate that either agency was terminated. According to N.J.A.C. 11:17-2.9(a)5, the agency contract of these two agencies remains in effect as a result of the company's failure to notify the NJDBI.

In addition, Proformance handled the following six agents contrary to the above statute and regulation as it was unable to provide the examiners with the 15-day notification to the NJDBI. The examiners did not cite these additional errors as they occurred outside of the review period.

Agent Name	ID #
P A Post Agency LLC	3030
Buckelew Associates	1210
Commerce Nat'l Ins Svcs	1210
Global Coverage Inc	3350
Deegan Associates Inc. *	3700
Rosenthal, Philip J (IP)	3350

* Notice sent 12/16/97 at NJDBI's request; all licenses were revoked for this agency.

c. Failure to Maintain The Signed Agency Agreement - 1 error

N.J.A.C. 11:17-2.9(a)1 requires that a copy of the signed agency agreement be maintained in the agency file. The PFI Agency (ID# 3800 & #4000) file did not contain the signed agency agreement, nor could the company produce a copy when requested to do so, contrary to the regulation noted above.

In addition, the Patgo Insurance Agency (ID#4020) file did not contain the signed agency agreement. This error occurred prior to the examiners review and will not be counted in error.

D. MARKETING

The examiners reviewed the printed advertising materials provided by Proformance for review. The company utilizes very little printed advertising material. The material consisted mostly of safe driving pamphlets and brochures used by its agency force. All materials were reviewed; the examiners found no errors.

Proformance also maintains an Internet site, on-line as of June 1, 1999, which was reviewed by the examiners. It is a general company identification site containing a description of the package policy offered and an employee directory. The examiners found no errors in the content of the Internet site as of the review date.

The examiners also reviewed the company's marketing practices to ensure compliance with the following statutes. N.J.S.A. 17:29A-6 requires insurers to file a rating system with the NJDBI and it also states, " From and after the date of the filing of such rating-systems, every insurer shall charge and receive rates fixed or determined in strict conformity therewith…." N.J.S.A. 17:29A-15 states "No insurer or employee thereof, and no broker or agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the respective rating-systems on file." In addition, N.J.S.A. 17:29A-15 continues to state, "No insurer or employee thereof, and no broker or agent shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, …any rebate, discount, abatement, credit or reduction of the premium … except to the extent that such rebate, discount, abatement, credit, reduction, favor, advantage or consideration may be provided for in rating-systems filed by or on behalf of such insurer and approved by the commissioner." [Emphasis added]

During the examination of Proformance's agent files, the examiners discovered the following errors in the company's marketing practices.

1. Improper Package Policy Discount Given on Monoline Auto Policies – 150 Policies Misrated – Improper General Business Practice

During the review of the Proformance active agent files, the examiners determined that the Mitchell Bateman Agency (ID #2531) of Newton and Somerville, NJ recently terminated its relationship with another insurer. Proformance is marketing that company's business as it comes up for renewal through Mitchell Bateman. In order for Proformance to be competitive with the pricing of the other carrier, Proformance has agreed to offer a 10% package policy discount on rollover business, monoline auto risks that do not qualify as package policies. The company letter to the agency states, "If after the annual term the account has not been packaged, we would delete the package credit." The package credit provides a 10% discount, for which all are ineligible, for two six-month policy terms.

Each of the policies written with this discount contains a note to the underwriting file identifying it as part of the rollover offer; the examiners identified a block of policies written with this improper discount. In response to a written inquiry, Proformance produced a list of 150 policies written with this improper discount.

As part of Proformance's inquiry response, it stated, "Proformance offered our

…package product to the [other carrier's] policyholders with the 10% package discount so it would be competitive." The response continued, "Although the credit may have been applied incorrectly, please note that Proformance did not injure our policyholders." The discount was offered to enable a partner agent to maintain a large book of business, as well as to make the Proformance product price-competitive with the coverage being replaced. The company stated that it did not injure any policyholders. This type of improper practice does not harm the existing book of business. Rather, it harms potential new insureds who do not receive the same offer of a discount from the company, as well as harming Proformance's remaining agents who do not have this discount to offer to their applicants.

By offering the package discount on monoline auto policies, the company is not in strict conformance with its rating system filed with the NJDBI. In addition, Proformance and the Mitchell Bateman Agency are knowingly charging rates and offering a discount that is not in accordance with the company's filed rating plan. These actions are contrary to the statutes quoted above. See the recommendations section of this report for the necessary corrective measures to be taken.

2. Improper Reduction of Homeowner Minimum Replacement Value For One Agent – 6 errors on 2 policies – Improper General Business Practice

The examiners found an internal E-mail message printed and retained in the agency file for the Dalton Agency, ID # 3500. The message was a request to management from a company-underwriting employee who visited the agency and determined that the company filed minimum required replacement value of $140,000 was too high for the area in which this agent operated. The employee requested that the guidelines be relaxed for this agency. The response from management was that the guidelines could be relaxed to $120,000 for this agency only; that it would be only for renewals, and that " 'new to the agency' clients" should be continued at the filed minimum of $140,000.

In response to a written inquiry, the company stated, "The Proformance Insurance Company does not believe that we are providing The Dalton Agency with an unfair advantage in the market. It is our opinion that The Dalton Agency is not receiving an unfair advantage since we did not provide this on renewals and there were two (2) policies that were written under this agreement." The company response continues, "Further, the reduction to $120,000 was instituted for the benefit of our policyholders, not the Dalton Agency. … The Proformance Insurance Company lowered it to $120,000 for the Dalton Agency to compensate for the economic difference and make our expansive HPP available to these individuals."

The company believes that its reduction of minimum requirements does not benefit the agent, only the policyholders; the examiners do not agree. If an agent has the ability to write homes of lesser value than is usually required, it opens an entire new market segment, especially in an area of reduced value. If, as the original memo suggests, this was only for renewals, it could benefit the agent by enabling him to more effectively retain his book of business, rather than being priced out of its market as property values diminish. No other NJ agent has been given the same consideration.

The company response as quoted above, describes the practice in direct contrast to the E-mail message found by the examiners initially. The E-mail stated that the reduction could be relaxed only for renewals, and that new clients would be held to the filed guidelines of $140,000. Whereas, the response to the inquiry states that the relaxed minimum is not provided on renewals, and that two policies were written within the relaxed guidelines. The two policies, PC3500970005H and PC3500990036H together cover six properties between them. Of the six properties written under the relaxed guideline, two dwellings are valued at $120,000 or greater; the remaining four are below the minimum requirements of the relaxed guideline. One is as low as $70,000, the second is $115,000 and the final two are $117,000 each. These two policies were written contrary to N.J.S.A. 17:29A-6 for not complying with the company's filed rate manual and underwriting guidelines.

In addition, Proformance's relaxation of its filed guidelines is contrary to N.J.S.A. 17:22-6.14a1 for being arbitrary and capricious. It is also contrary to N.J.S.A. 17:29A-6 in that the company charged rates which were not in strict conformity with its filed rate manual and its underwriting guidelines, and it is contrary to N.J.S.A. 17:29A-15 for providing a discount that is not part of the company's filed rate plan.

VII. COMPANY OPERATIONS

A. DISASTER RECOVERY PLAN

During the course of the examination Proformance was questioned about its disaster recovery plan. The company stated that it is currently in the process of preparing a disaster recovery plan. When questioned further as to the status of the company efforts, Proformance indicated that in 1998 an audit completed by an external firm, outlined several recommendations, upon which the company presently relies, as outlining the necessary safeguards to be taken in the event of a disaster or catastrophic system failure. The company states it currently has no itemized disaster plan in writing.

The examiners reviewed the audit recommendations referenced in the company response. The recommendations are general in nature. They advise the company of the areas it should consider including in any disaster plan it implements; however, it does not tell the company how to react in the event of a catastrophic occurrence. The purpose of the recommendations was to advise the company of the need for a comprehensive disaster recovery or business continuity plan, not to serve in place of one. The company has not implemented any of the audit recommendations.

B. INTERNAL AUDITS

As part of the initial call letter for this examination, the Department asked the company to provide copies of any internal audits completed during the review period. Proformance advised that although it is audited annually by an external auditor (Arthur Anderson) relative to financial statements and records, its current position is that funding an internal audit function would not be cost effective. Rather, as part of its ongoing management process, the company conducts self-audits of accounts and records; no formal report is written as a result of these self-audits. As the size and complexity of the organization increases, Proformance states that it will regularly re-evaluate its position regarding a more formalized audit function.

C. YEAR 2000 PLAN, NJDBI ORDER A97-129

On May 21, 1997 the New Jersey Banking and Insurance Commissioner issued Order A97-129 encouraging companies to begin instituting programs to address the Year 2000 issue within the companies' own computer systems. In response to the examiners' inquiries, Proformance stated that it has examined the Y2K readiness of its personal lines, Diamond system, and its premium processing application and its Access-based general ledger system. In addition, the company has received assurances from its premium, claim and general ledger software, hardware and operating systems vendors that each is Y2K compliant. Proformance has successfully begun testing of all systems for compliance. As of April 1999, the company stated it was in the process of preparing a comprehensive Year 2000 project plan.

As an additional requirement of the NJDBI Order referenced above, a Y2K preparedness survey was to be completed and forwarded to the Department by May 21, 1997. The initial response to the examiners' request for a copy of the completed survey stated that no survey could be located. Thereafter, the company produced a copy of the survey and cover letter sent to the NJDBI in early 1998, seven to eight months after the requested due date, contrary to the requirements of NJDBI Order A97-129.

VII. RECOMMENDATIONS

Proformance should inform all employees who handled the files and records cited in this report of the examiners' findings. The New Jersey Department of Banking and Insurance also recommends the following remedial measures and that the company should establish procedures to monitor compliance with these measures. Throughout this report, the examiners cite and/or discuss all errors found. If a single error occurs, the examiners often include a "reminder" recommendation because if a single error is found, more errors of the same type may have occurred. Proformance has already generally agreed to comply with the recommendations herein; however, documentation of compliance is still needed.

A. GENERAL INSTRUCTIONS

- All items requested for the Commissioner, all copies of written instructions, procedures and forms recommended in this report should be sent to the attention of Clifton J. Day, Manager, Market Conduct Unit, 20 West State Street, P.O. Box 329, Trenton, N.J., 08625, within 30 days of the date of the final report. On files that are reopened as recommended, the letter offering coverage or providing additional payment, should be sent to the insured with an accompanying cover letter containing the following first paragraph (variable language in parentheses):

  > "During a recent review of our files by market conduct examiners of the New Jersey Department of Banking and Insurance, they found that we ({improperly rated}{improperly terminated}{improperly declined}{failed to pay interest on} your auto{policy}{claim}). Enclosed is our ({offer of a new policy}{premium credit}{interest payment in the amount of $______}) to correct the error."

- Except for PIP claims (see recommendation 10), a copy of the letters recommended should be forwarded to the Commissioner. For any files corrected during the course of the examination, a copy of the cover letter, proofs of any refund or credit issued, plus the results of any offer of coverage made, should be forwarded to the Commissioner.

B. COMPLAINTS

1. In order to comply with N.J.S.A. 17:29B-4(10), Proformance is to issue written instructions to all appropriate personnel stating that:

   a) All complaints received, including those directly and through the NJDBI, must be logged into the complaint register.

   b) The actual complaint receipt and response dates are to be recorded in the log. Accurate dates are essential in determining the total number of days to resolve complaints.

2. The three NJDBI complaints cited as not being included in the Complaint Log are to be correctly entered at this time, and a copy of the page(s) showing the entries is to be provided to verify compliance with this recommendation.

3. Proformance is to provide a copy of its 1999 Complaint log to the Commissioner for review.

4. The company must monitor Complaint Log entries to ensure the continued accuracy of all dates being logged.

5. The company must remind all appropriate personnel that:

a) N.J.A.C. 11:2-17.6(d) requires a written response within 15 working days on NJDBI claim complaints. In addition, they must respond promptly to all complaints from the NJDBI as required by N.J.S.A. 17:23-1.

b) they must maintain all pertinent communications in the related policy or claim file.

C. CLAIMS

6. Proformance must issue written instructions to appropriate personnel, including independent appraisers that when handling first and third party claims, they must:

a) Pursuant to N.J.A.C. 11:3-10.3(c), specify the insured's deductible on appraisal forms relating to all collision and comprehensive claims.

b) Pursuant to N.J.A.C. 11:2-17.5(e), cease using language on claim checks or drafts, such as “full and final settlement”, which releases the insurer or its insured from total liability on partial settlements. In order to verify compliance, Proformance is to provide the NJDBI with documentation that a programming change has been implemented to eliminate this wording as the default message currently appearing on claim checks.

c) Pursuant to N.J.A.C. 11:3-10.4(c), advise the first and third party total loss claimants in writing of their rights of recourse at the time of settlement, and retain a copy of the recourse notice in the claim file.

d) Pursuant to N.J.A.C. 11:3-10.5(a) & (b) and N.J.A.C.11:2-17.7(c) & (f), pay all first and third party claims within 30 or 45 days as appropriate, unless clear justification exists, and if unable to settle within the time periods specified, send written notices of delay every 30 or 45 days as appropriate, until settlement.

e) Pursuant to N.J.A.C. 11:2-17.8(i), pay benefits when they become due. Proformance must also explain to all appropriate Claims personnel how to identify potential claims, such as Lost Wages and Essential Services under

PIP coverages, as well as the importance of prompt handling.

f) Pursuant to N.J.A.C. 11:2-17.10(a)8, advise a property damage claimant whether and to what extent payment for automobile rental is available under the terms of an auto policy.

g) Pursuant to N.J.A.C. 11:2-17.7(g), pay the amount agreed upon within 10 working days of the claim agreement being reached.

h) Pursuant to N.J.A.C. 11:2-17.7(a), commence all claim investigations within 10 working days of receipt of notice.

i) Pursuant to N.J.A.C. 11:2-17.8(b), confirm in writing and retain copies in the claim file of all denials or offers of compromised settlements.

j) Pursuant to N.J.A.C. 11:2-17.6(c), provide the first party claimant with all necessary claim forms and instructions within 10 working days.

k) Pursuant to N.J.A.C. 11:2-17.6(b), acknowledge receipt of notification of a claim notice within 10 working days, unless payment is made within such period of time.

l) Pursuant to N.J.A.C. 11:2-17.8(k), include a statement on all claim payments setting forth the coverage under which payment is made and in sufficient detail.

7. Proformance is to issue written instructions and hold training sessions for the purpose of instructing all PIP claims personnel that N.J.S.A. 39:6A-5 and N.J.A.C. 11:2-17.7(a) require all PIP claims to be paid within 60 days unless an extension of 45 days is requested in writing; and that N.J.S.A. 39:6A-5h requires the payment of interest on PIP claims paid beyond the required time frames. The training should also include a discussion that although interest is to be paid when a delayed PIP claim is settled, the payment of interest does not absolve the company of the responsibility of untimely payment. The training session agenda, a list of attendees by job title, plus handouts or training materials used are to be sent to the NJDBI to verify compliance with this recommendation.

8. Proformance is to reopen and review all PIP claims paid during the review period, calendar year 1998. For all payments made beyond the required time period, interest is to be calculated and paid for the period of delay as required by N.J.S.A. 39:6A-5h. A computer list of all files reopened and the amount of interest paid is to be generated and provided to the NJDBI to verify compliance with this recommendation. No interest payments of less than $1.00 need to be issued; however, these small amounts are to be included on the computer listing as requested. See general instructions for language to be included in the cover letter sent with each interest payment.

9. Proformance should reopen all claims cited in this report for failure to pay claims when benefits were due and issue checks to reimburse the claimants for amounts it owes. See general instructions for language to be included in the cover letter sent with each check.

10. On all claims cited in this report for failure to advise claimants of possible rental coverage availability in the event of a loss, Proformance is to send a letter to each claimant advising of the examination and the company's error. In addition, the claimant(s) are to be invited to submit for consideration any rental bills incurred as a result of the loss in question that were not otherwise reimbursed.

11. The company must establish procedures to assure that all incoming mail, as well as all claim documentation in general, is properly date stamped and that all outgoing mail reflects an accurate date of mailing, as required by N.J.A.C. 11:2-17.12(b) and N.J.A.C. 11:3-10.10. Written instructions to implement any procedures established are to be issued to the appropriate personnel.

12. Proformance must ensure the accuracy of the information input and retained in the claim payment system. If the company elects to retain only electronic evidence of payments made, it must be reliable, accurate and complete, pursuant to N.J.A.C. 11:2-17.12(b) and 11:3-10.10. Documentation of any changes or updates to this system that the company implements in this regard, are to be forwarded as verification of compliance with this recommendation.

13. Proformance must remind the appropriate personnel that if they are not going to pursue a subrogation claim where the probability of recovery exists, the company must advise the insured of this fact within 60 days after it has paid the claim, or it must return the deductible to the insured.

14. The two claims cited for the company's failure to pursue subrogation are to be reviewed and the results of the subrogation, or evidence of the insureds' deductibles being returned is to be provided to the NJDBI.

15. Proformance should remind all appropriate personnel of the following:

a) Lienholders are to be included on all first party claim checks.
b) All claims must always be paid from the correct claim file.
c) PIP files should contain accurate, complete payment logs.
d) Routinely review all previously paid PIP bills to avoid duplicate payments.

D. UNDERWRITING & RATING

16. Proformance must issue written instructions to the appropriate personnel and revise its billing system on policies to be renewed, so that the insured receives the renewal bill within the 30 to 45-day time frame required by N.J.A.C. 11:3-8.3(b). Mailing time should be included. Verification of all new procedures and system

changes is to be provided to the NJDBI to ensure compliance with this recommendation.

17. The company is to forward a copy of its current renewal billing notice stating the effect of nonpayment, to verify compliance with N.J.A.C. 11:3-8.3(b).

18. Supplies of all superceded and outdated CSF's in use prior to 1999 are to be destroyed, to assure compliance with N.J.A.C. 11:3-15.7. Proformance must also issue written instructions to the appropriate personnel, including field agents, that Forms UA 131b (Ed. 4-94) and 231-1085 (9/95) may no longer be used. The company is to ensure accuracy and compliance of its current CSF at all times.

19. Proformance must issue written instructions to its partner agents and the appropriate staff that:

a) When the company waives a mandatory physical damage inspection, a record of the waiver must be retained as required by N.J.A.C. 11:3-36.4.
b) Pursuant to N.J.A.C. 11:3-36.3, physical damage inspections must be conducted on all vehicles when physical damage coverage is requested unless mandatory inspection is waived. A copy of the physical damage report must be retained in the insured's file.
c) For all new policies, including rollover business, a completed and signed Coverage Selection Form is required prior to coverage becoming effective, pursuant to N.J.A.C. 11:3-15.9(a).
d) Pursuant to N.J.A.C. 11:3-39.4, for all vehicles equipped with one or more approved anti-theft or recovery devices they must provide a reduction in its base rates of its comprehensive and theft coverages. The discount should be granted when the documentation provided verifies that the vehicle is equipped with such a device(s).
e) Agents should indicate on the application or endorsement the type of applicable anti-theft device, the appropriate discount and provide the necessary documentation.
f) Passive restraint discounts must be provided on each qualifying vehicle to assure compliance with N.J.S.A. 17:29A-6 & 15.

20. During the course of this exam, the company stated that it corrected the rating errors cited by the examiners under statutory and regulatory requirements. Verification and documentation of the corrections and proof of credits or refunds issued for all affected policy terms are to be forwarded to the commissioner. The errors are as follows:

PC1060975001 - Passive Restraint Error
PC1060970375 - Anti-Theft Discount Error
PC1060970355 - Forgiveness Program Error
PC1020970221 - Passive Restraint Error
PC1330970186 - Anti-Theft Discount Error
PC1241970416 - Incorrect Class Code

PC3600980104 - Anti-Theft Discount Error
PC33600990110 -Anti-Theft Discount Error

21. Pursuant to N.J.A.C. 11:3-15 et seq., Proformance should remind appropriate personnel that:

a) Insureds are to receive the coverage they request on the signed Coverage Selection Form.
b) The minimum liability limits of 15/30/5 are available and if requested, are to be provided.
c) The correct class code should be assigned to each policy.
d) Motor vehicle points of 2 points or less must be forgiven as required by N.J.S.A. 17:33B-14.1.

22. Proformance should issue written instructions to all partner agents reminding them that they do not have the authority to issue permanent identification cards.

23. To assure compliance with N.J.A.C. 11:3-6.2, the company should provide the Department with the corrected insurance identification card issued on policy PC1130980245.

24. Proformance must review its current in-force population of auto policies to determine eligibility for the anti-theft discount from January 1, 1998 through the present. The company is to issue refunds or credits for all policies eligible, to include all policy terms in which the insured qualified for the discount(s) but did not receive them. Proformance is to provide documentation of this review and a computer run listing all credits or refunds issued. These items are to be forwarded to the Commissioner. See general instructions for the cover letter to be included with all credits or refunds issued.

25. The company must correct the programming error in its Diamond system which prevents changes being made to past policy terms in order to properly rate policies in accordance with its approved rating systems. Proformance's rating system should be provided to the Commissioner for review. Proof of the correction to Proformance's rating system should be provided to the Commissioner for review. See General Instructions.

26. Proformance must submit its UEZ quarterly in-force reports to the NJDBI, and within the required timeframe, pursuant to N.J.A.C. 11:3-46.13.

E. TERMINATIONS

27. Proformance must resubmit corrected Nonrenewal Reports for 1998 to the NJDBI along with itemized explanations of the differences between the reports previously filed and the new submissions. Copies of the corrected reports and the explanations are to be forwarded to the NJDBI as verification of compliance with this recommendation. (See general instructions.)

28. The company is to issue written instructions and hold a training session for appropriate personnel responsible for the submission of the NJDBI Nonrenewal reports. The session is to include a thorough discussion of the findings of this examination as relate to this issue. The requirements of N.J.A.C. 11:3-8.7 are to be emphasized. A copy of the agenda of this training, and copies of any handouts, memos or other training materials used are to be forwarded to the Commissioner for review.

29. Proformance is to issue written instructions to appropriate personnel that they must include the Appendix B appeal form with all declinations. Each declined policy file is to include a notation that the proper appeal forms were sent to the applicant at the time of declination.

30. Proformance is to hold training sessions for all personnel responsible for declining new business personal auto applications. These sessions are to include all statutory and regulatory requirements for declining new business personal auto applications with special emphasis to be included on the following:

a) N.J.S.A 17:33B-16 and N.J.A.C. 11:3-33.4(a) & (b) which require the specific reason for a declination to be included on the termination notice.
b) The company cannot decline for failure to meet underwriting guidelines without specifying what guideline has not been met, and why.

31. Proformance is to immediately cease issuing a termination notice for an incomplete application without first requesting missing underwriting information. The company should issue written instructions to all appropriate personnel outlining a procedure to be initiated, whereby the company first requests the information from the insured with a copy of the request to be sent to the agent. Proformance should allow a reasonable period of time to respond before termination is initiated or the policy is rerated. If the missing information would render the insured ineligible, then the policy may be terminated. If the missing information would place the insured in a higher category, then the company may rerate the policy. All time requirements set forth by regulation for the processing of new business and terminations are to be included in the written instructions and discussed to ensure timeliness of all new procedures implemented. Copies of the new procedure and how the company intends to implement it, are to be forwarded to the Commissioner for review prior to implementation.

32. Proformance is to issue written instructions to all appropriate personnel that no applicants can be declined coverage unless they are determined ineligible according to statutory and regulatory definition, pursuant to N.J.S.A. 17:33B-15 and N.J.A.C. 11:3-34.4.

33. Proformance is to reopen and offer the opportunity to reapply for new policies to the 16 insureds itemized in Appendix D3 for declining potentially eligible persons as cited in this report. The company may also request any information that was previously missing. If the company receives an application for coverage from

any of them, they are to be underwritten for eligibility as if new business. The offer letter is to include the paragraph provided in the general instructions.

34. The company is to issue a written directive to all underwriting staff and partner agents that the company is obligated by NJ statute and regulation to accept all eligible applicants. The directive must state that Proformance will write youthful operators and minimum liability limits if eligible persons apply and request them. Copies of this directive must be provided to the Commissioner for review.

35. Proformance is to immediately cease all activity that serves to discourage applications being submitted by agents for youthful operators and/or minimum liability limits.

36. The company must remind all underwriting staff that N.J.S.A. 17:29C-8 requires cancellation (declination for ineligibility) notices to provide at least 20 days advance notice prior to the effective date of cancellation.

37. The company should remind all appropriate personnel that when a notice of cancellation is sent, a certified, true duplicate copy is to be retained in the file.

F. LICENSING AND MARKETING; COMPANY OPERATIONS

38. The company is to correct all licensing deficiencies with the NJDBI.

a) For active agents cited as not properly appointed, the appointments must be done immediately with copies also sent to the Market Conduct unit to document compliance with the recommendation.

b) For terminated agents cited, required notices of agency termination must be submitted to the NJDBI with copies provided to Market Conduct for compliance verification.

39. Proformance is to issue written instructions to all appropriate personnel that:

a) they must file notice of appointment for all agents appointed pursuant to N.J.S.A.17:22A-15c.

b) 90 days advance notice of agency termination must be sent to the agent with a copy to the Commissioner, pursuant to N.J.S.A.17:22-6.14a(d).

c) notice of agency termination must be sent to the NJDBI within 15 days of termination, pursuant to N.J.S.A. 17:22A-15b.

d) Pursuant to N.J.A.C. 11:17-2.9(a)1, both the company and the appointed agent shall maintain a copy of the agency contract.

40. Pursuant to N.J.S.A. 17:29A-6 and N.J.S.A. 17:29A-15, the company must

immediately cease offering the 10% package policy discount to monoline auto policies and at renewal of each policy affected. Written notice of this discount termination is to be immediately provided to the Mitchell Bateman Agency. A copy of that notification is to be provided to the Commissioner.

41. Proformance is to draft a letter to all policyholders affected by the Mitchell Bateman discount issue. The letter is to explain that the discount was improper and advise of the removal of the discount at renewal. A copy of this letter is to be forwarded to the Commisisoner for review prior to issuance.

42. Pursuant to N.J.S.A. 17:29A-6 and N.J.S.A. 17:29A-15 the company is to immediately reinstate its homeowner minimums as filed for all agencies. No agent is to have unique guidelines by which to write new business. Written notice of this change is to be sent immediately to the Dalton Agency with a copy to the Commissioner for verification of compliance.

43. Proformance should reconsider its practice of using a minimum, required homeowner replacement value and instead, evaluate risks based on the condition of the property and other pertinent, non-arbitrary underwriting criteria. The company should resubmit this change to the Commissioner for review prior to implementation.

44. The company must issue written directives to all Underwriting staff that unique premium discounts and special underwriting arrangements with agents are not permitted on personal lines insurance under the statutory and regulatory requirements of the State of New Jersey. Proformance should include with its directives, copies of the applicable statutes and regulations as referenced in the Marketing section of this report. The company should hold training sessions in which these statutes and regulations are discussed and reinforced.

45. Proformance should establish a written disaster recovery plan to assure business continuity in the event of a catastrophe due to occurrences such as, severe weather, power failures etc. The company should forward a copy of the plan to appropriate personnel and to the Commissioner.

46. Proformance should begin conducting internal audits which would encompass New Jersey statutes and regulations and enable the company to monitor its compliance.

APPENDIX A – COMPLAINT HANDLING ERRORS

A1. Incorrect Complaint Log Receipt Dates
Improper General Business Practice

Policy/ Claim Number	Log Receipt Date	Document Receipt Date	Days in Error
PC1241970125	9/16/98	9/18/98	2
PC2400971247	8/12/98	8/17/98	5
P2400980089	11/19/98	11/23/98	4
P992D174	9/28/98	10/2/98	4
P997L223	8/10/98	8/17/98	7
P243098005	8/6/98	8/13/98	7
P066J050	8/5/98	8/10/98	5
P157N128	1/28/98	2/11/98	14
P558J054	4/15/98	4/20/98	5
P997D104	4/22/98	4/24/98	2
P417D192	3/19/98	3/30/98	11
P367T078	6/24/98	7/6/98	12
P51MS00092	3/6/98	3/9/98	3
UZAR98260U0027	10/28/98	11/2/98	5
PC1390980025	5/29/98	6/5/98	7
PA1240249	6/8/98	6/12/98	4
PC2550970140	2/20/98	2/25/98	5
PC2400970339	1/23/98	1/30/98	7

A2. Incorrect Complaint Log Response Dates
Improper General Business Practice

Policy/ Claim Number	Log Response Date	Document Response Date	Days in Error
PC1241970125	9/22/98	9/25/98	3
P992D174	10/4/98	10/8/98	4
P066J050	8/25/98	9/1/98	7
P558J054	5/6/98	5/15/98	9
P367T078	7/15/98	7/20/98	5
PA1240249	6/23/98	6/26/98	3
PC1200970031	4/6/98	4/10/98	4

APPENDIX B - CLAIM ERRORS

B1. Failure To Include Deductible On Appraisals
Improper General Business Practice

Claim Number	Claim Number	Claim Number	Claim Number
P1040980001A	P1141980010A	P2400980111A	P199098009
P1141980001A	P1150980048A	P2400980091A	P2430980016A
P1020980006A	P1060980002A	P2500980013A	P3060980017
P137098050A	P1330980037A	P1390980019A	P3600980016A
P1220980047A	P1150980007A	PA12200309	P1990980051A
P1391980009A	P1360980087A	P1040980009A	P1020980020
P1220980074A	P1060980011A	PA11900685	P3090980002
P2400980049A	P1130980001A	P3600980078A	P3110980002A
		P2500980005A	P3600980070A

B2. Improper Statement on Claim Settlement Checks
Improper General Business Practice

Claim Number	Claim Number	Claim Number	Claim Number
P1020980024A	P1220980074A	P1060980011A	PA13700383
PA11800127	P2400980049A	P1130980001A	P2430980016A
P3600980018A	P1150980048A	P2400980111A	P3060980017A
P1241980020A	P1060980002A	P2400980091A	P3600980016A
P1020980006A	P1330980037A	P1300980008A	P1990980051A
P137098050A	P1150980007A	PA12200309	P1020980020A
P1391980009A	P1360980087A	P3600980070A	P3090980002A
			P3110980002A

B3. Failure To: Pay PIP Claims Timely, Request 45-Day Extensions and Pay Interest On Delayed PIP Claims - Improper General Business Practice

Claim Number	Date Claim Received	Date Claim Settled	Days >60	PIP Bills in File	Interest Paid
P4000980011A	10/21/98	2/5/99	32	8	$16.55
P1280980006A	6/10/98	1/7/99	118	6	$2.60
P1150980049A	9/17/98	12/16/98	30	5	0*
P3600980053A	10/5/98	4/7/99	124	6	$0.23
P1060980053A	11/10/98	3/8/99	58	9	0*
P2420980006A	11/18/98	2/23/99	37	19	$53.67
P1140980013A	7/1/98	11/2/98	64	9	0*
P1140980013A	6/2/98	5/11/98	16	9	$2.15
P2560900008A	12/8/98	5/11/99	92	9	$0.87
P3030980003A	11/17/98	2/9/99	18	3	$0.78
P3030980003A	11/17/98	2/9/99	23	3	$0.23
P3030980003A	11/17/98	2/9/99	23	3	$0.23
P1060980040A	11/16/98	1/19/99	4	5	0*
P1040980034A	11/9/98	2/2/99	25	2	$1.48
P4000980025A	1/21/99	6/11/99	82	54	$4.40
P4000980025A	12/30/98	6/11/99	102	54	$1.29
P4000980025A	2/5/99	6/11/99	67	54	$7.40
P4000980025A	2/18/99	6/11/99	54	54	$2.56
P4000980025A	3/15/9	6/11/99	27	54	$4.42
P3600980024A	7/24/98	12/21/98	88	5	$6.80
P3600980024A	8/31/98	12/21/98	51	5	$12.66
P3600980024A	12/29/98	5/27/99	87	5	$26.11
					$144.43

* Interest to be paid and verified to NJDBI

B3.1. Failure To Settle Claims In A Timely Manner and Failure to Issue Claim Delay Notices – Improper General Business Practice

Claim Number	Date of Loss	Date of Notice	Claim Paid	Days > 30, 45	Error Code
PA11500093	1/19/98	1/21/98	6/2/98	87	A
P1390980019A	7/20/98	7/21/98	10/1/98	42	B
PA24000446	2/28/98	3/9/98	6/22/98	60	A
P1241980019A	5/21/98	6/1/98	12/17/98	154	A
PA12200309	2/13/98	2/17/98	3/23/98	7	B
PA10200664	3/19/98	3/19/98	4/22/98	4	B
P2430980016A	12/11/98	12/16/98	2/2/99	18	B
P1040980009A	5/30/98	6/19/98	11/20/98	124	B*
P1360980008A	3/31/98	4/27/98	7/30/98	50	A#
P137098050A	12/4/98	12/8/98	2/24/99	51	A
P1241980020A	5/26/98	6/1/98	8/6/98	22	A
P1141980001A	4/9/98	4/13/98	7/1/98	50	B
P1150980048A	7/8/98	7/8/98	11/10/98	81	A
P1020980024A	6/22/98	6/25/98	8/14/98	21	B

Error Codes:
A) N.J.A.C. 11:2-17.7(c)2 - Failure to pay property damage claims within 45 days and N.J.A.C. 11:2-17.7(f)- Failure to send notice of delay.

B) N.J.A.C. 11:3-10.5(a) - Failure to pay physical damage claims within 30 days and N.J.A.C. 11:3-10.5(b) - Failure to send notice of delay.

* - Claim closed without payment.
# - Claim denied

B4. Failure To Pay Benefits When Due

Claim Number & Type	Current Action Taken
P1150980049A (PIP Lost Wages)	Company is investigating wage claim
P1150980049A (PIP bill overlooked)	$185.89 paid to provider plus interest
P1150980049A (PIP audit bill missed)	$43.62 paid to audit firm
P1150980049A (PIP Essential Services)	Company requested documentation
P3600980053A (PIP Lost Wages)	Company is investigating wage claim
P1040980009A (Comprehensive)	Probable lack of interest by insured
P3600980074A (PIP bill overlooked)	$63.45 paid to provider plus interest
P2560900008A (PIP Lost Wages)	Company is investigating wage claim
P2560900008A (PIP bill overlooked)	$62.80 paid to provider plus interest
P3600980024A (PIP bill overlooked)	Co. to verify payment with interest
P4000980025A (5 PIP bills overlooked)	$2575.85 paid to provider plus interest
P1140980013A (PIP bill overlooked)	$840.00 paid to provider plus interest
P1140980013A (PIP audit bill missed)	$587.05 paid to audit firm
P1140980013A (PIP Lost Wages)	Company is investigating wage claim

B5. Failure To Inform Claimants Of Rental Rights

Claim Number	Claim Number
P1040980001A	P1220980047A
PA11800127	P1391980009A
P3600980018A	P1220980074A
P1241980020A	P2400980049A
P1020980006A	P1141980010A
P137098050A	P1330980037A

B6. Failure to Pay Agreed Amount Within 10 Days

Claim Number	Settlement Agreed	Payment Date	Working Days>10
PA24000446	03/20/98	06/22/98	55
PA10200664	03/19/98	04/22/98	14
P1390980019A	09/05/98	10/01/98	09
PA11500093	02/17/98	06/02/98	65
PA13700383	05/05/98	06/09/98	15
P2430980016A	12/30/98	02/02/99	12
P3090980002	06/11/98	08/10/98	31
P2400980049A	07/28/98	08/14/98	03
P1141980010A	09/08/98	10/13/98	14
P1150980007A	05/14/98	06/09/98	07

B7. Failure to Begin Investigation Within 10 Working Days

Claim Number	Type of Claim	Date Claim Received	Investigation Began	Working Days >10
PA10200664	Comprehensive	03/19/98	04/13/98	7
PA12200520	PIP	03/16/98	05/19/98	36
P2490980002A	PIP	05/01/98	06/04/98	14
P1150980049A	PIP	07/10/98	08/12/98	13
P1140980013A	PIP Lost Wages	07/15/98+	---*	---*
P2560900008A	PIP Lost Wages	06/12/98+	---*	---*
P3600980053A	PIP Lost Wages	09/16/98+	---*	---*
P1060980040A	PIP Lost Wages	09/08/98+	10/15/98	---*
P1150980049A	PIP Lost Wages	09/10/98+	---*	---*
P1150980049A	PIP Essential Services	09/10/98+	---*	---*

* No investigation initiated until Market Conduct examiners reviewed claim.
\+ Date completed PIP application received.

B8. Failure to Provide Required Claim Forms Within 10 Working Days and Failure to Acknowledge Claim Within 10 Working Days

Claim Number	
PA12200520	PIP Application sent 36 days beyond 10 working days.
P2490980002A	PIP Application sent 14 days beyond 10 working days.
P1150980049A	PIP Application sent 13 days beyond 10 working days.
P1140980013A	PIP Wage forms not sent.
P2560900008A	PIP Wage forms not sent.
P1150980049A	PIP Wage forms not sent .
P3600980053A	PIP Wage forms not sent.
P1060980040A	PIP Wage forms not sent.

APPENDIX C – UNDERWRITING ERRORS

C1. Failure to Provide Sufficient Notice of Renewal Billing (all 27 Errors)
Failure to State Effect of Nonpayment (6 Errors noted with an *)
Improper General Business Practice

Policy Number	Mailing Date	Due Date	# of Days Notice (incl.2 mail days)
PC1130980346*	5/11/99	5/26/99	13
PC1010980086*	5/11/99	5/26/99	13
PC1390980150*	5/11/99	5/26/99	13
PC2410980103*	5/11/99	5/26/99	13
PC1132980004*	5/11/99	5/26/99	13
PC1221980174*	5/11/99	5/26/99	13
PC2400970229	7/6/99	7/31/99	23
PC3100970020	7/6/99	7/31/99	23
PC2400970231	7/6/99	7/31/99	23
PC2490970044	7/6/99	7/31/99	23
PC2490970045	7/6/99	7/31/99	23
PC2550970122	7/6/99	7/31/99	23
PC2490970048	7/6/99	7/31/99	23
PC3090980037	7/6/99	7/31/99	23
PC2410980020	7/6/99	7/31/99	23
PC3090980033	7/6/99	8/1/99	24
PC3090980030	7/6/99	8/1/99	24
PC1330980023	7/6/99	8/2/99	25
PC1150980683	7/6/99	8/2/99	25
PC3090980039	7/6/99	8/2/99	25
PC1391980125	7/6/99	8/2/99	25
PC1390970061	7/6/99	8/2/99	25
PC1141980017	7/6/99	8/3/99	26
PC3090980040	7/6/99	8/3/99	26
PC3090980023	7/6/99	8/3/99	26
PC1240970015	7/6/99	8/3/99	26
PC1141980011	7/6/99	8/4/99	27

APPENDIX D - DECLINATION ERRORS

D1. - Failure to Provide Appendix B_

PC3600970360	PC1060980104	PC1090980125	PC1110980028A
PC1130980246	PC1160980051	PC122098005	PC1241980033
PC1370970284	PC1370980695	PC1390980037	PC1390980098A
PC2400980303	PC2400980334	PC3060980045	PC3090980189
PC3110980057	PC3600980051	PC3600980117	PC3600980163A
PC3800980073	PC3800980153A	PC3810980141	PC4000980054
PC4000980116	PC4000980129	PC4000980135	PC4000980144A
PC4000980173	PC4000980183	PC4000980199	PC400980130

D2. – Failure to Provide Specific Reason On Declination Notice

PC1060980104*	PC3110980057	PC1110980028A	PC1130980246
PC1220980059	PC1241980033*	PC1370980695	PC1390980037
PC2400980303	PC2400980334	PC3060980045	PC3090980189*
PC3600980051	PC3600980117	PC3800980073	PC3800980153A*
PC4000980116	PC4000980135	PC4000980144A*	PC4000980173
PC4000980199			

* U/W guideline not specified but additional facts on notice proved ineligibility.

D3. – Invalid Declinations

PC1110980028A - Undisclosed losses
PC1130980246 - Missing Registration and Undisclosed operators
PC1220980059 - Undisclosed operators
PC1370980695 - Undisclosed losses
PC1390980037 - Undisclosed loss
PC2400980303 - Undisclosed losses
PC2400980334 - Undisclosed losses
PC3060980045 - Undisclosed losses and violations
PC3600980051 - Undisclosed loss
PC3600980117 - Undisclosed loss
PC3800980073 - Undisclosed loss and undisclosed operators
PC4000980116 - Undisclosed violations
PC4000980135 - Missing supplemental documents (reg., prior policy, etc.)
PC4000980173 - Undisclosed loss and undisclosed operator
PC4000980199 - Undisclosed loss
PC3110980057 - No continuous prior coverage and low limits requested

VERIFICATION PAGE

1. I, Phyllis A. Sabino, am the Examiner-In-Charge of the Market Conduct Examination of the Proformance 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.

2. 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 Examination of the Proformance Insurance Company as of December 31, 1998.

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

________________	________________________
DATE	Phyllis A. Sabino Examiner-In-Charge New Jersey Department of Banking and Insurance