



# Market Conduct Examination

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K. MCCOY, INCORPORATED  
AGENCY

Hamilton, New Jersey

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND  
INSURANCE

Division of Consumer Protection Services  
Market Conduct Examination Unit

Report Adopted November 20, 2003

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REPORT  
OF THE  
MARKET CONDUCT EXAMINATION  
OF THE  
K. MCCOY, INCORPORATED AGENCY  
LOCATED IN  
HAMILTON, NEW JERSEY  
AS OF  
JUNE 5, 2002  
BY EXAMINERS  
OF THE  
STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
OFFICE OF CONSUMER PROTECTION SERVICES  
MARKET CONDUCT EXAMINATION UNIT  
DATE REPORT ADOPTED:  
November 20, 2003

# Table of Contents

	Page Number
I. INTRODUCTION	1
A. SCOPE OF EXAMINATION	1
B. ERROR RATIOS	1
C. AGENCY PROFILE	2
II. COMPLAINTS	3
A. INTRODUCTION	3
B. COMPLAINT HANDLING ERRORS	3
III. UNDERWRITING	4
A. INTRODUCTION	4
B. ERROR RATIOS	4
C. EXAMINERS FINDINGS	4
IV. MISCELLANEOUS AGENCY REVIEW	5
A. FORM REVIEW	5
B. ADVERTISING REVIEW	5
C. AGENTS/BROKER LICENSING	6
D. AGENT COMMISSION REGISTERS	6
E. AGENT LITIGATION AND DISCIPLINE FILES	7
IV. RECOMMENDATIONS	8
VERIFICATION PAGE	Last Page

# I. INTRODUCTION

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This is a report of the Market Conduct activities of K. McCoy, Incorporated Agency (hereinafter referred to as “McCoy” or “the Agency”). In this report, examiners of the New Jersey Department of Banking and Insurance (NJDOBI) present their findings, conclusions and recommendations as a result of their market conduct examination. The Market Conduct Examiners were Robert Greenfield, Examiner-In-Charge, and Richard Segin.

## A. SCOPE OF EXAMINATION

The scope of the examination covered the Agency’s insurance business conducted in New Jersey only. The examiners reviewed business conducted by the Agency during the review period April 3, 2000 through June 5, 2002. This examination constitutes a limited review of the Agency's complaints, underwriting, sales and advertising practices.

The examiners performed their fieldwork at the Agency's office located in Hamilton, New Jersey between December 19, 2001 and December 21, 2001 and June 3, 2002 and June 5, 2002. The examiners completed the examination and report writing on various dates thereafter.

The examiners randomly selected files and records from listings and documents provided by the Agency. The random selection process is in accordance with the National Association of Insurance Commissioners' Market Conduct Handbook.

## B. ERROR RATIOS

Error ratios are the percentage of files that the agency handled in error. Each file 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 is treated unfairly, even if no statute or regulation is applicable. Even though a file may contain multiple errors, the examiners counted only one error per file in calculating the error ratio. However, any file that contains more than one error will be cited more than once in this report. In the event that the agency corrects an error because of a consumer complaint or due to the examiners' findings, the error will be included in the error ratio. If the agency corrects an error independent of a complaint or NJDOBI intervention, the error is not included in the error ratios. For the most part, this is a report by exception.

The examiners occasionally find a business practice of an agency which may be technical in nature or which did not have an impact on a consumer. Although such a practice would not be in compliance with law, the examiners do not count each of these files as an error in determining error ratios. Whenever the examiners find that the Agency commits a type of error with sufficient frequency, they will cite the error as an improper general business practice. If an error constitutes an improper general business practice, the examiners have stated this in the report that follows.

The examiners sometimes find improper general business practices of an agency that may be technical in nature or which did not have an impact on a consumer. Although such practice would not comply with law, the examiners do not count each of these files as an error in determining error ratios. Whenever such business practices do have an impact on the consumer, each of the files in error will be counted in the error ratio. The examiners indicate in the report that follows whenever they did not count any particular files in the error ratio.

The examiners submitted written inquiries to representatives of the Agency on the errors cited in this report. These inquiries afforded the Agency the opportunity to respond to the examiners' findings and to offer explanations for an error or exception reported by the examiners. On those errors and exceptions where the Agency disagreed, the examiners evaluated the individual merits of each response and considered all of its comments. In some instances, the examiners did not cite the files due to the Agency's explanatory responses. In others, the errors remained as cited in the examiners' report.

## **C. AGENCY PROFILE**

K. McCoy Incorporated was formed in February 2000. The Agency started transacting insurance business on April 3, 2000. Its initial business plan was to market and service property and casualty insurance with emphasis on commercial lines throughout New Jersey. The active officers for the McCoy Agency are Kenneth M. McCoy and Kevin McCoy. The Agency currently represents Providence Washington, Farmers Mutual of Salem, Vesta Shelby and Magna Carta Companies.

## II. COMPLAINTS

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### A. INTRODUCTION

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For the period April 3, 2000 through June 5, 2002, the examiners reviewed the Agency's complaint handling procedures and checked for compliance with applicable New Jersey Insurance laws and regulations including N.J.S.A. 17:23-1 (promptly responding to complainants), N.J.A.C. 11:2-17.6(d) and (e) and N.J.S.A. 17:29B-4 (complaint handling procedures), all of which relate to Chapter VI - Conducting Property and Casualty Insurance Examinations of the National Association of Insurance Commissioner's Market Conduct Examination Handbook.

### B. COMPLAINT HANDLING ERRORS

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#### 1. Failure to Maintain a Complaint Register - (Improper General Business Practice)

Pursuant to N.J.S.A. 17:29B-4(10), the McCoy Agency is required to maintain a complete record of all complaints received. This record shall include the total number of complaints, their classification by line of insurance, the nature and disposition of each complaint and the time it took to process each complaint. Standard One of the complaint handling section of the NAIC Market Conduct Examiners Handbook states that "[A]ll complaints ...(should be)... recorded in the required format on the company complaint register." In response to the examiners' initial request for preliminary information, the McCoy Agency advised that it does not maintain complaint records. Failure to maintain a complaint register is contrary to the aforementioned statute and constitutes an improper general business practice.

# III. UNDERWRITING

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## A. INTRODUCTION

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The examiners conducted a limited review to check for the Agency's compliance with N.J.S.A. 17:29A-6, 15, 36 and 38 (filed and approved rating methods), N.J.S.A. 17:29A-4 (rate reduction for operative smoke detection devices) N.J.S.A. 17:33B-15 and 16 (coverage for eligible persons and proper coding of underwriting information) and proper placement of commercial and personal lines of business. The examiners randomly selected files and calculated error ratios in accordance with the procedures outlined in Section I of this report. The examiners' findings are presented in the sections that follow.

## B. ERROR RATIOS

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<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Workers Comp	14	0	0%
Commercial Auto	20	0	0%
Homeowners	17	0	0%
General Liability	16	0	0%
Private Passenger Automobile	4	0	0%
Totals	71	0	0%

## C. EXAMINERS FINDINGS

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The examiners checked the Agency's new business underwriting files in each of the above referenced categories to determine if business was being placed in the proper market, i.e. personal versus commercial. The examiners found no instances in which any of the above lines of insurance were placed in the wrong market.

As indicated above, a review of the Agency's records revealed that all commercial auto applications qualified for a commercial policy, and all private passenger auto policies qualified under the voluntary market. In addition, the examiners determined that all homeowner policies were written to insure dwellings used for personal as opposed to commercial, business or industrial use. The examiners verified this by comparing structural descriptions with file photographs, as well as photographing the insured dwelling to assure that the physical location matched the structure description maintained in the file. Lastly, the examiners found no errors in the workers comprehensive, general liability and protective device discount coding reviews.

# IV. MISCELLANEOUS AGENCY REVIEWS

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## A. FORM REVIEW

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### 1. **Failure to Include Required Language in Fee Acknowledgement Form** **(Improper General Business Practice)**

**N.J.A.C. 11:17B-3.1(c) 3 and 4** states “Any Insurance producer acting as an insurance broker or insurance consultant charging a fee to an insured shall first obtain from the insured a written agreement, which shall be separate and apart from all other agreements and applications, and shall contain the following provisions: “...

[a] clear statement as to whether a commission will be received from the purchase of insurance; and

[b] the signature of the insured and the licensed insurance broker or insurance consultant and the date of the execution of the agreement.” While checking for compliance with these requirements, the examiners found that, contrary to **N.J.A.C. 11:17B-3.1(c) 3 and 4**, the Agency utilizes a form that does not inform the insured that commissions will be received by the licensee and does not include a space where a date could be entered.

In response to an inquiry, the McCoy Agency stated that “... [I]t is our policy that the insured read, sign and date (this form)...[W]e were not aware of any additional language needed in the form, it certainly was not our agency's intention not to include the statement... We will insert that statement into the form, in order to be in compliance with regulation.”

Failure to provide the above-noted informational disclosures is contrary to the aforementioned regulation and constitutes an improper general business practice whenever the Agency used this form in the normal course of its business.

## B. ADVERTISING REVIEW

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### 1. **Improper Use of the Word "Insurance" in Business Name** **(Improper General Business Practice)**

**N.J.S.A. 17:22A-12** states in part that, “No insurance producer shall file or use a name containing the words "insurance," "insurance company," "guaranty," "guarantee," "guaranty company," "guarantee company" or similar



words unless the word "agent," "agency," "broker" or "brokerage" or a word of similar import is also used to distinguish the business from an insurance company" (N.J.S.A. 17:22A-1 et seq. was in effect at the time of this examination, but has been superseded by **the New Jersey Producer Licensing Act of 2001, under N.J.S.A. 17:22A-26** et seq.). In addition, N.J.A.C. 11:17-2.7(c)3 states that, "If the word "insurance" or its equivalent is contained (emphasis added) in the name, it must be joined with wording such as "agency" or "brokerage" to distinguish the entity from an insurance underwriting company."

While examining for compliance with the above requirements, the examiners discovered that the agency was licensed by the NJDOBI under the corporate name "K McCoy Inc." However, the agency's business cards, stationary letterhead and some of its advertisements utilize the phrase "K. McCoy Inc., Insurance." Contrary to N.J.A.C. 11:17-2.7(c)3, the word "agency" or "brokerage" is not contained in its business name and therefore fails to satisfy the requirement that the entity be distinguished from an insurance company.

In response to an inquiry, the Agency stated that it was under the impression that it could use the term "insurance" without the clarifying terms "producer", "broker" or "agent", so long as the term "insurance" appears at least one line space away from the agent/broker name.

The examiners disagree. The regulation clearly specifies that an agent or broker may not characterize itself as an insurance company. Merely placing the term "insurance" on a line different from the agent/broker name does not distinguish the former from the latter; the casual reader could easily and erroneously infer that the entity is an insurer when in fact it is not. Failure to include either of these clarifying terms (agent/broker) is contrary to the aforementioned statutes and regulation regardless of which line the term "insurance" appears. The examiners cited this as an improper general business practice.

## **C. AGENTS/BROKER LICENSING**

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The examiners cross-checked all active agents within the review period to the master licensing records of the New Jersey Department of Banking and Insurance to determine if all producers were properly licensed. The examiners found no errors or discrepancies.

## **D. AGENT COMMISSION REGISTERS**

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The examiners randomly reviewed 15 pages and transactions from the Agency's commission register and found no apparent errors or commission payments to unlicensed producers.

## **E. AGENT LITIGATION AND DISCIPLINE FILES**

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The examiners reviewed a log of the Agency's litigation files, randomly reviewed subject matter files, and found these files to be unremarkable. The examiners also reviewed disciplinary files, and found these to be unremarkable as well.

## IV. RECOMMENDATIONS

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K. McCoy Incorporated should inform all responsible personnel, including all outside sales staff who may have handled the areas cited in this report, of the examiners' findings. The New Jersey Department of Banking and Insurance recommends the remedial measures listed below and that the Agency establish procedures to monitor compliance with these measures.

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

### A. GENERAL INSTRUCTIONS

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Documentation of compliance with each of the recommendations below, including copies of written instructions, bulletins, procedures, reminders, etc., should be sent to the Commissioner, c/o Clifton Day, Manager, Market Conduct Examinations and Anti-fraud Compliance Unit, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, within 30 days of the date of the final, adopted report.

### B. COMPLAINTS

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1. The Agency must issue written instructions to all appropriate personnel stating that **N.J.S.A. 17:29B-4(10)** requires any person engaged in the business of insurance to maintain complaint handling procedures, including a complaint register. The complaint register shall include the total number of complaints, their classification by line of insurance, the nature and disposition of each complaint and the time it took to process each complaint. The McCoy Agency must provide a sample of its complaint register to the Commissioner in order to demonstrate compliance with the aforementioned statute.

### C. FORM REVIEW

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2. In order to comply with **N.J.A.C. 11:17B-3.1(c)3** and **4**, the Agency must, where fees are properly charged, obtain the insured's written agreement and acknowledgement that a fee is being charged to process an application. This agreement must also include a statement as to whether or not the producer will receive a commission for writing a policy. These statements must be signed and dated by the insured. A copy of the corrected form must be provided to the Commissioner prior to use.

## D. ADVERTISING

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3. Pursuant to N.J.S.A. 17:22A-12 and N.J.A.C. 11:17-2.7(c)3, the Agency must refrain from the practice of using the word "insurance" in its business name and in all advertisement items unless language is included that adequately distinguishes the entity as a broker or producer, and not an insurance company. The Agency must research and correct all advertisements, handouts, marketing materials or other items intended for public use that do not comply with these requirements.

# VERIFICATION PAGE

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1. I, Robert Greenfield, am the Examiner-in-Charge of the Market Conduct Examination of the K. McCoy Incorporated agency conducted by the 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 Conduct examination of K. McCoy Incorporated as of June 5, 2002
3. I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

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Date:

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Robert Greenfield  
Examiner in Charge  
New Jersey Department of  
Banking and Insurance