



# Market Conduct Examination

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THE MERCER INSURANCE COMPANY OF  
NEW JERSEY

Pennington, New Jersey

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND  
INSURANCE

Division of Consumer Protection Services

Market Conduct Examination Unit

Report Adopted September 23, 2005

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CONFIDENTIAL

REPORT

Of the

MARKET CONDUCT EXAMINATION

Of the

MERCER INSURANCE COMPANY

Located in

PENNINGTON, NEW JERSEY

As of

May 11, 2005

BY EXAMINERS

Of the

STATE of NEW JERSEY

DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF CONSUMER PROTECTION SERVICES  
MARKET CONDUCT EXAMINATION SECTION

Date Report Adopted: September 23, 2005

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# I. INTRODUCTION

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This is a report of the Market Conduct activities of the Mercer Insurance Company (hereinafter referred to as Mercer or the Company). 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.

## A. SCOPE AND PURPOSE OF THE EXAMINATION

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The purpose of this examination was to evaluate Mercer Insurance Company's compliance with certain regulations and statutes that pertain to homeowner and dwelling fire insurance. Areas of review included rating, underwriting and terminations. This examination covered the Company's New Jersey homeowner and dwelling fire insurance business activities during the period January 1, 2003 through December 31, 2003. Between November 15, 2004 and January 21, 2005 the examiners completed their field work at the Company's Pennington, New Jersey office. On various dates thereafter, the examiners completed additional review work and the writing of the report. The Market Conduct Examiners included Esther Y. Turner, Examiner-in-Charge, William Sonntag, Tia Hammond, Janice Flynn and Marcus Rosser. 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 NAIC Market Conduct Handbook.

## B. ERROR RATIOS

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

There are errors cited in this report that define practices as specific acts that an insurer commits so frequently that it constitutes an improper general business practice. Whenever the examiners find that the errors constitute 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 insurer that may be technical in nature or which did not have an impact on a consumer. Even though such a practice would not be in compliance with applicable 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 Company representatives on the errors cited in this report. This provided Mercer the opportunity to respond to the examiners' findings and to provide exception to the statutory and/or regulatory errors or mishandling of files reported herein. In response to these inquiries, Mercer agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the individual merits of each response and gave due consideration to all of its comments. In some instances, the examiners did not cite the files due to the Company's explanatory responses. In others, the errors remained as cited in the examiners' inquiries.

### **C. COMPANY PROFILE**

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Mercer Insurance Group first conducted business in 1844 when the Mercer County Mutual Fire Insurance Company was incorporated by the State of New Jersey, after a group of Pennington, New Jersey merchants, farmers and homeowners met to form a company designed to provide affordable protection from fire losses. Mercer operated solely as a fire loss company until 1959 when it amended its charter to include multiple lines, homeowners and general liability coverage. The Company changed its name to the Mercer Insurance Company upon receipt of approval to write these added lines of business.

In order to further diversify its business, Mercer Insurance Company organized a subsidiary company in the early 1980's called the Mercer Insurance Company, Inc., and obtained a license to conduct business in Pennsylvania. In 1997, Mercer Insurance Company changed its state of domicile to Pennsylvania, and renamed its subsidiary company to Mercer Insurance Company of New Jersey, Inc., as a New Jersey domestic. As part of its effort to broaden its scope of business, Mercer purchased a controlling interest in the Franklin Insurance Company of Lock Haven, Pennsylvania, on June 1, 2001. The Mercer Insurance Group has grown to an organization providing fourteen lines of business in New Jersey and Pennsylvania, writing over \$40 million in business and maintaining a surplus in excess of \$30 million.

## II. POLICY TERMINATIONS

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### A. INTRODUCTION

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During the review period of January 1, 2003 to December 31, 2003 Mercer cancelled 2,260 policies beyond the first 60 days, of which 1,023 were cancelled for nonpayment of premium. Mercer declined to offer coverage on 65 applications and cancelled 247 new business policies within the first 60 days. In the same period, the Company nonrenewed 567 policies. The examiners randomly selected and reviewed 84 nonrenewals and 127 cancellations. In the section that follows, the examiners list the errors found by type. The examiners checked for compliance with applicable statutes and regulations including N.J.A.C. 11:1-20.2 (nonrenewal and cancellation notice requirements), N.J.A.C. 11:1-20.3 (policy provisions relating to cancellation or nonrenewal) and N.J.A.C. 11:1-20.4 (cancellation and nonrenewal underwriting guidelines). These requirements also relate to the standards identified in the National Association of Insurance Commissioners (NAIC) Market Conduct Examination Handbook.

### B. TERMINATION ERROR RATIOS

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The examiners calculated error ratios for the termination review by applying the procedure outlined in the introduction of this report. The following chart itemizes the review samples, the number of errors and the error ratios by type of termination.

<b>Review Sample</b>	<b>Files Reviewed</b>	<b>Files with One or More Errors</b>	<b>Error Ratio</b>
<b><i>Nonrenewals</i></b>			
Homeowners	66	27	41%
Dwelling Fire	<u>18</u>	<u>5</u>	28%
<i>Sub-Total</i>	84	32	38%
<b><i>Cancellations</i></b>			
• First 60 Days			
Homeowners	42	37	88%
Dwelling Fire	<u>21</u>	<u>17</u>	81%
<i>Sub-Total</i>	63	54	86%
• Midterm			
Homeowners	43*	22*	51%
Dwelling Fire	<u>10</u>	<u>1</u>	10%
<i>Sub-Total</i>	53	23	43%

Review Sample	Files Reviewed	Files with One or More Errors	Error Ratio
• Non-Payment			
Homeowner	10	0	0%
Dwelling Fire	<u>0</u>	<u>0</u>	0%
<i>Sub-Total</i>	10	0	0%
• Declinations			
Homeowner	49	28	57%
Dwelling Fire	<u>2</u>	<u>2</u>	100%
<i>Sub-Total</i>	51	30	59%
<b>Overall Totals</b>	261	139	53%
Mail Review	26	20	77%

\*Company reported 20 files as mid-term cancellations when they are technically renewals not taken. Twenty of the 22 errors are renewals not taken. See section II.C.5

## C. EXAMINERS' FINDINGS

### 1. Failure to Provide Standard or Reason and Factual Basis For Declinations (30 Files in Error), Cancellations (57 Files in Error) and Nonrenewals (17 Files in Error)-Improper General Business Practice

(104 Files in Error)

N.J.S.A. 17:23A-10a(1) requires that in the event of an adverse underwriting decision, the insurance company must either provide the applicant with the specific reason or reasons for the adverse underwriting decision in writing or advise the person that upon written request he/she may receive the specific reason or reasons in writing. Of the 51 declinations selected and reviewed, the Company did not provide 28 homeowner applicants and two dwelling fire applicants with the specific reason(s) for the adverse underwriting decision in writing; nor did it advise of the right to request this information, contrary to N.J.S.A. 17:23A-10. As an example, on policy number PHO4001425, the reason on the declination notice stated, "Application is declined. No coverage is bound." In response to an inquiry, the Company agreed with the examiners' finding that the notice did not specify the actual reason for declining coverage. The examiners cited this error as an improper general business practice.

Additionally, N.J.A.C. 11:1-20.2(g) states that no cancellation shall be valid unless the notice contains the standard or reason upon which the termination is

premised and specifies in detail the factual basis upon which the insurer relies. Contrary to this regulation, on 37 homeowner first 60 day cancellations, 17 dwelling fire first 60 day cancellations, 17 homeowner nonrenewals, two homeowner mid-term cancellations and one dwelling fire mid-term cancellation, the examiners found that the Company did not provide the standard or reason upon which the termination is premised; nor did it specify in detail the factual basis for the cancellation and nonrenewal. As an example, the reason for cancellation on policy number CDP0523339 states, "Cancellation within first 60 days." On policy number PHO0777149, the reason on the nonrenewal notice states, "No longer meets underwriting requirement." In response to an inquiry, the Company agreed with the examiners' findings and stated that it "...had previously interpreted the law which permits cancellations within the first 60 days of coverage "for any reason" literally, so as to negate the Company's obligation to stipulate that reason..." Mercer further advised that it would rectify this practice.

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**SEE APPENDIX A-1 FOR LIST OF POLICIES IN ERROR**

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**2. Failure to Obtain Proof of Mailing**

**(3 Files in Error; 1 Mail Review Error)**

**N.J.A.C. 11:1-20.2(i)** states that no non-renewal or cancellation shall be valid unless notice thereof is sent by certified mail; or by first class mail, if at the time of mailing the insurer has obtained from the Post Office a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice. Contrary to the regulation, the Company failed to obtain proof of mailing for two homeowner and two dwelling fire nonrenewals. In response to an inquiry, the Company agreed with the examiners' finding.

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**SEE APPENDIX A-2 FOR LIST OF POLICIES IN ERROR**

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**3. Failure to Use Correct Complaint Address on Termination Notices**

**(151 Files in Error; 13 Mail Review Errors)**

**N.J.A.C. 11:1-20.2(h)** states that all notices of nonrenewal and cancellation, except where cancellation is for nonpayment of premium, must provide the insured with notice of the right to file a written complaint about the cancellation or nonrenewals with the New Jersey Department of Banking and Insurance. The examiners found that Mercer utilized an incorrect mailing address on its termination notices on 42 homeowner first 60 day cancellations, 43 homeowner midterm cancellations and 66 homeowner nonrenewals. The notice states the following address: The Department of Insurance, Division of Licensing and Endorsement, CN 325, Trenton, New Jersey 08625-0325. The correct disclosure is

New Jersey Department of Banking and Insurance, Division of Consumer Protection Services, P.O. Box 325, Trenton, New Jersey, 08625-0325. The Company agreed with this finding. The examiners did not include these files in the Error Rate Chart.

#### **4. Failure to Properly Document and Comply with the Notice Requirements on Agency Termination Files**

##### **(12 Files in Error)**

**N.J.A.C. 11:1-20.4(b)13i** allows an insurer to non-renew a policy due to agency termination, provided that the insurer documents that "...replacement coverage at comparable rates and terms has been provided to the insured, and the insurer has informed the insured, in writing, of his or her right to continue coverage with the insurer."

Contrary to the aforementioned regulations, the Company failed to document that it adhered to the requirements listed in **N.J.A.C. 11:1-20.4(b)13i**. Of the 84 non-renewal files reviewed, 31 were agency termination files, of which 12 were in error. This represents an error rate of 39%. In response to an inquiry, the Company agreed with the examiners' finding.

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#### **SEE APPENDIX A-3 FOR LIST OF POLICIES IN ERROR**

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#### **5. Correction of Underwriting Errors that Caused Premium Increases and Insured Cancellation Requests**

##### **(20 Files in Error)**

Of the 43 homeowner mid-term cancellations requested for review, the examiners found that 20 were in fact renewals not taken as a result of premium increases caused by the Company's failure to properly utilize the new business underwriting guidelines that were in effect upon policy inception. Specifically, these policies were erroneously placed in the preferred program even though they qualified for the higher-rated Standard Program. Ultimately, Mercer conducted renewal underwriting reviews and discovered that these policies did in fact not qualify for the Preferred Program. Consequently, in an effort to correct these errors on a forward-going basis, Mercer rewrote these policies in the Standard Program, resulting in premium increases. Mercer did not attempt to recoup premium undercharges that occurred in prior policy periods. In response to these 20 renewal packages that identified the reason for this increase, these insureds either requested cancellation or allowed the policy to lapse due to cancellation and placed coverage elsewhere.

In response to an inquiry, the Company agreed with the examiners' finding that 19 of the 20 policies were incorrectly issued in the preferred program.

However, in response to a subsequent inquiry, the Company disagreed with the examiners' finding and stated that "...though they were incorrectly issued in the preferred program, when we began reviewing them in 2003, we renewed them in the proper standard program with no change in coverage." The fact that these policies were ultimately renewed in the proper standard program with no change in coverage does not negate the Company's failure to properly utilize the new business underwriting guidelines that were in effect at policy inception. On the remaining policy, the Company neither agreed nor disagreed with this finding.

The examiners note that, pursuant to N.J.S.A. 17:29A-6 and 15, insurers are required to charge rates in strict conformity with the rating system filed with and approved by the Commissioner. As a result of the initial new business underwriting tier placement error, Mercer charged rates in a manner that is inconsistent with its filed and approved rating system. The frequency of policy period errors among all 20 policies in error ranged from a low of two policy periods to a high of 14 policy periods. Premium in error ranged from a low of \$120 to a high of \$540.

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**SEE APPENDIX A-4 FOR LIST OF POLICIES IN ERROR**

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**D. MAIL REVIEW**

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On various dates between November 15, 2004 and January 21, 2005 the examiners conducted a mail review at Mercer's Pennington, New Jersey office. This review consisted of four homeowner midterm cancellations, six homeowner non-pays, two dwelling fire midterm cancellations, nine homeowner nonrenewals and five dwelling fire nonrenewals. The examiners checked for compliance with proof of mailing requirements (N.J.A.C. 11:1-20.2(i)2 and applicable minimum notice requirements on terminations (N.J.A.C. 11:1-20.2(d) through (h) and N.J.S.A. 17:23A-10a(2)), and found the following:

**1. Failure to Provide Summary of Rights**

**(20 Mail Review Errors and the following Errors on the Overall Termination Population - 65 Rejected Applications, 247 First 60 Day Cancellations, 1,237 Midterm Cancellations and 567 Nonrenewal Files in Error – Improper General Business Practice)**

N.J.S.A. 17:23A-10a(2) states that, "In the event of an adverse underwriting decision, the insurance institution ... responsible for the decision shall provide the ... policyholder ... with a summary of the rights established under subsection b. of this section and sections 8 and 9 of this act." Contrary to N.J.S.A. 17:23A-10a(2), the Company failed to provide a summary of

rights on 20 terminations examined during the mail review as follows: four homeowner midterm cancellations, two dwelling fire midterm policies, nine homeowner nonrenewals and five dwelling fire nonrenewal policies.

In response to the examiners' inquiries, the Company disagreed with these errors, stating that, "...we provided a cancellation or non-renewal notice, which includes instructions for complaint filing on each of the policies listed with the adverse underwriting decision stated. We believe this is in accordance with the regulation and is not an improper general business practice...our procedure is to provide the notice with the adverse underwriting decision noted which is our current practice."

The examiners note, however, that instruction for filing a complaint and advisement of the actual reason for termination does not satisfy the informational disclosure and summary of rights requirements as defined in **N.J.S.A. 17:23A-8-10**. The Company did state, however, that when these policies were issued they were automatically processed with a Notification of Information Practices and Privacy Notice which, Mercer states, would meet the requirements of **N.J.S.A. 17:23A-10a(2)**. The examiners note, however, that this statute also requires issuance of these notices incident to an adverse underwriting decision. Notably, **N.J.S.A. 17:23A-2** defines, among other things, policy termination as an adverse underwriting decision. Therefore, Mercer was required to issues these notices at the time of policy termination. The examiners cited this error as an improper general business practice.

**SEE APPENDIX A-5 FOR LIST OF MAIL REVIEW POLICIES IN ERROR**

# III. RATING, UNDERWRITING AND POLICYHOLDER SERVICE

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## A. INTRODUCTION

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The examiners reviewed randomly selected policy files from Mercer's database runs of 19,852 homeowner policies and 3,130 dwelling fire policies written or renewed between January 1, 2003 to December 31, 2003. The examiners checked for compliance with applicable statutes and regulations including N.J.S.A. 17:29A-6 and 15, (filed and approved rating methodologies), N.J.S.A. 17:29A-4(d) (rate reductions for structures equipped with operative smoke detection devices), all of which relate to Chapter VII - Conducting the Property and Casualty Insurance Examinations of the Market Conduct Examination Handbook.

## B. ERROR/EXCEPTION RATIOS

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

<b>Review Category</b>	<b>Files Reviewed</b>	<b>Files In Error</b>	<b>Error Ratio</b>
<b>Random Underwriting</b>			
HO New Business	91	6	7%
Renewals	78	2	3%
DF New Business	6	0	0%
Renewals	<u>24</u>	<u>2</u>	8%
Total:	199	10	5%
<b>Manual Rating Review</b>			
HO New Business	5	0	0%
Renewals	5	0	0%
DF New Business	5	0	0%
Renewals	<u>5</u>	<u>0</u>	0%
Total:	20	0	0%
Mail Review	27	0	0%

## C. EXAMINERS' FINDINGS

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### 1. Failure to Apply 2% Rate Reduction on Structures Equipped with Smoke Detection Devices

#### (5 Random Files in Error)

N.J.S.A. 17:29A-6 and 15 require insurers to charge rates in strict conformity with the rating system filed with and approved by the Commissioner. N.J.S.A. 17:29A-4(d) requires insurers to give a rate reduction for fire insurance on structures equipped with operative smoke detection devices. In addition, Standard One of the Underwriting and Rating Guidelines of the N.A.I.C. Market Conduct Examiners Handbook specifies that, "The rates charged for the policy coverage (should be) in accordance with filed rates..."

Of the 199 files randomly selected and reviewed, the Company failed to apply a 2% rate reduction on three homeowner and two dwelling fire policies where structures equipped with operative smoke detection devices were present and identified on the application. The average premium overcharge was \$12.05. Failure to provide this discount is contrary to the aforementioned statute. In response to inquiries, the Company agreed with the examiners' finding on all five policies. Additionally, Mercer endorsed the policies for a premium adjustment.

Based on an error ratio of 3%, and an overall population of 22,982 policies, approximately 689 policies (3% of the population) may not have received this discount.

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PLEASE SEE APPENDIX B-1 FOR FILES IN ERROR

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### 2. Improper Application of Fire Protection Class Code Resulting in Overcharges

#### (4 Random Files in Error)

N.J.S.A. 17:29A-6 and 15 require insurers to charge rates in strict conformity with the rating system filed with and approved by the Commissioner. Contrary to this requirement, the examiners found that the Company applied an incorrect Fire Protection Class Code B, instead of Code A, on four homeowner policies. According to the Company's rate manual, Class Code A is applied if a fire hydrant is within 1000 feet of a dwelling; each dwelling satisfied this criterion. In response to inquiries, the Company agreed that the policies were incorrectly classified. Additionally, Mercer

stated that these policies would be endorsed for premium credit adjustments. The average base premium overcharge is \$68.00 per policy.

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**PLEASE SEE APPENDIX B-2 FOR FILES IN ERROR**

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**3. Failure to Provide the 5% Rate Reduction For Masonry Construction**

**(1 Random File in Error)**

N.J.S.A. 17:29A-6 and **15** require insurers to charge rates in strict conformity with the rating system filed with and approved by the Commissioner. Contrary to these statutes, the examiners found that the Company did not apply the masonry construction differential on homeowner policy SHO0758055. Mercer's rate manual provides for a 5% discount for masonry construction. Mercer incorrectly rated this risk as a frame structure. In response to an inquiry, the Company agreed that the construction is masonry and that the policy qualifies for a 5% discount. Mercer endorsed the policy and issued a credit of \$27.00 for the 2004-2005 policy period.

**4. Sample Rate Calculations (No Errors)**

Upon request, Mercer's underwriting staff provided the examiners with itemized, manual rate calculations on 20 of the files (five homeowner new business, five homeowner renewals, five dwelling fire new business and five dwelling fire renewals) that comprised the random sample. The calculations included discounts for new home and protective devices, burglar and fire central alarms, all peril deductibles and preferred homeowner discounts. The examiners found that Mercer provided all eligible policies with the appropriate discounts.

**5. New Home Premium Credit (No Errors)**

The examiners reviewed 169 homeowner and 30 dwelling fire rating and underwriting files from the random sample to determine if Mercer issued the appropriate new home discounts.

Mercer offers a New House Discount for homes up to 15 years old for preferred policies and up to 10 years old for standard policies. These premium discounts range from 5% - 20%. Similarly, for dwelling fire policies the Company allows Coverage A base premium discounts up to 15% for dwelling ages up to 10 years. Of the 199 files reviewed, 23 preferred and 17 standard homeowner policies qualified for this discount. There were no dwelling fire policies that qualified. This review was designed to check for compliance with N.J.S.A. 17:29A-6 and **15** and Standard One of the Underwriting and Rating Section of the N.A.I.C M.C.E. Handbook. In reviewing the Company's filed and approved underwriting manual, the examiners noted that each credit is computed by the age of the home as of the effective year of policy minus the

year of construction. In no instance did the examiners find any errors on the homeowner policies that qualified for the New House Discount.

#### **D. MAIL REVIEW**

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On various dates between November 15, 2004 and January 21, 2005 the examiners conducted a mail review at Mercer's Pennington, New Jersey location. The examiners reviewed four dwelling fire new business packages, eight homeowner new business packages, five dwelling fire renewal packages and ten homeowner renewal packages. The examiners checked Mercer's mail operation to verify that new business and renewal packages were sent in a timely fashion, and to determine if the Company included all required notices and informational disclosures. The examiners found no errors.

## IV. RECOMMENDATIONS

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Mercer should inform all responsible personnel and third party entities that handle the files and records cited as errors in this report of the examiners' recommendations and remedial measures which follow in the report sections indicated. It is also recommended that the Company establish procedures to monitor compliance with these measures.

Whenever the examiners cited a single error, the report includes a "reminder" recommendation because a single error may be an indication of others.

The examiners acknowledge that the Company 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 Company 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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For all items requested for the Commissioner and copies of all written instructions, procedures, policies, recommended forms and premium refunds, copies of each accompanying letter described below, computer runs, etc., should be sent to the Commissioner, c/o Clifton Day, Manager of Market Conduct Examinations and Anti-Fraud Compliance Unit, 20 West State Street, PO Box 329, Trenton, NJ 08625, within thirty (30) days of the date of the adopted report.

On all policies to be reopened with additional payment as recommended, the letter should be sent to the insured with an accompanying cover letter containing the following first paragraph (variable language is included in parentheses):

#### PREMIUM REFUND/ADJUSTMENT

"During a recent review of our policy files by market conduct examiners of the New Jersey Department of Banking and Insurance, they found that we failed to discount your (Dwelling Fire Insurance/Homeowner Policy) due to being eligible for a (protective device credit/masonry construction rate/more favorable fire protection class). Enclosed is our (payment/credit) in the amount of (insert amount) to correct our error. We have rerated your policy to provide you with this discount on all eligible policies and policy periods."

## B TERMINATIONS

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1. In order to comply with **N.J.S.A. 17:23A-10**, the Company should issue written instructions to all appropriate personnel advising them to provide the applicant with the specific reason(s) for the adverse underwriting decision in writing. Additionally, the Company should issue written instructions to all appropriate personnel advising them to provide the standard or reason and factual basis on the notice when issuing a cancellation or nonrenewal.
2. The Company should remind appropriate personnel that **N.J.A.C. 11:1-20.2(i)2** requires insurers to obtain a date stamped proof of mailing showing the name and address of the insured when canceling or nonrenewing a policy.
3. The Company should remind appropriate personnel to utilize the appropriate New Jersey Department of Banking and Insurance address, which includes Division of Consumer Protection Services, PO Box 325, Trenton, NJ 08625-0325, on all termination notices.
4. In order to comply with **N.J.A.C. 11:1-20.4(b)13**, the Company should issue written instructions to all appropriate personnel advising that, when a policy is nonrenewed due to agency termination, the Company must document that replacement coverage at comparable rates and terms has been provided to the insured. Instructions should also state that the insurer is required inform the insured in writing of the right to continue coverage with the insurer.
5. Mercer should adopt revised procedures to better ensure that risks are correctly placed in standard and preferred rating tiers.
6. Mercer should issue written instructions to all appropriate personnel setting forth the requirement of **N.J.S.A. 17:23A-10a(2)**, which states in the event of an adverse underwriting decision, the insurer must provide a summary of rights to the policyholder.

## C RATING AND UNDERWRITING

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7. Mercer should issue written instructions to appropriate personnel advising that policies that insure structures equipped with protective devices must receive the correct rating discount pursuant to **N.J.S.A. 17:29A-4(d)** and **N.J.S.A. 17:29A-6** and **15**. On the five files in error, the Company must credit all policy periods in error, retroactive to the first period in which the error occurred, and provide the Commissioner with a report outlining the policy numbers, the named insureds, amount returned or credit for all policy periods.
8. Pursuant to **N.J.S.A. 17:29A-6** and **15**, the Company should remind all appropriate personnel to apply the correct fire protection class codes on all policies. On the four files in error, the Company must credit all policy periods

in error, retroactive to the first period in which the error occurred and provide the Commissioner with a report outlining the policy numbers, the named insureds, amount returned or credit for all policy periods.

9. **N.J.S.A. 17:29A-6** and **15**, The Company should remind all appropriate personnel of the necessity to correctly identify the type of dwelling construction. On policies that are masonry construction, a 5% discount should be applied in order to comply with the Company's filed and approved rate system and **N.J.S.A. 17:29A-6** and **15**. Although during the field review period the Company did arrange to correct this error on the file cited, the Company should provide a copy of the endorsement that confirms proper application of this discount.

# V. APPENDICES

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## APPENDIX A - POLICY TERMINATIONS

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### **1. Failure to Provide Standard or Reason and Factual Basis (104 files in Error)**

#### **(Cancellations - 57 Files in Errors)**

1	PHO4001061*	20	SHO5003010*	39	CDP0523411**
2	PHO4000486*	21	SHO5002917*	40	CDP0523564**
3	PHO4001091*	22	SHO5002822*	41	SHO5002795***
4	PHO4000554*	23	SHO5002808*	42	PHO0750631***
5	SHO5002860*	24	SHO5002742*	43	CDP0523273***
6	SHO5001178*	25	SHO5001281*	44	CDP0523377**
7	SHO5001687*	26	SHO5000885*	45	CDP0523287**
8	SHO5001804*	27	SHO5001805*	46	PHO4001152*
9	SHO5001269*	28	PHO4001129*	47	PHO4000881*
10	SHO5002163*	29	PHO4001641*	48	PHO4001048*
11	SHO5003852*	30	PHO4000729*	49	SHO5003590*
12	CPD0523205**	31	PHO4001224*	50	SHO5003288*
13	CPD0523313**	32	CDP0523308**	51	SHO5002799*
14	CPD0523339**	33	CDP0523360**	52	SHO5002403*
15	CPD0523511**	34	CDP0523510**	53	SHO5001766*
16	CPD0523577**	35	CDP0523567**	54	SHO5001231*
17	SHO5004739*	36	CDP0523251**	55	SHO5000868*
18	SHO5004262*	37	CDP0523268**	56	SHO5003082*
19	SHO5003572*	38	CDP0523183**	57	CDP0523293**

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\* 37 Homeowner First 60 Days

\*\* 17 Dwelling Fire First 60 Days

\*\*\* 3 Midterm Cancellations

#### **(Nonrenewals – 17 Files in Error)**

01	SHO5000899	07	PHO0756212	13	PHO0744869
02	PHO0738194	08	PHO0756829	14	SHO0757082
03	PHO1500069	09	PHO0739482	15	SHO5000963
04	PHO0777149	10	PHO0756920	16	SHO5000353
05	SHO0056907	11	SHO0733927	17	SHO5001007
06	SHO0757891	12	SHO0762380		

**(Declinations – 30 files in Error)**

**Homeowner**

1	PHO4001425	20	SHO5000961
2	PHO4001324	21	SHO5001154
3	PHO4000948	22	SHO5002162
4	PHO4001546	23	SHO5002434
5	PHO4000789	24	SHO5002885
6	PHO4001323	25	SHO5003328
7	PHO4001238	26	SHO5003596
8	PHO4000888	27	SHO5004755
9	PHO4000628	28	PHO4000888
10	SHO5003329		
11	SHO5002414		
12	SHO5002660		
13	SHO5002880		
14	SHO5004316		
15	SHO5000856		
16	SHO5000873		
17	SHO5001065		
18	SHO5001353		
19	SHO5004901		

**Dwelling Fire**

01 CDP523400 02 CDP052341

**2. Failure to Obtain Proof of Mailing (3 Files in Error; 1 Mail Review Error)**

01 CDP0521517 02 SHO5000736 03 SHO0739753  
04 CDP0506920\*

\*Mail Review

**3. Failure to Properly Document and Comply with the Notice Requirements on Agency Termination Files (12 Files in Error)**

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1	PHO0013860
2	SHO0778402
3	SHO5000694
4	SHO0774708
5	SHO5000713
6	SHO5000549
7	SHO0771536
8	SHO0095995
9	CDP0519845
10	CDP0508391
11	CDP0522192
12	CDP0522148

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**4. Correction of Underwriting Errors that Caused Premium Increases and Insured Request Cancellations (20 Files in Error)**

<b>Inception Date/ Policy #</b>	<b>Date Rewritten/ Policy #</b>	<b>Number of Policy Terms In Error</b>	<b>Preferred Premium</b>	<b>Standard Premium</b>	<b>Premium Difference</b>	<b>% Increase</b>
5/1/97 PHO0762543	5/1/03 SHO5001919	6 years	\$437	\$710	\$273	62%
8/29/99 PHO0769255	8/29/03 SHO5003442	4 years	\$518	\$896	\$378	73%
11/17/99 PHO0769951	11/17/03 SHO5004430	4 years	\$403	\$828	\$425	105%
12/1/00 PHO0777147	12/1/03 SHO5004516	3 years	\$559	\$805	\$246	44%
3/23/01 PHO0775565	3/23/03 SHO5001451	2 years	\$820	\$1360	\$540	66%
4/14/00 PHO0766807	4/14/03 SHO5004555	3 years	\$350	\$478	\$128	37%
2/6/00 PHO0771747	2/6/03 SHO5000899	3 years	\$630	\$997	\$367	58%
8/9/99 PHO0770258	8/9/03 SHO5003772	4 years	\$335	\$530	\$195	58%
5/1/00 PHO0772751	5/1/03 SHO5001912	3 years	\$593	\$927	\$334	56%
1/16/83 PHO0012645	1/16/83 SHO5000540	1 years	\$564	\$780	\$216	38%
12/2/98 PHO0767451	12/2/03 SHO5004537	5 years	\$388	\$617	\$229	59%
3/13/00 PHO0772215	3/13/03 SHO5001298	3 years	\$463	\$602	\$139	30%
2/11/91 PHO0720899	2/11/03 SHO5000963	12 years	\$513	\$767	\$254	50%
12/27/91 PHO0727323	12/27/02 SHO5000353	11 years	\$402	\$565	\$163	41%
2/15/97 PHO0757771	2/15/03 SHO5000994	6 years	\$528	\$972	\$444	84%
1/26/99 PHO0767522	1/26/03 SHO5000736	4 years	\$388	\$554	\$166	43%

3/30/99 PHO0768727	3/30/03 SHO5001547	4 years	\$326	\$464	\$138	42%
12/11/96 PHO0756831	12/11/03 SHO5004588	7 years	\$397	\$517	\$120	30%
7/31/00 PHO0773690	7/31/03 SHO5003064	3 years	\$339	\$486	\$147	43%
PHO0777149	SHO5004480	2 years	\$341	\$698	\$357	105%

**5. Failure to Provide Summary of Rights  
(20 Mail Review Errors – Improper General Business Practice)**

**Nonrenewals**

01	PHO0739521	05	SHO0746120	10	SHO0134237
02	SHO5000664	06	SHO0757600	11	SHO0096159
03	SHO0134023	07	SHO0762305	12	CDP0510884
04	PHO0771591	08	CDP0514309	13	CDP0506920
		09	CDP0503954	14	CDP0509096

**Cancellations**

01	SHO5006082	03	SHO5004413	05	CDP0523822
02	PHO4002874	04	CDP0523828	06	PHO4002600

**APPENDIX B - RATING, UNDERWRITING, POLICYHOLDER SERVICE**

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**1. Failure to Apply 2% Rate Reduction on Structures Equipped with Smoke Detection Devices (5 Random Files in Error)**

<b>Policy Number</b>	<b>Mercer Premium</b>	<b>Rate Impact</b>	<b>Amount of Overcharge</b>
SHO5000333	\$813	2%	\$16.26
SHO5001622	\$579	2%	\$11.58
*CDP0500682	\$505	2%	\$10.10
SHO5001834	\$516	2%	\$10.32
*CDP0503303	\$600	2%	\$12.00
<b>Total:</b>			\$60.26

Average overcharge: \$12.05 per policy

\* Dwelling Fire

**2. Failure to Correctly Apply Fire Protection Class Code (4 Random Files in Error)**

<b>Policy Number</b>	<b>Base Premium Class A</b>	<b>Base Premium Class B</b>	<b>Amount of Overcharge</b>
SHO5002301	\$650	\$722	\$74.00
SHO5001972	\$721	\$793	\$83.00
SHO5001761	\$623	\$685	\$67.00
PHO4001456	\$530	\$582	\$48.00
<b>Total:</b>			\$272.00

Average base premium overcharge: \$68.00 per policy.

## VI. VERIFICATION PAGE

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1. I, Esther Y. Turner, am the Examiner-in-Charge of the Market Conduct Examination of the Mercer 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 Conduct examination of Mercer Insurance Company as of May 11, 2005.

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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Esther Y. Turner  
Examiner-in-Charge,  
New Jersey Department of  
Banking and Insurance