



# **Market Conduct Examination**

---

**Mercury Indemnity Company of America**  
Bridgewater, New Jersey

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE  
Office of Consumer Protection Services  
Market Conduct Examination and Anti-fraud Compliance Section

Date Report Adopted: January 6, 2010

---

REPORT  
of the  
MARKET CONDUCT EXAMINATION  
of  
Mercury Indemnity Company of America

located in

Bridgewater, NEW JERSEY

as of

February 20, 2009

BY EXAMINERS

of the

STATE OF NEW JERSEY

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

MARKET CONDUCT EXAMINATION AND ANTI-FRAUD  
COMPLIANCE SECTION

DATE REPORT ADOPTED: JANUARY 6, 2010

# TABLE OF CONTENTS

---

	<b>Page</b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>A. SCOPE OF EXAMINATION.....</b>	<b>1</b>
<b>B. ERROR RATIOS.....</b>	<b>1</b>
<b>C. COMPANY PROFILE.....</b>	<b>2</b>
<b>II. COMPLAINTS .....</b>	<b>3</b>
<b>A. INTRODUCTION .....</b>	<b>3</b>
<b>B. COMPLAINT REGISTER .....</b>	<b>3</b>
<b>III. CLAIMS REVIEW .....</b>	<b>4</b>
<b>A. INTRODUCTION .....</b>	<b>4</b>
<b>B. ERROR RATIO CHART .....</b>	<b>4</b>
<b>C. PERSONAL INJURY PROTECTION CLAIMS.....</b>	<b>5</b>
<b>D. PHYSICAL DAMAGE AND PROPERTY DAMAGE CLAIMS .....</b>	<b>9</b>
<b>IV. RATING AND UNDERWRITING .....</b>	<b>13</b>
<b>A. INTRODUCTION .....</b>	<b>13</b>
<b>B. ERROR RATIOS.....</b>	<b>13</b>
<b>C. EXAMINERS' FINDINGS.....</b>	<b>13</b>
<b>V. RECOMMENDATIONS .....</b>	<b>16</b>
<b>A. GENERAL INSTRUCTIONS .....</b>	<b>16</b>
<b>B. COMPLAINTS .....</b>	<b>17</b>
<b>C. CLAIMS REVIEW .....</b>	<b>17</b>
<b>D. RATING AND UNDERWRITING.....</b>	<b>19</b>
<b>APPENDIX A – CLAIM ERRORS .....</b>	<b>20</b>
<b>APPENDIX B – RATING AND UNDERWRITING ERRORS .....</b>	<b>27</b>
<b>VI. VERIFICATION PAGE .....</b>	<b>28</b>

---

# I. INTRODUCTION

---

This is a report of the Market Conduct activities of Mercury Indemnity Company of America (hereinafter referred to as Mercury, MICA 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 examination.

## A. SCOPE OF EXAMINATION

---

The scope of the examination included private passenger automobile insurance sold by the Company in New Jersey. The examiners evaluated Mercury's compliance with the regulations and statutes pertaining to automobile underwriting and claims. The review period for the examination was September 1, 2007 to August 31, 2008. The examiners also conducted a select review for all PIP claims received by the Company in 2006. The examiners conducted their fieldwork at the Company's offices in Bridgewater, New Jersey between November 10, 2008 and December 12, 2008 and from January 12, 2009 to January 16, 2009. On various dates following the fieldwork, the examiners completed additional review work and report writing. The Market Conduct Examiners were Examiner-in-Charge Marleen Sheridan, Monica Koch, Thomas Goehrig and Ralph Boeckman.

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

## B. ERROR RATIOS

---

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

There are errors cited in this report that define practices as specific acts that an insurer commits so frequently that it constitutes an improper general business practice. Whenever the examiners find that the errors cited constitute an improper general business practice, they have stated this in the report.

The examiners sometimes find improper general business practices or errors of an insurer that may be technical in nature or which did not have an impact on a consumer. Even though such

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

The examiners submitted written inquiries to Company representatives on the errors cited in this report. These inquiries provided Mercury the opportunity to respond to the examiners' findings and to provide exceptions to the statutory and/or regulatory errors or mishandling of files reported herein. In response to these inquiries, Mercury agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the individual merits of each response and gave due consideration to all comments. In some instances, the examiners did not cite the files due to the Company's explanatory responses. In others, the errors remained as cited in the examiners' inquiries. For the most part, this is a report by exception.

## C. COMPANY PROFILE

---

Mercury Indemnity Company of America (MICA) is wholly owned by Mercury General Corporation. Mercury General Corporation is a traditional stock company domiciled in Los Angeles, California and was founded in 1962.

Mercury Indemnity Company of America was admitted into New Jersey in August 2003. Claims, Underwriting and Billing operations were transacted in Clearwater, Florida. MICA established a local claims office in Bridgewater, New Jersey in June 2006. Underwriting operations were transferred from Clearwater, Florida in June 2005 to Latham, New York and subsequently to Bridgewater, New Jersey in August 2007.

## II. COMPLAINTS

---

### A. INTRODUCTION

---

Mercury's complaint register indicates that consumers filed 106 complaints with the New Jersey Department of Banking and Insurance during the review period. The examiners reviewed Mercury's complaint register for compliance with **N.J.S.A. 17:29B-4(10)**. The examiners used Chapters Sixteen (General Examination Standards) and Seventeen (Conducting the Property and Casualty Examination of the Market Regulation Handbook), as a guide to conduct this review.

### B. COMPLAINT REGISTER

---

Pursuant to **N.J.S.A. 17:29B-4(10)**, insurers are required to maintain a record of all complaints received by the company. These records shall indicate the total number of complaints, the classification by line of insurance, the nature and the disposition of each complaint and the time it took to process each complaint. This statute conforms in relevant part to review items and analysis standards outlined in Chapters Sixteen (General Examination Standards) and Seventeen (Conducting the Property and Casualty Examination of the Market Regulation Handbook).

The examiners noted that, contrary to the above referenced statute, Mercury's complaint registers that the Company utilized during the review period failed to include all of those complaints filed directly with the Company by the insured; rather, it only included internal appeals. In response to an inquiry from the examiners, Mercury provided a revised complaint register that included a total of 30 direct consumer complaints, including internal appeals and direct complaints. The overall total of all complaints, including those submitted to the Department, was 136.

# III. CLAIMS REVIEW

---

## A. INTRODUCTION

---

This review covers paid and denied Personal Injury Protection (PIP), collision, comprehensive and property damage claims submitted under private passenger automobile insurance. Any such New Jersey claim closed between September 1, 2007 and August 31, 2008 was subject to review. During the review period Mercury closed 36,266 PIP claims, 1,044 comprehensive claims, 7,467 collision claims and 11,015 property damage claims. Additionally, the examiners conducted a select review of paid PIP claims that Mercury received in 2006. The examiners randomly selected and reviewed 290 paid and denied claims from these categories.

In reviewing each claim, the examiners checked for compliance with all applicable statutes and regulations that govern timeliness requirements in settling first and third party claims. The examiners conducted specific reviews placing particular emphasis on N.J.S.A. 17:29B-4(9) and N.J.A.C. 11:2-17 (Unfair Claims Settlement Practices), N.J.A.C. 11:3-10 (Auto Physical Damage Claims), N.J.S.A. 39:6A-5 (Personal Injury Protection Claims), N.J.A.C. 11: 3-4 (PIP Benefits/Medical Protocols) as well as N.J.A.C. 11:3-37.10(a)5 (Explanation of Benefits). These requirements relate to Chapter Sixteen - General Exam Standards and Seventeen - Property and Casualty Insurance Examinations of the NAIC Market Regulation Handbook.

## B. ERROR RATIO CHART

---

The examiners calculated the error ratios by applying the procedure outlined in the introduction of this report. Error ratios are itemized separately based on the review samples as indicated in the following charts. The chart below itemizes all randomly selected paid and denied claims reviewed, along with total files in error and error ratio by category.

### 1. Paid Claims

Review Sample	Files Reviewed	Files in Error	Error Ratio
PIP	83	39	47%
Collision	40	7	18%
Comprehensive	20	5	25%
Property Damage	<u>40</u>	<u>12</u>	30%
<b>Subtotal</b>	<b>183</b>	<b>63</b>	<b>34%</b>

## 2. Denied Claims

Review Sample	Files Reviewed	Files in Error	Error Ratio
PIP	12	2	17%
Collision	10	1	10%
Comprehensive	10	3	30%
Property Damage	<u>15</u>	<u>0</u>	0%
Subtotal	47	6	13%
<b>Random Totals</b>	<b>230</b>	<b>69</b>	<b>30%</b>

## 3. Select 2006 Paid PIP Sample

Review Sample	Files Reviewed	Files in Error	Error Ratio
PIP	60	36	60%

## C. PERSONAL INJURY PROTECTION CLAIMS

---

### **1. Failure to Pay PIP Claims Timely – 21 Random Files and 36 Select Files in Error - Improper General Business Practice**

According to **N.J.S.A. 39:6A-5(g)** and **N.J.A.C. 11:2-17.7(b)**, a claim shall be overdue if not paid within 60 days after the insurer is furnished written notice of the fact of a covered loss. However, an insurer may secure a 45-day extension in accordance with **N.J.S.A. 39:6A-5(g)** and **N.J.A.C. 11:2-17.7(b)**. Where such an extension is requested, the maximum settlement period may not exceed 105 days.

The examiners reviewed 83 paid PIP claims and found that Mercury Indemnity Company of America (MICA) failed to settle 18 claims within the maximum 60 calendar day timeframe contrary to **N.J.S.A. 39:6A-5g** and **N.J.A.C. 11:2-17.7(b)**. On three additional claims, the Company issued the 45-day delay letter but failed to pay these claims within 105 days, also contrary to **N.J.S.A. 39:6A-5g** and **N.J.A.C. 11:2-17.7(b)**. Combined, these 21 errors represent an error rate of 25%. The examiners cited delayed PIP settlements as an improper general business practice.

The examiners found the same error during the select review of PIP claims processed in 2006. During that period, Mercury failed to pay 36 PIP claims within 60 days and further failed on all 36 to issue the required 45 day extension letters.

**SEE APPENDIX A-1 FOR A LIST OF RANDOM FILES IN ERROR**

**SEE APPENDIX A-1a FOR A LIST OF SELECT FILES IN ERROR**

## **2. Failure to Pay Interest on Delayed PIP Payments – 9 Random Files and 9 Select Files in Error - Improper General Business Practice**

**N.J.S.A. 39:6A-5(h)** requires the payment of interest on all overdue benefits. Contrary to this requirement, Mercury failed to pay interest on nine of the 21 randomly selected PIP bills cited in the previous section for a 43% rate of error. In order to test the extent of this error, the examiners randomly selected six of the 21 claims referenced in section III.C.1 above and identified a total of 161 bills that Mercury paid beyond 60 or 105 days. The examiners found that Mercury did not pay interest on 62 bills and paid a lower interest rate on one bill, for an interest error rate of 39%.

The examiners found the same error on nine of the 36 files from the select review of PIP claims submitted in 2006 for a 25% rate of error. In order to test the extent of this error on the 2006 claims, the examiners identified a population of 298 bills that Mercury processed on the 36 randomly selected claims. From this total, the examiners found that Mercury did not pay interest on 43 late bill payments, for an error rate of 14%. The examiners also found an additional 144 bills in which Mercury paid an interest rate that was lower than the required rate, for an error rate of 48%. The combined error rate for both error types is 63% ( $43+144=187/298=63\%$ ). The Company agreed with these findings and issued interest payments for the files cited. The examiners cited this error as an improper general business practice.

**SEE APPENDIX A- 2 FOR A LIST OF RANDOM FILES IN ERROR**

**SEE APPENDIX A- 2a FOR A LIST OF SELECT FILES IN ERROR**

## **3. Failure to Apply Correct Interest Rates for Overdue PIP Claims – 3 Random Files and 13 Select Files in Error (Total Claim Underpayment \$142.11) - Improper General Business Practice**

**N.J.S.A. 39:6A-5(h)** states that all overdue PIP claim payments shall bear interest at the percentage of interest prescribed in the Rules Governing the Courts of the State of New Jersey for judgments, awards and orders for the payment of money. For 2008, the applicable interest rate for late PIP claim payments was 5.5%. However, the examiners found that the Company erroneously paid the 2007 rate of 4% on two 2008 claims rather than the required 5.5%. For 2007 claims, the applicable interest rate was 4%. However, the Company incorrectly applied an interest rate of 2% on one overdue 2007 PIP claim rather than the required 4%. The examiners found this error on 3 of 12 possible files, for an error rate of 25%.

The examiners found the same error during the select review of PIP claims submitted in 2006. On 13 out of 27 such claims where this error could have occurred (48%), Mercury applied a 1% or 2% interest rate when the interest rate was 2% or 4%, respectively. Overall, the Company randomly applied rates without apparent consistency and contrary to **N.J.S.A. 39:6A-5(h)** and the Rules Governing the Courts of the State of New Jersey. Between the random and select sample rates of error, the examiners cited incorrect interest as an improper general business practice.

**SEE APPENDIX A-3 FOR A LIST OF RANDOM FILES IN ERROR**

**SEE APPENDIX A-3a FOR A LIST OF SELECT FILES IN ERROR**

#### **4. Unfair Settlement Due to Use of Fee Schedule versus In-Network Physician Benefit Discount on Insured Co-pay Obligation - 19 Files in Error –(\$753.94 in Underpaid Benefits) - Improper General Business Practice**

According to N.J.A.C. 11:3-4.4(a), an insured is obligated to pay a 20 percent copayment on eligible medical expense benefits that accrue and are payable between the stated deductible and the first \$5,000 in expenses. An insurer may adjust such medical expenses on either a fee schedule, usual and customary rate (FC/UCR) or provider network discount basis. Regarding the latter, Mercury encourages but does not require insureds to utilize discounted network providers as a means to control costs.

While recalculating incurred expense and benefit determinations on discounted provider network settlements the examiners found on 19 files that Mercury systematically applies the insured's 20% copayment to the higher FC/UCR rate rather than the discounted network rate upon which payment was based. The examiners note that the amount payable within the context of N.J.A.C. 11:3-4.4(a) and N.J.S.A. 39:6A with respect to benefit eligibility based on actual, incurred expenses, is the discounted provider network rate. Contrary to these requirements, Mercury calculated the insured's copayment on the higher FC/UCR non-incurred rate. This practice over-assesses copayment liability, which inappropriately increases the insured's out-of-pocket expenses while enriching the insurer. Such settlements are prohibited by N.J.S.A. 17:29B-4(9)(f), which requires fair and equitable settlements. The examiners cited this error as an improper general business practice since Mercury underpaid all claims subject to copayments.

In response to the examiners' inquiries, Mercury disagreed with this error stating that N.J.A.C. 11:3-4.4(a) through (g) permits application of copayments and deductibles in any order and in a manner that permits an insurer to apply a copayment to an unadjusted FC/UCR even though settlement is based on a discounted network rate. The examiners disagree, as N.J.A.C. 11:3-4.4(g) specifically refers to deductible and copayment calculation order under subparagraphs (d) through (f) with respect to copayment penalties against a provider for failure to obtain precertification for services. This element is irrelevant with respect to this practice. Moreover, subparagraphs (a) through (c) of N.J.A.C. 11:3-4.4 provide no exception for discounted network rates and merely state that copayments are assessed on a per accident basis at 20% between the insured-selected deductible of \$250, \$500, \$1,000, \$2,000 and \$2,500. See recommendations.

#### **SEE APPENDIX A-4 FOR THE LIST OF RANDOM FILES IN ERROR**

#### **5. Unfair PIP Underpayments due to Excessive Application of 20% Insured Copayment - 3 Files in Error (\$367.19 in Underpaid Benefits).**

Pursuant to N.J.A.C. 11:3-4.4(a), an insured is obligated to pay a 20 percent co-payment on eligible medical expense benefits that accrue between the stated policy deductible and the first \$5,000 in expenses. Contrary to this requirement, the examiners found that Mercury applied excessive copayments that exceeded the total maximum co-payment of \$950 (\$5,000 - \$250

deductible = \$4750 x .20 = \$950) on three files reviewed from the random sample. The Company agreed with these findings and agreed to remediate the amount underpaid.

**SEE APPENDIX A-5 FOR A LIST OF RANDOM FILES IN ERROR**

**6. Excessive Application of PIP Deductibles Resulting in Claim Underpayments and Reduction in Benefit Level - 2 Files in Error (\$527.82 in Underpaid Benefits)**

N.J.A.C. 11:3-4.4(c) states, “All deductibles and co-pays in (a) and (b) above (regulation N.J.A.C. 11:3-4.4) shall apply on a per accident basis”. On claim numbers NJP66108 and NJP71296 Mercury incorrectly applied deductibles in excess of the maximum \$250.00 limit, resulting in claim underpayments of \$277.82 and \$250, respectively. The Company agreed with the examiners’ findings and advised that it would correct this error.

**THESE FILES IN ERROR ARE ALSO LISTED IN APPENDIX A-6**

**7. Unfair Settlements due to Improper Retrospective Claim Denials - 2 Files in Error (\$1,720.89 in Unpaid PIP Benefits)**

Pursuant to N.J.A.C. 11:3-4.7(g), an insurer shall not retrospectively deny payment for treatment when a precertification request for the treatment was properly submitted to the insurer. Contrary to this requirement on claim number NJP68880, the examiners found that Mercury erroneously denied payment for a procedure for lack of precertification. However, the examiners’ review of the Company’s claim system confirmed that the procedure was in fact certified by Mercury as medically necessary. In response to an inquiry, Mercury agreed with this error and advised that it would pay the claim in full (\$99) along with interest (\$2.69).

The examiners found the same error on claim number NJP64325. In response to the examiners’ inquiries, Mercury agreed that it did in fact precertify the claimed service and advised that it would pay the claim in full (\$1,612.11) along with interest (\$7.09). Mercury’s denial of these benefits is contrary to N.J.A.C. 11:3-4.7(g) and unfair to the insured and provider.

**THESE FILES IN ERROR ARE ALSO LISTED IN APPENDIX A-7**

**8. Erroneous Issuance of PIP Delay Notice Due to Need to Increase PIP Reserves - 2 Files, 3 Bills in Error**

N.J.S.A. 17:29B-4(9)(f) requires insurers to attempt in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear. In addition, N.J.S.A. 39:6A-5 permits a delayed settlement of 45 days only if additional time is needed to investigate the claim for purposes of determining eligibility for payment. The examiners found two files in which the Company issued delay letters to the provider/claimant advising that the claim could not be settled due to the need for the adjuster to seek approval to increase PIP claim reserves. Since internal, administrative claim functions are unrelated to benefit eligibility and not

within the control of the claimant or provider, delay notices and requests for additional time are defective and unfounded, which unnecessarily delayed the settlement of these claims. **N.J.S.A. 17:29B-4(9)(f)** and **N.J.S.A. 39:6A-5** do not permit delays due to internal administrative claim processing issues.

**SEE APPENDIX A-8 FOR FILES IN ERROR**

**D. PHYSICAL DAMAGE AND PROPERTY DAMAGE CLAIMS**

---

**9. Failure to Notify the Claimant of Rights if Unable to Sell Salvaged Vehicle – 1 File in Error - Improper General Business Practice**

Pursuant to **N.J.A.C. 11:3-10.4(j)1-3**, the insurer must provide written notice to the claimant stating that, if the claimant cannot sell the salvaged vehicle for the amount of the salvage deduction, the insurer shall pay additional proceeds up to the amount that the claimant can actually sell the vehicle or provide the claimant with the information on where he or she can obtain that value for salvage. Contrary to this regulation and as an improper general business practice, Mercury failed to provide this notification on property damage claim NJP62678. The Company also failed to provide this notice on all other total loss claims where the claimant either chose to retain salvage or where Mercury refused to take possession of salvage. A review of the Company's salvage register indicates that owners retained salvage on 578 total loss claims (488 property damage; 82 collision and 8 comprehensive).

**THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX A-9**

**10. Failure to Advise the Claimant of Right of Recourse – 15 Files in Error - Improper General Business Practice**

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

The examiners reviewed 15 paid collision, comprehensive and property damage claims and found that Mercury failed to provide the required written right of recourse on fifteen total loss claims (six collision, six property damage and three comprehensive), for a 100% rate of error.

**SEE APPENDIX A-10 FOR A LIST OF FILES IN ERROR**

**11. Failure to Report the Sale of Salvage to the National Information Crime Bureau (NICB) – 11 Files in Error - Improper General Business Practice**

**N.J.A.C. 11:16-2.4(a)2** requires all insurers to report to the National Insurance Crime Bureau (NICB) all losses involving motor vehicle salvage, however sustained, including salvage retained by either an insured or third party claimant. This regulation further states that salvage shall be

reported to the NICB within five working days after the sale of salvage; or, if the insured is permitted to retain salvage, within five working days after the date of loss payment.

During a review of collision, comprehensive and property damage claims, the examiners found 11 out of 15 total loss claims (four collision, six property damage and one comprehensive) where the Company failed to report the sale of salvage to the NICB as required by the regulation. This represents a 73% rate of error.

**SEE APPENDIX A-11 FOR A LIST OF FILES IN ERROR**

**12. Settlement Delays and Failure to Issue Delay Notices – 11 Files in Error**

**N.J.A.C. 11:3-10.5(a)** and **N.J.A.C. 11:2-17.7(c)** state that unless clear justification exists the maximum payment period for physical damage claims shall be 30 calendar days and 45 calendar days for property damage claims. **N.J.A.C. 11:3-10.5(b)** and **N.J.A.C. 11:2-17.7(e)** state that, if the insurer is unable to settle the claim within the time periods specified, the insurer must send the claimant written notice by the end of the payment periods. This notice must specify the reason for the delay. **N.J.A.C. 11:3-10.5(b)** and **N.J.A.C. 11:2-17.7(e)** also require an insurer to send an updated, written notice of delay every 30 and 45 days, respectively, thereafter until all elements of the claim are paid or denied.

The examiners reviewed 100 paid and 35 denied first and third party claims and found that Mercury failed to settle eleven of these claims (two collision, four comprehensive and five property damage) within the correct time frame. On seven of the claims, the Company failed to issue the appropriate delay letter and on the remaining four, Mercury sent the delay letter but sent it beyond the required timeframe. Delays ranged from a low of 20 days beyond 30 to a high of 150 days beyond 30 for first party claims and a low of 8 days beyond 45 to a high of 153 days beyond 45 for third party claims.

**SEE APPENDIX A-12 FOR A LIST OF FILES IN ERROR**

**13. Failure to Inspect Property Damage Claims within Seven Working Days – 3 Files in Error**

In accordance with **N.J.A.C. 11:3-10.3(a)**, if the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, it shall have seven working days following receipt of notification of claim to inspect the claimant's damaged property at a place and time reasonably convenient to the claimant, provided that the claimant has not refused to make the property available for inspection. The examiners found three claims in which Mercury failed to inspect the claimant's damaged vehicle within the required time frames. Delays ranged from a low of 12 days to a high of 33 days.

**SEE APPENDIX A-13 FOR A LIST OF FILES IN ERROR**

**14. Failure to Apply Correct Deductible – 2 Files in Error**

**N.J.S.A. 17:29B-4(9)(f)** requires insurers to effectuate fair and equitable settlements of claims in which liability has become reasonably clear. The examiners found two physical damage claims where Mercury failed to apply the correct deductible. On comprehensive claim NJP61714 Mercury failed to apply the required \$500 deductible altogether. On collision claim NJP57281 the Company applied a \$1,000.00 deductible instead of the \$500.00 deductible that the insured selected. The examiners note that the total deduction was recovered for the insured during subrogation.

**THESE FILES IN ERROR ARE ALSO LISTED IN APPENDIX A-14**

**15. Failure to Issue Notice of Termination of Storage Charges Timely – 2 Files in Error**

**N.J.A.C. 11:2-17.10(a)9** requires an insurer to provide notice to a claimant three working days prior to the termination of payment for automobile storage charges and place a copy of such notice in the claim file. On two files (one collision and one property damage), the examiners found that the Company did send the required letters advising that storage charges were being terminated; however, Mercury did not provide the required three working days notice prior to termination. On both claims, the Company issued the letter and indicated that the storage charges were terminated retroactive to a prior date. In response to the report, the Company stated that on one claim there was no indication that storage charges ever accrued. The examiners note, however that a storage termination notice was in fact issued and the time period in which reimbursement would cease was not accurate.

**SEE APPENDIX A-15 FOR A LIST OF FILES IN ERROR**

**16. Failure to Confirm Denial of Claim in Writing – 2 Files in Error**

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

**SEE APPENDIX A-16 FOR A LIST OF FILES IN ERROR**

**17. Failure to Pay Agreed Amount within 10 Working Days – 1 File in Error**

**N.J.A.C. 11:2-17.7(g)** states that, unless otherwise provided by law, every insurer shall pay any amount finally agreed upon in settlement of all or part of any claim not later than 10 working days from either the receipt of such agreement by the insurer or the date of the performance by the claimant of any conditions set by such agreement, whichever is later. Contrary to this regulation on property damage claim NJP68412, Mercury did not issue payment until 26 working days from agreement, a delay of 16 working days.

**THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX A-17**

**18. Issuing a Form Letter with Untrue Statements – 1 File in Error**

Pursuant to **N.J.S.A. 17:29B-4(2)**, no insurer may provide false information in the form of a letter or notice with respect to the business of insurance which is untrue, deceptive or misleading. On denied collision claim **NJP50224**, the examiners found that Mercury sent a letter to the insured regarding her claim with a statement that was untrue. The statement read, “In the event that an Un-Insured Motorist claim should be presented, Mercury Insurance will not be responsible for any towing or storage fees.” This statement is untrue because the Mercury policy has no such exclusion. The examiners also cited **N.J.A.C. 11:2-17.5(a)**, which prohibits an insurer from failing to fully disclose to first and third party claimants all pertinent benefits, coverages or other policy provisions incident to a claim.

**THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX A-18**

## IV. RATING AND UNDERWRITING

---

### A. INTRODUCTION

---

The examiners reviewed randomly selected policy files from Mercury's database run of 158,735 renewals and 9,798 new business policies that were in force during the period September 1, 2007 through August 31, 2008. The examiners checked for compliance with specific statutes and regulations, including N.J.S.A. 17:29A-6 and 15 (filed and approved rating methodologies), N.J.S.A. 17:29A-38 (reduction of rates for operators 65 years or older), N.J.S.A. 17:29A-46 (uniform application of underwriting guidelines), N.J.A.C. 11:3-15 (coverage selection forms), N.J.A.C. 11:3-35; (automobile insurance underwriting rules), N.J.S.A. 39:6A-4.1 and N.J.A.C. 11:3-21 (PIP rate discounts). These requirements relate to Chapter Sixteen (General Exam Standards) and Seventeen (Property and Casualty Insurance Examinations) of the NAIC Market Regulation Handbook.

### B. ERROR RATIOS

---

The examiners calculated 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.

Review Sample	Files Reviewed	Files in Error	Error Ratio
New Business	40	40	100%
Renewals	<u>40</u>	<u>1</u>	3%
Random Totals	<b>80</b>	<b>41</b>	<b>51%</b>

### C. EXAMINERS' FINDINGS

---

#### 1. Deficient Coverage Selection Form – 40 Files in Error - Improper General Business Practice

Pursuant to N.J.A.C. 11:3-15.6(a), each insurer shall have a separate Coverage Selection Form (CSF) for the Standard Policy and for the Basic Policy that uses the text found in Exhibits 1 and 2 of the Appendix to that regulation. Contrary to N.J.A.C. 11:3-15.6(a), and as an improper

general business practice, Mercury utilized on all new business policies written during the review period deficient coverage selection forms that omitted language mandated in Exhibits 1 and 2. Specifically, Mercury's CSF failed to list \$750.00 as the standard deductible for collision and comprehensive coverage; failed to explain that the default deductible is \$750.00; failed to include the page of the buyer's guide where the insured can find additional information about each coverage; and did not correctly describe the effects of choosing the No Limitation of Lawsuit Threshold versus the Limitation of Lawsuit Threshold on the coverage selection form.

Regarding the latter, Mercury informs the insured that bodily injury liability rates will be up to 250% higher as opposed to giving a specific range as indicated in Exhibit 1 of the Appendix which states, "My bodily injury liability premium will be \_% to \_% higher...." Additionally, the Company failed to include the following sentences on its CSF, "Per vehicle, my bodily injury liability premium at current rates will be \$\_ to \$\_ higher on each renewal of my policy if I select the No Limitation on Lawsuit option instead of the Lawsuit option. I understand that I can contact my insurer or my insurance producer for specific details." Lacking this information, the CSF does not inform the insured the extent to which bodily injury liability rates will be higher at each renewal if the No Limitation of Lawsuit option is selected.

**SEE APPENDIX B-1 FOR A LIST OF FILES IN ERROR**

**2. Failure to Obtain Physical Damage Inspection Report – 1 File in Error**

**N.J.A.C. 11:3-36.4(d)**, permits an insurer to waive physical damage inspection based solely on underwriting criteria that is uniformly applied and not based on the age, race, sex or marital status of the insured, the principal place of garaging or the fact that the automobile is insured in the residual market. According to Mercury's Rule Manual, a vehicle is exempt from physical damage inspection if an insured had prior insurance for at least six months and the coverage is transferred by an independent insurance agent. The Rule Manual requires that a copy of the inspection report must be in the underwriting file. The examiners found one policy, NJA8177862, in which an independent agent transferred an insured's coverage to Mercury; however, the Company waived the physical inspection without obtaining a copy of the physical damage inspection report from the prior insurer.

**THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX B-2**

**3. Failure to Suspend Physical Damage Coverage – 1 File in Error**

Pursuant to **N.J.A.C. 11:3-36.5(b)1** an insurer may defer the mandatory inspection requirement on new business policies for a period of seven calendar days following the effective date of coverage. **N.J.A.C. 11:3-36.7(a)** requires an insurer to suspend physical damage coverage if the inspection is not conducted prior to the expiration of this deferral period. On policy NJA8176727, Mercury failed to suspend physical damage coverage when the physical damage inspection was not completed within the required seven calendar days. The policy became effective September 28, 2007 and the physical damage inspection did not occur until November 5, 2007 or thirty-eight days after coverage was initiated.

**THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX B-3**

**4. Failure to Rate Policy in Correct Tier – 1 File in Error (Premium Overcharge of \$515)**

Pursuant to **N.J.S.A. 17:29A-6** and **15**, an insurer is required to charge rates in strict conformity with its rating system as filed with and approved by the Commissioner. In accordance with Mercury's filed rating plan, a vehicle that would normally be eligible for the Superior 10 Tier is assigned to the Preferred Plus 11 Tier when the Company does not insure all vehicles in the household. Mercury placed policy NJA8009487 in the Preferred Plus 11 Tier since the application indicated the insured's fiancé, a resident non-relative, insured her vehicle with another insurance carrier. However, when the insured married and added his wife's vehicle to the Mercury policy, the Company maintained the policy in the Preferred Plus 11 Tier and did not place the policy in the Superior 10 Tier at the next renewal. Therefore, Mercury failed to comply with **N.J.S.A. 17:29A-6** and **15** and its own rating plan by not assigning the policy to the Superior 10 Tier. This error resulted in a base rate overcharge of \$515 beginning with the September 4, 2004 policy renewal through the present policy period. In response to an inquiry, the Company stated that this rating rule has since been eliminated from its rating manual.

**THIS FILE IN ERROR IS ALSO LISTED IN APPENDIX B-4**

# V. RECOMMENDATIONS

---

Mercury Indemnity Company of America should inform all responsible personnel and third party entities who handle the files and records cited as errors in this report of the examiners' recommendations and remedial measures that follow in the report sections indicated. The examiners also recommend that Mercury Indemnity Company of America establish procedures to monitor compliance with these measures.

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

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

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

## A. GENERAL INSTRUCTIONS

---

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

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

### 1. Premium Credits

"During a review of our policy files by Market Conduct examiners of the New Jersey Department of Banking and Insurance, they found that we failed to correctly rate your policy. Enclosed is our (payment/credit) in the amount of (insert amount) to correct our error."

### 2. Underpaid Claims

"During a review of your claim by Market Conduct Examiners of the New Jersey Department of Banking and Insurance, they found that we (failed to pay interest on your Personal Injury Protection claim) (failed to pay the correct interest on your Personal Injury Protection claim) (underpaid your physical damage/property damage claim). Enclosed is our payment in the amount of (insert amount) to correct our error."

## B. COMPLAINTS

---

1. In order to comply with **N.J.S.A. 17:29B-4(10)**, Mercury must issue written instructions to all appropriate personnel stating that all complaints received by the company either through the Department or directly from the complainant must be entered into the complaint register;
2. The Company must provide the Commissioner with revised complaint registers that comply with **N.J.S.A. 17:29B-4(10)**.

## C. CLAIMS REVIEW

---

3. Mercury must issue written instructions to all appropriate claims personnel stating that:
  - a. pursuant to **N.J.S.A. 39:6A-5** and **N.J.A.C. 11:2-17.7(a)** all PIP claims must be settled (paid, denied, compromised) within 60 days unless an extension of 45 days is requested in writing, within this 60 day period, for a total period not to exceed 105 days from the notice of loss;
  - b. pursuant to **N.J.S.A. 39:6A-5(h)**, the Company must pay interest on PIP claims settled beyond the required time frames;
  - c. the Company must apply the correct interest rate on overdue PIP claims. This information can be obtained from the Courts of the State of New Jersey.
4. The Company must reopen and review the PIP claims listed in Appendices A-2, A-2a, A-3 and A-3a of this report. The Company should calculate and pay the interest due for the periods of delay as required by **N.J.S.A. 39:6A-5(h)**. This includes all claims where interest was either underpaid or not paid at all. A computer listing of all files reopened, the amount of interest paid and a grand total should be generated and provided to the Commissioner to verify compliance with this recommendation. In addition to those claims listed in Appendix A-2, A-2a, A-3, Mercury must research, calculate and issue interest still owed on all PIP claims closed between January 1, 2006 and the present.
5. Mercury must issue written instructions to all appropriate claims personnel stating that, pursuant to **N.J.A.C. 11:3-4.4(a)**:
  - a. an insurer may not calculate the insured's 20% copayment at the higher fee schedule level when the benefit is calculated and paid at a lower network provider fee level;
  - b. an insurer is obligated to pay 80 percent co-payment on eligible medical expense benefits that accrue between the stated deductible and the first \$5,000 in expenses;
  - c. an insurer must apply the correct PIP deductible when adjudicating a claim.
6. Mercury should reopen and review all PIP claims paid from August 16, 2007 to the present to identify all claims paid at a reduced network provider level. Mercury should then identify all claims in which the insured's copayment was incorrectly calculated at a higher, non-network provider fee or fee schedule. Once identified, Mercury should calculate the correct copayment at the reduced network provider level. The Company must then issue the difference to the insured, including interest. A computer listing of all files reopened, the correct copayment, the amount of interest paid and a grand total should be generated and provided to the Commissioner to verify compliance with this recommendation.

7. Mercury must issue written instructions to all appropriate claims personnel stating that:
  - a. **N.J.A.C. 11:3-4.7(g)** prohibits retrospective medical necessity claim denials where the provider or insured properly seeks precertification for treatment;
  - b. **N.J.A.C. 11:3-4.4(d)** allows insurers to apply up to a 50% penalty on a PIP payment only if the provider fails to file a request for precertification of a procedure.
  - c. **N.J.S.A. 17:29B-4(9)(f)** requires insurers to attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. An insurer cannot validly delay settlement of a PIP claim due to the need for additional PIP reserves.
8. Pursuant to **N.J.A.C. 11:3-10.4(j)1-3**, Mercury must create a letter and forward a copy to the Commissioner stating that if the claimant cannot sell the salvaged vehicle for the amount deducted from the claim payment, the insurer shall pay the additional proceeds up to the amount the claimant can actually sell the vehicle.
9. Mercury must issue written instructions to all appropriate claims personnel stating that:
  - a. **N.J.A.C. 11:3-10.4(c)** requires insurers to provide claimants with a written notice of the right of recourse at the time of a total loss settlement and to retain a copy of the notice in the claim file;
  - b. **N.J.A.C. 11:16-2.4(a)2** requires that all losses involving motor vehicle salvage, however sustained by either an insured or a third party claimant, shall be reported to the NICB within five working days after the sale or retention of the salvaged vehicle;
  - c. pursuant to **N.J.A.C. 11:3-10.5(a)**, insurers are required to settle first party claims within 30 calendar days from receipt and that pursuant to **N.J.A.C. 11:3-10.5(b)**, if an insurer is unable to settle claims within the time periods specified, the insurer must send written notices of delay every 30 days as appropriate, until settlement is completed;
  - d. **N.J.A.C. 11:2-17.7(c)** states the maximum payment period for property damage claims is 45 calendar days from receipt and pursuant to **N.J.A.C. 11:2-17.7(e)** if an insurer is unable to settle claims within the time periods specified, the insurer must send a written notice of delay every 45 days as appropriate, until the settlement is completed;
  - e. In accordance with **N.J.A.C. 11:3-10.3(a)** all first and third party partial losses must be inspected within seven business days.
10. Mercury must issue written reminders to all appropriate claims personnel stating that:
  - a. The proper physical damage deductible must be applied to all applicable claims pursuant to **N.J.S.A. 17:29B-4(9)(f)**, which requires insurers to effectuate fair and equitable settlements of claims in which liability has become reasonably clear;
  - b. **N.J.A.C. 11:2-17.10(a)9** requires an insurer to provide notice to a claimant three working days prior to the termination of payment for automobile storage charges and place a copy of such notice in the appropriate claim file;
  - c. In accordance with **N.J.A.C. 11:2-17.8(b)** insurers must confirm all denials or offers of compromise to the claimant in writing and to maintain a copy in the appropriate claim file;

- d. N.J.A.C. 11:2-17.7(g) requires insurers to pay any amount finally agreed upon in settlement of all or part of any claim not later than 10 working days after the receipt of such agreement;
  - e. In accordance with N.J.S.A. 17:29B-4(2) and N.J.S.A. 17:29B-4(9)(a), no false information or misrepresented facts may appear on letters that are sent to an insured or claimant, and no insurer may fail to fully disclose applicable policy benefits.
11. The Company should reopen the files listed in Appendix A-15 and pay all storage charges that occurred three working days after Mercury informed the claimant that the Company will terminate payment of storage charges.

## D. RATING AND UNDERWRITING

---

12. In order to comply with N.J.A.C. 11:3-15.6(a) Mercury must revise its' coverage selection forms to include:
- the \$750.00 deductible as the standard deductible and the default deductible for collision and comprehensive coverages;
  - the page of the buyer's guide where the insured can find additional information concerning each coverage listed on the form;
  - A description of the effects of choosing the No Limitation of Lawsuit Threshold versus the Limitation of Lawsuit Threshold.

Mercury should provide the Commissioner with a specimen copy of the revised CSF.

13. Mercury should issue a written reminder to all appropriate personnel stating that:
- a. when an independent agent transfers an insured's coverages from another carrier to Mercury, the Company must request a copy of the physical damage inspection report from the prior carrier when it waives an inspection as required by its Rate Manual and N.J.A.C. 11:3-36.4(d);
  - b. pursuant to N.J.A.C. 11:3-36.5(b)1 an insurer may defer the mandatory inspection requirement on new business policies for a period of seven calendar days following the effective date of coverage. N.J.A.C. 11:3-36.7(a) requires an insurer to suspend physical damage coverage if the inspection is not conducted prior to the expiration of this deferral period;
  - c. the Company's filed and approved rating system must be followed to comply with N.J.S.A. 17:29A-6 and 15. Mercury must place an insured in the appropriate tier. The Company must re-rate policy NJA8009487 and provide a credit or refund to the insured. Mercury should provide a copy of the credit or refund calculations to the Commissioner.

# Appendix A – Claim Errors

## 1. Failure to Pay PIP Claims Timely - 21 Random Files in Error - Improper General Business Practice

Claim Number	Date Bill Received	Date Paid	Days Paid Beyond 60/105
NJP65913 *	4/1/08	7/21/08	51
NJP65016 *	12/14/07	2/27/08	15
NJP59040 *	6/26/07	9/07/08	13
NJP19753 *	2/13/06	4/22/08	739
NJP61947 *	5/5/08	7/17/08	13
NJP69623 *	4/24/08	7/1/08	8
NJP62375 *	9/6/07	12/11/07	36
NJP67663 *	11/21/07	2/07/08	18
NJP59831 *	7/25/07	10/12/07	20
NJP66208 *	5/21/08	8/05/08	16
NJP58782 *	6/04/07	9/13/07	41
NJP59002 *	11/09/07	1/16/08	8
NJP60665 *	8/20/07	10/25/07	6
NJP58528 *	6/18/07	9/14/07	28
NJP55174 *	3/03/08	6/23/08	52
NJP64411 *	11/20/07	3/24/08	65
NJP37662 *	2/12/07	5/24/07	41
NJP38068 *	12/11/06	12/13/07	308
NJP55727 **	10/29/07	3/21/08	39
NJP60306 **	8/10/07	2/01/08	70
NJP68611 **	3/28/08	7/18/08	5

\* Company failed to issue 45-day delay letter. Days paid are beyond 60 days.

\*\* Company issued a 45-day delay letter within the first 60 days from notice of claim, but failed to settle the claim within the maximum 105 day period. Days paid are beyond 105 days.

**1a. Failure to Pay PIP Claims Timely - 36 Select Files in Error-Improper General Business Practice**

<b>Claim Number</b>	<b>Date Bill Received</b>	<b>Date Paid</b>	<b>Days Paid Beyond 60</b>
NJP30248	10/23/06	1/10/07	19
NJP62948	8/15/07	2/04/08	113
NJP32989	10/10/06	3/15/07	96
NJP10623	10/17/05	2/21/07	432
NJP40903	10/23/06	2/07/07	47
NJP17109	8/19/05	1/24/06	98
NJP50181	11/27/06	3/07/07	40
NJP40930	8/11/06	2/01/08	479
NJP39320	10/23/06	7/31/08	587
NJP42237	6/01/06	2/22/07	206
NJP35672	5/01/05	8/09/06	405
NJP41764	9/13/06	5/29/07	198
NJP34471	8/21/06	11/09/06	20
NJP37039	8/28/06	12/22/06	56
NJP37286	6/21/06	9/21/06	32
NJP36233	6/09/06	10/05/06	58
NJP35213	1/26/06	6/21/06	86
NJP35937	2/13/06	8/08/07	481
NJP38826	8/28/06	12/18/06	52
NJP42019	10/11/06	12/29/06	19
NJP36604	4/9/07	7/12/07	34
NJP44662	7/24/06	11/15/06	54
NJP48065	10/02/06	3/13/07	102
NJP38306	5/5/06	1/29/07	210
NJP45923	8/18/06	1/09/07	84
NJP48782	11/27/06	2/14/07	19
NJP48568	11/13/06	3/05/07	52
NJP46169	11/06/06	4/02/07	88
NJP41407	6/13/06	4/03/07	234
NJP48952	1/02/07	4/3/07	31
NJP45261	11/13/06	3/8/07	55
NJP40177	9/05/06	2/21/07	109
NJP49272	11/2/06	1/31/07	30
NJP46494	10/4/06	6/05/07	184
NJP36865	3/13/06	10/04/06	145
NJP41185	7/31/06	5/16/07	229

**2. Failure to Pay Interest on Delayed PIP Payments – 9 Random Files in Error - Improper General Business Practice**

Claim Number	Date Bill Received	Date Paid	Days Paid Beyond 60/105	Interest Owed
NJP65913	4/1/08	7/21/08	51	\$ 10.17
NJP19753	2/13/06	4/22/08	739	\$1,158.38
NJP55727	10/29/07	3/21/08	39	\$ 58.01
NJP64411	11/20/07	3/24/08	65	\$ 4.82
NJP37662	2/12/07	5/24/07	41	\$ .32
NJP60306	8/10/07	2/01/08	70	\$ 20.08
NJP68611	3/28/08	7/18/08	5	\$ 32.51
NJP67663	11/21/07	2/07/08	18	\$ 1.50
NJP59831	7/25/07	10/12/07	20	\$ 3.78
Total				\$ 1,289.57

**2a. Failure to Pay Interest on Delayed PIP Payments – 9 Select Files in Error - Improper General Business Practice**

Claim Number	Date Bill Received	Date Paid	Days Paid Beyond 60	Interest Owed
NJP62948	8/15/07	2/04/08	113	\$ 6.33
NJP44662	7/24/06	11/15/06	54	\$ .05
NJP48782	11/27/06	2/14/07	19	\$ .19
NJP41407	6/13/06	4/03/07	234	\$ 4.19
NJP48952	1/02/07	4/3/07	31	\$ .12
NJP45261	11/13/06	3/8/07	55	\$ 3.07
NJP40177	9/05/06	2/21/07	109	\$ 1.29
NJP39320	10/23/06	7/31/08	587	\$631.52
NJP32989	10/10/06	3/15/07	96	\$ 59.97
Total				\$706.73

**3. Failure to Apply Correct Interest Rate for Overdue PIP Claims - 3 Random Files in Error - Improper General Business Practice**

Claim Number	Amount Paid	Days Beyond 60	Interest Company Paid	Correct Interest Payment	Interest Underpaid Amount
NJP65016	\$24,195.75	15	\$ 34.47	\$ 58.34	\$ 23.87
NJP69623	\$ 135.40	8	\$ .14	\$ .20	\$ .06
NJP38068	\$ 4,655.00	307	\$ 78.31	\$ 157.12	\$ 78.81

Total	\$102.74
-------	----------

**3a. Failure to Apply Correct Interest Rate for Overdue PIP Claims - 13 Select Files in Error - Improper General Business Practice**

Claim Number	Amount Paid	Days Beyond 60	Interest Company Paid	Correct Interest Payment	Interest Underpaid Amount
NJP30248	\$6,908.40	19	\$7.19	\$14.39	\$7.20
NJP40903	\$ 39.99	47	\$1.11	\$ 2.22	\$1.11
NJP42237	\$ 689.30	206	\$7.78	\$ 9.82	\$2.04
NJP35672	\$ 404.23	405	\$4.40	\$ 7.00	\$2.60
NJP37286	\$ 200.74	32	\$ .21	\$ .42	\$ .21
NJP36233	\$2,002.50	58	\$3.23	\$ 6.46	\$3.23
NJP35213	\$1,191.63	86	\$2.15	\$ 4.31	\$2.16
NJP36604	\$4,514.78	34	\$8.40	\$16.81	\$8.41
NJP48065	\$ 373.85	102	\$2.09	\$ 3.58	\$1.49
NJP38306	\$ 636.73	210	\$7.29	\$15.62	\$8.33
NJP49272	\$ 503.57	30	\$ .83	\$ 1.66	\$ .83
NJP37039	\$ 727.50	56	\$ .71	\$ 2.27	\$1.56
NJP35937	\$ 15.48	481	\$.23	\$ .43	\$.20
Total					\$39.37

**4. Unfair Settlement Due to Use of Fee Schedule versus In-Network Physician Benefit Discount on Insured Co-Pay Obligation - 19 Files in Error - Improper General Business Practice**

Claim Number	Billing Charges	Net Billing Allowance	Copayment Co. Applied	Correct 20% Copayment	Overage Charges
NJP66208	\$1,698.32	\$1,446.29	\$ 301.86	\$ 289.26	\$ 12.60
NJP65913	\$3,339.99	\$1,257.48	\$ 223.10	\$ 201.50	\$ 21.60
NJP66372	\$2,075.00	\$ 586.91	\$ 167.62	\$ 117.38	\$ 50.24
NJP67663	\$2,800.00	\$ 876.96	\$ 292.32	\$ 175.39	\$116.93
NJP65125*	\$ 99.68	\$ 59.80	\$ 19.93	\$ 11.96	\$ 7.97
NJP67212	\$ 718.92	\$ 541.51	\$ 115.50	\$ 108.30	\$ 7.20
NJP66592	\$ 581.40	\$ 301.19	\$ 100.40	\$ 60.24	\$ 40.16
NJP66734	\$ 690.00	\$ 258.42	\$ 70.68	\$ 51.68	\$ 19.00
NJP70036*	\$ 360.00	\$ 102.00	\$ 34.00	\$ 20.40	\$ 13.60
NJP66189	\$2,344.00	\$1,182.00	\$ 260.00	\$ 236.40	\$ 23.60
NJP70425	\$1,745.00	\$ 665.10	\$ 154.62	\$ 133.02	\$ 21.60
NJP66108	\$1,150.00	\$ 826.59	\$ 255.47	\$ 165.32	\$ 90.15
NJP70493	\$1,590.00	\$ 539.42	\$ 160.00	\$ 107.88	\$ 52.12
NJP67719	\$2,906.72	\$ 794.33	\$ 176.07	\$ 152.87	\$ 23.20
NJP65738	\$ 470.00	\$ 306.45	\$ 68.49	\$ 61.29	\$ 7.20
NJP64411	\$ 777.00	\$ 717.65	\$ 184.39	\$ 163.53	\$ 20.86
NJP64969	\$ 844.98	\$ 500.24	\$ 168.99	\$ 100.05	\$ 68.94

NJP63063	\$1,091.00	\$ 383.00	\$ 216.29	\$ 76.60	\$139.69
NJP68611	\$ 410.00	\$ 194.38	\$ 51.60	\$ 38.80	\$ 17.28
Total					\$753.94

\* Claim payments did not attain the \$5,000 limit

**5. Unfair PIP Underpayments Due to Excessive Application of 20% Insured Copayment – 3 Files in Error**

Claim Number	Insured Total Amount Co-Pay	Amount of Overcharge
NJP68611	\$ 967.28	\$ 17.28
NJP67663	\$ 1,276.00	\$ 326.00
NJP64975	\$ 973.91	\$ 23.91
Total		\$ 367.19

**6. Excessive Application of PIP Deductibles Resulting in Claim Underpayments and Reduction in Benefit Level - 2 Files in Error**

Claim Number	PIP Deductible Listed on Policy	Total Deductible Taken by Co.	Overcharged Amount
NJP66108	\$ 250	\$ 527.82	\$ 277.82
NJP71296	\$ 250	\$ 500.00	\$ 250.00
Total			\$527.82

**7. Unfair Settlements Due to Improper Retrospective Claim Denials– 2 Files in Error**

Claim Number	Date of Service	Service Code	Amount Denied
NJP68880	3/28/08	99215 25	\$ 101.69
NJP64325	3/12/08	20553	\$1,619.20
Total			\$1,720.89

**8. Erroneous Issuance of PIP Delay Notice Due to Need to Increase PIP Reserves - 2 Files, 3 Bills in Error**

Claim Number	Date Bill Received	Date Paid	Date of Delay Letter
NJP38068	12/21/07	3/14/08	12/28/07
NJP47655	6/25/07	11/20/07	9/10/07
NJP47655	7/27/07	11/20/07	9/24/07

**9. Failure to Notify the Claimant if Unable to Sell Salvaged Vehicle – 1 File in Error - Improper General Business Practice**

Claim Number
NJP62678

**10. Failure to Advise the Claimant of Right of Recourse – 15 Files in Error - Improper General Business Practice**

Claim Number	Claim Number	Claim Number	Claim Number
NJP61788	NJP66379	NJP65757	NJP67388
NJP65077	NJP70038	NJP62678*	NJP71128*
NJP64611*	NJP67780*	NJP67907*	NJP71652*
NJP61939^	NJP61593^	NJP60662^	

\* Property Damage                      ^ Comprehensive

**11. Failure to Report the Sale of Salvage to the NICB – 11 Files in Error - Improper General Business Practice**

Claim Number	Claim Number	Claim Number	Claim Number
NJP61788	NJP66379	NJP65757	NJP67388
NJP62678*	NJP71128*	NJP64611*	NJP67780*
NJP67907*	NJP71652*	NJP61593^	

\* Property Damage                      ^ Comprehensive

**12. Settlement Delays and Failure to Issue Delay Notices – 11 Files in Error**

<b>First Party Claims</b>			
Claim Number	Date Claim Received	Date Claim Settled	Total Days Beyond 30
NJP61788**	7/20/07	9/20/07	32
NJP66379**	11/30/07	2/13/08	45
NJP65031^	10/22/07	1/15/08	55
NJP68636^	2/12/08	4/3/08	21
NJP72407^	6/30/08	8/20/08	21
NJP61714^ **	7/18/07	1/14/08	150
<b>Third Party Claims</b>			
Claim Number	Date Claim Received	Date Claim Settled	Total Days Beyond 45
NJP60328	6/14/07	8/20/07	22
NJP62678	8/14/07	2/28/08	153
NJP70977	5/6/08	8/5/08	46
NJP64656	10/10/07	12/19/07	25

NJP64872**	10/16/07	12/20/07	20
------------	----------	----------	----

\*\*Delay letter was sent late for these claims    ^ Comprehensive

**13. Failure to Inspect Property Damage Claims within Seven Working Days – 3 Files in Error**

Claim Number	Date Claim Received	Date Vehicle Inspected	Total Working Days
NJP60328	6/21/07	8/8/07	33
NJP62678	8/14/07	9/10/07	12
NJP70977	5/6/08	6/4/08	23

**14. Failure to Apply Correct Deductible – 2 Files in Error**

Claim Number	Amount of Deductible Overcharge/Undercharge
NJP57281	\$500.00 overcharge
NJP61714^	\$500.00 undercharge

^ Comprehensive

**15. Failure to Issue Notice of Termination of Storage Charges Timely – 2 Files in Error**

Claim Number	Storage Cutoff Date	Date Notification Sent	Days in Error
NJP66379	1/22/08	1/24/08	2
NJP71910*	6/19/08	6/20/08	1

\* Property Damage

**16. Failure to Confirm Denial of Claim in Writing – 2 Files in Error**

Claim Number
NJP65031
NJP67921

**17. Failure to Pay Agreed Amount within 10 Working Days – 1 File in Error**

Claim Number	Date of Agreed Amount	Date Payment Issued	Total Days to Issue Payment
NJP68412	2/14/08	3/21/08	20

**18. Issuing a Form Letter with Untrue Statements – 1 File in Error**

Claim Number
NJP50244

# Appendix B – Rating and Underwriting Errors

---

## **1. Deficient Coverage Selection Form – 40 Files in Error - Improper General Business Practice**

Policy Number	Policy Number	Policy Number	Policy Number
NJA8180055	NJA8181900	NJA8178994	NJA8174291
NJA8180149	NJA8176903	NJA8178596	NJA8176727
NJA8172424	NJA8174401	NJA8177679	NJA8173687
NJA8178309	NJA8174811	NJA8179667	NJA8174998
NJA8172889	NJA8175120	NJA8177577	NJA8179303
NJA8180605	NJA8175612	NJA8176197	NJA8179452
NJA8173159	NJA8178267	NJA8174916	NJA8179985
NJA8173367	NJA8179717	NJA8175442	NJA8178745
NJA8174611	NJA8176093	NJA8173432	NJA8177862
NJA8176802	NJA8175773	NJA8173134	NJA8177636

## **2. Failure to Obtain Physical Damage Inspection Report – 1 File in Error**

Policy Number
NJA8177862

## **3. Failure to Suspend Physical Damage Coverage – 1 File in Error**

Policy Number
NJA8176727

## **4. Failure to Rate Policy in Correct Tier – 1 File in Error**

Policy Number
NJA8009487

## VI. VERIFICATION PAGE

---

I, Marleen J. Sheridan, am the Examiner-in-Charge of the Market Conduct Examination of Mercury Indemnity Company of America conducted by examiners of the New Jersey Department of Banking and Insurance. This verification is based on my personal knowledge as acquired in my official capacity.

The findings, conclusions and recommendations contained in the foregoing report represent, to the best of my knowledge, a full and true statement of the Market Conduct examination of Mercury Indemnity Company of America as of February 20, 2009.

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

---

Date

---

Marleen Sheridan  
Examiner-In-Charge  
New Jersey Department  
of Banking and Insurance