

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of )  
Banking and Insurance, State of New )  
Jersey, with respect to Progressive Garden ) CONSENT  
State Insurance Company NAIC No.14800, )  
Progressive Freedom Insurance Company, ) ORDER  
NAIC No. 12302 and Drive New Jersey )  
Insurance Company, NAIC No. 11410 )

TO: Progressive Insurance Companies  
6300 Wilson Mills Road N72  
Cleveland, OH 44143-2128

This matter, having been opened to the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon the filing of a Market Conduct Examination Report (the Report) containing the results of the October 1, 2009 to February 8, 2011 examination of personal automobile claim settlements processed by Progressive Garden State Insurance Company, Progressive Freedom Insurance Company and Drive New Jersey Insurance Company (the Companies) performed by the Department of Banking and Insurance (Department) pursuant to the authority provided at N.J.S.A. 17:23-20 et seq.; and

WHEREAS, the market conduct examination revealed certain instances, as fully set forth in the Report, where the Companies' practices did not accord fully with various provisions of New Jersey insurance statutes or regulations; and

WHEREAS the companies' claim practices contained certain instances where the frequency of error was such as to constitute an improper general business practice; and

WHEREAS, based on the documentation and information submitted by the Companies, the Department is satisfied that the Companies have taken or will take corrective measures pursuant to the recommendations of the Report.

NOW, THEREFORE, IT IS on this 21<sup>st</sup> day of October, 2011

ORDERED AND AGREED that the attached Report will be adopted and filed as an official record of the Department; and

IT IS FURTHER ORDERED AND AGREED that Companies shall comply with New Jersey insurance statutes and regulations and the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that the Department will commence a reexamination of the companies within eighteen (18) months of the date of this Consent Order to determine if the companies have complied with the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that in the event the reexamination determines that the companies have not fully implemented the recommendations and complied with New Jersey insurance statutes and regulations, the companies will be subject to appropriate penalties and administrative sanctions; and

IT IS FURTHER ORDERED AND AGREED that pursuant to N.J.S.A. 17:23-24d(1), within 30 days of the adoption of the Report, the Companies shall file an affidavit with the Department's Market Conduct Unit, stating under oath that its directors have received a copy of the adopted Report.



Thomas B. Considine  
Commissioner

Consented to as to form, content and entry

See Attached Addendum

\_\_\_\_\_  
Name

Date: 10/11/2011

Consented to as to form, content and entry

Drive New Jersey Insurance Company

Company

By: Daniel A. Shallow, Secretary  
Officer

Date 10/11/2011

Progressive Freedom Insurance Company

Company

Raymond P. G. Asst. VP  
Officer

Date 10/11/2011

Progressive Garden State Insurance Company

Company

Raymond P. G. Asst. VP  
Officer

Date 10/11/2011

**MARKET CONDUCT EXAMINATION**

**of the**

**DRIVE INSURANCE COMPANY  
PROGRESSIVE FREEDOM INSURANCE COMPANY  
PROGRESSIVE GARDEN STATE INSURANCE COMPANY**

**located in**

**ISELIN, NEW JERSEY**

**as of**

**February 8, 2011**

**BY EXAMINERS**

**of the**

**STATE OF NEW JERSEY**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF CONSUMER PROTECTION SERVICES**

**MARKET CONDUCT EXAMINATIONS and ANTI-FRAUD  
COMPLIANCE SECTIONS**

**REPORT ADOPTED:**

**October 25, 2011**

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## **I. INTRODUCTION**

This is a report of the Market Conduct activities of Drive Insurance Company, Progressive Freedom Insurance Company, and Progressive Garden State Insurance Company (hereinafter collectively referred to as Progressive 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 Progressives' compliance with the regulations and statutes pertaining to private passenger automobile claims. The review period for the examination was October 1, 2009 to the present.

The examiners conducted their fieldwork at Progressives' office in Iselin, New Jersey between November 29, 2010 and January 14, 2011. On various dates following the fieldwork, the examiners completed additional review work and report writing. The Market Conduct Examiners were Examiner-in-Charge Ralph J. Boeckman, Richard Segin and William Sonntag.

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

### **B. ERROR RATIOS**

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

There may be 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 Progressive the opportunity to respond to the examiners' findings and to provide exceptions to the statutory and/or regulatory errors or mishandling of files reported. In response to these inquiries, Progressive 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**

Progressive Insurance Group Members were incorporated in New Jersey on June 16, 2005 and commenced business on September 30, 2005. Profiles for the three companies examined appear below.

#### **Drive New Jersey Insurance Company**

Drive New Jersey Insurance Company is wholly owned by Drive Insurance Holdings, Inc. (DIH), a Delaware Corporation. DIH is a wholly owned subsidiary of The Progressive Corporation, a publicly traded Ohio holding company. In December 2006, DIH acquired Parkway Insurance Company, which was merged with Drive New Jersey Insurance Company.

The Company's business segments include Personal Lines, Commercial Auto, and Other Indemnity insurance written exclusively in New Jersey. The Personal Lines segment includes primarily personal automobile business that is generated by independent insurance agencies. Other Personal Lines include motorcycle, boat, motor home, travel trailer, snowmobile, and personal umbrella coverage. In June 2008, the Company began writing new Commercial Auto business. Other Indemnity business includes employment practices liability insurance.

### Progressive Freedom Insurance Company

Progressive Freedom Insurance Company is wholly owned by Progressive Direct Holdings, Inc. (PDH), a Delaware holding company. PDH is a wholly owned subsidiary of The Progressive Corporation.

The Company writes Personal Lines insurance exclusively in New Jersey. The Personal Lines business includes direct-marketed personal automobile business written online and over the phone. Other Personal Lines includes new and renewal motorcycle, boat and snowmobile coverage.

### Progressive Garden State Insurance Company

Progressive Garden State Insurance Company is wholly owned by PDH, which is a wholly owned subsidiary of The Progressive Corporation. In December 2006, PDH acquired Salem Insurance Company which, via name change became Progressive Garden State Insurance Company.

The Company writes Personal Lines insurance exclusively in New Jersey. The Company's Personal Lines business primarily includes direct-marketed personal automobile business written online and over the phone. Other Personal Lines includes motor home and travel trailer coverage.



## II. 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 October 1, 2009 and September 30, 2010 was subject to review. During the review period, Progressive closed 8,838 PIP claims, 6,495 comprehensive claims, 20,343 collision claims and 22,239 property damage claims. The examiners randomly selected and reviewed 225 paid and 200 denied claims.

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 Chapter Seventeen (Property and Casualty Insurance Examinations) outlined in the NAIC Market Regulation Handbook.

### B. ERROR RATIOS

The examiners calculated the following 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 chart.

**Error Ratio Chart**

<u>Type of Claim</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
<b>Collision</b>			
<u>Paid</u>			
Drive Insurance	20	2	10%
Progressive Freedom	5	1	20%
Progressive Garden State	<u>25</u>	<u>0</u>	0%
Subtotal	50	3	6%
<u>Denied</u>			
Drive Insurance	20	1	5%
Progressive Freedom	5	0	0%
Progressive Garden State	<u>25</u>	<u>0</u>	0%
Subtotal	50	1	2%
<b>Comprehensive</b>			
<u>Paid</u>			

Drive Insurance	20	0	0%
Progressive Freedom	5	0	0%
Progressive Garden State	<u>25</u>	<u>1</u>	4%
Subtotal	50	1	2%
<u>Denied</u>			
Drive Insurance	20	1	5%
Progressive Freedom	5	3	60%
Progressive Garden State	<u>25</u>	<u>4</u>	16%
Subtotal	50	8	16%
<b>Property Damage</b>			
<u>Paid</u>			
Drive Insurance	25	0	0%
Progressive Freedom	5	0	0%
Progressive Garden State	<u>20</u>	<u>4</u>	20%
Subtotal	50	4	8%
<u>Denied</u>			
Drive Insurance	20	1	5%
Progressive Freedom	5	1	20%
Progressive Garden State	<u>25</u>	<u>1</u>	4%
Subtotal	50	3	6%
<b>PIP</b>			
<u>Paid</u>			
Drive Insurance	25	3	12%
Progressive Freedom	5	2	40%
Progressive Garden State	<u>20</u>	<u>3</u>	15%
Subtotal	50	8	16%
<u>Denied</u>			
Drive Insurance	25	1	4%
Progressive Freedom	5	0	0%
Progressive Garden State	<u>20</u>	<u>1</u>	5%
Subtotal	50	2	4%
<b>Total Loss</b>	<u>25</u>	<u>5</u>	20%
<b>Total</b>	425	35	8%

### C. PERSONAL INJURY PROTECTION

#### 1. Failure to Include Required Statement on Explanation of Benefit/Review Forms - 50 Files in Error (Improper General Business Practice)

N.J.A.C. 11:3-37.10(a)6 requires insurers to provide a statement to insureds on their explanation of benefits forms advising that, "no health care provider may demand or request any payment from any person in excess of those permitted by N.J.A.C. 11:3-29, and that no person is liable to any health care provider for any amount of money which results from the charging of

fees in excess of those permitted by N.J.A.C. 11:3-29 pursuant to N.J.S.A. 39:6A-4.6.”

Contrary to N.J.A.C. 11:3-37.10(a)6, the examiners found that the Explanation of Benefit/Review form utilized by the Company did not contain the above-quoted statement as required. Progressive’s failure to include this statement on the Explanation of Benefit/Review form constitutes an improper general business practice; this error occurred on all claims reviewed. The examiners did not, however, include this error in the error ratio. If included, the error ratio for the paid PIP review would have been skewed at 100% due to this error alone.

**2. Failure to Settle PIP Claims Timely – 10 Files in Error (9 Paid Files in Error and 1 Denied File in Error)**

N.J.S.A. 39:6A-5(g) states that 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...” N.J.A.C. 11:2-17.7(b) states that “The maximum period for all personal injury protection (PIP) claims shall be 60 calendar days after the insurer is furnished written notice of the fact of a covered loss...; provided however, that an insurer may secure a 45-day extension in accordance with N.J.S.A. 39:6A-5.” Where such an extension is requested, the maximum settlement period may not exceed 105 days.

The examiners reviewed 50 paid PIP claims and found that Progressive failed to settle six claims within the maximum 60-calendar day time frame without securing the 45-day extension for additional time to investigate. Delays ranged from a low of 9 days beyond 60-days to a high of 26 days beyond 60-days with an average delay of 18 days.

Furthermore, the examiners found an additional three paid claims where the Company requested a 45-day extension but failed to settle the claims within 105 days. Delays ranged from a low of 26 days beyond 105 days to a high of 272 days beyond 105 days with an average delay of 144 days.

Lastly, the examiners found that Progressive failed to deny one PIP claim within 105 days. The Company denied this claim 258 days after receipt for a delay of 153 days beyond 105 days.

**3. Failure to Pay Interest on Delayed PIP Payments - 3 Files in Error**

N.J.S.A. 39:6A-5(h) requires the payment of interest on all overdue benefits. Contrary to this requirement, Progressive failed to pay interest on three PIP claims cited in the previous section. Principal subject to interest ranged from a low of \$201.17 to a high of \$1,248.00.

**4. Incorrect Denial Reason Provided on Explanation of Benefit/Review Form - 1 File in Error**

N.J.S.A. 17:29B-4(9)(n) requires an insurer to promptly provide a reasonable explanation of the policy basis in relation to the facts for the claim denial. N.J.A.C. 11:2-17.8(a) requires an insurance company's denial to reference a statement of the facts.

The examiners reviewed 50 denied PIP claims and found that, contrary to the statute and regulation, Progressive failed to provide the correct reason for denial on one claim. The reason listed on the denial notice was stated as, "treatment denied due to negative IME" even though no Independent Medical Exam had been conducted. In response to an inquiry, the Company stated that the correct reason for denial was the claimant's failure to attend an IME appointment.

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

**5. Deficient Rights of Recourse Notice – 44 Files in Error (Improper General Business Practice)**

N.J.A.C. 11:3-10.4(c) requires insurers to provide first or third party claimants with a written notice of the rights of recourse at the time a total loss settlement draft is issued and to retain a copy of the notice in the claim file. Additionally, N.J.A.C. 11:2-17.10(a) specifically states that the requirements for this section apply to automobile property damage third party claims from the time that liability becomes reasonably clear and are in addition to those of N.J.A.C. 11:3-10.1 through 10.4 for automobile physical damage first party claims. Lastly, N.J.A.C. 11:3-10.4(b)1-4 requires the insurer to reopen a claim if the insured writes to the Company within 30 days of the settlement draft to advise of the inability to purchase a comparable vehicle. In response, the insurer must either: 1) locate a similar vehicle; 2) pay the difference on an insured located similar vehicle; 3) offer a replacement; or 4) settle under contract appraisal.

The examiners determined that Progressive provided claimants with a Rights of Recourse notice that contained information from N.J.A.C. 11:3-10.4(b)1 and 2. However, the letters failed to identify the additional rights available to the insured/claimant as specified in N.J.A.C. 11:3-10.4(b)3 (offer of replacement) - and 4 (appraisal settlement).

Since all options are not presented in the letter, the insured/claimant is not aware of all options available to him/her at the time settlement is made. The examiners cited Progressive's failure to provide a right of recourse notice stating all four available options as an improper general business practice.

The examiners did not include this error in the overall error ratios since this error alone would have caused an overall error ratio of 98%.

**6. Failure to Confirm Claim Denial in Writing – 9 Files in Error**

N.J.A.C. 11:2-17.8(b) requires insurers to confirm all denials to the claimant in writing and to maintain a copy in the appropriate claim file. The examiners found that Progressive failed to confirm claim denial in writing on nine claim files (1 collision, 6 comprehensive and 2 property damage).

**7. Settlement Delays and Failure to Issue Delay Notices - 8 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 150 paid and 150 denied first and third party claims and found that Progressive failed to settle eight claims (three paid collision, one paid comprehensive, one denied comprehensive, two paid property damage and one denied property damage) within the correct time frame. The Company also failed to issue any delay notices on the cited claims. Delays ranged from a low of 6 days beyond 30 to a high of 108 days beyond 30 for first party claims and a low of 41 days beyond 45 to a high of 84 days beyond 45 days for third party claims.

**8. Failure to Provide Notice of Right of Recourse - 4 Files in Error**

N.J.A.C. 11:3-10.4(c) requires insurers to provide claimants with a written notice of the rights of recourse at the time a total loss settlement draft is issued, and to retain a copy of the notice in the claim file. Contrary to this regulation, the examiners found that Progressive failed altogether to provide the required written right of recourse notice on four collision claims.

**9. Failure to Report the Sale of Salvage to the National Insurance Crime Bureau - 2 Files in Error**

N.J.A.C. 11:16-2.4(a)2 requires an insurance company to report all vehicle salvage losses to the National Insurance Crime Bureau (NICB) or its member companies within five working days after the salvage sale; or, if the insured is

permitted to retain salvage, within five working days after the loss payment date.

During the claim review, the examiners found two property damage claims where the Company failed to report the sale of salvage to the NICB as required by the regulation.

**10. Failure to Provide a Specific Explanation on Claim Denial Letter - 1 File in Error**

N.J.S.A. 17:29B-4(9)(n) requires an insurer to promptly provide a reasonable explanation of the policy basis in relation to the facts for a claim denial. N.J.A.C. 11:2-17.8(a) requires an insurance company's denial to specifically reference policy provisions, language, exclusions and a statement of the facts making those provisions applicable to the denial.

Contrary to the statute and regulation cited above, Progressive failed to provide a specific explanation on one denied comprehensive claim. The reason for denial listed on the notice stated only that the loss was not covered. Progressive did not explain the contractual basis (exclusion, conditions, peril not insured against, etc) that preempted coverage.

**11. Failure to Timely Issue Notice of Termination of Storage Charges – 1 File 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 one property damage claim, the examiners found that the Company did send the required letter advising that storage charges were being terminated; however, Progressive provided two and not the required three working days notice prior to termination.

**12. Failure to Apply Correct New Jersey State Sales Tax on Total Loss Claim Settlement – 1 File in Error**

N.J.A.C. 11:3-10.4(a) states in part that, "...if the insurer elects to make a cash settlement, it must bear in mind that the insured's position is that of a retail consumer, and that the settlement must be reasonable and fair for a person in that position..." Moreover, "... if the insurer elects to make a cash settlement, its offer is subject to additions and deductions plus applicable sales tax." The examiners found one total loss collision claim where the Company incorrectly applied a sales tax rate of 6% instead of the applicable 7% New Jersey state sales tax rate. This resulted in an underpayment to the insured of \$123.30.

### **III. RECOMMENDATIONS**

Progressive 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 Progressive 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.

Non-compliant activity was identified in this report 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 Progressive agreed and 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 additional claim payments, Progressive should provide the insured with a cover letter that contains the following first paragraph:

"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 sales tax on your total loss collision claim). Enclosed is our payment in the amount of (insert amount) to correct our error."

## B. CLAIMS

1. Progressive must revise its current Explanation of Benefits/Review form to include the language required by N.J.A.C. 11:3-37.10(a)6 which states, “no health care provider may demand or request any payment from any person in excess of those permitted by N.J.A.C. 11:3-29, and that no person is liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by N.J.A.C. 11:3-29 pursuant to N.J.S.A. 39:6A-4.6.” A copy of the revised form should be provided to the Commissioner for review.
2. Progressive 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-5h, the Company must pay interest on PIP claims settled beyond the required time frames;
  - c. pursuant to N.J.S.A. 17:29B-4 and N.J.A.C. 11:2-17.8(a) with respect to claim denials, the Company must provide an accurate and reasonable explanation of the policy basis and specifically reference a statement of the facts relative to the denial.
3. Progressive must reopen and review the PIP claims referenced in Sections II.C2 and II.C.3 above. The Company should calculate and pay the interest due for the period of delay as required by N.J.S.A. 39:6A-5(h). A list of files reopened and the amount of interest paid should be generated and provided to the Commissioner to verify compliance with this recommendation. See general instructions for language to be included in the cover letter sent with each interest payment.
4. The Company must revise its current right of recourse letter to include the settlement options available to first and third party claimants as specified in N.J.A.C. 11:3-10.4(b)1-4. A copy of the revised letter should be provided to the Commissioner for review.
5. Progressive must issue written instructions to all appropriate claims personnel stating that:



- a. In accordance with N.J.A.C. 11:2-17.8(b) insurers must confirm all denials to the claimant in writing and maintain a copy in the appropriate claim file;
  - b. 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;
  - c. Pursuant to N.J.A.C. 11:3-10.4(c), insurers must provide first and third party claimants with a written notice of the right of recourse at the time of settlement on total loss claims and that a copy of this notice must be retained in the claim file;
  - d. Pursuant to N.J.A.C. 11:16-2.4(a)2, the company must report all vehicle salvage loss sales to the National Insurance Crime Bureau within five working days of the salvage sale or loss payment date if the insured retains salvage;
  - e. N.J.S.A. 17:29B-4(9)(n) requires an insurer to promptly provide a reasonable explanation of the policy basis in relation to the facts for a claim denial. N.J.A.C. 11:2-17.8(a) requires an insurance company's denial to specifically reference policy provisions, language, exclusions and a statement of the facts;
  - f. 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 to place a copy of such notice in the claim file.
6. The Company should issue a written reminder to appropriate claims personnel that the payment of a total loss auto property damage claim is subject to the correct New Jersey State sales tax rate when the resident owner/vehicle is registered in New Jersey.
  7. Progressive must reopen and review the total loss claim referenced in Section II.C.12 above. The Company must recalculate the total loss claim using the correct sales tax rate pursuant to N.J.A.C. 11:3-10.4(a)

and reimburse the insured the amount of the underpayment. See general instructions for appropriate cover letter.

#### IV. VERIFICATION PAGE

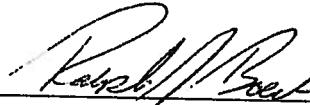
I, Ralph J. Boeckman, am the Examiner-in-Charge of the Market Conduct Examination of Drive Insurance Company, Progressive Freedom Insurance Company and Progressive Garden State Insurance Company conducted by examiners of the New Jersey Department of Banking and Insurance. This verification is based on my personal knowledge as acquired in my official capacity.

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 Drive Insurance Company, Progressive Freedom Insurance Company and Progressive Garden State Insurance Company as of February 8, 2011.

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.

3/15/2011

Date



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