

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 Castlepoint Insurance	)	
Company, NAIC No. 17205; Tower National	)	CONSENT
Insurance Company, NAIC No. 43702; Tower	)	ORDER
Insurance Company of New York,	)	
NAIC No. 44300 and Preserver Insurance	)	
Company, NAIC No. 15586	)	

TO: Tower Group Companies  
120 Broadway, 31st floor  
New York, New York 10271-3199

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 April 1, 2009 through March 31, 2010 examination of homeowner and dwelling fire insurance rating, underwriting and terminations of Castlepoint Insurance Company, Tower National Insurance Company, Tower Insurance Company of New York, and Preserver 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

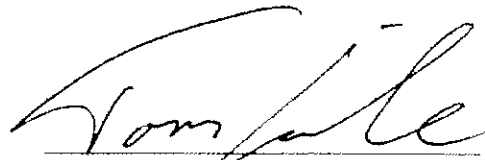
WHEREAS, based on the documentation and information submitted by the Companies, the Department is satisfied that the Companies have taken or will take corrective measures pursuant to the recommendations of the Report.

NOW, THEREFORE, IT IS on this Fourth day of May, 2011

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

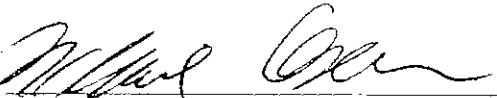
IT IS FURTHER ORDERED AND AGREED that Companies shall comply with New Jersey insurance statutes and regulations and the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that 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 each director received a copy of the adopted Report.



Thomas B. Considine  
Commissioner

Consented to as to form, content and entry

  
Name

Date: 4/27/2011

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**MARKET CONDUCT EXAMINATION**

**of the**

**Castlepoint Insurance Company, Tower National Insurance Company,  
Tower Insurance Company of New York and Preserver Insurance Company**

**located in**

**New York, New York**

**As of**

**November 4, 2010**

**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: May 24, 2011**

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## **I. INTRODUCTION**

This is a report of the Market Conduct activities of Castlepoint Insurance Company, Tower National Insurance Company, Tower Insurance Company of New York and Preserver Insurance Company, hereinafter referred to as the Tower Group or the Company. In this report, examiners of the New Jersey Department of Banking and Insurance (NJDOBI) present their findings, conclusions and recommendations as a result of their market conduct examination. The Market Conduct Examiners included Examiner-in-Charge Monica Koch and Ralph Boeckman.

### **A. SCOPE AND PURPOSE OF THE EXAMINATION**

The scope of the examination included homeowner and dwelling fire insurance sold by the Company in New Jersey. The examiners evaluated the Tower Group's compliance with the regulations and statutes that pertain to homeowner and dwelling fire insurance rating, underwriting and terminations. The review period for the examination was April 1, 2009 through March 31, 2010. The examiners completed their fieldwork at the Company's New York, NY office between September 13, 2010 and October 8, 2010. On various dates thereafter, the examiners completed additional review work and report writing in Trenton, New Jersey.

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 Market Regulation Handbook, Chapters 16 (General Examination Standards) and 17 (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 containing 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.

Whenever the examiners find that a company commits a type of error with sufficient frequency, they will cite the errors as an improper general

business practice. If an error constitutes an improper general business practice, the examiners have stated this in the report that follows.

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

The examiners submitted written inquiries to Company representatives on the errors cited in this report. This provided the Tower Group the opportunity to respond to the examiners' findings and to provide exception to the statutory and/or regulatory errors or mishandling of files reported herein. In response to these inquiries, the Company 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.

### **C. COMPANY PROFILE**

Tower Insurance Company of New York was incorporated in the State of New York in 1989 and commenced business in New York in 1990. The company started writing primarily small non-standard commercial package and monoline property and general liability type business. In 1996, Tower Group Inc., was formed under the laws of Delaware in order to serve as the partner company of Tower Insurance Company of New York. Tower Group began writing homeowners insurance in 1998 and its initial public offering occurred in October 2004. In March 2005, Tower acquired North American Lumber Insurance Company and MIIX Insurance Company of New York, both of which were licensed in New Jersey. The two newly acquired companies were renamed Tower National Insurance Company and Castlepoint Insurance Company.

Tower Group began writing business in New Jersey utilizing Tower National Insurance Company in 2005 and first offered personal lines in 2006. In April 2007, Tower Group completed the acquisition of Preserver Group, a New Jersey based property and casualty insurer. The Company then transitioned the Preserver policies to Tower National Insurance Company and Tower Insurance Company of New York upon renewal. During 2009, Tower Group acquired Hermitage Insurance Company, a specialty property and casualty insurance holding company, CastlePoint Holdings, Specialty Underwriters' Alliance Inc., and the renewal rights to

the worker's compensation business of AequiCap Program Administrators. Tower Group has since acquired the personal lines division of One Beacon Insurance Group (July 2010) which included Massachusetts Homeland Insurance Company, York Insurance Company of Maine and two management companies. The management companies are attorneys-in-fact for New Jersey Skylands Insurance Association, a New Jersey reciprocal insurer. Tower Insurance Company of New York is currently licensed in every state except Wyoming while Tower National Insurance Company is currently licensed in 37 states.

## II. UNDERWRITING AND RATING

### A. INTRODUCTION

The examiners reviewed randomly selected homeowner and dwelling policy files from the Tower Group's book of business that was in force during the review period April 1, 2009 to March 31, 2010. The Tower Group reported 29,500 homeowner policies and 1,669 dwelling (fire) policies for a total of 31,169 in-force contracts. Among the dwelling fire policies, 1,188 were written in Tower National Insurance Company, and 481 were written in Preserver Insurance Company.

Among the homeowner policies, 13,454 were written in Castlepoint Insurance Company, 10,298 were written in Tower National Insurance Company and 5,748 were written in Tower Insurance Company of New York. The examiners checked for compliance with all applicable New Jersey statutes and regulations including N.J.S.A. 17:29A-6 and 15 (filed and approved rating methodologies), N.J.S.A. 17:23A-4 (Notice of Information Practices) and N.J.S.A. 17:29A-4(d) (rate reductions for structures equipped with operative smoke detection devices).

### B. ERROR RATIOS

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

<u>Review Category</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
<b>New Business</b>			
Castlepoint	25	0	0%
Tower Insurance Company of New York	10	0	0%
Tower National Insurance Company	<u>15</u>	<u>0</u>	<u>0%</u>
Subtotal	50	0	0%
<b>Renewals</b>			
Castlepoint	20	0	0%
Tower Insurance Company of New York	20	0	0%



Tower National Insurance Company	<u>20</u>	<u>0</u>	<u>0%</u>
Subtotal	60	0	0%
<b>Total</b>	110	0	0%*

\*The examiners note that, had the examiners included the improper general business practices outlined below, the error ratios would have been 100% for all samples and companies.

### C. EXAMINERS' FINDINGS

#### **1. Deficient Flood Notice (Improper General Business Practice)**

Pursuant to N.J.A.C. 11:1-5.5(a)1 through 7, insurers are required to provide insureds with flood insurance informational disclosures on an annual basis. The examiners determined that the Tower Group's flood notice fails to include two of the seven required informational items on all new business and renewal policies. Specifically, this form failed to include the following language:

N.J.A.C. 11:1-5.5(a)4: "A separate policy of flood insurance may be available to cover flood damage at an additional premium;"

N.J.A.C. 11:1-5.5(a)5: "The insurer or insurance agent should be consulted to obtain further information about how to secure flood insurance, including the availability, terms and coverage ..."

The examiners cited this error as an improper general business practice because the notice deficiencies occurred on all policies reviewed and the overall policy population.

#### **2. Failure to Provide Earthquake Notice on New Business Policies (Improper General Business Practice)**

N.J.S.A. 17:36-5.38 requires that, "Every insurer that is authorized to transact the business of homeowners' insurance in this State and that offers coverage for earthquake damage by endorsement to those homeowners' insurance policies, shall inform insureds at the time of renewal of a homeowners' insurance policy, and applicants at the time of application for a homeowners' insurance policy, of the availability of an endorsement to the policy covering earthquake damage."

Contrary to this statute, the Tower Group failed to provide the required notice to the insured on new business policies. The examiners cited this error as an improper general business practice because the notice deficiencies occurred on all new business policies reviewed and the overall policy population.

### **3. Fuel Oil Storage Tank Exclusion and Buyback Option**

The Tower Group's current underwriting guidelines stipulate that new business applicants with in-ground oil tanks are ineligible for insurance coverage. The Company does, however, offer a separate fuel oil and storage tank liability endorsement on homeowner and dwelling fire new business policies. During this review, the examiners found no rating or underwriting errors involving fuel oil storage tanks.

### III. TERMINATIONS REVIEW

#### A. INTRODUCTION

During the review period April 1, 2009 to March 31, 2010, the Tower Group cancelled 554 new business policies within the first 60 days and cancelled 1,208 policies beyond the first 60 days, which included non-pay cancellations and cancellations at the insured's request. During the same period, the Company non-renewed 50 policies and declined 381 applications. The examiners randomly selected and reviewed 20 Declinations, 20 non-renewals, 25 first 60-day cancellations and 41 midterm cancellations for a total of 106 files reviewed. The examiners checked for compliance with applicable statutes and regulations including N.J.A.C. 11:1-20.2 (non-renewal and cancellation notice requirements), N.J.A.C. 11:1-20.3 (policy provisions relating to cancellation or nonrenewal) and N.J.A.C. 11:1-20.4 (cancellation and non-renewal underwriting guidelines). The examiners also utilized the NAIC Market Regulation Handbook, Chapters 16 and 17, as a guide to conduct this review.

#### B. ERROR RATIOS

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

<u>Review Category</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
<b>Declinations</b>			
Castlepoint	15	0	0%
Tower Insurance Company of New York	3	0	0%
Tower National Insurance Company	<u>2</u>	<u>0</u>	<u>0%</u>
Subtotal	20	0	0%
<b>Nonrenewals</b>			
Castlepoint	7	2	29%
Tower Insurance Company of New York	1	0	0%
Tower National	<u>12</u>	<u>3</u>	<u>25%</u>

Insurance Company			
Subtotal	20	5	25%
<b>60 Day Cancellations</b>			
Castlepoint	16	0	0%
Tower Insurance Company of New York	6	0	0%
Tower National Insurance Company	<u>3</u>	<u>0</u>	<u>0%</u>
Subtotal	25	0	0%
<b>Midterm Cancellations</b>			
Castlepoint	14	0	0%
Tower Insurance Company of New York	7	0	0%
Tower National Insurance Company	19	1	5%
Preserver Insurance Company	<u>1</u>	<u>0</u>	<u>0%</u>
Subtotal	41	1	2%
Total	106	6	6%

### C. EXAMINERS' FINDINGS

#### 1. Failure to Provide Factual Basis for Nonrenewals - 5 Files In Error

N.J.A.C. 11:1-20.2(g) requires the insurer to provide a nonrenewal or cancellation notice which contains the standard or reason upon which the termination is premised and specifies in detail the factual basis upon which the insurer relies.

The Tower Group nonrenewed five policies contrary to the requirements outlined in N.J.A.C. 11:1-20.2(g). On four standard tier homeowner policies the notice of nonrenewal stated, "Specific reason(s) for nonrenewal: Unfavorable loss experience – Water Damage 1/27/09." The notice identifies a single event and the date of the event. However, it fails to state the dollar amount that was paid which made the policy ineligible

for renewal. The Company's current underwriting guidelines allow a policy to remain eligible for coverage in the standard tier with one claim as long as the claim payment is under the dollar amount specified. Since the Company failed to list the amount of the claim on the nonrenewal notice, it did not provide the complete factual basis for the nonrenewal.

On the fifth policy, a dwelling fire policy, the notice of nonrenewal only stated, "Specific reason(s) for nonrenewal: Unfavorable Loss Experience." This notice failed to provide any facts which were relied upon to nonrenew the policy.

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

**2. Failure to Issue Notice of Cancellation Timely – 1 File in Error**

**N.J.A.C. 11:1-20.2(d)** states in part that no cancellation shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any person entitled to notice under the policy, not more than 120 days nor less than 30 days prior to the effective date of such cancellation.

Contrary to the stated regulation, the Company mailed the notice of cancellation for policy HOS2962960 28 days prior to the effective date of the cancellation of the policy.

**THIS FILE IN ERROR IS LISTED IN APPENDIX A-2**

## IV. RECOMMENDATIONS

Castlepoint Insurance Company, Tower National Insurance Company, Tower Insurance Company of New York and Preserver Insurance Company should inform all responsible personnel and third party entities that handle the files and records cited as errors in this report of the examiners' recommendations and remedial measures that follow in the report sections indicated. The examiners also recommend that the Tower Group 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, the Tower Group 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, NJ 08625, within thirty (30) days of the date of the adopted report.

On files reopened as recommended, the letter that offers coverage should be sent to the insured with an accompanying cover letter containing the following first paragraph (variable language is include in parentheses):

#### Offer of Coverage

"During a recent review of our policy files by market conduct examiners of the New Jersey Department of Banking and Insurance, they found that we should not have canceled your (homeowner/ dwelling fire insurance). We are now offering you a new policy to correct our error."

## **B. UNDERWRITING AND RATING REVIEW**

1. In order to comply with N.J.A.C. 11:1-5.5(a)4 and 5, the Company must revise the flood notice to include the following information:

“A separate policy of flood insurance may be available to cover flood damage at an additional premium.”

“The insurer or insurance agent should be consulted to obtain further information about how to secure flood insurance, including the availability, terms and coverage.”

2. Pursuant to N.J.S.A. 17:36-5.38(1) and N.J.S.A. 17:36-5.41(4)a the Tower Group must issue the required Earthquake Notice on all new business policies.

## **C. TERMINATION REVIEW**

3. Tower Group should issue written instructions to all personnel stating that N.J.A.C. 11:1-20.2(g) requires the insurer to provide a cancellation notice that specifies in detail the factual basis upon which the insurer relies. This includes the amount of the payment and the applicable underwriting dollar threshold that results in ineligibility.

4. The Company should issue a written reminder to appropriate personnel stating that, pursuant to N.J.A.C. 11:1-20.2(d), notices of cancellation for reasons other than non-payment of premium must be issued no greater than 120 days and no less than 30 days prior to the effective date of cancellation.

## APPENDIX A – TERMINATION ERRORS

### 1. Failure to Provide Factual Basis for Nonrenewals - 5 Files In Error

<u>Policy Number</u>	<u>Policy Number</u>
DFP2851152	HOS2654796
HOS2856547	HOS2757758
HOS2856051	

### 2. Failure to Issue Notice of Cancellation Timely – 1 File in Error

<u>Policy Number</u>	<u>Date of Cancellation Notice</u>	<u>Cancellation Effective Date</u>	<u>Proof of Mailing Date</u>	<u>Days Notice</u>
HOS2962960	9/10/09	10/9/09	9/11/09	28



## VERIFICATION PAGE

I, Monica Koch, am the Examiner-in-Charge of the Market Conduct Examination of The Tower Group 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 Castlepoint Insurance Company, Tower National Insurance Company, Tower Insurance Company of New York and Preserver Insurance Company as of November 4, 2010.

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.

12/1/10  
Date

Monica Koch  
Monica Koch  
Examiner-In-Charge  
New Jersey Department  
of Banking and Insurance