August 16, 2004

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex N)
600 Pennsylvania Ave., N.W.
Washington, DC 20580
FACTAscoringstudy@ftc.gov

RE: Fair and Accurate Credit Transactions Act Scores Study, **Matter No. P044804**

I am writing to you because of a grossly unfair condition in automotive insurance practices in New Jersey. The use of insurance scoring that is approved by the New Jersey Department of Banking and Insurance is not applied fairly, as my example will show. In fact, it has led to an insurance rating that is the opposite of what it should be. There is a flaw in the system.

I am insured by Foremost Insurance Company, Grand Rapids, Michigan, License #8207504, NAIC #212-11185, My Policy #XXX-XXXXXXXXXX-XX. They performed insurance scoring on renewal of my policy this Spring, which resulted in my receiving an adverse action and an increase in my rates 8 days before my policy expired. I was surprised and baffled because I have had an *excellent* driving record and credit history. I followed the procedures and after much effort I found out that my records did not contain any negative information. When I asked Foremost about it, they could not tell me for several weeks why my rates had gone up. All the personal responsibility data that they had available on me showed no reason for the adverse action, so they asked me to request a formal investigation (copy enclosed), which I did. I was told that the Foremost Compliance Department had opened an insurance claim and was working with a state representative to resolve it. Foremost reported to me as result of the investigation that the insurance score calculated by Fair, Isaac, & Company from credit information provided by the Experian Credit Reporting Agency "resulted in an unverifiable insurance score because of limited credit history, changing the personal Responsibility Factor from .45 to .65."

As I mentioned already, my credit history is excellent. I am a writer, 47 years old, and have a long credit history going back to 1979 with my college loans, which I repaid completely and always on-time. I have purchased 4 new cars over the years, and have practiced the same financial responsibility in repaying those loans. I have a number of store and major credit cards, which I have handled with the utmost responsibility. I have had no late payments, no collectibles, and needless to say, no bankruptcies. When I purchased a new home in 2001 with my wife, my FICO score was 758, which is A+ credit, enabling us to get the best deal on a home loan. Since then, we have made every mortgage payment on time and nothing has changed in the high-level of my financial responsibility practices.

There is supposed to be a way for consumers to rectify incorrect information in their credit files, but this is not the case for incorrect *lack* of information. I contacted Experian to see if I could correct their files. I asked if I could authorize them to obtain my up-to-date credit information. I asked if they could obtain the information from another CRA. I asked if I could send them a copy of my credit report from another CRA. They would allow none of these measures, nor could they offer me any recourse. There is a shortcoming in my credit file with Experian that I have no control over.

I then attempted to resolve the issue through my insurance company. I asked Foremost if they could use another CRA other than Experian. They said that by law they could not, because their filing with the New Jersey Division of Banking and Insurance requires them to use Experian.

As noted, I received a .65 personal responsibility factor from Foremost, which resulted in an 40% increase in my insurance premium. If Foremost's rating system had been based on an accurate credit history (similar to my previous FICO score of 758), I should have received a personal responsibility factor of .35 according to their personal responsibility rating table (enclosed), which would have substantially *decreased* my insurance premium. The outcome is not just wrong, it is *very wrong*.

Experian does not have my current credit history. Whatever the reason for their lack of current information, I fall into a credit file category known as a "thin file," or "no hits," or "no established credit history," or "no recent credit history," or "lack of credit history." This group, which I shall refer to as the "thin file" group, includes a significant number of people, totaling 4 percent of the population. Dr. Robert Hartwig, Senior Vice President and Chief Economist at the Insurance Information Institute, describes this segment of the population as including retirees who have probably paid off their mortgage and do not otherwise access credit markets, some Depression era people who avoid credit, the elderly, certain religious sects and those who might not use credit on personal or religious grounds, immigrants and those new to the country, as well as younger people and some low-income people who have not yet established a credit history, such as students.[1]

The NJ DOBI web-site publication on "Insurance Scoring in New Jersey"[2] says the following:

> [page 1]:
> New Jersey recently approved the use of insurance scoring for Mercury Indemnity Company of America, a subsidiary of Mercury General Insurance Group. This is the first time insurance scoring has been used in rating New Jersey private passenger auto insurance.... Regulatory staff at the Department of Banking and Insurance worked with Mercury to ensure that:
> - Drivers without recent financial responsibility scores will be treated neutrally. They will be assigned to a tier with better than standard rates.
> - Drivers with poor financial responsibility scores who have a clean driving record for the previous three years will not be placed in substandard tiers.
> - Drivers with outstanding financial responsibility scores who seek to buy lower coverage limits can achieve more favorable tier placement. This will bring savings to drivers of modest means who have fewer assets to protect.
>
> [page 6]:
> What about those individuals for whom a score cannot be calculated? If no score can be developed, some companies ignore

[1] www.iii.org/media/hottopics/insurance/creditscoring/, www.iii.org/media/hottopics/insurance/creditscoring/credit_paper/, and personal interview 8/11/04

[2] www.state.nj.us/dobi/acrobat/insurescore.pdf

> insurance scoring, and others assign them to a specific tier, usually better than standard. This normally means the individual does not have a recent credit history.

It sounds like the regulatory staff assured proper consumer protections in the case of Mercury. The "thin file" group is assured of "neutral" treatment and "better than standard rates." Even those with poor credit scores who had a clean driving record did not get placed in substandard tiers. Why has the DOBI failed to apply these protections to Foremost Insurance? I did not receive neutral treatment and better than standard rates. I was assigned a personal responsibility factor next to the bottom. And unlike people with *poor* credit scores and a clean driving record, I was placed in a substandard tier, even though I have a clean driving record and an excellent credit record (or at least no recent data if you go by Experian).

The NJ DOBI Bulletin No. 04-05, dated 4/26/04, on "Insurance Scoring Information"[3] says the following:

> People Without Credit History: If an applicant or existing policyholder does not have credit history, an insurer shall do one of the following:
>
> 1. Provide actuarial support that the absence of credit history relates to the risk; or
> 2. Exclude the use of credit as a factor.
>
> Credit cannot be used to place these consumers in a tier below a standard rating tier.

I would like the DOBI to clarify or interpret the statement that "Credit cannot be used to place these consumers in a tier below a standard rating tier." Does this apply to the "thin file" category as a whole or only to action #2? If it applies to the category, Foremost appears to be in violation of this requirement.

Since I was assigned to a substandard tier, I assume that in filing its underwriting model with New Jersey, Foremost provided the justification for this through actuarial information from its own experience with policyholders in New Jersey. If this is true, I would like to request a copy of this information. If this is not true, it seems to me that Foremost is in violation of the requirement.

In summary, I see the following problems with the New Jersey insurance scoring regulations:

- They allow a company to rely on only a single Credit Reporting Agency. I have heard that some states require the use of all three major CRAs for credit scoring, and this could help. A regulation to this end may not be a complete solution, but New Jersey should move to adopt this policy to help resolve the problem and prevent wrongful practices like ones I have described in my case.
- The insurance scoring regulations allow a company to assign the "thin file" group to a substandard tier. The actuarial justification for such action needs to be very robust and completely convincing, and it needs stringent oversight and a high threshold of proof. Otherwise, it is too easy for insurance companies to misapply substandard rating to groups that don't deserve it (including religious groups), leaving this option open for errors and abuse. It would also have the effect of nullifying the main purpose of the consumer protections given to

[3] www.state.nj.us/dobi/bulletins/blt04_05.pdf

the "thin file" group in the New Jersey regulations and the National Conference of Insurance Legislators model law.[4] A number of states are working to protect the "thin file" group more explicitly and to restrict credit scoring.[5]

Also, based on my experience and what I've learned about insurance scoring, the following problems also exist:

- The time it takes to investigate a problem is prohibitive. I received my adverse action notification 8 days before my policy expired. I contacted Foremost, ChoicePoint, Experian, and Foremost again and still didn't know what the problem was. There were long delays and much back and forth communication. The layers of information and complexity to find out what happened was unmanageable. It took from May 25 to July 23 with much effort even to find out what happened! I am a very capable individual and I have been overwhelmed by this all.

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[4] The Insurance Information Institute states that "Regulations generally require insurers to consider an applicant with a so-called 'thin' or 'no-hit' file an average risk." In fact, according to the institute, the model law passed by the National Conference of Insurance Legislators (NCOIL) "says that in such cases either the credit score should be considered 'neutral,' or average, or credit as an underwriting factor should not be used at all. As a third option, it allows the insurer to follow a procedure of its own. The justification for this must be provided to the insurance department." This insurance industry organization describes the third option as an exception and almost an afterthought, and yet it provides a loophole that nullifies the consumer protections accorded the "thin file" group. The consumer protections in the model law are misunderstood because the third option is overlooked; for example, BankRate.com reports that the model law and the state laws which are based on it protect the "thin file" group and "prohibit insurance companies from counting an absence of credit history or unpaid medical bills against their customer." [Sources: www.iii.org/media/hottopics/insurance/creditscoring/ and www.bankrate.com/brm/news/insurance/20030827a1.asp]

[5] The Insurance Information Institute reports the following recent governmental actions to restrict the use of credit scoring and to protect the "thin file" group:

- The Insurance Commissioner and the Governor of Michigan announced an administrative rule banning the use of insurance scoring in personal lines of insurance.
- "In New York, insurers would not be allowed to deny coverage based solely on a credit score or to nonrenew or increase premiums based on credit information."
- Washington State "limits the difference in rates based on credit-related factors to 20 percent and prohibits or restricts the use of credit in specific circumstances. These include the absence of credit history,..."
- Maryland, which previously allowed insurance scoring, bans the use except in new auto insurance policies, where the law imposes strict limits.
- South Carolina is considering a regulation that would require "a separate breakout of loss data by age for policyholders that have no credit record."
- In Colorado, the insurance department issued an insurance scoring regulation that "among other things, excludes people 65 and older with no recent credit history from impact.

Sources: A) www.iii.org/media/hottopics/insurance/creditscoring, B) www.howcreditworks.org/legisl.htm

If it was this bad for me, I cannot imagine how impossible this process must be to other consumers.

- The Fair Credit Reporting Act addresses how consumers can resolve incorrect negative data, but not the incorrect lack of data. Also, I can get a poor insurance score for lack of data, as well as other factors that are not negative, such as the type of credit, the lack of activity, and the lack of a real-estate loan. Credit scoring interprets a variety of data and makes specific discriminations and judgments that go far beyond practices covered by the FCRA.
- The scoring criteria are not transparent to the consumer, and there is no standard methodology, so that there is a great variation in scores by different companies and using different methods. I don't have access to how my score is calculated, nor can I find out how specific actions will affect my score and what to do to have a positive impact on my score. I don't know what information is used or the weight given to the criteria. Credit-based insurance scores should be calculated uniformly and must be transparent to the consumer.
- Insurance scoring penalizes consumers who are not using credit. Many of the criteria also penalize consumers who are simply using, and not abusing, credit (Examples: newly opened accounts count against your score even if payments are current, installment loan accounts can hurt your score, retail store and gas company credit cards hurt your score, consumer initiated credit inquiries count against the score.[6])
- Credit-based scores used for auto insurance are not appropriate predictors of driving skill or risk.

If the use of insurance scoring is to have a positive impact on the State, its residents, and its insurers, the gaps or holes like the ones I describe must be corrected. Otherwise, the use of insurance scoring in New Jersey cannot be applied fairly and should not be allowed. I would like these problems to be fixed and believe that it will benefit everyone if they are.

Respectfully,

John Irwin

[6] www.cej-online.org/Simplified%20Credit%20Scoring%20Model.pdf