

OHIO DEPARTMENT OF INSURANCE

A

MARKET CONDUCT EXAMINATION

OF

FIRST ACCEPTANCE INSURANCE COMPANY

NAIC # 10336

As Of

April 30, 2006





Ted Strickland, Governor
Mary Jo Hudson, Director

2100 Stella Court, Columbus, OH 43215-1067
(614) 644-2658 www.ohioinsurance.gov

Honorable Mary Jo Hudson
Director
Ohio Department of Insurance
2100 Stella Court
Columbus, Ohio 43215-1067

Director:

Pursuant to your instructions and in accordance with the powers vested under Title 39 of the Ohio Revised Code, a market conduct examination was conducted on the Ohio business of:

First Acceptance Insurance Company
NAIC Company Code 10336

The examination was conducted at the Company's home office and primary business location in Nashville, Tennessee. A report of the examination is enclosed.

Respectfully submitted,


David R. Beck
Chief, Market Conduct Division

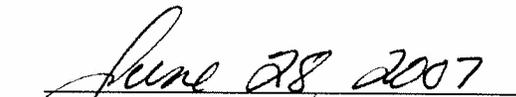

Date



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FOREWORD

This examination was conducted under authority provided by Ohio Revised Code (“R.C.”) 3901.011.

SCOPE OF EXAMINATION

On April 11, 2006, the Market Conduct Division, Ohio Department of Insurance (“Department”) opened an examination into the non-financial business practices of First Acceptance Insurance Company, Inc. (“Company”). On September 18, 2006, the on-site portion of the examination began at the Company’s home office and primary business location in Nashville, Tennessee. The on-site portion of the examination concluded September 22, 2006.

The examination was restricted to a review of Company activities for private passenger automobile insurance policies for the period from May 1, 2005, through April 30, 2006. The Company’s tenant homeowner and financial responsibility bonds were not included in this examination.

The examination is reported by test and was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners (“NAIC”) and the State of Ohio’s applicable statutes and rules.

Accordingly, the examination included the following areas of the Company’s operations:

- A. Company Operations
- B. Underwriting and Rating
- C. General Claim Practices
- D. Specific Claim Review
- E. Policyholder Services

METHODOLOGY

As part of the examination, the Department’s examiners reviewed the Company’s automobile policies and claim files, and the Company’s corresponding procedure manuals. This information was supplemented by interviewing Company managers and with written inquiries requesting clarification and/or additional information.

Only Ohio policyholders’ files were reviewed. A series of tests were designed and applied to these files to determine the Company’s level of compliance with Ohio’s insurance statutes and rules. These tests are described and the results noted in this report.

The examiners used the NAIC’s standard of:

7% error ratio on claim files (93% compliance rate)

10% error ratio on all other files (90% compliance rate)

to determine whether an apparent pattern or practice of non-compliance existed for any given test. The results of each test applied to a sample are reported separately. Each test is expressed as a “yes/no” question. A “yes” response indicates compliance, and a “no” response indicates a failure to comply. A “no” response may be referred to in this report as an “exception.”

In any instance where errors were noted, the examiners described the apparent error and asked the Company for an explanation. The Company responded to the examiners and either:

- Concurred with the findings,
- Had additional information for the examiners to consider, and/or
- Proposed remedial action(s) to correct the apparent deficiency.

If applicable, the examiners' recommendations are included in this report.

SAMPLING

Upon request, the Company supplied reports of policy and claim data in file formats, which could be used on IBM compatible personal computers. Except as otherwise noted, all tests were conducted on a sample of files randomly selected from a given report. The samples were selected from populations consisting of Ohio policies using a standard business database application that provides a true random sample given that it supplies a random starting point from which to select the sample.

COMPANY HISTORY

First Acceptance Corporation was created in December of 2003 when Liberté Investors Inc. and USAuto Holdings, Inc., (the parent company for USAuto Insurance Company, Inc. and Village Auto Insurance Company, Inc.) entered into a merger agreement. Following completion of the merger in April of 2004, USAuto Holdings, Inc. became the surviving corporation of the merger and subsequently changed its name to First Acceptance Corporation.

First Acceptance Corporation is a publicly traded company and is listed on the New York Stock Exchange under the symbol FAC.

The Company, under its former name, USAuto Insurance Company, Inc., and ownership has been admitted and writing auto insurance in Ohio since 2001. It was authorized to write surety lines in 2002.

COMPANY OPERATIONS

The Company is a Tennessee domestic stock insurance company and maintains its statutory home office and primary business location in Nashville, Tennessee. It operates under the trade name "Acceptance Insurance."

The Company's ultimate parent is First Acceptance Corporation. All outstanding shares of the Company are owned by USAuto Holdings, Inc., an insurance holding company domiciled in the state of Delaware.

The Company writes private passenger automobile, tenant homeowner insurance, and financial responsibility bonds in Ohio. It is admitted in 25 states, but writes business in only twelve. Besides Ohio, the Company writes insurance in Alabama, Florida, Georgia, Illinois, Indiana, Mississippi, Missouri, Pennsylvania, South Carolina, Tennessee and Texas.

The Company has an agreement with First Acceptance Services, Inc., an affiliated company, to provide claims handling services to the Company. Claims are reported to the claim call center located in Nashville.

The Company has no claims offices in Ohio. Staff adjusters in Ohio work from their homes. Two teams of adjusters specialize in Ohio claims. Independent adjusters and appraisers are used as needed. At present, the Company has no relationships with “preferred repair” shops in Ohio. To make certain that claims are adjusted correctly, the Company conducts monthly audits of each adjuster’s claims files.

The Company reports its loss experience annually to its statistical reporting agency, National Independent Statistical Service.

The Company’s 2005 year-end written premiums as reported in its Financial Annual Statements appear below.

Line	Ohio Direct Written	National Direct Written
Fire	\$11,050	\$273,205
Other private passenger auto liability	\$7,932,305	\$46,986,115
Private passenger auto physical damage	\$4,130,170	\$39,420,280
Fidelity	\$1,419,361	\$1,419,361
Totals	\$13,492,886	\$92,213,926

As of December 31, 2005, the officers of the Company were:

Stephen Joe Harrison President
Michael John Bodayle Treasurer
Thomas Marshall Harrison, Jr. Secretary

MARKETING

The Company markets in Ohio using television advertisements and display advertisements in local “yellow page” directories.

Consumers can place applications and effect coverage at 30 retail sales offices across Ohio. All offices are staffed by employee agents. The Company reported it employed 51 agents at its Ohio sales offices during the exam period.

An Ohio consumer’s call to the Company’s toll-free sales number is answered by an employee in the Company’s Nashville call center. All call center employees are Ohio non-resident agents. These employees do not take applications or effect coverage. Policy applications are accepted only at the Company’s retail sales offices.

Sales and Marketing Materials

Standard: All advertising and sales materials are in compliance with applicable statutes, rules and regulations.

Test: Were all marketing and advertising materials free from untrue, deceptive, or misleading statements and/or representations? {R.C. 3901.20 and 3901.21(B)}

Methodology:

- The Company supplied copies of all marketing materials in use during the examination period. For television advertisements, the examiners reviewed transcripts.
- The examiners tested two television advertisement scripts and three print advertisements for compliance.
- When necessary, the examiners compared the text of the marketing material with the text of the policy form and/or endorsement.
- The examiners considered an exception to be any statement that was unclear, deceptive, misleading, inaccurate, or might have the tendency to mislead its intended recipient.

Findings: The examiners found the Company's marketing materials to be in compliance with R.C. 3901.20 and R.C. 3901.21(B).

Agent Licensing and Appointment

Methodology:

- The Company supplied reports of all:
 - Persons selling, soliciting, or negotiating for insurance, or acting in any other way as an "insurance agent" as defined in R.C. 3905.01(D) during the examination period.
 - Policies issued as new business during the examination period.
 - All commissions paid or accrued during the examination period.
- This data was compared with the agent licensing and appointment records of the Department for each test.
- The date the application was taken was not available in an automated format. For the new business tests, the examiners used the policy inception date instead.
- For new business tests, the population of all policies issued as new business was tested.
- For commission tests, the Company supplied reports of all persons paid commissions for Ohio business during the examination period. This report listed persons earning commissions and the dates the commissions were accrued.

New business applications—Licensed Agents

Standard: The producers are properly licensed in the jurisdiction where the application was taken.

Test: Were the persons reported by the Company as selling, soliciting, or negotiating for insurance licensed as required by R.C. 3905.02?

Test Methodology:

- The examiners compared the policy effective date with the Department’s record of the date the producing agent was licensed for property and casualty lines.
- The examiners considered any policy effective before the date the producing agent was licensed, or after the date an agent’s license terminated, to be an exception.

Findings:

Policies Issued	Yes	No	Standard	Compliance
26,890	26,468	422	90%	98%

The standard for compliance is 90%. The Company’s practices met this standard.

Examiner Comments: Of the 422 applications that failed, the examiners found that one unlicensed individual produced 418 of them.

The Company reported 51 employees, in its 30 Ohio sales offices, accepted applications from Ohio consumers during all or part of the exam period. In total, five employees were not licensed at the time an application was accepted from an Ohio consumer.

New Business Applications—Appointed Agents

Standard: The producers are properly appointed in the jurisdiction where the application was taken.

Test: Were the persons reported by the Company as selling, soliciting, or negotiating for insurance appointed by the Company as required by R.C. 3905.20?

Test Methodology:

- The examiners compared the policy effective date with the Department’s record of the date the Company appointed the agent.
- The examiners considered any policy effective before the date the producing agent was appointed by the Company, or after the date an agent’s appointment terminated, to be an exception.

Findings:

Policies Issued	Yes	No	Standard	Compliance
26,890	23,439	3,451	90%	87%

The standard for compliance is 90%. The Company’s practices failed to meet this standard.

Examiners' Comments:

Of the Company's 51 agents writing new business in Ohio, six were not appointed at the time an application was accepted. Four individuals produced most of these applications.

It appears the Company does not have adequate record-keeping systems in place. In some instances, the Company could not provide the examiners with employee tax identification numbers or confirm an agent's date of employment.

Examiners' Recommendations:

The examiners recommend that the Company:

1. Establish controls to assure that every person acting as an "insurance agent," as defined in R.C. 3905.01(D), is properly licensed and appointed at the time he/she accepts an application for insurance from an Ohio consumer.
2. Review its record-keeping systems to make certain it collects, and can readily access, data sufficient to permit it to confirm that each person acting as an "insurance agent" is licensed and appointed at the time he/she accepts an application for insurance from an Ohio consumer.
3. Establish internal audit practices to make certain that agent appointments are current.

Commissions

Standard: Regulated entity records of licensed and appointed producers agree with Department of Insurance records.

Test: Were the persons reported by the Company as receiving commissions, and/or any other sales-based compensation, licensed and appointed at the time the commission was paid and/or accrued as required by R.C. 3905.18(A) and (B)?

Test Methodology:

- The Company supplied a report of commissions paid for Ohio business during the examination period. This report included persons earning commissions, the dates the commissions were accrued and the amount paid. From this report, the examiners identified all commission payments of \$1 or more.
- The Company's agents are employees and paid a salary. Commissions are an incentive and are calculated as a percentage of the total earned premium an agent has produced while employed with the Company, not on individual policies produced. These payments accrue at the end of each calendar month and are paid on the 15th of the following month. Accordingly, the examiners considered the population to be the total number of commission payments accrued during the exam period. Each commission payment was considered a unique record.
- To test for compliance, the examiners used the date an agent accrued commission and compared it with the licensing and appointment dates in the Department's records.

- The examiners considered an exception to be any sales-based payment accrued:
 - o before the effective date of an employee’s Ohio agent license;
 - o after the termination date of an employee’s Ohio agent license;
 - o before the date his/her appointment with the Company was effective; or
 - o after the date his/her appointment with the Company terminated.

Findings:

Commissions Paid	Yes	No	Standard	Compliance
300	274	26	90%	91%

The standard for compliance is 90%. The Company’s practices met this standard.

Examiners’ Comments:

The examiners found all persons paid or accruing commissions during the exam period were licensed agents. Four persons were not appointed when these individuals accrued a combined total of 26 distinct commission payments.

PRIVATE PASSENGER AUTOMOBILE UNDERWRITING

Policy Cancellation and Non-Renewal—General Methodology

- The examiners reviewed all procedure manuals as part of the examination process.
- The Company supplied a file of all policies in effect more than 90 days and subsequently terminated for any reason during the examination period.
- From this data, the examiners identified three populations defined by the reason the Company initiated policy termination. An insured’s request to cancel the policy was excluded from these populations. The populations were defined as:
 1. Policies cancelled for non-payment of premium;
 2. Policies cancelled at the Company’s request for any reason other than non-payment of premium; and,
 3. Policies that the Company “refused to renew.”
- Random samples were selected. For populations less than 100, the entire population was tested.
- Multiple errors in a single record were counted as one error.

Automobile Policy Cancellations—Non-Payment of Premium

Standard: Cancellation notices comply with policy provisions, Company guidelines, and the applicable Ohio statutes and rules.

Test: Did the Company’s cancellation procedures and practices for non-payment of premium conform to R.C. 3937.31, 3937.32, and 3927.33?

Test Methodology:

- The examiners considered the following to be exceptions:
 1. Any cancellation effective with less than 10 days notice;
 2. Any cancellation notice that failed to contain the statutorily required information and appeal notice; and
 3. A lack of reliable data to support the date the notice was mailed to the insured.

Findings:

Population	Sample	Yes	No	Standard	Compliance
17,263	100	0	100	90%	0%

The standard of compliance is 90%. The Company’s practices failed to meet this standard.

Examiner’s Comments:

Every cancellation notice issued during the examination period and reviewed in this sample lacked the appeal notice required by R.C. 3937.32(F); therefore, all notices failed. The Company became aware of this practice during the examination. The Company confirmed that neither its nonpayment nor its underwriting cancellation notices included the required “appeal” wording.

At one time, the Company printed the appeal wording on the reverse of Ohio cancellation notices. However, at an undetermined time before the exam period, the Company stopped printing on the reverse of its cancellation notices. This change did not include a change in procedure to print the appeal wording on the face of the notice.

Since the on-site examination, the Company revised its form and filed it with the Department’s Office of Property and Casualty Services.

The examiners also found the data provided by the Company for the mailing date of notices were unreliable. The examiners found that the mailing dates recorded in the Company’s bulk mailing records didn’t match the dates stamped on the mailing records by the Unites States Postal Service. Further, the Company’s bulk mailing records showed mailing dates for days when there was no mail service, such as Sundays and federal holidays. Accordingly, when conducting tests for timely notice and notice content, the examiners counted all records as errors.

Examiner’s Recommendations:

As reported above, the Company has already made changes to its policy cancellation forms to bring them into compliance with RC 3937.31 through 3937.33.

The examiners recommend that the Company:

1. Establish controls and internal audit practices to assure that all cancellation procedures and practices conform with R.C. 3937.31 through R.C. 3937.33.

2. Establish controls to assure that notice mailing dates are recorded accurately so that information in the Company’s data systems can be relied upon when auditing for compliance with applicable statutes and regulations.

Automobile Policy Cancellations—Other than Non-Payment of Premium

Standard: Cancellation notices comply with policy provisions, Company guidelines, and the applicable Ohio statutes and rules.

Test: Did the Company’s cancellation procedures and practices, when the reason for cancellation is other than non-payment of premium, conform to R.C. 3937.31, 3937.32, and 3937.33?

Test Methodology:

- The examiners tested the entire population of 5 policies.
- The examiners considered the following to be exceptions:
 1. Any cancellation reason other than:
 - a. the insured moving to a state where the Company is not licensed to write automobile insurance;
 - b. loss of the insured’s driving privileges; or
 - c. material misrepresentation by the insured.
 2. A notice to an insured which stated any reason for cancellation other than:
 - a. the insured moving to a state where the Company is not licensed to write automobile insurance;
 - b. loss of the insured’s driving privileges; or
 - c. material misrepresentation by the insured.
 3. Any cancellation effective with less than thirty (30) days notice to the insured, unless the policy was rescinded as permitted by the Company’s policy.
 4. Any cancellation notice that failed to contain the required information and appeal notice.
 5. A lack of reliable data to support the date that the notice was mailed to the insured.

Findings:

Population	Sample	Yes	No	Standard	Compliance
5	5	0	5	90%	0%

The standard for compliance is 90%. The Company’s practices failed to meet this standard.

Examiner’s Comments:

As reported above, the Company notices lacked the required “appeal” wording and lacked reliable information on the date the notice was mailed. Accordingly, the examiners counted all records as errors for the tests for timely notice and notice content.

The population is extremely small because most policies are terminated for underwriting reasons before the 90th day the policy is in-force. None of the five cancellation notices showed the reason the policy was cancelled.

Three of the five were rescinded for material misrepresentation as permitted by the Company's policy contract. However, the Company failed to show the reason in the cancellation notice.

The remaining two were canceled for reasons other than those permitted by R.C. 3997.31. In addition, the Company cancelled these policies with less than 30 days notice.

Examiner's Recommendations:

As reported above, the Company has already made changes to its policy cancellation forms to bring them into compliance with RC 3937.31 through 3937.33.

The examiners recommend that the Company:

1. Establish controls and internal audit practices to assure that cancellations for any reason other than nonpayment of premium conform with R.C. 3937.31 through R.C. 3937.33.
2. Establish controls to assure that notice mailing dates are recorded accurately so that information in the Company's data systems can be relied upon when auditing for compliance with applicable statutes and regulations.

Automobile Policy Non-Renewals

Standard: Non-renewal notices comply with policy provisions, Company guidelines, and the applicable Ohio statutes and rules.

Test: Did the Company's non-renewal of the policy qualify as a "refusal to renew," as defined in R.C. 3937.31, and did the Company's non-renewal procedures and practices conform to R.C. 3937.34?

Test Methodology:

- The examiners tested the entire population of 26 policies that the Company identified as "nonrenewals."
- The examiners considered the following to be exceptions:
 1. Any "refusal to renew" when a policy was in-force for a period of less than two years;
 2. Any "refusal to renew" effective on other than the biennial anniversary of the policy's original inception date;
 3. Any notice of "refusal to renew" effective on a date other than the expiration date of the policy or lacking the required information;
 4. Any "refusal to renew" effective with less than 30 days notice; and,
 5. A lack of reliable data to support the date that the notice was mailed to the insured.

Findings:

Population	Sample	Yes	No	Standard	Compliance
26	26	0	26	90%	0%

The standard of compliance is 90%. The Company’s practices failed to meet this standard.

Examiner’s Comments:

The examiners used the definition of “refusal to renew” as it appears in R.C. 3937.31: a policy “*issued for a period of not less than two years or guaranteed renewable for successive policy periods totaling not less than two years.*” Only four of the policies that the Company reported as being “nonrenewed” met the statutory definition of “refusal to renew.”

The Company terminated 22 of the 26 policies in the non-renewal population at other than the biennial anniversary of the policy’s original inception. Nineteen were terminated for reasons not permitted under Ohio law during the “two year guaranteed renewal” period. These reasons included claim history, the insured’s move to a state where the Company was licensed to write insurance, and the insured’s request to add a newly acquired private passenger auto which did not meet the Company’s new business guidelines.

The Company reported 10 of the policies were terminated for the reason “moved out of state.” However, only three insureds moved to a state where the Company was not licensed. Four other insureds moved to states where the Company was licensed and actively writing automobile insurance. As specified in R.C. 3937.31(A)(4), an insurer may cancel a private passenger automobile policy before the expiration of the two year period of guaranteed renewal only if:

*“The place of residence of the insured or the state of registration or license of the insured automobile is changed to a state or country in which the insurer **is not authorized to write automobile coverage.**”* [emphasis added]

Further, the remaining three notices showed the cancellation reason “moved out of state,” yet the Company’s underwriting system notes documented that the Company’s underwriters initiated these policy terminations for reasons such as vehicle cost new or vehicle type. In its response to the examiners’ questions, the Company explained that sometimes the Company’s processing system prints the wrong reason on termination notices.

Like the other tests of company initiated policy terminations, there was a lack of reliable information on the date that the notice was mailed. Accordingly, all records failed the compliance tests for timely notice and notice content.

Examiner’s Recommendations:

The examiners recommend that the Company:

1. Establish controls to assure that all Ohio policies are issued for the two year guaranteed period mandated in R.C. 3937.31.

2. Establish controls, including data system controls, to assure that the Company's cancellation notices list complete and correct reasons for cancellation and are free of any misleading information.
3. Establish training for agents, underwriters and other policy processing personnel to make certain all are aware of Ohio's "two year guaranteed" renewal requirements as they apply to cancellations and refusals to renew.
4. Establish internal audit practices to make certain that procedures and practices for refusals to renew and cancellations for any reason other than non-payment of premium conform with R.C. 3937.31 through R.C. 3937.33.
5. Establish controls to assure that notice mailing dates are recorded accurately so that information in the Company's data systems can be relied upon when auditing for compliance with applicable statutes and regulations.

Automobile Policy Cancellations—"Rewrites" at the Insured's Request

The examiners reviewed 103 policies cancelled and rewritten at the insured's request. The Company's cancellation procedures and practices were also reviewed. There are various reasons for rewriting policies including changing the name of the insured, excluding a driver, or changing the billing date. In explaining its rewrite process, the Company advised that, when a policy is rewritten, the Company considers the rewritten policy to be "new" business. Accordingly, the Company procedures then provide for an additional 89 day cancellation period for the "rewrite," as permitted by R.C. 3937.31(C).

Examiners' comments:

The Department's position is that "rewrites" do not provide an additional 89 day cancellation period and that the new policy assumes the original inception.

Examiner's Recommendations:

The examiners recommend that the Company:

1. Revise procedures to assure that policies rewritten continue to be identified by the original contract inception date and any decision by the Company to cancel or refuse to renew conforms with R.C. 3937.31 through R.C. 3937.34.
2. Establish internal audit practices to make certain that procedures and practices for rewrites for any reason conform with R.C. 3937.31 through R.C. 3937.34.

GENERAL CLAIM PRACTICES

The examiners reviewed the Company's claim procedures to determine whether the Company's procedures could reasonably be expected to meet the requirements of R.C. 3901.20, Ohio Adm.Code 3901-1-07, and 3901-1-54; to wit, timely investigation, denial of coverage, and reporting of apparent fraudulent claims. The examiners also reviewed Company's procedures to assure compliance with R.C. 3999.41, which requires a company to adopt an antifraud program.

The examiners found that the Company's procedures were sufficient to establish compliance with Ohio statutes and rules.

SPECIFIC CLAIM REVIEW

Methodology:

- The Company supplied reports of first and third party claims closed during the examination period. The examiners segmented this data into populations of claims for each claims "feature," i.e., collision, property damage liability, bodily injury liability, and uninsured motorist bodily injury.
- Each claimant was considered a unique record.
- Random samples were selected. For populations of unique claimants less than 100, the entire population was tested.
- Claims where the amount of the covered loss was less than the deductible were considered "paid" claims.
- Where the number of apparent errors in a claims sample of 50 were between 4% and 8%, an additional sample of 25 records was selected and tested to assure statistical credibility of the findings. An additional sample was selected for the Collision total loss and Property Damage partial loss tests.
- The examiners reviewed samples to test that the Company's claim practices were free of unfair practices prohibited by R.C. 3901.20, and defined by R.C. 3901.21, and Ohio Adm.Code 3901-1-07 and 3901-1-54.
- When found to be outside the scope of the examination, the examiners removed from the claims paid samples and replaced:
 - 25 Property Damage partial loss ("PD partial") records;
 - 3 Collision total loss ("Collision partial") records;
 - 5 Property Damage total loss ("PD total") records; and,
 - 1 Collision Total Loss ("Collision total") record.
- When found to be outside the scope of the examination, the examiners removed one record from the UMBI claims paid sample. As the tests were applied to the entire population, this record was not replaced.
- All repair estimates accepted by the Company as "proof of loss" and subsequently paid were considered to be prepared "by or on behalf of" the Company for the purpose of these tests.
- Multiple errors in one claim record were counted as a single error.

Timely Initial Contact

Standard: The initial contact by the company with the claimant is within the required time frame.

Test: Upon receiving notice of the claim, did the Company respond within the time frame required by Ohio Adm.Code 3901-1-54(F)(2)?

Test Methodology:

- “Initial contact” included telephone notice to the Company of a loss from the insured, third party claimant, and/or legal representative.
- The examiners considered failure to contact a claimant within ten days from the date of notice of the claim, when the Company had sufficient information to contact that claimant, to be an exception.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Collision Partial	411	50	50	0	93%	100%
Collision Total	184	75	75	0	93%	100%
PD Partial	1,017	75	75	0	93%	100%
PD Total	167	50	50	0	93%	100%
BI Paid	326	50	50	0	93%	100%
UMBI Paid	85	85	85	0	93%	100%

The standard for compliance is 93%. The Company’s practices met this standard.

Timely Claim Settlement

Standard: Claims are resolved in a timely manner.

Test: Did the Company make timely settlement to claimants as required by Ohio statutes and rules?

Test Methodology:

- Where a document, such as a salvage title, was required to settle an automobile claim, a claim was not “payable” until the Company received the required document(s).
- The examiners considered the following to be an exception:
 1. Any claim paid to a first party claimant more than ten calendar days after the amount was known and agreed as required by Ohio Adm.Code 3901-1-54(G)(6); and,
 2. Any claim paid to a third party claimant more than five working days after the amount was known and agreed as required by Ohio Adm.Code 3901-1-07(C)(16).

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Collision Partial	411	50	50	0	93%	100%
Collision Total	184	75	75	0	93%	100%
PD Partial	1017	75	75	0	93%	100%

Claim Feature	Population	Sample	Yes	No	Standard	Findings
PD Total	167	50	50	0	93%	100%
BI Paid	326	50	50	0	93%	100%
UMBI Paid	85	85	85	0	93%	100%

The standard for compliance is 93%. The Company's practices met this standard.

Use Of "Like Kind and Quality" Parts In Repair Estimates

Standard: Claims are properly handled in accordance with policy provisions and applicable statutes and rules.

Test: Where applicable, did repair estimates prepared by the Company, or prepared on the Company's behalf, clearly indicate when the repair estimate included "Like Kind and Quality" ("LKQ") parts and the name and address of the licensed salvage dealer where the parts were to be obtained as required by Ohio Adm.Code 3901-1-54(H)(4)?

Test Methodology:

- The examiners tested only to those estimates where LKQ parts were used.
- The examiners considered the following to be an exception:
 1. Any repair estimate that failed to disclose that LKQ parts were used in the estimate; and
 2. Any repair estimate that failed to clearly show the name and location of the licensed salvage dealer where the LKQ parts were to be obtained.

Findings:

Claim Feature	Population	Sample	LKQ	Yes	No	Standard	Findings
Collision Partial	2,118	50	25	20	5	93%	80%
PD Partial	4,355	75	22	17	5	93%	77%

The standard for compliance is 93%. The Company's practices failed to meet this standard.

Examiners' Recommendations:

The examiners recommend that the Company:

1. Establish controls to make certain the name and address of the licensed salvage dealer is clearly identified when LKQ parts are used in repair estimates; and,
2. Establish and implement internal audit procedures to monitor and review the Company's claims procedures and practices for LKQ parts in repair estimates at regular intervals.

Use Of Non Original Equipment Manufacturer Parts In Repair Estimates

Standard: Claims are properly handled in accordance with policy provisions and applicable Ohio statutes and rules.

Test: Where applicable, did repair estimates prepared by the Company, or prepared on the Company’s behalf, clearly indicate the use of non-OEM parts and did the statutorily mandated disclosure wording appear on the estimate as required by Ohio Adm.Code 3901-1-54(H)(4)?

Test Methodology:

- The examiners tested only to those estimates where non-OEM parts were used.
- The examiners considered the following to be an exception:
 1. Any repair estimate that failed to disclose that non-OEM parts were used in the estimate; and,
 2. Any repair estimate using non-OEM parts which lacked the statutorily mandated disclosure wording.

Findings:

Claim Feature	Population	Sample	Non-OEM	Yes	No	Standard	Findings
Collision Partial	2,118	50	28	27	1	93%	96%
PD Partial	4,355	75	20	20	0	93%	100%

The standard for compliance is 93%. The Company’s practices met this standard.

Vehicle Total Loss—Actual Cash Value

Standard: Claims are properly handled in accordance with policy provisions and applicable Ohio statutes and rules.

Test: Did the Company’s actual cash value (“ACV”) total loss settlement calculations conform with Ohio Adm.Code 3901-1-54(H)(7)(a)-(e)?

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Collision Total	184	50	49	1	93%	98%
PD Total	167	50	50	0	93%	100%

The standard for compliance is 93%. The Company’s practices met this standard.

Vehicle Total Loss—Sales Tax

Standard: Claims are properly handled in accordance with policy provisions and applicable Ohio statutes and rules.

Test: Did the Company pay and/or reimburse sales tax on vehicle total loss settlements as required by Ohio Adm.Code 3901-1-54(H)(7)(f)?

Test Methodology:

- The examiners considered the following to be an exception:
 1. Any failure to pay or reimburse sales tax payment/reimbursement pursuant to Ohio Adm.Code 3901-1-54(H)(7)(f); or,
 2. Any failure to use local sales tax rates.
- Total loss settlements where sales tax was not payable, such as owner retaining salvage, and settlements negotiated by the claimant’s attorney were considered compliant for the purpose of this test.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Collision Total	184	50	20	30	93%	40%
PD Total	167	50	14	36	93%	28%

The standard for compliance is 93%. The Company’s practices failed to meet this standard.

Examiners’ comments:

The Company pays sales tax on every total loss paid as ACV cash settlement. The sales tax is added to the ACV and paid when the ACV settlement is made.

During the exam period, the Company used a flat rate of 6% sales tax on all cash settlement regardless of the claimant’s location. The Company’s source for the 6% sales tax rate came from the Ohio Department of Taxation’s website under the listing “Ohio Sales Tax.”

At the start of the examination period, no Ohio county had local sales tax under 6.25%. Since receiving the examiners’ findings, the Company has implemented a revised claim procedure.

Further, at the examiners’ recommendation, the Company identified all claims since the Company was admitted to Ohio in 2001 where the claimant received less than the total amount of sales tax due based on the local sales tax rate. The Company supplied detailed documentation of its additional claim payment calculations and the claimants paid.

Accordingly, the examiners have no recommendations.

Personal Injury Claim Settlements

Standard: Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

Test: Were the Company’s claim settlements free of unfair practices as prohibited by R.C. 3901.20, and as defined in R.C. 3901.21, Ohio Adm.Code 3901-1-07(C)(6) and (8), and Ohio Adm.Code 3901-1-54(G)(9) and (10)?

Test Methodology:

- The examiners considered the following to be an exception:
 1. Any indication of a pattern settlement;
 2. Any indication of the Company’s deliberate action to compel a first-party claimant to litigate;
 3. Failure to document that the settlement amount offered and/or paid was fair and reasonable;
 4. Any indication that the Company compelled claimant to accept less than amount awarded in arbitration; and,
 5. Failure to document the application of comparative negligence to any claim settlement or any indication that the Company failed to fully disclose such information to a claimant upon the claimant’s written request.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
BI Paid	326	50	50	0	93%	100%
UMBI Paid	85	85	85	0	93%	100%

The standard for compliance is 93%. The Company’s practices met this standard.

Claims Not Denied and Closed Without Payment

Standard: Claims are properly handled in accordance with policy provisions and applicable statutes and rules.

Test: Was the Company’s decision to close the claim reserve without payment appropriate based on the results of Company’s investigation and free of any unfair, deceptive or misleading practice(s) prohibited by R.C. 3901.20, and defined by 3901.21(B), and Ohio Adm.Code 3901-1-54(E)(1) and (2)?

Test Methodology:

- The examiners used the definition of “Investigation” as it appears in Ohio Adm.Code 3901-1-07(C)(17).
- The examiners considered the following to be an exception:
 1. Failure to conduct a thorough investigation appropriate to the type and severity of the claim reported; and,
 2. Failing to disclose all pertinent policy coverages to first party claimants.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Bodily Injury	130	50	50	0	93%	100%
Collision	386	50	50	0	93%	100%
Property Damage	514	50	50	0	93%	100%
UM/UIM	81	81	81	0	93%	100%

The standard for compliance is 93%. The Company’s practices met this standard.

Denied Claims

Standard: “*Denied*” claims are handled in accordance with policy provisions and state statutes and rules.

Test: When a claim was denied, was the Company’s settlement free of unfair practices as prohibited by R.C. 3901.20, and defined by R.C. 3901.21(B), and did it conform with the requirements Ohio Adm.Code 3901-1-07(C)(14) and 3901-1-54(E)(1) and (G)(1),(2),(3) and (5)?

Test Methodology:

- The examiners requested the Company identify the subset of claims “denied” from the claim records it reported as “closed without payment.”
- The examiners removed from the sample and replaced 24 PD claims:
 - o Two were removed because the PD claim was paid, not denied;
 - o Three were removed because they were not third-party PD claims; and,
 - o The remaining 19 claims were removed because the PD claim was not denied, but closed without payment.
- The examiners removed from the population:
 - o Four Collision claims. Three were not denied but closed without payment. One was not an Ohio claim.
 - o Eight BI claims. Five were not denied but closed without payment and three were duplicate records.
 - o Two UMBI claims. One was a duplicate claim and one was not denied but closed without payment.
- The examiners considered the following to be an exception:
 1. Failure to respond to a demand for payment within 21 days of receipt of a properly executed proof of loss when the claim amount was known and not in dispute;
 2. A claim denied solely on the basis that the proof of loss is not on the insurer's usual form when the form of the proof of loss was not material;
 3. Failure to notify the Department of any indication of fraud within 60 days of proof of loss;

4. If the denial is based on a specific provision, condition or exclusion, failure to reference that specific provision, condition or exclusion in its notice to the claimant;
5. A claim denied to a first-party claimant on consideration that others should assume the responsibility for payment;
6. Failure to provide an unrepresented claimant with at least 60 days notice of any statute of limitations expiration;
7. Any claim denied solely on the insured's request to do so without making an independent evaluation of the insured's liability; and,
8. Failure to disclose all coverages and benefits available to a first-party claimant.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Collision Denied	40	40	40	0	93%	100%
PD Denied	349	50	49	1	93%	98%
BI Denied	60	60	56	4	93%	93%
UMBI Denied	18	18	18	0	93%	100%

The standard for compliance is 93%. The Company's practices met this standard.

Examiners' comments:

All five errors lacked a copy of the denial letter in the claim file. Three of the four errors in the BI population were all claimants in a single BI claim file.

The exam period coincided with a time period when the Company made changes to its claims record systems that included new procedures to image hard copy claim documents. From the claims notes, it appears each claimant was sent a letter, but copies of these letters were not imaged. Accordingly, the examiners have no recommendations concerning the Company's claim documentation procedures and practices.

Litigated Claims

Methodology:

- The population was defined as all lawsuits closed during the examination period that named the Company as a defendant, or named the insured as defendant and was defended by the Company as required by the policy provisions. Each claimant was considered a separate record.
- The examiners removed three records which were outside the definition of the population for the following reasons:
 - o No suit was filed;
 - o The Company was not named in the suit. The policy limits had been exhausted and the third party claimant was attempting to recover additional amounts from the insured; and,

- o The Company initiated the lawsuit to subrogate against an uninsured motorist.

Standard: Claim handling practices do not compel claimants, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

Test: Did the Company offer to claimants, who have made fair and reasonable claims and in which liability has become reasonably clear, amounts which were fair and reasonable as shown by the insurer’s investigation of the claim, providing the amounts so offered were within policy limits in accordance with policy provisions? {Ohio Adm.Code 3901-1-07(C)(6)}

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Claims Litigated	28	28	28	0	93%	100%

The standard for compliance is 93%. The Company’s practices met this standard.

Standard: Claim handling practices do not compel claimants, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

Test: Did the Company comply with the Rule that prohibits a company from attempting to compel claimants to accept settlements or compromises less than the amount awarded in arbitration by making known a policy of appealing arbitration awards in favor of claimants? {Ohio Adm.Code 3901-1-07(C)(8)}

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Claims Litigated	28	28	28	0	93%	100%

The standard for compliance is 93%. The Company’s practices met this standard.

Standard: Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

Test: Was the Company’s claim settlement free from practices that resulted in compelling first party claimants to litigate by offering substantially less than the amounts claimed compared to the amount ultimately recovered in actions brought by such claimants? {Ohio Adm.Code 3901-1-54(G)(10)}

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
Claims Litigated	28	28	28	0	93%	100%

The standard for compliance is 93%. The Company's practices met this standard.

POLICYHOLDER SERVICES

Methodology:

- The examiners reviewed all written procedures relating to policyholder service.
- The Company supplied a report of all consumer complaints received during the examination period regardless of source. The Company confirmed that there were no complaints received by the Company other than those referred by the Department.
- The examiners reviewed the entire population of seven consumer complaints.
- The examiners considered the following to be an exception:
 1. A failure to respond appropriately to the consumer's inquiry, request, or complaint;
 2. If appropriate, a failure to take follow up action as the result of the consumer's inquiry, request, or complaint; and,
 3. If a claim was the subject of a complaint, failure to respond to a Department complaint concerning a claim within the 21 days specified by Ohio Adm.Code 3901-1-54(F)(4).

Standard: An insurer shall adopt and implement reasonable standards for the proper handling of written communications, primarily expressing grievances, received by the insurer from insureds or claimants.

Test: Did the Company adopt and implement reasonable standards for handling written communications, primarily expressing grievances, including procedures to make a complete investigation of an insured's or claimant's complaint and respond as required by Ohio Adm.Code 3901-1-07(C)(15)?

Qualifying Test: If a claim was the subject of a complaint, did the Company respond to the Department within the 21 calendar days specified by Ohio Adm.Code 3901-1-54(F)(4)?

Findings:

Population	Yes	No	Standard	Compliance
7	5	2	90%	71%

The standard for compliance is 90%. The Company's practices failed to meet this standard.

Examiners' Comments:

The Company failed to respond to the Department within 21 calendar days regarding consumer complaints.

Examiners' Recommendations:

The examiners recommend that the Company:

1. Establish controls to assure that timely response is made to complaints presented by the Department as required by Ohio Adm.Code 3901-1-54(F)(4), if a claim is the subject of the complaint;
2. Confirm that controls are in place to make timely response to complaints from claimants as required by Ohio Adm.Code 3901-1-07(C)(15) and Ohio Adm.Code 3901-1-54(F)(3), if a claim is the subject of the complaint; and,
3. Establish internal audit practices to make certain that responses to complaints, regardless of source, are timely and appropriate, as required by Ohio Adm.Code 3901-1-07(C)(15); and if a claim was the subject of a complaint, Ohio Adm.Code 3901-1-54(F)(3) and (4).

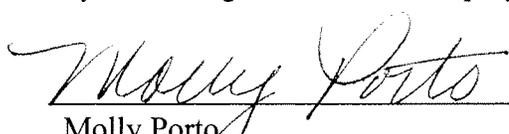
SUMMARY

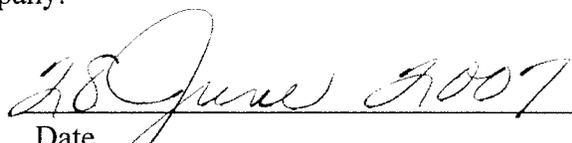
The examination found the Company to be out of compliance in the following areas:

<u>Areas of Review</u>	<u>Compliance Standard</u>	<u>Compliance Rate</u>
<p>Appointments Were the persons reported by the Company as selling, soliciting, or negotiating for insurance appointed by the Company as required by R.C. 3905.20?</p>	90%	87%
<p>Automobile Cancellations—Non-Payment of Premium Did the Company’s cancellation procedures and practices, when the reason for cancellation is other than non-payment of premium conform to R.C. 3937.31, 3937.32, and 3927.33?</p>	90%	0%
<p>Automobile Cancellations—Other than Non-Payment of Premium Did the Company’s cancellation procedures and practices, when the reason for cancellation is other than non-payment of premium conform to R.C. 3937.31, 3937.32, and 3927.33?</p>	90%	0%
<p>Automobile Policy Non-Renewal Did the Company’s non-renewal of the policy qualify as a “refusal to renew” as defined in R.C. 3937.31 and did the Company’s non-renewal procedures and practices conform to R.C. 3937.34?</p>	90%	0%
<p>Automobile Cancellations at the Insured’s Request to “Rewrite” Did the Company’s procedures and practices, when an insured requested an existing policy to be cancelled and replaced with another policy (“rewrite”), conform to R.C. 3937.31?</p>	non-compliant	procedures
<p>Collision Partial Losses Paid—Use of LKQ Parts Where applicable, did repair estimates, prepared by the Company, or prepared on the Company’s behalf, clearly indicate when the repair included “Like, Kind, and Quality” (“LKQ”) parts and the name and location of the licensed salvage dealer where the parts are to be obtained as required by Ohio Adm.Code 3901-1-54(H)(4)?</p>	93%	80%

<u>Areas of Review</u>	<u>Compliance Standard</u>	<u>Compliance Rate</u>
<p>Property Damage Partial Losses Paid—Use of LKQ Parts Where applicable, did repair estimates prepared by the Company, or prepared on the Company’s behalf, clearly indicate when the repair included “Like, Kind, and Quality” (“LKQ”) parts and the name and location of the licensed salvage dealer where the parts are to be obtained as required by Ohio Adm.Code 3901-1-54(H)(4)?</p>	93%	77%
<p>Collision Total Loss—Sales Tax Did the Company pay and/or reimburse sales tax on vehicle total loss settlements as required by Ohio Adm.Code 3901-1-54(H)(7)(f)?</p>	93%	40%
<p>Property Damage Total Loss—Sales Tax Did the Company pay and/or reimburse sales tax on vehicle total loss settlements as required by Ohio Adm.Code 3901-1-54(H)(7)(f)?</p>	93%	28%
<p>Policyholder Service Did the Company adopt and implement reasonable standards for handling written communications, primarily expressing grievances, including procedures to make a complete investigation of an insured’s or claimant’s complaint and respond as required by Ohio Adm.Code 3901-1-07(C)(15) and where applicable make response to claim related complaints from the Department within 21 calendar days?</p>	90%	71%

This concludes the report of the market conduct examination of First Acceptance Insurance Company. The examiners would like to acknowledge the assistance and cooperation provided by the management and the employees of the Company.


 Molly Porto
 Examiner-in-Charge


 Date

COMPANY RESPONSE

First Acceptance Insurance Company, Inc.

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April 17, 2007

Daniel J. Atkisson, CPCU, CIDM, CIE
Insurance Compliance Supervisor
Ohio Department of Insurance
2100 Stella Court
Columbus, OH 43215-1067

RECEIVED
APR 19 2007
OHIO DEPT. OF INSURANCE
MARKET CONDUCT DIVISION

RE: Market Conduct Examination of First Acceptance Insurance Company NAIC #10336

Mr. Atkisson:

This is in response to the draft market conduct examination report directed to our company dated January 3, 2007. Provided below are our responses to the Department's comments and recommendations.

New Business Applications—Appointed Agents

Test: Were the persons reported by the Company as selling, soliciting, or negotiating for insurance appointed by the Company as required by R.C. 3905.20?

Findings:

Policies Issued	Yes	No	Standard	Compliance
26,890	23,439	3,451	90%	87%

The standard for compliance is 90%. The Company's practices failed to meet this standard.

Examiners' Recommendations:

The examiners recommend that the Company:

1. Establish controls to assure that every person acting as an "insurance agent," as defined in R.C. 3905.01(D), is properly licensed and appointed at the time he/she accepts an application for insurance from an Ohio consumer.
2. Review its record-keeping systems to make certain it collects, and can readily access, data sufficient to permit it to confirm that each person acting as an "insurance agent" is licensed and appointed at the time he/she accepts an application for insurance from an Ohio consumer.
3. Establish internal audit practices to make certain that agent appointments are current.

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Company Response:

The Company immediately made the required appointments for the individuals who were not appointed at the time an application was accepted. The Company has implemented the following new controls in order to assure the proper steps will be taken for future appointments: 1) the Sales Department has appointed the Assistant Vice President of Sales/Marketing Department to oversee the licensing and appointing process for its agents; 2) a specific administrative assistant has been placed over the Ohio licensing and appointment process; 3) a new spreadsheet and tracking system has been implemented to record license inception and expiration dates as well as appointment inception and expiration dates; 4) new measures have been taken through the AS400 system to monitor or safeguard the process of assigning and activating Agent Codes for new employees based solely on compliance with state regulations; and 5) the Compliance Department is implementing its internal audit procedures which will track and audit sales agents licensing and appointments on a periodic basis.

Automobile Policy Cancellations—Non-Payment of Premium

Test: Did the Company's cancellation procedures and practices for non-payment of premium conform to R.C. 3937.31, 3937.32, and 3927.33?

Findings:

Population	Sample	Yes	No	Standard	Compliance
17,263	100	0	100	90%	0%

The standard of compliance is 90%. The Company's practices failed to meet this standard.

Examiner's Recommendations:

As reported above, the Company has already made changes to its policy cancellation forms to bring them into compliance with RC 3937.31 through 3937.33.

The examiners recommend that the Company:

1. Establish controls and internal audit practices to assure that all cancellation procedures and practices conform to R.C. 3937.31 through R.C. 3937.33.
2. Establish controls to assure that notice mailing dates are recorded accurately so that information in the Company's data systems can be relied upon when auditing for compliance with applicable statutes and regulations.

Company's Response

Upon recommendations of examiners, the Underwriting Department has instituted a periodic review process of printings and mailing to insure compliance with to Ohio's laws and regulations. The Company immediately made corrections while the auditors were in-house to its notice of cancellations and printing of required wording.

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1. In order to assure future controls and practices are in place for the company to conform with R.C. 3937.31 through R.C. 3937.33, the company is implementing an internal audit program through the direction of the company's Compliance Department, which will involve a periodic rotating state audit of all documentation and procedures through all departments of the company to assure compliance with all states' laws and regulations. Furthermore, all changes to the forms will be first reviewed by the Director of Compliance before going to IT for implementation, and IT must receive the proper signature approvals before the changes are entered into production.
2. Currently, the company's operational procedures provide that its operating systems run seven days a week with notices being processed on weekends, including holidays. This "Processed Date" appears in our system and on the mailed notices. However, when the processed day takes place on a Sunday or Holiday, the mail is taken to the post office the following day when the post office is open. We were compliant in our number of days notice given, as found using the postmark date on the bulk mailing sheets, but the department found it difficult to easily access this date as our system only showed the "processed date," and not the date of mailing.

In order to make this information more accessible for auditing purposes, the IT Department will add another field into the system data to show "Mailing Date," which will be the actual date of mailing. Thus, if the system processed this on Sunday, January 28th, and shows the "Processed Date" as January 28, it will also show a "Mailing Date" as Monday, January 29. and the bulk listing postmark date will correspond. This "Mailing Date" will also be shown on the actual mailed notice, in lieu of the "Processed Date" that is found there currently.

Automobile Policy Cancellations—Other than Non-Payment of Premium

Test: Did the Company's cancellation procedures and practices, when the reason for cancellation is other than non-payment of premium, conform to R.C. 3937.31, 3937.32, and 3937.33?

Findings:

Population	Sample	Yes	No	Standard	Compliance
5	5	0	5	90%	0%

The standard for compliance is 90%. The Company's practices failed to meet this standard.

Examiner's Recommendations:

As reported above, the Company has already made changes to its policy cancellation forms to bring them into compliance with RC 3937.31 through 3937.33.

The examiners recommend that the Company:

1. Establish controls and internal audit practices to assure that cancellations for any reason other than nonpayment of premium conform to R.C. 3937.31 through R.C. 3937.33.
2. Establish controls to assure that notice mailing dates are recorded accurately so that information in the Company's data systems can be relied upon when auditing for compliance with applicable statutes and regulations.

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Company Response

Upon recommendations of examiners, the Underwriting Department has instituted a monthly review process of printings and mailing for compliance with Ohio's laws and regulations.

In order to assure future controls and practices are in place for the company to conform with R.C. 3937.31 through R.C. 3937.33, the company is implementing an internal audit program through the direction of the company's Compliance Department, which will involve a monthly rotating state audit of all documentation and procedures through all departments of the company to assure compliance with all states' laws and regulations. All changes to the forms will be first reviewed by the Director of Compliance before going to IT for implementation, and IT must receive the proper signature approvals before the changes are entered into production.

Furthermore, the system has been modified so that a cancellation cannot be entered and processed unless the underwriter enters a reason for the cancellation that will appear on the cancellation notice. This will prevent manual errors from personnel.

Automobile Policy Non-Renewals

Test: Did the Company's non-renewal of the policy qualify as a "refusal to renew," as defined in R.C. 3937.31, and did the Company's non-renewal procedures and practices conform to R.C. 3937.34?

Findings:

Population	Sample	Yes	No	Standard	Compliance
26	26	0	26	90%	0%

The standard of compliance is 90%. The Company's practices failed to meet this standard.

Examiner's Recommendations:

The examiners recommend that the Company:

1. Establish controls to assure that all Ohio policies are issued for the two year guaranteed period mandated in R.C. 3937.31.
2. Establish controls, including data system controls, to assure that the Company's cancellation notices list complete and correct reasons for cancellation and are free of any misleading information.
3. Establish training for agents, underwriters and other policy processing personnel to make certain all are aware of Ohio's "two year guaranteed" renewal requirements as they apply to cancellations and refusals to renew.
4. Establish internal audit practices to make certain that procedures and practices for refusals to renew and cancellations for any reason other than non-payment of premium conform to R.C. 3937.31 through R.C. 3937.33.
5. Establish controls to assure that notice mailing dates are recorded accurately so that information in the Company's data systems can be relied upon when auditing for compliance with applicable statutes and regulations.

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Company Response

1. Nonrenewals for the State of Ohio have been assigned to a specific underwriter for processing and only that underwriter will have access to this nonrenewal process for Ohio to cut down on personnel error in entering the nonrenewals. The Compliance Department will also be tracking and monitoring the process and conducting monthly audits of the process.
2. Upon recommendations of examiners, a monthly review process of printings and mailing will be reviewed for any changes. Also, all changes are to be approved and signed off on before entered into production. Furthermore, the system has been modified so that a cancellation cannot be entered and processed unless the underwriter enters a reason for the cancellation that will appear on the cancellation notice. This will further prevent manual errors from personnel.
3. Nonrenewals for the State of Ohio have been assigned to a specific underwriter for processing and only that underwriter will have access to this nonrenewal process for Ohio to cut down on personnel error in entering the nonrenewals. This underwriter will be trained in the laws and regulations that govern this nonrenewal process.
4. Upon recommendations of examiners, the Underwriting Department will monthly review the process of printings and mailing will be reviewed for any changes. In order to assure future controls and practices are in place for the company to conform with R.C. 3937.31 through R.C. 3937.33, the company is implementing an internal audit program through the direction of the company's Compliance Department, which will involve a monthly rotating state audit of all documentation and procedures through all departments of the company to assure compliance with all states' laws and regulations.
5. Please see the Company's response 2. under Automobile Policy Cancellations – Non-Payment of Premium section.

Automobile Policy Cancellations—“Rewrites” at the Insured's Request

The examiners reviewed 103 policies cancelled and rewritten at the insured's request. The Company's cancellation procedures and practices were also reviewed. There are various reasons for rewriting policies including changing the name of the insured, excluding a driver, or changing the billing date. In explaining its rewrite process, the Company advised that, when a policy is rewritten, the Company considers the rewritten policy to be “new” business. Accordingly, the Company procedures then provide for an additional 89 day cancellation period for the “rewrite,” as permitted by R.C. 3937.31(C).

Examiner's Recommendations:

The examiners recommend that the Company:

1. Revise procedures to assure that policies rewritten continue to be identified by the original contract inception date and any decision by the Company to cancel or refuse to renew conforms to R.C. 3937.31 through R.C. 3937.34.
2. Establish internal audit practices to make certain that procedures and practices for rewrites for any reason conform to R.C. 3937.31 through R.C. 3937.34.

Company Response

Upon recommendations of the examiners, the Underwriting Department has changed the procedures to assure that policies rewritten continue to be identified by the original contract inception date and that any

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decisions made to cancel or refuse to renew will conform to R.C. 3937.31 through R.C. 3937.34. The Underwriting Department will also begin a process of self-auditing their procedures for rewrites to maintain conformance with R.C. 3937.31 through R.C. 3937.34.

In order to assure future controls and practices are in place for the company to conform with R.C. 3937.31 through R.C. 3937.33, the company is implementing an internal audit program through the direction of the company's Compliance Department, which will involve a periodic rotating state audit of all documentation and procedures through all departments of the company to assure compliance with all states' laws and regulations.

Use Of "Like Kind and Quality" Parts In Repair Estimates

Test: Where applicable, did repair estimates prepared by the Company, or prepared on the Company's behalf, clearly indicate when the repair estimate included "Like Kind and Quality" ("LKQ") parts and the name and address of the licensed salvage dealer where the parts were to be obtained as required by Ohio Adm.Code 3901-1-54(H)(4)?

Findings:

Claim Feature	Population	Sample	LKQ	Yes	No	Standard	Findings
Collision Partial	2,118	50	25	20	5	93%	80%
PD Partial	4,355	75	22	17	5	93%	77%

The standard for compliance is 93%. The Company's practices failed to meet this standard.

Examiners' Recommendations:

The examiners recommend that the Company:

1. Establish controls to make certain the name and address of the licensed salvage dealer is clearly identified when LKQ parts are used in repair estimates; and,
2. Establish and implement internal audit procedures to monitor and review the Company's claims procedures and practices for LKQ parts in repair estimates at regular intervals.

Company Response

With regard to the use of "Like, Kind and Quality" ("LKQ") parts, all staff and independent appraisers have been directed to identify clearly on the appraisal form the name and address of the salvage dealer when LKQ parts are used in a repair estimate. Audit procedures have been implemented by which appraisals are randomly audited for accuracy and to confirm the identification of LKQ parts dealer.

Policyholder Services

Test: Did the Company adopt and implement reasonable standards for handling written communications, primarily expressing grievances, including procedures to make a complete investigation of an insured's or claimant's complaint and respond as required by Ohio Adm.Code 3901-1-07(C)(15)?

Qualifying Test: If a claim was the subject of a complaint, did the Company respond to the Department within the 21 calendar days specified by Ohio Adm.Code 3901-1-54(F)(4)?

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Findings:

Population	Yes	No	Standard	Compliance
7	5	2	90%	71%

The standard for compliance is 90%. The Company's practices failed to meet this standard.

Examiners' Recommendations:

The examiners recommend that the Company:

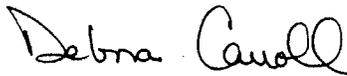
1. Establish controls to assure that timely response is made to complaints presented by the Department as required by Ohio Adm.Code 3901-1-54(F)(4), if a claim is the subject of the complaint;
2. Confirm that controls are in place to make timely response to complaints from claimants as required by Ohio Adm.Code 3901-1-07(C)(15) and Ohio Adm.Code 3901-1-54(F)(3), if a claim is the subject of the complaint; and,
3. Establish internal audit practices to make certain that responses to complaints, regardless of source, are timely and appropriate, as required by Ohio Adm.Code 3901-1-07(C)(15); and if a claim was the subject of a complaint, Ohio Adm.Code 3901-1-54(F)(3) and (4).

Company Response

The Company has currently identified Debora Carroll, Director of Compliance, Compliance Department, as the contact person within the company to whom all complaints should be forwarded upon receipt. The Compliance Department has contacted all Consumer Services Divisions to advise them of the new contact information shown below. A new complaint database structure has been constructed using the NAIC's model for data fields. Once received, complaints are promptly logged into the database, forwarded to the appropriate person(s) for response, and placed on diary for follow-up. The use of the diary assures that complaints are responded to on a timely basis. This process is subject to weekly audits by the Compliance Department each Monday morning and a list of all responses due that upcoming week is emailed to each Department to make certain that all complaints, regardless of the source, are responded to in a timely manner. The Compliance Department has also hired a Regulatory Compliance Analyst who manages the complaint database system and performs the weekly/daily updating tasks. In addition, monthly reports are generated by the Director of Compliance using information compiled in the complaint database system, and these reports are sent to the appropriate management and are reviewed monthly for trends or other discriminating information that may help formulate improvements in the company's processes.

We would like to thank the auditors for their professionalism and cooperation during this examination. Please let me know if I need to provide you with anything further.

Sincerely,



Debora Carroll
Director of Compliance

First Acceptance Insurance Company, Inc.
3322 West End Avenue, Nashville, TN 37203

STATE OF OHIO
DEPARTMENT OF INSURANCE
2100 Stella Court
Columbus, Ohio 43215

IN THE MATTER OF : **CONSENT ORDER**
FIRST ACCEPTANCE INSURANCE :
COMPANY, INC., NAIC # 10336 :
MARKET CONDUCT EXAMINATION :

The Superintendent of the Ohio Department of Insurance (“Department”) is responsible for administering Ohio insurance laws pursuant to Section 3901.011 of the Ohio Revised Code (“R.C.”). First Acceptance Insurance Company, Inc. (“Company”) is authorized to engage in the business of insurance in the State of Ohio and, as such, is under the jurisdiction of the Superintendent and the Department. The Department examined the Company’s private passenger automobile insurance business in the State of Ohio for the period of May 1, 2005, through April 30, 2006.

SECTION I

BASED UPON THE EXAMINATION, THE SUPERINTENDENT DETERMINED THAT:

The Company was found to be in violation of Ohio statutes and regulations in files and and claims sampled.

- A. To wit, the Company failed to properly maintain agent appointments. As a result, the Company did not comply with the requirements of R.C. 3905.20.
- B. To wit, the Company failed to properly record the mailing dates of cancellations. As a result, the Company’s cancellation procedures and practices did not conform to R.C. 3937.31, 3937.32 and 3937.33.
- C. To wit, the Company failed to include an appeal notice in the cancellation notices. As a result, the Company did not comply with the requirements of R.C. 3937.32(F).
- D. To wit, the Company failed to process non-renewals on the biennial anniversary. As a result, the Company did not conform to the requirements of R.C. 3937.31.

- E. To wit, the Company's "rewrite" procedures improperly established a new 90-day underwriting procedure. As a result, the Company's procedures and practices did not conform to R.C. 3937.31.
- F. To wit, the Company failed to provide the name and address of the licensed salvage parts dealer on collision and property damage liability partial loss repair estimates for "like kind and quality" ("LKQ") parts as required by Ohio Admin. Code 3901-1-54(H)(4).
- G. To wit, the Company failed to pay the correct local sales tax rate on collision and property damage actual cash value ("ACV") total loss settlements as required by Ohio Admin. Code 3901-1-54(H)(7)(f).
- H. To wit, the Company failed to respond to consumer complaints in a timely manner as required by Ohio Admin. Code 3901-1-54(F)(4). As a result, the Company violated Ohio Admin. Code 3901-1-07(C)(15).

SECTION II

It is hereby agreed to by the parties that:

- A. The Superintendent and the Company enter into this Consent Order to resolve the allegations as set forth in Section I of this order. Further, the Company neither admits nor denies the allegations as set forth in Section I.
- B. The Company has been advised that it has the right to a hearing before the Superintendent pursuant to R.C. Chapter 119; that, at a hearing, the Company would be entitled to appear in person, to be represented by an attorney, or other representative who is permitted to practice before the Department; and that, at a hearing, the Company would be entitled to present its position, arguments or contentions in writing and to present evidence and examine witnesses appearing for and against the Company. The Company hereby waives all such rights.
- C. The Company consents to the jurisdiction of the Superintendent and the Department to determine the issues set forth herein. The Company expressly waives any prerequisites to jurisdiction that may exist.
- D. The Company has represented to the Department that the Company has implemented a new set of controls in order to ensure that the proper steps are taken for the appointment of agents, as required by R.C. 3905.20.
- E. The Company has represented to the Department that the Company has instituted a periodic review process of printings and mailing to insure compliance with

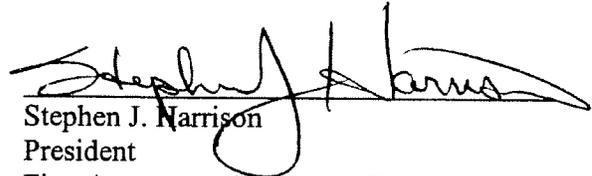
Ohio's laws and regulations regarding cancellation notices, as required by R.C. 3937.31, 3937.32 and 3937.33. As part of this process, the Company has represented to the Department that the Company has added another field into the Company's information system data to show the "Mailing Date" that provides the actual date on which cancellation notices are mailed.

- F. The Company has represented to the Department that the Company has instituted a monthly review process of printings and mailing for compliance with Ohio's laws and regulations regarding cancellation notices. As part of this process, the Company has represented to the Department that the Company has added an appropriate appeal notice to the cancellation notices to comply with R.C. 3937.32(F).
- G. The Company has represented to the Department that the Company has instituted new controls, procedures and practices to ensure that non-renewals are processed on the biennial anniversary in conformance with R.C. 3937.31. As part of this process, the Company has represented to the Department that all Ohio non-renewals are assigned to a specific underwriter trained in the laws and regulations that govern this non-renewal process.
- H. The Company has represented to the Department that the Company has changed its procedures to ensure that "rewritten" policies continue to be identified by the original contract inception date and that any decision made to cancel or renew a policy will conform to R.C. 3937.31 through R.C. 3937.34.
- I. The Company has represented to the Department that the Company has revised its procedures to ensure that the name and address of the licensed salvage dealer is clearly identified on the appraisal form when a LKQ part is used on collision and property damage liability partial loss repair estimates, as required by Ohio Admin. Code 3901-1-54(H)(4).
- J. The Company has represented to the Department that the Company has instituted policies, procedures and controls to ensure that local sales taxes on collision and property damage ACV total loss settlements are paid in accordance with Ohio Admin. Code 3901-1-54(H)(7)(f).
- K. The Company has represented to the Department that the Company has identified all persons who received collision and property damage ACV total loss settlements in Ohio since admission of the Company in this state in 2001 to the present. Further, the Company has represented to the Department that the Company has recalculated the sales tax amount on each of these claims using the correct local sales tax rate and has reimbursed all applicable persons for the appropriate amounts owed to those persons on their total loss settlements.
- L. The Company has submitted to the Department a report of the remediation outlined in Paragraph K of Section II of this Consent Order, including the name of

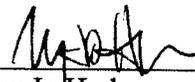
the each claimant/insured, the date of loss, the amount originally paid, the additional amount paid and a total of the additional amounts paid. The Company has represented to the Department that the report submitted is complete and final, covering all of the persons identified in Paragraph K of Section II of this Consent Order.

- M. The Company has represented to the Department that the Company has developed new controls, procedures and practices to ensure that all complaints are handled in a timely manner, as required by Ohio Admin. Code 3901-1-54(F)(3) and (4) and Ohio Admin. Code 3901-1-07(C)(15).
- N. The Company will pay a Market Conduct penalty in the amount of \$15,000 by check or money order made payable to the "Ohio Department of Insurance" no later than thirty days after the date of execution of this Consent Order by the Superintendent.
- O. The Company will pay for the expenses of the examination. Expense reimbursement is invoiced during the normal quarterly billing cycle.
- P. The Company waives any and all causes of action, claims or rights, known or unknown, that the Company may have against the Department, and any employees, agents, consultants, contractors or officials of the Department, in their individual and official capacities, as a result of any acts or omissions on the part of such persons or firms arising out of this matter.
- Q. The Company has read and understands this Consent Order. The Company further understands that it has the right to seek counsel of its choice and to have counsel review this Consent Order.
- R. This Consent Order has the full force and effect of an Order of the Superintendent. Failure to abide by the terms of this agreement shall constitute an actionable violation in and of itself without further proof and may subject the Company to any and all remedies available to the Superintendent.
- S. This Consent Order shall be entered in the Journal of the Ohio Department of Insurance. All parties understand and acknowledge that this Consent Order is a public document pursuant to R.C. 149.43.

Date: 6-7-07


Stephen J. Harrison
President
First Acceptance Insurance Company, Inc.

Date: 25 June 2007


Mary Jo Hudson
Superintendent of Insurance