

OHIO DEPARTMENT OF INSURANCE

MARKET CONDUCT EXAMINATION

OF

FIRST ACCEPTANCE INSURANCE COMPANY

NAIC #10336



**As of
July 31, 2012**



John R. Kasich, Governor
Mary Taylor, Lt. Governor/Director

Honorable Mary Taylor
Lt. Governor/Director
Ohio Department of Insurance
50 W. Town St. Ste. 300
Columbus, OH 43215

Lt. Governor/Director:

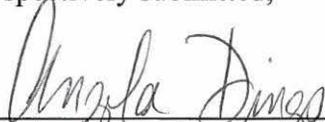
Pursuant to your instructions and in accordance with the powers vested under Title 39 of the Ohio Revised and Administrative Codes, a market conduct examination was conducted on the Ohio business of:

First Acceptance Insurance Company
NAIC Company Code 10336

The examination was conducted at the Company's home office located at
3813 Green Hills Village Drive, Nashville TN 37215
and

The offices of the Ohio Department of Insurance located at
50 W. Town St. Ste. 300
Columbus, OH 43215

Respectively submitted,



Angela Dingus, MCM, AIC, AINS
Chief, Market Conduct Division
Office of Risk Assessment



Date

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FOREWORD

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

SCOPE OF EXAMINATION

On October 22, 2012, the Market Conduct Division, Ohio Department of Insurance (“Department”), conducted an examination into the non-financial business practices of First Acceptance Insurance Company (“Company”). The on-site examination was conducted at the Company’s home office and primary business location in Nashville, Tennessee. The examination was restricted to a review of the Company activities for Ohio private passenger automobile (“automobile”) insurance policies for the period of August 1, 2011 through July 31, 2012.

The examination report is a report by test and was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners (“NAIC”) and State of Ohio’s applicable statutes and regulations. The examination included the following areas of the Company’s operations:

- Company Operations
- Claims
- Policyholder Services/Consumer Complaints
- Underwriting/Cancellations

METHODOLOGY

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

Only the 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 are 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.

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 provided reports of policy and claim data in file formats. Except as otherwise noted, all tests were conducted on a sample of files randomly selected from a given report. The samples were pulled from populations consisting of Ohio policies and claim files and were selected 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 OPERATIONS

First Acceptance Insurance Company (“Company”) is a Tennessee domestic stock insurance company that maintains its statutory home office and primary business location in Nashville, Tennessee. It operates under the trade name “Acceptance Insurance.”

The Company writes private passenger automobile, tenant homeowner insurance and financial bonds in the State of Ohio, and is admitted in 25 states, but writes business in only 12 states. The Company writes in Alabama, Florida, Georgia, Illinois, Indiana, Mississippi, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee and Texas.

2011 Private Passenger Automobile Insurance

Company	Ohio Direct Premiums	Ohio Incurred Claims Losses
First Acceptance Insurance Company	\$14,078,911	\$8,749,363

UNDERWRITING

Nonrenewal Cancellations—General Methodology

- The examiners reviewed all procedure manuals as part of the examination process.
- The examiners conducted interviews as part of the examination process.
- The Company provided a file of terminated automobile policies.
- The examiners identified the population from the terminated policy file defined by the termination reason.
- The examiners tested the entire population as indicated in the findings below.
- Multiple errors in a single record were counted as one exception.

Automobile Policy Nonrenewal

Standard: Nonrenewal notices comply with policy provisions, Ohio statutes and rules, and Company guidelines.

Test: Did the Company’s nonrenewal of the policy qualify as a “refusal to renew” as defined in ORC 3937.31 and did the Company’s nonrenewal procedures and practices conform to ORC 3937.34?

Test Methodology:

- The examiners tested the total population of policies that the Company identified as “non-renewals” with the purpose of confirming compliance with Ohio statutes and rules.
- 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 two-year anniversary of the policy’s original inception date;
 3. Any non-renewal notice lacking the required information; and,
 4. Any “refusal to renew” effective with less than 30 days notice.

Findings:

Population	Sample	Yes	No	Standard	Findings
13	13	3	10	90%	23%

Examiners' Comments:

The exceptions were a result of the Company nonrenewing policies at other than the two-year anniversary of the policy’s original inception or any subsequent two-year renewal period.

Examiners' Recommendations:

1. The Company should establish controls to confirm that all Ohio non-renewal policies are processed on the two-year period as required by ORC 3937.31.

2. The Company should establish company-wide training for agents, underwriters and other company personnel to confirm adherence to Ohio's "two-year guarantee" renewal requirements as it applies to refusal to renew policies.

Company Comments:

The Company concurred with findings.

GENERAL CLAIM PRACTICES

The examiners reviewed the Company's claims procedure manual to determine whether the procedures meet the requirements of ORC 3901.20, as defined by ORC 3901.21, OAC 3901-1-07, and OAC 3901-1-54, with regard to timely investigation, denial of coverage, and reporting of apparent fraudulent claims. The examiners also reviewed the Company's procedures to assure compliance with ORC 3999.41, which requires a company to adopt an anti-fraud initiative.

The examiners found that the Company's procedures were satisfactory in establishing compliance with Ohio statutes and rules.

SPECIFIC CLAIM REVIEW

General Methodology:

- The Company supplied reports of first and third party automobile claims closed during the exam period.
- The examiners reviewed samples or the entire population to test for compliance with various sections of ORC 3901.20 as defined by ORC 3901.21 and OAC 3901-1-07 and 3901-1-54.
- A claim file was considered an exception if the file documentation precluded the examiner from being able to reconstruct and understand the complete chronology of the claim submission to closure.

Private Passenger Automobile Paid Claims

Timely Initial Contact

Standard: The initial contact by the Company with the claimant is within the required timeframe.

Test: Did the Company make timely contact (15 days of receipt contact) with claimants following the report of a claim required by OAC 3901-1-54(F)(2)?

Test Methodology:

- “Initial contact” included a telephone notice to the Company from the insured, third party claimant, and/or legal representative.
- The examiners considered any claim on which the Company did not contact the claimant within fifteen (15) days from the date of notification of the claim to be an exception.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
First Party Partial	517	50	50	0	93%	100%
First Party Total	179	50	50	0	93%	100%
Third Party Partial	1165	50	50	0	93%	100%
Third Party Total	213	50	50	0	93%	100%

The standard for compliance is 93%. The Company’s handling practices were above this standard.

Timely Investigation

Standard: Investigations conducted in a timely manner.

Test: Did the Company make a decision to accept or deny the claim within 21 days of receipt of a properly executed proof of loss, and if not, was notice sent to the claimant within the 21 day period, and was claimant notified of the status of investigation and the estimated time required for continuing the investigation at least every 45 days thereafter as in OAC 3901-1-54(G) (1)?

Test Methodology:

- The examiners used the definition of “Investigation” according to OAC 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. Failure to conduct an investigation within 21 days of receipt of claim.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
First Party Partial	517	50	50	0	93%	100%
First Party Total	179	50	50	0	93%	100%
Third Party Partial	1165	50	50	0	93%	100%
Third Party Total	213	50	50	0	93%	100%

The standard for compliance is 93%. The Company’s handling practices were above this standard.

Timely Communication

Standard: Company responds to claim communications in a timely manner.

Test: Did the Company respond to any communication from a claimant when that communication suggests a response is appropriate, within 15 days per OAC 3901-1-54(F)(3)?

Test Methodology:

- The examiners considered any failure to respond, within 15 days, to a communication where a response is deemed appropriate, to be an exception.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
First Party Total	179	11	11	0	93%	100%
Third Party Total	213	9	8	1	93%	89%

The standard for compliance is 93%. The Company’s handling practices were below this standard in the Third Party Total category.

The only population of claims that contained any communication where a response was deemed appropriate was the first and third party total losses. The First and Third Party Partial Loss claims files reviewed did not contain any communications to which this test would be applicable.

Examiner Recommendations:

The Company should develop internal controls to assure that claim files include the a response to any communication where a response is deemed warranted.

Company Comments:

The Company concurs with the findings.

Timely 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 release by a lienholder or a salvage title was required to settle an automobile claim, the examiners did not consider the claim “payable” until the Company received the required document(s).
- The examiner considered the following to be an exception:

1. Any claim in which the Company failed to make payment to a first party claimant in ten (10) days once the amount was known and agreed as required by OAC 3901-1-54(G)(6); and,
2. Any claim in which the Company failed to make payment to a third party claimant in five (5) days once the amount was known and agreed as required by OAC 3901-1-07(C)(16).

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Compliance
First Party Partial	517	50	50	0	93%	100%
First Party Total	179	50	50	0	93%	100%
Third Party Partial	1165	50	50	0	93%	100%
Third Party Total	213	50	50	0	93%	100%

The standard of compliance is 93%. The Company’s handling practices were above this standard.

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 when the repair estimate included replacement parts which were not manufactured by the “Original Equipment Manufacturer” (“OEM”), and was the mandatory statutory disclosure wording included on the estimate as required by OAC 3901-1-54(H)(4)?

Test Methodology:

- The examiners considered the following to be an exception:
 1. A repair estimate that failed to clearly show that Non-OEM parts were included in the estimate, and/or
 2. A repair estimate that failed to include the statutory mandated disclosure wording required when non-OEM parts are used to repair a vehicle.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Compliance
First Party Partial	517	50	50	0	93%	100%
Third Party Partial	1165	50	50	0	93%	100%

The standard of compliance is 93%. The Company’s handling practices were above this standard.

Use of “Like Kind and Quality” 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 when the repair estimate included “Like Kind and Quality” (“LKQ”) parts and the name and location of the licensed salvage dealer where the parts were obtained as required by OAC 3901-1-54(H)(4)?

Test Methodology:

- 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/or
 2. Any repair estimate that failed to show the name and location of the licensed salvage dealer where the LKQ parts were obtained.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Compliance
First Party Partial	517	50	47	3	93%	94%
Third Party Partial	1165	50	50	0	93%	100%

The standard of compliance is 93%. The Company’s handling practices were above this standard.

Fair and Reasonable Settlements

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

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, and in which liability has become reasonably clear as required by OAC 3901-1-07(C)(6)?

Test Methodology:

The examiners considered any claim in which the Company failed to document the settlement amount offered and/or paid was fair and reasonable, as an exception.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Compliance
First Party Partial	517	50	50	0	93%	100%
First Party Total	179	50	50	0	93%	100%
Third Party Partial	1165	50	50	0	93%	100%
Third Party Total	213	50	50	0	93%	100%

The standard of compliance is 93%. The Company's claim practices were above this standard.

Vehicle Total Loss—Actual Cash Value

Standard: Claim files handled in accordance with policy provisions and applicable Ohio statutes and rules.

Test: Did the Company calculate actual cash value on total loss in a manner that conformed to OAC 3901-1-54(H)(7)(a-e)?

Test Methodology:

- The examiners considered failure to document that the settlement amount offered and/or paid was fair and reasonable to be an exception.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
First Party Total	179	50	50	0	93%	100%
Third Party Total	213	50	50	0	93%	100%

The standard of compliance is 93%. The Company's handling practices were above this standard.

Vehicle Total Loss—Sales Tax

Standard: Claim files are 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 statutes and rules?

Test Methodology:

Did the Company conform to the sales tax provisions of OAC 3901-1-54(H)(7)(f) and (g)?

- The examiners considered the following to be an exception:
 1. Any failure to pay or reimburse sales tax payment/reimbursement pursuant to OAC 3901-1-54 (H)(7)(f) and (g); and

2. Any failure to use local sales tax rates when paying sales tax on actual cash value settlements.

Findings:

Claim Feature	Population	Sample	Yes	No	Standard	Findings
First Party Total	179	50	11	38	93%	22%
Third Party Total	213	50	38	12	93%	76%

The standard of compliance is 93%. The Company's handling practices were below this standard.

Examiners Comments:

The Company's current handling practices failed to conform to the sales tax provisions of OAC 3901-1-54(H)(7)(f) and (g). This was also an issue in the prior market conduct examination in 2006.

Examiners' Recommendations:

1. The Company should recalculate the sales tax amount on all total loss claims reported within the exam period, and reimburse all applicable claimants for the appropriate amount owed on their total loss settlements.
2. The Company should develop stronger controls to assure the Company offers, pays and/or reimburses sales tax on automobile total loss settlements as required by OAC 3901-1-54(H)(7)(f) and (g).
3. The Company should establish company-wide training for adjusters and other claims personnel to adhere to Ohio's sales tax rule.
4. The Company should conduct internal audits to adhere to the procedures and practices as it applies to sales tax rule to conform to OAC 3901-1-54(H)(7)(f) and (g).

Company Comments:

The Company agreed to the findings and has reviewed and strengthened its sales tax payment process to comply with the sales tax provisions, and is sending sales tax reimbursement offer letters to all claimants identified in the Summary of Findings.

Subrogation

Standard: Claim files handled in accordance with policy provisions and applicable Ohio statutes, and rules.

Test: Did the Company's subrogation demand conform to OAC 3901-1-54(H)(10)?

Test Methodology:

- The examiners considered an exception any subrogation amount that did not include the first party claimants deductible or the Company did not pay the deductible on a proportional basis with first party claimants, unless the deductible had been paid in advance or recovered.

Findings:

Population	Sample	Yes	No	Standard	Findings
101	101	101	0	93%	100%

The standard of compliance is 93%. The Company’s handling practices were above this standard.

POLICYHOLDER SERVICES

Consumer Complaints

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

Test: Has the Company adopted and implemented reasonable standards for handling written communications, primarily expressing grievances, including procedures to make a complete investigation of a complaint and respond as required by OAC 3901-1-07(C)(15)?

Test Methodology:

Prior to the on-site portion of the examination, the examiners reviewed Company complaints for the period August 1, 2011 through July 31, 2012.

Findings:

The Company has formal written procedures for the handling of consumer complaints from the Department of Insurance (DOI) and consumers. The Company’s Consumer Complaints are directed to the Company through the Compliance Department by way of email, fax and/or mail. The complaints originate from state insurance departments, the Better Business Bureau, and individual consumers. All complaints are scanned to pdf format and then logged into the Complaints-Regulatory folder by state using the NAIC model. Responses are prepared by the appropriate business unit and are sent back through the Compliance Department to be logged, reviewed and forwarded to the state. Monthly reports are made to all department heads to review for any emerging trends.

The examiners found the Company’s complaint procedures and complaint handling practices to comply with OAC 3901-1-07(C)(15).

**FIRST ACCEPTANCE INSURANCE COMPANY
EXAMINATION 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>First Party Total Paid Loss Claims Did the file document that sales tax was paid on total loss settlements to conform with OAC 3901-1-54(H)(7)(f) and (g)?</p>	93%	22%
<p>Third Party Total Paid Loss Claims Did the file document that sales tax was paid on total loss settlements to conform to OAC 3901-1-54(H)(7)(f) and (g)?</p>	93%	76%
<p>Did the company respond to any communication from a claimant when that communication suggests is appropriate, within 15 days per OAC 3901-1-54 (F)(3)?</p>	93%	89%
<p>Automobile Policy Nonrenewal Did the Company's nonrenewal of the policy qualify as a "refusal to renew" as defined in ORC 3937.31 and did the Company's non-renewal procedures and practices conform to ORC 3937.34?</p>	90%	23%

SUMMARY

This concludes the report of the Market Conduct Examination of First Acceptance Insurance Company.

The examiners, Laura Price, Ben Hauck, John Pollock and Molly Porto would like to acknowledge the assistance and cooperation provided by the management and the employees of the Company.



Laura Price
Examiner-in-Charge



Date

COMPANY RESPONSE



VIA EMAIL

June 6, 2013

Mr. Don Layson
Insurance Compliance Supervisor
Market Conduct Division
Ohio Department of Insurance
50 W. Town Street, Suite 300
Columbus, Ohio 43215

Re: Market Conduct Examination
First Acceptance Insurance Company

Dear Mr. Layson:

We are in receipt of the draft report for the Market Conduct Examination of First Acceptance Insurance Company ("First Acceptance") conducted in July 2012 and appreciate the opportunity to review the Department's conclusions.

First Acceptance accepts the findings contained in the report as written. We have already implemented policies and procedures to address the issues identified in the examination and will work proactively to prevent their reoccurrence.

Thank you and your staff for the courtesy and professionalism displayed throughout the examination process.

Sincerely,
Robert Rice
Director, Compliance and Ethics
Acceptance Insurance

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 WEST TOWN STREET
3RD FLOOR, SUITE 300
COLUMBUS, OHIO 43215

IN THE MATTER OF:	:	MARY TAYLOR
	:	LT. GOVERNOR/DIRECTOR
TARGETED MARKET CONDUCT	:	
EXAMINATION OF FIRST ACCEPTANCE	:	
INSURANCE COMPANY NAIC # 10336	:	CONSENT ORDER

The Superintendent of the Ohio Department of Insurance (“Superintendent”) is responsible for administering Ohio insurance laws pursuant to Ohio Revised Code (“ORC”) Section 3901.011. First Acceptance Insurance Company (“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. The Superintendent conducted an examination of the Company’s non-financial business practices, procedures, oversight and compliance from August 1, 2011 through July 31, 2012 to ensure compliance with Ohio insurance statutes and regulations (“ laws”).

Section I

As a result of this examination, the Superintendent alleges the following:

- A. The Company violated ORC 3937.31 by failing to renew automobile insurance policies for any mandatory successive two year policy periods.
- B. The Company violated Ohio Administrative Code (“OAC”) 3901-1-54(H)(7)(f) and (g) by failing to provide written notice to claimants of the right to reimbursement of applicable sales tax simultaneously with the conveyance of the settlement check for the total loss of an automobile or, in lieu of reimbursement, pay total loss claimants directly at the time of cash settlement.
- C. The Company violated OAC 3901-1-54(F)(3) by failing to respond within fifteen days to any communication from a claimant where a response is deemed to be appropriate.

Section II

In lieu of further proceedings and to resolve this matter, the Superintendent and the Company hereby agree as follows:

- 1. The Company admits that the allegations contained in Section I above are true and accurate and that it violated the above-referenced sections of the Ohio Revised Code and Ohio Administrative Code.
- 2. The Company shall comply with Ohio insurance laws.
- 3. The Company shall devise and implement an internal audit program to ensure the Company is in compliance with Ohio insurance laws.
- 4. The Company shall make necessary revisions to and thereafter maintain policies, procedures and controls to ensure compliance with Ohio laws, including:

- a. ORC 3937.31 nonrenewal requirements and
 - b. OAC 3901-1-54 and 3901-1-07 claims settlement practice requirements.
5. The Company shall establish company-wide training for agents, underwriters, and other company personnel to ensure compliance with nonrenewal requirements of ORC 3937.31.
 6. The Company shall pay applicable sales taxes to any first and third party claimant who settled a total automobile loss during the examination period in compliance with OAC 3901-1-54(H)(7)(f) and (g).
 7. The Companies shall respond to all future communications requiring a response within 15 days in compliance with OAC 3901-1-54(F)(3).

The Company has been advised that under ORC Chapter 119, it has a right to a hearing before the Superintendent may impose sanctions or penalties; that, at a hearing, the individual representing the Company would be entitled to appear in person, to be represented by an attorney or other representative permitted to practice before the agency, to present its position, arguments, or contentions in writing and to present evidence and examine witnesses appearing for and against it. The Company hereby waives all such rights.

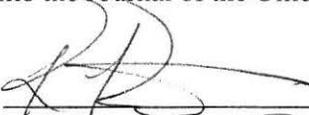
The Company waives any rights it may have under ORC 119.12 to appeal this Consent Order.

The Company waives any and all causes of action, claim or rights, known or unknown, which it 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.

The individual signing on behalf of the Company represents that he or she has the authority to execute this Consent Order on behalf of the Company.

This Consent Order is a public record and shall be entered into the Journal of the Ohio Department of Insurance.

Date: 11-8-2013

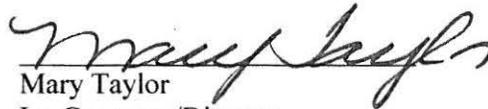
Signature: 

Name (printed) ROBERT RICE

Title: DIRECTOR, COMPLIANCE

FIRST ACCEPTANCE INSURANCE COMPANY

Date: 11/19/13


Mary Taylor
Lt. Governor/Director
Ohio Department of Insurance