

**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In re:)
) Examination No. 0801-05-TGT
First Acceptance Insurance Company (NAIC #10336))

CURATIVE ORDER OF THE DIRECTOR

NOW, on this 20th day of January, 2009, Acting Director Kip Stetzler, after consideration and review of the market conduct examination report of First Acceptance Insurance Company (NAIC #10336), report number 0801-05-TGT, prepared and submitted by the Division of Insurance Market Regulation pursuant to §374.205.3(3)(a), RSMo, does hereby adopt such report as filed. After consideration and review of such report, relevant workpapers, and any written submissions or rebuttals, the findings and conclusions of such report are deemed to be the Director's findings and conclusions accompanying this order pursuant to §374.205.3(4), RSMo.

This order, issued pursuant to §374.205.3, RSMo and §374.046.15. RSMo (Cum. Supp. 2006), is in the public interest.

IT IS THEREFORE ORDERED that the Company shall CURE the violations of law, regulations or prior orders revealed in such report and shall take remedial action to bring the Company into compliance with the statutes and regulations of the State of Missouri and to maintain those corrective actions at all times, including, but not limited to, taking the following actions:

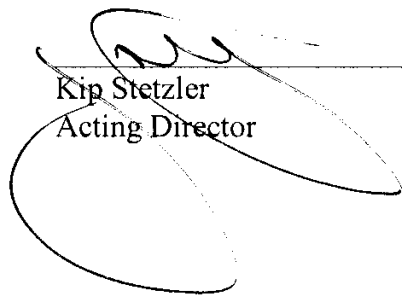
1. The Company shall take any needed steps to assure that the sales tax credit affidavit used by the Company and provided to its claimants are accurate and properly maintained by the Company, as required by §144.027, RSMo, and 20 CSR 300-2.200(3)(B)3 (as amended, 20 CSR 100-8.040(3)(b)3; and

2. The Company shall take any needed steps to assure that it provides its insureds a sufficiently specific and clear reason for cancellation, as required by §379.883.3, RSMo.

It is further ORDERED that a Missouri market conduct examination of the Company is not necessary until three years from the date of this Order, unless the Director has cause to believe the Company has failed to comply with the terms of this Order or has otherwise violated Missouri laws or regulations.

So Adopted, Found, Concluded and Ordered.

1-20-09
Date


Kip Stetzler
Acting Director

First Acceptance Insurance Company, Inc.

Debora Carroll
Director of Compliance
800-321-0899 (x61627)
615-844-1290 (direct line)
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dcarroll@facins.com

January 19, 2009

Carolyn H. Kerr, Senior Counsel
Market Conduct Section
Missouri Department of Insurance
301 West High Street, Room 530
Jefferson City, Missouri 65102

Re: First Acceptance Insurance Company, Inc. NAIC # 10336
Examination Number 0801-05-TGT

Ms. Kerr:

This is in response to the examiners' market conduct report directed to our company dated December 23, 2008. Provided below are our responses to the Department's comments and recommendations.

II. UNDERWRITING AND RATING PRACTICES - C. Cancellations, Nonrenewals, and Rejections

In four instances, the Company failed to provide reasons which were sufficiently clear and specific so that a person could identify the basis for the insurer's decision for refusal to write without further inquiry.

Company Response: First Acceptance has been working to address the concerns raised regarding providing more specific reasons for action taken on cancellation, non-renewal and rejection notifications. This process has included a change in our programming system and testing before putting this action into live production. In the last week, the new procedure has been fully implemented and provides clear and specific reasons to consumers for the actions taken regarding cancellations, nonrenewals and refusals to write coverage.

III. CLAIMS PRACTICES - A. Unfair Settlement Practices, General Handling & Timeliness

1. In two instances, the Company failed to provide a sales tax affidavit to the insured as a result of a total loss.

Company Response: First Acceptance did fail to provide evidence that we sent the sales tax credit affidavit in one instance. It is our protocol to send the affidavit on every total loss. However, there was no copy scanned in the file which would indicate an oversight on this particular claim. We are continuing to work with our clerical department to make sure that all correspondence is properly scanned into the customer's file.

The second instance was unique in that we settled the claim directly with the lien holder/finance company, because the car was repossessed. We were not aware that this affidavit was required to be sent to a lien holder/finance company. We have modified our policy to assure that the sales tax affidavit letter is sent out to the lien holder/finance company in the future.

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

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January 19, 2009
Carolyn H. Kerr, Senior Counsel
Missouri Department of Insurance

2. In one instance, the Company failed to a) inform the insured that the sales tax affidavit is valid for only 180 days; and b) include the amount of the insured's deductible in the sales tax affidavit.

Company Response: First Acceptance did fail to include the language that the sales tax affidavit is valid for 180 days, as well as include the amount of the insured's deductible in the sales tax affidavit on this particular claim. The amount of the deductible was provided to the customer verbally prior to the settlement of the matter, however the omission of the deductible amount in the sales tax affidavit was clearly an oversight by the adjuster who, in this instance, failed to use the standardized company form which included deductible information. This issue has been addressed and we do not anticipate that this error will resurface in the future.

While we are cognizant of the 180 day timeframe, due to oversight, as a company, we have not previously included specific language pertaining to the 180 day period in the standardized sales tax affidavit sent to consumers. Effective November 11, 2008, we modified our sales tax affidavit letter to include this language.

With regard to this particular claim, we sent a revised letter on this claim including the 180 day language and his deductible amount.

3. In 13 instances, the Company failed to inform the claimant that the sales tax affidavit is valid for only 180 days.

Company Response: First Acceptance sent a standardized sales tax affidavit letter out in all 13 instances. While we are cognizant of the 180 day timeframe, due to oversight, as a company, we have not previously included specific language pertaining to the 180 day period in the standardized sales tax affidavit sent to consumers.

Effective November 11, 2008, we have modified our sales tax affidavit letter to include this language and this letter will be used with every total loss claim going forward.

In a further effort to assure that this information is properly conveyed to our customers, on or about November 11, 2008 we also forwarded revised letters to every consumer who had a total loss settlement with the company in the six months prior to November 1, 2008 and specifically advised them that the affidavit they had previously received is only valid for 180 days. We have not been notified of any concerns or negative feedback from any consumer, as of this date, in response to these letters.

I hope we have addressed all the concerns that were brought forward in the examiners' report and made the necessary corrections in our practices to ensure we are in compliance. 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 any further information.

Sincerely,

Debra Carroll
Director of Compliance

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

6/1/08

STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS & PROFESSIONAL
REGISTRATION

MARKET CONDUCT EXAMINATION REPORT
OF
FIRST ACCEPTANCE INSURANCE COMPANY
NAIC # 10336

3322 West End Avenue, Suite 1000

Nashville, TN 37203

DECEMBER 22, 2008

EXAMINATION NUMBER: 0801-05-TGT

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FOREWORD

This market conduct examination report of the First Acceptance Insurance Company is, overall, a report by exception. Examiners cite errors the Company made; however, failure to comment on specific files, products, or procedures does not constitute approval by the Missouri Department of Insurance, Financial Institutions and Professional Registration.

Examiners use the following in this report:

“The Company” and “First Acceptance” refer to First Acceptance Insurance Company;

“DIFP” and “Department” refer to the Missouri Department of Insurance Financial Institutions and Professional Registration;

“NAIC” refers to the National Association of Insurance Commissioners;

“RSMo” refers to the Revised Statutes of Missouri; and

“CSR” refers to the Code of State Regulation.

SCOPE OF EXAMINATION

The DIFP has authority to conduct this examination pursuant to, but not limited to, §§374.110, 374.190, 374.205, 375.445, 375.938, and 375.1009, RSMo. In addition, §447.572, RSMo, grants authority to the DIFP to determine compliance with the Uniform Disposition of Unclaimed Property Act.

The purpose of this examination is to determine if First Acceptance complied with Missouri statutes and DIFP regulations and to consider whether Company operations are consistent with the public interest. The primary period covered by this review is January 1, 2007, through December 31, 2007; however, examiners include all discovered errors in this report.

Although examiners report the errors discovered in individual files, this report focuses on general business practices of the First Acceptance Insurance Company. The DIFP has adopted the NAIC published error tolerance rate guidelines. Unless otherwise noted, examiners apply a 10 percent (10%) error tolerance criterion to underwriting and rating practices and a seven percent (7%) tolerance criterion to claims handling practices. Error rates greater than the tolerance suggest a general business practice.

This examination is primarily directed to the following company operations as related to private passenger automobile operations including:

Sales and Marketing;

Underwriting and Rating; and

Claims.

Examiners conducted this examination at DIFP's office located in St. Louis, Missouri.

EXECUTIVE SUMMARY

In four instances, the Company failed to provide insureds reasons for refusal to write a policy which were sufficiently clear and specific.

In one instance, the Company failed to inform the claimant that the sales tax affidavit is valid for 180 days and failed to include the amount of the deductible in the sales tax affidavit provided.

In 13 instances, the Company failed to inform the insured that the sales tax affidavit provided is valid for 180 days.

EXAMINATION FINDINGS

I. SALES AND MARKETING

In this section of the report, the examiners report their findings regarding how the Company complied with the laws that monitor sales and marketing practices. Due to time and cost restraints, examiners reviewed a sample of the Company's licensing records and marketing materials.

A. Licensing of Producers

Missouri law requires the Company to sell insurance products through individuals and entities that hold a current license from the DIFP. The purpose of a license is to protect the public by providing competent and trustworthy producers.

During underwriting and rating reviews, examiners documented producers involved in producing the business. The examiners randomly verified the entities were properly licensed.

The examiners discovered no errors during this review.

B. Marketing Practices

First Acceptance markets its products through the independent agency system.

Missouri law requires producers to be truthful and provide adequate disclosure while selling insurance products.

The Company also provides information about its products through the Internet where the Company maintains a web site.

The examiners discovered no discrepancies when the examiners reviewed the site.

C. Company Overview and Background

According to information provided by the Company, First Acceptance (formerly USAuto Insurance Company) began in 1995 when it was organized in the state of Tennessee to underwrite insurance for the 12 company-owned agencies then doing business under the name “Harrison Brothers.”

In November, USAuto expanded outside the state of Tennessee and began writing business throughout the state of Georgia. In 2004, the Company completed a merger with Liberte resulting in First Acceptance Corporation, a publicly owned company trading on the New York Stock Exchange.

First Acceptance redomesticated from Tennessee to the state of Texas in 2006 and currently writes business in 10 states.

II. UNDERWRITING AND RATING PRACTICES

In this section of the report, the examiners report their findings of the Company's underwriting and rating practices. These practices include, but are not limited to, the use of policy forms, adherence to underwriting guidelines, premiums charged, and procedures to cancel, nonrenew, or reject coverages. Because of the time and cost involved in reviewing each policy file, the examiners use scientific sampling. For this review, a sampling unit represents a policy file with one complete premium amount including the charges provided or restricted by endorsements, issued, or re-rated during the examination. The most appropriate statistic to measure the Company's compliance is the percent of files in error. Errors can include, but are not limited to, any miscalculation of the premium based on file information, improper acceptance or denial of an application, and failure to observe Missouri statutes or DIFP regulations.

A. Forms and Filings

The examiners review the Company's policy forms to determine compliance with filing, approval, and content requirements. This helps to assure contract language is not ambiguous and is adequate to protect those insured.

There were no discrepancies noted.

B. Underwriting and Rating

Personal Automobile

Field Size:	3,933
Sample Size:	100
Type of Sample:	Random
Errors:	0
Error Ratio:	0%
Within department guidelines:	Yes

The examiners discovered no errors in this review.

C. Cancellations, Nonrenewals, and Rejections

The examiners reviewed policies the Company terminated before the scheduled expiration date and applications the Company rejected because the applicant failed to meet underwriting guidelines. Policies were selected from all policies canceled, nonrenewed, or rejected during the time frame of the examination for personal automobile.

Personal Automobile

Field:	4
Sample Size:	4
Type of Sample:	Census
Errors:	4
Error Ratio:	100%
Within Department Guidelines:	No

In four instances, the Company failed to provide reasons which were sufficiently clear and specific so that a person could identify the basis for the insurer's decision for refusal to write without further inquiry.

Reference: §379.120, RSMo

Policy Number

XXXX1990

XXXX51458

XXXX51776

XXXX52632

D. Legal Practices Not in the Best Interest of Consumers

The examiners also looked for products and practices that, although do not violate Missouri laws, are not in the best interest of consumers.

The examiners discovered no issues in the underwriting practice reviews.

III. CLAIMS PRACTICES

In this section, examiners review claim practices of the Company to determine efficiency of handling, accuracy of payment, adherence to contract provisions, and compliance with Missouri statutes and DIFP regulations. Due to the large number of claim files, examiners are unable to review each claim. As such, examiners conduct scientific sampling of claim files. A claim file, as a sampling unit, is an individual demand for payment or action under an insurance contract for benefits that may or may not be payable. The most appropriate statistic to measure compliance with the law is the percent of files in error. An error can include, but is not limited to, any unreasonable delay in the acknowledgment, investigation, payment, or denial of a claim. Errors also include the failure to calculate benefits correctly or to comply with Missouri laws regarding claim settlement practices.

Claim files were also reviewed to determine compliance with the unfair claims settlement practices act, other statutes and regulations, as well as general policy provisions. Missouri law requires that insurers and agents disclose to first-party claimants all pertinent benefits, coverages and other provisions of an insurance policy under which a claim is presented. The Company must give claim denials to the claimant in writing and retain a copy in the file.

The examiners reviewed claims for personal automobile physical damage, uninsured/underinsured motorist, and medical payments.

A. Unfair Settlement Practices, General Handling & Timeliness

1. Personal Automobile Physical Damage Claims

Field Size:	1,080
Sample Size:	104
Type of Sample:	Random
Number of Errors:	16
Error Rate:	15.4%
Within department guidelines:	No

In two instances, the Company failed to provide a sales tax affidavit to the insured as a result of a total loss.

Reference: §144.027, RSMo, and 20 CSR 300-2.200(3)(B)3

Claim Number

XXXX1420
XXXX1548

In one instance, the Company failed to a) inform the insured that the sales tax affidavit is valid for only 180 days; and b) include the amount of the insured's deductible in the sales tax affidavit.

Reference: §144.027, RSMo, and 20 CSR 300-2.200(3)(B)3

Claim Number

XXXX1515

In 13 instances, the Company failed to inform the claimant that the sales tax affidavit is valid for only 180 days.

Reference: §144.027, RSMo, and 20 CSR 300-2.200(B)3

Claim Number

XXXX0632

XXXX1322

XXXX0069

XXXX0098

XXXX0137

XXXX0199

XXXX0420

XXXX0558

XXXX0748

XXXX1155

XXXX0980

XXXX1318

XXXX1670

2. Personal Automobile Uninsured Motorist and Underinsured Motorist

Field Size:	38
Sample Size:	38
Type of Sample:	Census
Number of Errors:	0
Error Ratio:	0
Within Department guidelines:	Yes

The examiners discovered no errors during this review.

3. Personal Automobile Medical Payments

Field Size:	99
Sample Size:	99
Type of Sample:	Census
Number of Errors:	0
Error Ratio:	0
Within Department guidelines:	Yes

The examiners discovered no errors during this review.

D. Legal Practices Not in the Best Interest of Consumers

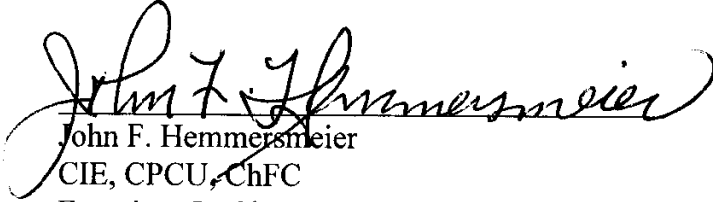
The examiners also looked for claims practices that, although do not violate Missouri laws, are not in the best interest of consumers.

The examiners discovered no issues in the claims practices reviews.

SUBMISSION

Examiners respectfully submit this Market Conduct examination report of the First Acceptance Insurance Company to the Director of Insurance, Financial Institutions and Professional Registration State of Missouri.

Gary Bird and John Pfaender participated in the examination and helped in the preparation of this report.


John F. Hemmersmeier
CIE, CPCU, ChFC
Examiner-In-Charge

SUPERVISION

The examination process has been monitored and supervised by the undersigned. The examination report and supporting work papers have been reviewed and approved. Compliance with NAIC procedures and guidelines as contained in the Market Regulation Handbook has been confirmed.

Win Nickens, CIE, JD, CPCU
Audit Manager
Department of Insurance, Financial
Institutions, and Professional Registration

Date: _____

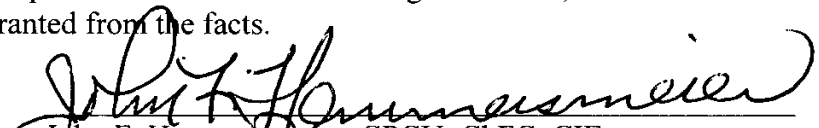
STATE OF MISSOURI)
)
CITY OF SAINT LOUIS)

AFFIDAVIT

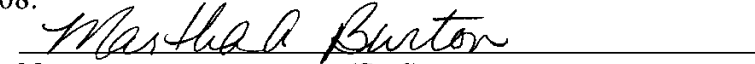
VERIFICATION OF WRITTEN REPORT OF EXAMINATION

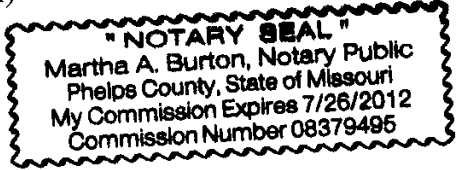
Before me, the undersigned authority, personally appeared John F. Hemmersmeier, who, being by me duly sworn and deposed stated as follows:

1. My name is John F. Hemmersmeier, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.
2. I am the Examiner-In-Charge duly appointed by the Director of the Department of Insurance, Financial Institutions & Professional Registration, State of Missouri to examine the business affairs and market conduct of First Acceptance Insurance Company, an entity granted authority to transact the business of insurance in the State of Missouri.
3. Attached and containing 20 pages is examination report #0801-05-TGT, dated December 22, 2008.
4. This examination report was produced in observation of those guidelines and procedures set forth in the Market Regulation Handbook adopted by the National Association of Insurance Commissioners and other guidelines and procedures adopted by the Division of Insurance Market Regulation, State of Missouri.
5. This examination report is comprised of only facts appearing upon the books, records, or other documents of the Company, or as ascertained from the testimony of its officers, agents, or other persons examined concerning its affairs, and such conclusions as reasonably warranted from the facts.


John F. Hemmersmeier, CPCU, ChFC, CIE

In witness whereof I have hereunto subscribed my name and affixed my official seal this 15th day of December, 2008.


Notary (Seal)
St. Louis City, Mo



SUPERVISION

The examination process has been monitored and supervised by the undersigned. The examination report and supporting work papers have been reviewed and approved. Compliance with NAIC procedures and guidelines as contained in the Market Regulation Handbook has been confirmed.



Win Nickens, JD, CPCU

Audit Manager

Missouri Department of Insurance, Financial Institutions and
Professional Regulation

12-19-8
Date