



REPORT ON  
MARKET CONDUCT EXAMINATION

of the

ACE AMERICAN INSURANCE COMPANY  
Philadelphia, Pennsylvania

BY REPRESENTATIVES OF THE  
NORTH CAROLINA DEPARTMENT OF INSURANCE

as of

November 15, 2012

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Raleigh, North Carolina  
November 15, 2012

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Department of Insurance  
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Honorable Commissioners:

Pursuant to your instructions and in accordance with the provisions of North Carolina General Statute (NCGS) 58-2-131 through 58-2-134, a general examination has been made of the market conduct activities of

**ACE American Insurance Company  
(NAIC #22667)**

NAIC Exam Tracking System Exam Number: NC170-M121  
Philadelphia, Pennsylvania

hereinafter generally referred to as the Company, located at the North Carolina Department of Insurance (Department) office located at 11 S. Boylan Avenue, Raleigh, North Carolina. A report thereon is respectfully submitted.

## **FOREWORD**

This examination reflects the North Carolina insurance activities of ACE American Insurance Company (the "Company"). The examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

## **SCOPE OF EXAMINATION**

This examination commenced on October 17, 2011 and covered the period of January 1, 2008 through December 31, 2010 with analyses of certain operations of the Company being conducted through October 22, 2012. All comments made in this report reflect conditions observed during the period of the examination.

The examination was arranged and conducted by the Department. It was made in accordance with Market Regulation standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC) and accordingly included tests of policyholder treatment, marketing, underwriting practices, terminations and claims practices.

It is the Department's practice to cite companies in apparent violation of a statute or rule when the results of a sample show errors/noncompliance at or above the following levels: 0 percent for consumer complaints, sales and advertising, producers who were not appointed and/or licensed and the use of forms and rates/rules that were neither filed with nor approved by the Department; 7 percent for claims; and 10 percent for all other areas reviewed. When errors are detected in a sample, but the error rate is below the applicable threshold for citing an apparent violation, the Department issues a reminder to the company.

## EXECUTIVE SUMMARY

This market conduct examination revealed concerns with Company procedures and practices in the following areas:

*Consumer Complaints* – response time to Departmental inquiries.

*Underwriting Practices* – Commercial Automobile: producers not properly appointed, use of a premium modification plan not filed with and approved by the Department, use of a premium payment plan with installment charges not filed with and approved by the Department, and rating errors. Commercial General Liability: producers not properly appointed by the Company, and use of a premium modification plan not filed with and approved by the Department. Workers' Compensation: producers not properly appointed by the Company.

*Terminations* – Commercial Automobile cancellations: failure to notify the North Carolina Division of Motor Vehicles (DMV) when liability coverages were terminated. Commercial General Liability cancellations: invalid receipts. Commercial Automobile nonrenewals: files not provided for review, invalid receipts, and failure to notify the DMV when liability coverages were terminated. Commercial General Liability nonrenewals: invalid receipts.

*Claims* – Total Loss Settlement: required documentation not provided for review.

Specific violations related to each area of concern are noted in the appropriate section of this report. All North Carolina General Statutes and rules of the North Carolina Administrative Code cited in this report may be viewed on the North Carolina Department of Insurance Web site [www.ncdoi.com](http://www.ncdoi.com) by clicking "INSURANCE DIVISIONS" then "LEGISLATIVE SERVICES".

This examination identified various non-compliant practices, some of which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business in North Carolina according to its insurance laws and regulations. When applicable, corrective action for other jurisdictions should be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify or criticize improper or non-compliant business practices in North Carolina or in other jurisdictions does not constitute acceptance of such practices. Examination

report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

## **COMPANY OVERVIEW**

### History and Profile

The Company was incorporated on November 1, 1945 under the laws of California and commenced business on January 1, 1946. From incorporation until early 1961, operations were under the title Allied Compensation Insurance Company. In early 1961, the word "Compensation" was dropped from the corporate title and underwriting was broadened to include all casualty, fire and allied lines of business. On December 14, 1977, the name was changed to INA Underwriters Insurance Company. On December 31, 1983, the name was changed to CIGNA Insurance Company. In 1982 the Administrative offices were moved from New York, New York to Philadelphia, Pennsylvania. The Company was redomesticated from Woodland Hills, California to Philadelphia, Pennsylvania on December 20, 1996. The company name, ACE American Insurance Company, was adopted on November 1, 1999.

### Company Operations and Management

The Company is a writer of a full array of commercial lines property and casualty insurance coverages. The Company is licensed in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

Direct written premium for the Company's 2010 national property and casualty operations was \$1,285,304,925. North Carolina's production for the same period was \$66,334,802. Premiums written in North Carolina between 2008 and 2010 decreased approximately 1.42 percent. The charts below outline the Company's mix of business for selected lines in 2010 and loss ratios in North Carolina for the examination period.



Line of Business	Written Premium	Percentage
Other Liability - occurrence	\$13,721,425	20.7
Other Liability - claims	\$12,091,248	18.2
Workers' Compensation	\$11,712,813	17.7
Commercial Multi-peril (non liability)	\$ 5,865,027	8.8
Commercial Auto Liability	\$ 4,907,132	7.4
Other	\$18,037,157	27.2
<b>Total</b>	<b>\$66,334,802</b>	<b>100.0</b>

Year	Written Premium	Earned Premium	Incurred Losses*	Loss Ratio
2008	\$ 67,293,157	\$ 69,877,586	\$17,661,925	25.3
2009	\$ 64,807,190	\$ 64,774,628	\$37,525,764	57.9
2010	\$ 66,334,802	\$ 64,769,619	\$15,984,542	24.7
<b>*Does not include IBNRs</b>				

#### Certificates of Authority

The Certificates of Authority issued to the Company were reviewed for the period under examination. These certificates were reviewed to determine compliance with the provisions of NCGS 58-7-15. The Company's writings in North Carolina were deemed to be in compliance with the authority granted.

#### Disaster Recovery Procedures

The Company has developed the ACE Emergency Preparedness and Business Recovery Plan (the Plan) to minimize any adverse impact to policyholders in the event of an emergency. Business analysis has been conducted to identify the most critical functions for policyholders in the event of an emergency. The Plan addresses the continuation of business operations, in addition to the health and welfare of employees.

In addition to the internal IT infrastructure, the Company has contracted external vendor services to provide disaster recovery services. These services include availability of regional recovery sites in the event of an emergency and an ongoing schedule of business recovery exercises, including annual tests of the Company's systems.

The Company has also developed a Corporate Incident Management Team to facilitate emergency planning and effective communication in the event of an emergency. Measures put into place include:

- Global electronic emergency notification system to send communications via telephone, e-mail and fax to employees, brokers and/or clients.
- Site Incident Management Plan, established for each location, combines the use of the global electronic emergency notification system and conventional call trees.
- Emergency preparedness internet site provides updated information to employees during an emergency.

The Company's senior management provides on-going employee training and periodic testing of the Plan throughout each year.

### **POLICYHOLDER TREATMENT**

#### Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules.

The Company's complaint register was reconciled with a listing provided by the Consumer Services Division of the Department. The Company's complaint register was in compliance with provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103. All 14 property and casualty complaints in the Department's listing were selected and received for review. The distribution of complaints requiring a response to the Department is shown in the chart below.

<b>Type of Complaint</b>	<b>Total</b>
Claims	14
<b>Total</b>	<b>14</b>

The Company's response to each complaint was deemed to be appropriate to the circumstances. The Company was deemed to be in apparent violation of the provisions of 11

NCAC 1.0602 as 6 of the complaints reviewed (42.9 percent error ratio) were responded to in excess of the 7 calendar day requirement of this rule.

The average service time to respond to a Departmental complaint was 9 calendar days.

A chart of the Company's response time follows:

<b>Service Days</b>	<b>Number of Files</b>	<b>Percentage of Total</b>
1 - 7	6	43.0
8 - 14	7	50.0
15 - 21	1	7.0
<b>Total</b>	<b>14</b>	<b>100.0</b>

## **MARKETING**

### Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Emphasis of the review was placed on the following lines of business:

1. Commercial Automobile
2. Commercial General Liability
3. Workers' Compensation

Filings for the workers' compensation line of business were made by the North Carolina Rate Bureau on behalf of the Company. Filings for the commercial automobile and commercial general liability lines of business were made by the Insurance Services Office on behalf of the Company. Deviations for these lines of business were made to the Department by the Company.

### Sales and Advertising

The Company's sales and advertising practices were reviewed to determine compliance with the provisions of NCGS 58-63-15.

The examiners reviewed advertisements, producer marketing solicitation kits, telemarketing scripts, bulletins, and brochures that are provided for promotional use. The

Company also maintains an internet website: [www.acegroup.com](http://www.acegroup.com). The website provides background information relative to its operations, as well as products and services offered.

No unfair or deceptive trade practices were noted in this segment of the examination.

#### Social Media

The Company reported it does not currently use social media outlets for marketing or advertising purposes. However, the Company has established sites on Twitter, Facebook and LinkedIn that carry global or corporate news releases, rather than marketing-related messages. The Company administers an "ACE Employees and Alumni" group and advertises job openings on LinkedIn.

#### Producer Licensing

The Company's procedures for appointment and termination of its producers were reviewed to determine compliance with the appropriate North Carolina statutes and rules. Fifty appointed producer files and 50 terminated producer files were randomly selected and received for review from populations of 886 and 485, respectively.

All appointment forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of NCGS 58-33-40. The Company was reminded of the provisions of NCGS 58-33-56(d) as the notification of termination letter was not sent for 2 of the terminated producer files reviewed (4.0 percent error ratio).

#### Agency Management

The marketing effort in North Carolina is under the direction of the Regional Executive Officer, located at the ACE USA office in Alpharetta, Georgia. The Regional Executive Officer is responsible for the activities of the agency and broker force in North Carolina. The Company has 908 active agencies and 327 brokers in the state. There are no agency or broker performance reviews and the Company does not offer contingencies.

## UNDERWRITING PRACTICES

### Overview

The Company's marketing philosophy in North Carolina focuses on commercial lines of business. The Company's commercial automobile, commercial general liability and workers' compensation policies were reviewed for adherence to underwriting guidelines, file documentation, and premium determination. Additionally, the policies were examined to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules.

### Commercial Automobile

The Company provided a listing of 32 active commercial automobile policies issued during the period under examination. All 32 policies were selected and received for review.

The Company's commercial automobile coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producers were not properly appointed by the Company for 8 of the active files reviewed (25.0 percent error ratio).

The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-85(a) and 58-41-50(f) for use of a premium modification plan (commission expense reduction) on 2 active files reviewed that had not been filed with and approved by the Department (6.3 percent error ratio).

The Company was deemed to be in apparent violation of the provisions of NCGS 58-41-50 and, by reference, NCGS 58-35-10(b) as a \$5.00 service charge was made part of a premium payment plan that had not been filed with and approved by the Department on 1 active file reviewed (3.1 percent error ratio).

As a result of the unfiled service charge, the examiners requested the Company conduct a self audit. The Company identified 40 policies on which the service charge was made (18 accounts with multiple policies, including the 1 originally found in error), resulting in overcharges in the amount of \$1,165.00. All refunds were returned to the policyholders prior to the conclusion of the examination.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-41-50 as the premiums charged on 31 of the active commercial automobile policies reviewed (96.9 percent error ratio) were incorrect. The rating errors consisted of the following:

- Use of incorrect loss cost multipliers, resulting in 31 undercharges.
- Two private passenger type vehicles were rated from the Commercial Lines Manual in error, resulting in 2 undercharges.
- One commercial truck unit was rated using an incorrect vehicle type, resulting in 1 undercharge.
- An additional premium was incorrectly included in the liability premium on 1 truck unit, resulting in 1 overcharge.

The rating errors resulted in 34 premium undercharges and 1 premium overcharge. At the request of the examiners, a refund in the amount of \$232.00 was issued by the Company for the overcharge. The remaining premiums charged were deemed correct.

#### Commercial General Liability

The Company provided a listing of 104 active commercial general liability policies issued during the period under examination. Fifty policies were selected and received for review.

The Company's commercial general liability coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

All policy files contained sufficient documentation to support the Company's classification of the risk.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producers were not properly appointed by the Company on 6 of the active files reviewed (12.0 percent error ratio).

The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-85(a) and 58-41-50(f) for use of a premium modification plan (commission expense reduction) that had not been filed with and approved by the Department on 1 active file reviewed (2.0 percent error ratio). The filing error resulted in a premium undercharge. The remaining premiums charged were deemed correct.

### Workers' Compensation

The Company provided a listing of 93 active workers' compensation policies issued during the period under examination. Fifty policies were selected and received for review.

The Company's workers' compensation coverages were written utilizing manual and deviated rates. Policies were written on an annual basis. Risk placement was determined by the Company's underwriting guidelines and the underwriter. No discrepancies were noted in the Company's use of its underwriting guidelines.

All policy files contained sufficient documentation to support the Company's classification of the risk. All premiums charged were deemed correct.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producers were not properly appointed by the Company on 32 of the active files reviewed (64.0 percent error ratio).

## **TERMINATIONS**

### Overview

The Company's termination procedures for its commercial automobile, commercial general liability, and workers' compensation policies were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. Special attention was placed on the validity and reason for termination,

timeliness in issuance of the termination notice, policy refund (where applicable), and documentation of the policy file. A total of 299 policies were terminated during the period under examination. The examiners randomly selected 240 terminations for review.

#### Commercial Automobile Cancellations

The entire population of ten cancelled commercial automobile policies was selected and received for review.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

<b>Reason for Cancellation</b>	<b>Number of Policies</b>	<b>Percentage</b>
Insured's request	5	50.0
Finance company request	3	30.0
Nonpayment of premium	2	20.0
<b>Total</b>	<b>10</b>	<b>100.0</b>

The Company was not required to issue cancellation notices for 8 of the cancellations reviewed as these policies were cancelled at the request of the insured or finance company. Cancellation notices for the remaining 2 policies stated the specific reason for cancellation.

The Company was deemed to be in apparent violation of the provisions of NCGS 20-309 and NCGS 20-309.2 as the North Carolina Notice of Termination form (FS-4) was not submitted to the DMV when liability coverages were cancelled on 7 policies reviewed (70.0 percent error ratio).

The final area of this review encompassed documentation of the policy file. The remaining policy files reviewed contained sufficient documentation to support action taken by the Company.

#### Commercial General Liability Cancellations

The entire population of 41 cancelled commercial general liability policies was selected for review. The Company did not provide 2 of the 41 policy files selected for review (4.9



percent error ratio) and was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e). The review was based upon the remaining 39 files received.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-2-131, 58-2-185, and 11 NCAC 19.0106(a)(4)(e) as 23 files received were invalid receipts (59.0 percent error ratio). The review was based upon the remaining 16 files.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

<b>Reason for Cancellation</b>	<b>Number of Policies</b>	<b>Percentage</b>
Insured's request	10	62.5
Finance company request	4	25.0
Nonpayment of premium	2	12.5
<b>Total</b>	<b>16</b>	<b>100.0</b>

The Company was not required to issue cancellation notices for 14 of the cancellations reviewed as these policies were cancelled at the request of the insured or finance company. Cancellation notices for the remaining 2 policies stated the specific reason for cancellation.

The final area of this review encompassed documentation of the policy file. The remaining policy files reviewed contained sufficient documentation to support action taken by the Company.

#### Workers' Compensation Cancellations

Fifty cancelled workers' compensation policies were randomly selected from a population of 54. The Company did not provide 2 of the 50 files selected (4.0 percent error ratio) and was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e). The review was based upon the remaining 48 files received.

The reason for cancellation was deemed valid for all policies reviewed. The review revealed the following reasons for cancellation:

<b>Reason for Cancellation</b>	<b>Number of Policies</b>	<b>Percentage</b>
Insured's request	28	58.3
Underwriting reasons	16	33.3
Finance company request	4	8.4
<b>Total</b>	<b>48</b>	<b>100.0</b>

The Company was not required to issue cancellation notices for 32 of the cancelled files reviewed as these policies were cancelled at the request of the insured or finance company. Cancellation notices for the remaining 16 policies stated the specific reason for cancellation.

The final area of this review encompassed documentation of the policy file. The remaining policy files reviewed contained sufficient documentation to support action taken by the Company.

#### Commercial Automobile Nonrenewals

The entire population of 39 nonrenewed commercial automobile policies was selected for review. The Company did not provide 4 of the 39 policy files selected (10.3 percent error ratio) and was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e). The review was based upon the remaining 35 files received.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-2-131, 58-2-185, and 11 NCAC 19.0106(a)(4)(e) as 28 files were invalid receipts (80.0 percent error ratio). The review was based upon the remaining 7 files.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

<b>Reason for Nonrenewal</b>	<b>Number of Policies</b>	<b>Percentage</b>
Underwriting reasons	4	57.1
Producer no longer represents Company	3	42.9
<b>Total</b>	<b>7</b>	<b>100.0</b>

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal.

The Company was deemed to be in apparent violation of the provisions of NCGS 20-309 and 309.2 as it did not notify the DMV when liability coverages were nonrenewed for 3 policies reviewed (42.9 percent error ratio).

The final area of this review encompassed documentation of the policy file. The remaining files contained sufficient documentation to support action taken by the Company.

Commercial General Liability Nonrenewals

Fifty nonrenewed commercial general liability policies from a population of 68 were randomly selected for review. The Company did not provide 4 of the 50 files selected (8.0 percent error ratio) and was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e). The review was based upon the remaining 46 files received.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-2-131, 58-2-185, and 11 NCAC 19.0106(a)(4)(e) as 19 files were invalid receipts (41.3 percent error ratio). The review was based upon the remaining 27 files.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

<b>Reason for Nonrenewal</b>	<b>Number of Policies</b>	<b>Percentage</b>
Underwriting reasons	27	100.0
<b>Total</b>	<b>27</b>	<b>100.0</b>

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal.

The final area of this review encompassed documentation of the policy file. The remaining policy files reviewed contained sufficient documentation to support action taken by the Company.

### Workers' Compensation Nonrenewals

Fifty nonrenewed workers' compensation policies from a population of 87 were randomly selected and received for review. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e) as 2 files (4.0 percent error ratio) were not provided for review. The review was based upon the remaining 48 files.

The reason for nonrenewal was deemed valid for all policies reviewed. The review revealed the following reasons for nonrenewal:

<b>Reason for Nonrenewal</b>	<b>Number of Policies</b>	<b>Percentage</b>
Underwriting reasons	48	100.0
<b>Total</b>	<b>48</b>	<b>100.0</b>

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal.

The final area of this review encompassed documentation of the policy file. All policy files reviewed contained sufficient documentation to support action taken by the Company.

## **CLAIMS PRACTICES**

### Overview

The Company's claims practices were reviewed to determine compliance with the appropriate North Carolina statutes and rules and policy provisions. The review encompassed paid, automobile medical payment, first and third party bodily injury, closed without payment, subrogated, total loss settlement, and litigated claims.

ACE North American Claims is not organized or managed by the state. The claims structure is as a line of business expertise. Such claim technical expertise is brought to bear based upon the claims characteristics, industry, client, and jurisdictional requirements.

Claims services can be handled in any Company office or by a Company approved third party administrator (TPA).

Claims handling is provided by Company claims employee staff; ESIS, Inc. (a Company subsidiary), a global risk management and claims services provider; or approved TPAs. For some adjusting task assignments, approved independent adjusting firms may be used but have no check writing authority.

The Company does not have agents or brokers adjusting claims in the state. There are some Company managing general agents that have associated independent TPA entities that possess limited authority. However, these responsibilities are governed under a TPA agreement contract with Company oversight, and the entities do not possess or use Company checks.

#### Paid Claims

The entire population of 42 first party automobile physical damage and third party property damage claims was selected and received for review. The claim files were reviewed for timeliness of payment, supporting documentation and accuracy of payment.

The following types of claims were reviewed and the average payment time is noted in calendar days:

<b>Type of Claim</b>	<b>Payment Time</b>
Automobile physical damage	16.1
Third party property damage	14.8

All payments issued by the Company were deemed to be accurate. Deductibles were correctly applied and depreciation taken was reasonable.

All claim files reviewed contained documentation to support the Company's payments. The documentation consisted of appraisals, estimates, repair bills, or inventory listings. The review of paid claims disclosed no apparent violations of the provisions of NCGS 58-63-15(11).

### Automobile Medical Payment Claims

The entire population of 1 automobile medical payment claim was selected and received for review. The claim file was reviewed to determine if the Company had engaged in any unfair claims practices. The review of the medical payment claim disclosed no apparent violation of the provisions of NCGS 58-63-15(11).

### First and Third Party Bodily Injury Claims

The Company reported no first party bodily injury claims occurred during the examination period. The entire population of 10 third party bodily injury claims was selected and received for review. The claim files were reviewed to determine whether the Company had engaged in any unfair claims practices. The review of third party bodily injury claims disclosed no apparent violations of the provisions of NCGS 58-63-15(11).

### Closed Without Payment Claims

Fifty closed without payment claims were randomly selected and received for review from a population of 64. The claim files were reviewed to determine if the Company's reasons for closing the claims without payment were valid.

The claim files reviewed contained documentation that supported the Company's reasons for closing the claims without payment. All reasons for denial or closing the files without payment were deemed valid. Claims were denied on an average of 14 calendar days for the 3-year period. The review of closed without payment claims disclosed no apparent violations of the provisions of NCGS 58-63-15(11).

### Subrogated Claims

The entire population of 6 subrogated claims was selected and received for review. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

All reimbursements were deemed to be correct and were issued on a 3-year average of 1 calendar day from the date the Company collected the monies. The review of subrogated claims disclosed no apparent violations of the provisions of NCGS 58-63-15(11).

#### Total Loss Settlement Claims

The entire population of 5 total loss claims was selected and received for review. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(5)(e) as the Company was unable to provide required documentation for 3 of the claim files reviewed (60.0 percent error ratio).

All settlements were deemed equitable. The Company settled all claims in a timely manner. The payments were issued on a 3-year average of 41 calendar days. The excessive payment period was due to legitimate delays beyond the Company's control. The review of total loss settlement claims disclosed no apparent violations of the provisions of NCGS 58-63-15(11), 11 NCAC 4.0418 or 4.0421.

#### Litigated Claims

The entire population of 9 litigated claims was selected and received for review. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of litigated claims disclosed no apparent violations of the provisions of NCGS 58-63-15(11).

### **SUMMARY**

The Market Conduct examination revealed the following:

#### 1. Policyholder Treatment

- a. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 1.0602 as the responses to 42.9 percent of the Departmental inquiries reviewed were in excess of the 7 calendar day requirement of this rule.

## 2. Marketing

- a. The Company was reminded of the provisions of NCGS 58-33-56(d) as the notification of termination letter was not sent for 4.0 percent of the terminated producer files reviewed.

## 3. Underwriting Practices

- a. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producers were not properly appointed by the Company on 25.0 percent of the active commercial automobile files reviewed.
- b. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-85(a) and 58-41-50(f) as 6.3 percent of the active commercial automobile files reviewed used a premium modification plan (commission expense reduction) that had not been filed with and approved by the Department.
- c. The Company was deemed to be in apparent violation of the provisions of NCGS 58-41-50 and, by reference, NCGS 58-35-10(b), as 3.1 percent of the active commercial automobile files reviewed had premiums paid on a payment plan with a service charge that had not been filed with and approved by the Department.
- d. The Company was deemed to be in apparent violation of the provisions of NCGS 58-41-50 as the premiums charged on 96.9 percent of the active commercial automobile policies reviewed were incorrect.
- e. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producers were not properly appointed by the Company on 12.0 percent of the active commercial general liability files reviewed.
- f. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-85(a) and 58-41-50(f) for use of a premium modification plan (commission expense reduction) that had not been filed with and approved by the Department on 2.0 percent of the active commercial general liability files reviewed.
- g. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-26 and 58-33-40 as the producers were not properly appointed by the Company on 64.0 percent of the active workers' compensation files reviewed.

## 4. Terminations

- a. The Company was deemed to be in apparent violation of the provisions of NCGS 20-309 and 20-309.2 as it did not notify the DMV when liability coverages were terminated for 70.0 percent of the cancelled commercial automobile files reviewed.
- b. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e) as it could not provide 4.9 percent of the cancelled commercial general liability files requested.



- c. The Company was deemed to be in apparent violation of the provisions of NCGS 58-2-131, 58-2-185, and 11 NCAC 19.0106(a)(4)(e) as 59.0 percent of the cancelled commercial general liability files reviewed were invalid receipts.
- d. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e) as it could not provide 4.0 percent of the cancelled workers' compensation files requested.
- e. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e) as it could not provide 10.3 percent of the nonrenewed commercial automobile files requested.
- f. The Company was deemed to be in apparent violation of the provisions of NCGS 58-2-131, 58-2-185, and 11 NCAC 19.0106(a)(4)(e) as 80.0 percent of the nonrenewed commercial automobile files reviewed were invalid receipts.
- g. The Company was deemed to be in apparent violation of the provisions of NCGS 20-309 and 20-309.2 as it did not notify the DMV when liability coverages were terminated for 42.9 percent of the nonrenewed commercial automobile files reviewed.
- h. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e) as it could not provide 8.0 percent of the nonrenewed commercial general liability files requested.
- i. The Company was deemed to be in apparent violation of the provisions of NCGS 58-2-131, 58-2-185, and 11 NCAC 19.0106(a)(4)(e) as 41.3 percent of the nonrenewed commercial general liability files reviewed were invalid receipts.
- j. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(e) as it could not provide 4.0 percent of the nonrenewed workers' compensation files requested.

5. Claims Practices

- a. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(5)(e) as the Company was unable to provide required documentation for 60.0 percent of the total loss settlement claim files reviewed.

**TABLE OF STATUTES AND RULES**

<u>Statute/Rule</u>	<u>Title</u>
NCGS 58-2-131	Examinations to be made; authority, scope, scheduling, and conduct of examinations.
NCGS 58-2-132	Examination reports.

NCGS 58-2-133	Conflict of interest; cost of examinations; immunity from liability.
NCGS 58-2-134	Cost of certain examinations.
NCGS 58-2-185	Record of business kept by companies and agents; Commissioner may inspect.
NCGS 58-7-15	Kinds of insurance authorized.
NCGS 58-33-26	General license requirements.
NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-33-85	Rebates and charges in excess of premium prohibited; exceptions.
NCGS 58-35-10	Exceptions to license requirements.
NCGS 58-41-50	Policy form and rate filings; punitive damages; data required to support filings.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
NCGS 20-309	Motor vehicle registration.
11 NCAC 1.0602	Insurance Companies' Response to Departmental Inquiries.
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 19.0102	Maintenance of Records.
11 NCAC 19.0103	Complaint Records.
11 NCAC 19.0104	Policy Records.
11 NCAC 19.0106	Records Required for Examination.

**CONCLUSION**

An examination has been conducted on the market conduct affairs of ACE American Insurance Company for the period January 1, 2008 through December 31, 2010 with analyses of certain operations of the Company being conducted through October 22, 2012.

This examination was conducted in accordance with the North Carolina Department of Insurance and the National Association of Insurance Commissioners Market Regulation Handbook procedures, including analyses of Company operations in the areas of policyholder treatment, marketing, underwriting practices, terminations, and claims practices.

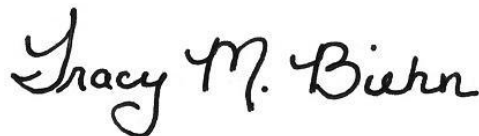
In addition to the undersigned, Gary Jones and Gina Abate, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,



James P. McQuillan, CPCU, AIT  
Examiner-In-Charge  
Market Regulation Division  
State of North Carolina

I have reviewed this examination report and it meets the provisions for such reports prescribed by this Division and the North Carolina Department of Insurance.



Tracy M. Biehn, LPCS, MBA  
Deputy Commissioner  
Market Regulation Division  
State of North Carolina