

Report on

Market Conduct Examination

of the

AmGuard Insurance Company  
Wilkes-Barre, Pennsylvania

by Representatives of the  
North Carolina Department of Insurance

as of

June 9, 2020

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Raleigh, North Carolina  
June 9, 2020

Honorable Mike Causey  
Commissioner of Insurance  
Department of Insurance  
State of North Carolina  
Albemarle Building  
325 N. Salisbury Street  
Raleigh, North Carolina 27603

Honorable Jessica K. Altman  
Insurance Commissioner  
Pennsylvania Insurance Department  
1326 Strawberry Square, 4<sup>th</sup> and Walnut Streets  
Harrisburg, Pennsylvania 17120

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 target examination has been made of the market conduct activities of

**AmGuard Insurance Company (NAIC #42390)**  
NAIC Exam Tracking System Exam Number: NC-NC094-20  
Wilkes-Barre, Pennsylvania

hereinafter generally referred to as the Company, at the North Carolina Department of Insurance (Department) office located at 325 N. Salisbury Street, Raleigh, North Carolina. A report thereon is respectfully submitted.

## SCOPE OF EXAMINATION

This examination commenced on July 29, 2019, and covered the period of January 1, 2017, through December 31, 2018. Analyses of certain operations of the Company were concluded during the Wrap-Up Conference which was held on May 15, 2020. All comments made in this report reflect conditions observed during the period of examination.

This examination was performed in accordance with auditing standards established by the Department and procedures established by the National Association of Insurance Commissioners (NAIC). The scope of this examination was not comprehensive, but consisted of an examination of the Company's practices and procedures in marketing and underwriting. The findings and conclusions contained within the report are based solely on the work performed and are referenced within the appropriate sections of the examination report.

It is the Department's practice to cite companies in violation of a statute or rule when the results of a sample show errors/noncompliance that fall outside certain tolerance levels. The Department applied a 0 percent tolerance level for producers who were not properly appointed and/or licensed, and the use of forms and rates/rules that were neither filed with nor approved by the Department and 5 percent for all other areas reviewed. Sample sizes were generated using Audit Command Language software. The Department utilized a 95% Confidence Level to determine the error tolerance level.

## EXECUTIVE SUMMARY

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

*Underwriting and Rating* – Incorrect premiums charged due to use of wrong rating factors. Produced accounts without accurately determining the garaging location and/or the radius of operation. Accepted business from producers that had not been properly appointed by the Company.

Specific violations 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.gov](http://www.ncdoi.gov).

This examination identified various statutory violations, 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.

All statutory violations may not have been discovered or noted in this report. Failure to identify statutory violations in North Carolina or in other jurisdictions does not constitute acceptance of such violations.

## **MARKETING PRACTICES**

### Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. We reviewed the following line of business:

- Commercial Automobile

Filings for the commercial automobile line of business were made by the North Carolina Reinsurance Facility (NCRF) and the Company. All of the files reviewed for this examination were ceded by the Company to the NCRF, but could include voluntary coverages as well.

## **UNDERWRITING AND RATING**

### Overview

The Company's marketing in North Carolina is directed to the commercial lines of business. The Company provided the examiners with listings of the following types of active policies for the period under examination:

- Commercial Automobile

A random selection of 357 policies was made from a total population of 1,261. The policies were divided into three categories: LOCAL, INTERMEDIATE, LONG-HAUL. Each policy was

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.

#### Rate Evasion Procedures

The Company's rate evasion procedures were reviewed to determine compliance with the provisions of NCGS 58-2-164. The Company has procedures in place to address other than nonfleet private passenger automobile rate evasion fraud.

#### Commercial Automobile

The Company's commercial automobile policies were written on an annual basis. Coverages were written utilizing manual rates and deviated rates. 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.

#### Commercial Automobile – Local Radius

One hundred nineteen policies were sampled for review. The Company did not adhere to the provisions of NCGS 58-37-40(e); the NCRF Standard Practices Manual, Section 4, Chapter 13, item C 11(d); NCGS 58-41-50(f); and NCGS 58-37-35(l) as 21 rating errors were identified on 19 policies. The errors consisted of:

- Recoupment surcharge miscalculated – 9 policies
- Incorrect bodily injury factor used to calculate the excess premium – 1 policy
- Incorrect Territory used – 2 policies
- Incorrect pollution liability factor applied – 9 policies

The above errors necessitated refunds on three policies. At the request of the examiners, the Company refunded premium and paid statutory interest to the insureds totaling \$1,834.21.

The Company did not adhere to the provisions of NCGS 58-33-40(b) as all 119 policies reviewed were submitted by a producer that had not been properly appointed by the Company.

#### Commercial Automobile – Intermediate Radius

One hundred nineteen policies were sampled for review. The Company did not adhere to the provisions of NCGS 58-37-40(e); the NCRF Standard Practices Manual, Section 4, Chapter 13, item C 11(d); NCGS 58-41-50(f); and NCGS 58-37-35(l) as 60 rating errors were identified on 46 policies. The errors consisted of:

- Recoupment surcharge miscalculated – 11 policies
- Incorrect bodily injury factor used to calculate the excess premium – 4 policies
- Incorrect radius used – 21 policies
- Incorrect pollution liability factor applied – 24 policies

The above errors necessitated refunds on six policies. At the request of the examiners, the Company refunded premium and paid statutory interest to the insureds totaling \$1,249.05.

The Company did not adhere to the provisions of NCGS 58-37-1(4) as 21 files did not have enough information to substantiate or confirm the garaging location.

The Company did not adhere to the provisions of NCGS 58-37-35(l) and the North Carolina Reinsurance Facility Standard Practice Manual, Section 3.P.1 as the Company failed to determine the policy was correctly classified and rated to develop the correct and proper premium for 10 policies reviewed. The presence on the policy of drivers licensed in states other than North Carolina indicates at least some of the vehicles should have been rated using the State Rate Schedules that were implemented by the North Carolina Reinsurance Facility effective April 1, 2017, or the residual market rates in those states prior to April 1, 2017.

The Company did not adhere to the provisions of NCGS 58-33-40(b) as all 119 policies reviewed were submitted by a producer that had not been properly appointed by the Company.



### **Commercial Automobile – Long-Haul Radius**

One hundred nineteen policies were sampled for review. The Company did not adhere to the provisions of NCGS 58-37-40(e); the NCRF Standard Practices Manual, Section 4, Chapter 13, item C 11(d); NCGS 58-41-50(f); and NCGS 58-37-35(l) as 107 rating errors were identified on 90 policies. The errors consisted of:

- Recoupment surcharge miscalculated – 17 policies
- Incorrect bodily injury factor used to calculate the excess premium – 56 policies
- Incorrect rating factors used – 4 policies
- Incorrect pollution liability factor applied – 30 policies

The above errors necessitated refunds on six policies. At the request of the examiners, the Company refunded premium and paid statutory interest to the insureds totaling \$3,295.31.

The Company did not adhere to the provisions of NCGS 58-37-1(4) as 25 files did not have enough information to substantiate or confirm the garaging location.

The Company did not adhere to the provisions of NCGS 58-37-35(l) and the North Carolina Reinsurance Facility Standard Practice Manual, Section 3.P.1 as the Company failed to determine the policy was correctly classified and rated to develop the correct and proper premium for 32 policies reviewed. The presence on the policy of drivers licensed in states other than North Carolina indicates at least some of the vehicles should have been rated using the State Rate Schedules that were implemented by the North Carolina Reinsurance Facility effective April 1, 2017, or the residual market rates in those states prior to April 1, 2017.

The Company did not adhere to the provisions of NCGS 58-33-40(b) as all 119 policies reviewed were submitted by a producer that had not been properly appointed by the Company.

## COMMENTS, RECOMMENDATIONS, AND DIRECTIVES

The Company is directed to refrain from accepting any business from producers that have not been properly appointed by the Company. The Company must calculate and charge the correct premiums by using the correct territories, correct radius, correct garaging locations, correct excess liability factors (if applicable), and correct pollution liability factors. Recoupment surcharges must be calculated correctly by using all the required premiums in the calculation. As a result of the use of an incorrect pollution liability factor, the examiners directed the Company to conduct a self-audit. Once complete, the Company will issue any additional refunds to the insureds and report the total dollar amount refunded to the Department.

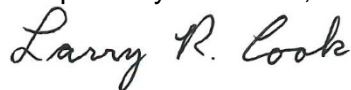
## CONCLUSION

An examination has been conducted on the market conduct affairs of AmGuard Insurance Company for the period January 1, 2017, through December 31, 2018, with analyses of certain operations of the Company being conducted through May 15, 2020.

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 the Company's operations in the areas of marketing and underwriting practices.

In addition to the undersigned, Patricia Murphy, AIC, ARM, MCM, North Carolina Market Conduct Examiner II, and Eshita Patel, MCM, North Carolina Market Conduct Examiner I, participated in this examination.

Respectfully submitted,



Larry R. Cook, CPCU, AU, ARe, ARM, AIM, AMIM,  
AIAF, AIC, ARC, AAI, MCM  
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.

A handwritten signature in black ink that reads "Teresa Knowles". The signature is fluid and cursive, with a large initial 'T' and a long, sweeping underline.

Teresa Knowles, ACS  
Deputy Commissioner  
Market Regulation Division  
State of North Carolina