

REPORT ON
MARKET CONDUCT EXAMINATION

of the

ATLANTIC CASUALTY INSURANCE COMPANY
Goldsboro, North Carolina

BY REPRESENTATIVES OF THE
NORTH CAROLINA DEPARTMENT OF INSURANCE

as of

September 24, 2009

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Raleigh, North Carolina
September 24, 2009

Honorable Wayne Goodwin
Commissioner of Insurance
Department of Insurance
State of North Carolina
Dobbs Building
430 N. Salisbury Street
Raleigh, North Carolina 27603

Honorable Commissioner:

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

ATLANTIC CASUALTY INSURANCE COMPANY (NAIC #42846)
NAIC Exam Tracking System Exam Number: NC170-M37
Goldsboro, North Carolina 27533

hereinafter generally referred to as the Company, 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 Atlantic Casualty Insurance 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 February 2, 2009 and covered the period of January 1, 2005 through December 31, 2007 with analyses of certain operations of the Company being conducted through September 21, 2009. 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 and rating, 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:

Appointment and Termination of Producers – background checks not performed, failure to notify producer of termination.

Underwriting and Rating – Private Passenger Automobile: incomplete file documentation. Commercial General Liability: use of unfiled forms, failure to secure signed consent for inspection/policy fees charge, charged for inspection fee when inspection was not completed.

Terminations – Private Passenger Automobile: use of an incorrect cancellation method to compute return premium.

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, by clicking “Helpful Links.”

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

Atlantic Casualty Insurance Company was incorporated on October 14, 1983 under the laws of the State of North Carolina and commenced business on November 9, 1983. The Company is a wholly owned subsidiary of Strickland Insurance Group, Inc.

On March 31, 1998, The Company's sixty-seven percent ownership in Atlantic Security Insurance Company was transferred through a dividend distribution to Strickland Insurance Group, Inc.

Strickland Insurance Group, the holding company for all operations of Atlantic Casualty Insurance Company, has elected individuals serving on the board of directors. The bylaws of Strickland Insurance Group require a separate elected board of directors for Atlantic Casualty Insurance Company.

Company Operations and Management

The Company is a writer of commercial general liability and commercial automobile coverages. Nonstandard personal automobile coverage was written from 2004 through October of 2006. The Company is currently licensed to write on an admitted basis in North Carolina and on a non-admitted basis in all states and the District of Columbia except California, Delaware, Iowa, Maine, and Vermont.

Direct written premium for the Company's 2007 countrywide property and casualty operations was \$87,554,361. North Carolina's production for the same period was \$25,520,865. Premiums written in North Carolina between 2005 and 2007 decreased approximately 24.7 percent. The charts below outline the Company's mix of business for selected lines in 2007 and loss ratios in North Carolina for the examination period.

Line of Business	Written Premium	Percentage
Commercial Automobile	\$12,756,973	50.0
Private Passenger Automobile	8,888,187	34.8
Commercial General Liability	3,371,011	13.2
Other	504,694	2.0
Total	\$25,520,865	100.0

Year	Written Premium	Earned Premium	Incurred Losses*	Loss Ratio
2005	\$33,876,524	\$29,141,321	\$24,092,856	82.7
2006	\$45,970,622	\$47,097,893	\$41,849,682	88.9
2007	\$25,520,866	\$30,991,921	\$20,727,952	66.9
* Does not include IBNRs				

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's disaster recovery plan addresses the needs of the organization in the event there is a disaster in the main Goldsboro office. The plan calls for operations to be relocated to Charlotte in the event of a problem in Goldsboro. Operational supplies are pre-staged offsite in a vault in the Charlotte office. Additional supplies would be transported to Charlotte in the event of an emergency.

All computer systems are backed-up nightly with tapes stored overnight in fireproof safes in the main Goldsboro office. Back-up tapes, in a regular rotation, are stored offsite in a vault with 24-hour access should the system need to be recovered.

As all policy and claim files are electronic, there are no paper files to maintain. In the event of a data loss, a server would be brought online and a restore of data from tape would be

executed. In the event of a planned outage in Goldsboro, such as a hurricane evacuation, the servers would be physically moved from Goldsboro to Charlotte to ensure continuous operations.

The Goldsboro office is equipped with redundant facilities for electricity and data services. A natural gas powered generator is available to supply power for all data center operations, air conditioning, and a number of offices. In addition, redundant internet service providers ensure data connectivity.

If an event were to occur at the Charlotte office, the impacted employees would work from the Goldsboro office. All information accessible from the Charlotte computer system is also accessible from Goldsboro.

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 for the period under examination was in compliance with the provisions of Title 11 of the North Carolina Administrative Code, (NCAC), Chapter 19, Section 0103.

The Company's complaint register was reconciled with a listing furnished by the Consumer Services Division of the Department. Fifty complaints from the Department's listing of 75 were randomly selected and received for review. The distribution of the complaints requiring a response to the Department is shown in the chart below.

Type of Complaint	Total
Claims	38
Underwriting	11
Administrative	1
Total	50

The Company's response to each complaint was deemed to be appropriate to the circumstances. The average service time to respond to a Department complaint was 4.16 calendar days. A chart of the Company's response time follows:

Service Days	Number of Files	Percentage of Total
1 - 7	50	100
Total	50	100

Privacy of Financial and Health Information

The Company provided privacy of financial and health information documentation for the examiners' review. The Company exhibited policies and procedures in place so that nonpublic personal financial or health information is not disclosed unless the customer or consumer has authorized the disclosure. The Company was found to be compliant with the provisions of NCGS 58-39-25, 58-39-26, and 58-39-27.

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. Private Passenger Automobile
2. Commercial Automobile
3. Commercial General Liability

Filings for ceded private passenger automobile and commercial automobile lines of business were made by the North Carolina Reinsurance Facility on behalf of the Company. Filings for the commercial general liability line of business were made by the Insurance Services Office on behalf of the Company. Deviations were made to the Department by the Company. Voluntary commercial automobile liability and physical damage coverages were filed by the Company with the Department.

Sales and Advertising

Sales and advertising practices of the Company were reviewed to determine compliance with the provisions of NCGS 58-63-15.

The Company does not market to the general public. Sales and advertising is directed to wholesale agents, who do not have authority to generate advertising material. The examiners reviewed Company newsletters, brochures, and promotional material that are provided to its wholesale agents/brokers.

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

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. The entire populations of 14 appointed and 11 terminated producer files were received for review.

All appointment and termination forms reviewed were submitted to the Department in accordance with the timetables stipulated under the provisions of NCGS 58-33-40 and 58-33-56.

The Company was deemed to be in apparent violation of the provisions of 11 NCAC 6A.0412(2) as background checks were not performed on any of the 14 appointed producers reviewed (100 percent error ratio).

The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-56(d) as notification of the termination was not sent to 3 of the terminated producers reviewed (27.3 percent error ratio).

Agency Management

Management of the Company's marketing effort in North Carolina is under the direction of the Assistant Vice President – Automobile, in the home office located in Goldsboro, North Carolina.

The Company is currently represented by 5 retail agencies and 14 producers for the North Carolina Reinsurance Facility commercial automobile business. Formal agency reviews are conducted annually, per statute, for these Designated Agents.

The Company is represented by 1 managing general agent, Strickland Insurance Brokers, Inc. (SIB) and 15 producers for the remainder of the company business. A brokerage agreement between the Company and SIB established the authority of SIB to act as the Agent for the Company. The Agent is given full power to accept, prepare, and cancel applications for insurance on the Company's behalf. The agent is also responsible for collecting premiums.

UNDERWRITING AND RATING

Overview

The Company's marketing philosophy in North Carolina focuses on personal and commercial lines.

The Company provided electronic lists of (1) all North Carolina Private Passenger Automobile, Commercial Automobile, and Commercial General Liability policies originally issued new with effective dates on or after January 1, 2005, and still in force as of December 31, 2007 and (2) all North Carolina Commercial General Liability policies originally issued new with effective dates originally on or after January 1, 2008, and still in force as of December 31, 2008. The lists only included risks where the named insured and mailing address is domiciled in North Carolina. The examiner randomly selected 100 of the Company's underwriting files from the first list and 50 of the Company's underwriting files from the second list and examined those files for underwriting criteria, consistency, rate accuracy, and compliance with North Carolina statutes and rules.

The Company also produced: (1) lists of all new, renewed, non-renewed, and cancelled Commercial General Liability policies for the period January 1, 2005 through December 31, 2007 (inclusive thereof) that were charged an inspection and/or policy fee, (2) lists of all new, renewed, non-renewed, and cancelled Commercial General Liability policies for the period

January 1, 2008 through December 31, 2008 (inclusive thereof) that were charged an inspection and/or policy fee, and (3) the complete electronic files for all of these policies. The examiner reviewed the 2005-2007 files for the sole purpose of determining compliance with NCGS 58-33-85(b) and related North Carolina statutes and regulations. The examiner reviewed the 2008 files for the purpose of determining compliance with NCGS 58-33-85(b), Article 63 of Chapter 58, and related North Carolina statutes and regulations.

Private Passenger Automobile

The Company provided a listing of 32,749 active private passenger automobile policies issued during the period under examination. One hundred policies were randomly selected and received for review.

The Company's private passenger automobile coverages were written on a 6 month basis. Liability coverages were written utilizing manual rates. Physical damage coverages were written on a consent to rate 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 reminded of the provisions of NCGS 58-37-35(l) as 8 policies reviewed (8.0 percent error ratio) were rated incorrectly. The rating errors consisted of the following:

- Incorrect territory was used to rate 4 policies.
- Incorrect Safe Driver Incentive Plan points were applied on 4 policies.

The rating errors resulted in 6 premium undercharges and 2 premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$152.33 were issued by the Company for the overcharges. The remaining 92 premiums were deemed correct.

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)(h) as 15 files reviewed (15.0 percent error ratio) did not contain proper file documentation.

- 5 files did not contain an application.
- 5 files did not contain a signed Uninsured/Underinsured Motorist Selection Form.
- 3 files did not contain a motor vehicle report for the listed drivers.
- 2 files did not contain accident reports to verify accidents involving personal injury.

Commercial Automobile

The Company provided a listing of 4,445 active commercial automobile policies issued during the period under examination. Fifty policies were randomly selected and received for review.

.The Company's commercial automobile coverages were written on an annual basis. Liability coverages were ceded to the North Carolina Reinsurance Facility. Physical damage and garagekeepers legal liability coverages were written on the Company's independently filed programs. 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 reminded of the provisions of NCGS 58-37-35(l) as 2 policies reviewed (4.0 percent error ratio) were rated incorrectly. One policy was rated using an incorrect territory and 1 policy was rated using an incorrect class code. The rating errors resulted in premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$213.00 were issued by the Company for the overcharges. The remaining 48 premiums were deemed correct.

Commercial General Liability Policies: January 1, 2005 through December 31, 2007

The Company's 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 examiner reviewed a random sample of 100 policies from an electronic list of all 5,190 North Carolina Commercial General Liability policies originally issued new with effective dates on or after January 1, 2005 and still in force as of December 31, 2007. The policy files were examined for underwriting criteria, consistency, rate accuracy, and compliance with North Carolina statutes and rules.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150(a) and 11 NCAC 10.1201 as the following policy forms had not been filed with and approved by the Department:

- Artisan Contractor General Liability Application
- General Liability Coverage Declarations (ACD-GL1 01-03)
- Policy Jacket (ACJ 1 1 1-02)
- Special Events Application (AGL-SE-01 09-98)

The Company was reminded of the provisions of NCGS 58-41-50(f) as 1 general liability events policy (1.0 percent error ratio) was rated using an incorrect base rate. The rating error resulted in a premium undercharge to the insured.

The examiner determined that the company charged a \$50.00 "policy fee" to eighty-six (86) of the 100 insureds and failed to obtain the insureds' written consent before charging the fees (86.0 percent error ratio). The company was thus deemed to be in apparent violation of NCGS 58-33-85(b) by failing to obtain the insureds' written consent before charging the fees.

On August 7, 2009, the examiner submitted an MC-2 form and a spreadsheet illustrating the examiner's findings for the 2005-2007 General Liability policies sample and requested a written response from the Company. [See **Exhibit A**, August 7, 2009 MC-2 Response Request form and Company response for General Liability Rating (2005-2007 policies) and spreadsheet.] In its written response, the Company does not dispute that it failed to obtain the insureds' written consent to these fees. The Company asserts that it did obtain the insureds' written consent on a signed consent to fee form before charging the \$50 policy fee up until November 14, 2001. The Company contends that "[its] records indicate that Frank Noyes, one of [the Company's] previous Underwriting Vice Presidents, had an 11/14/2001 telephone conversation with Helen Best of the Department wherein she stated, the fee was considered part of the Company's rate filing and that since it was approved, no Consent-to-Rate form need be completed (obtained)." The Company further contends that "[b]ased on Helen's statement, Atlantic Casualty Insurance Company stopped the process of obtaining the consent forms from that point forward. Our intent was never that the insured be unaware of the charges, as the fees were prominently displayed on the Declaration page of the policies where fees were charged. We believe that issues of communication and interpretation affected our attempts to file and implement these fees in a manner satisfactory to the Department."

The disclosure of fees on policy declaration pages does not substitute for compliance with NCGS 58-33-85(b). Chapter 58 contains no exceptions to the requirement under NCGS 58-33-85(b) that insurers obtain the applicant's written consent before charging a fee for the processing of applications or other forms or for the rendering of services associated with a contract of insurance, which money is in addition to the premium for such contract. Moreover, Helen Best, a Property and Rate Analyst in the Department's Property and Casualty Division, has no recollection of any such conversation with Mr. Noyes or any other Company representative and there is no record of any such conversation in the Property and Casualty

Division's file for the Company. The Department requested that the Company provide evidence of written confirmation received from Helen Best regarding the issue of the consent form. On February 9, 2008, the Company's Marketing Manager informed the examiner that the Company could not provide such written confirmation.

The Company's Commercial General Liability ["CGL"] filings with the Department's Property and Casualty Division reflect that the Company has known the requirements of NCGS 58-33-85(b). The Company's original May 1997 CGL filing included a \$50.00 inspection fee in addition to the premium. The filing which the Department approved stated: "inspection fee of \$50 applicable to risks requiring loss control inspection, *consent to rate form will be completed.*" (Emphasis added). [See **Exhibit B**, excerpt from Atlantic Casualty Insurance Company's May 1997 CGL filing] All subsequent filings by the Company indicate that the Company would not charge any additional fees without first obtaining the applicant's written consent. The Company's revised CGL filing of July 15, 1997 continued to specify an "inspection fee of \$50 applicable to risks requiring loss control inspection, *consent to rate form will be completed.*" (Emphasis added). [See **Exhibit C**, excerpt from Atlantic Casualty Insurance Company's July 15, 1997 CGL filing] On February 7, 2008, the Company submitted a \$50.00 service fee and consent to fee form for filing. In its February 7, 2008 submission, the Company stated that the consent form "*allows us to meet the requirements set forth in NCGS 58-33-85(b).*" (Emphasis added). [See **Exhibit F**, excerpt from Atlantic Casualty Insurance Company's February 2008 CGL filing]

The examiner also reviewed the electronic files of all new, renewed, non-renewed, and cancelled General Liability policies for the period January 1, 2005 through December 31, 2007 (inclusive thereof) that were charged a fee. [See **Exhibit D**, spreadsheet for General Liability policies 2005-2007] There was a total population of 13,615 new, renewed, non-renewed, and cancelled General Liability policies that were charged a \$50.00 fee. The examiner reviewed

these files for the sole purpose of determining compliance with NCGS 58-33-85(b) and related North Carolina statutes and regulations. The examiner determined that the Company never obtained the insured's written consent prior to charging the \$50.00 fee to each of the 13,615 insureds. Thus, the Company is deemed to be in apparent violation of NCGS 58-33-85(b) by charging and collecting a total of \$680,750.00 in fees for the period January 1, 2005 through December 31, 2007 without obtaining the insureds' prior written consent to these fees.

The examiner recommends that the Company issue refund checks to each of the 13,615 insureds to which the Company charged a fee without obtaining the insureds' prior written consent in order to cure these violations of NCGS 58-33-85(b).

Commercial General Liability Policies for 2008

The examiner reviewed a random sample of 50 policies from an electronic list of all 1,235 North Carolina Commercial General Liability policies originally issued new with effective dates on or after January 1, 2008 and still in force as of December 31, 2008. The policy files were examined for underwriting criteria, consistency, rate accuracy, and compliance with North Carolina statutes and rules.

The Company was reminded of the provisions of NCGS 58-41-50(f) as 3 policies (6.0 percent error ratio) were rated incorrectly. An incorrect base rate was used in rating the general liability events policies. The rating errors resulted in premium undercharges to the insureds.

The examiner determined that the Company charged a \$50.00 fee to 35 of these insureds and failed to obtain the insureds' prior written consent to the fees (70.0 percent error ratio). The Company is deemed to be in apparent violation of NCGS 58-33-85(b) by failing to obtain the insureds' written consent before charging the fees.

With one exception, the declaration pages for the fifty (50) policies listed the \$50.00 fee as either a "policy fee" or an "inspection fee." Thirty (30) of the policies listed a \$50.00

inspection fee and nineteen (19) of the policies listed a \$50.00 policy fee. The policy declaration pages on policies issued from January 1, 2008 until mid-February 2008 list the fee as a "policy fee." Thereafter, the declaration pages refer to the \$50.00 fee as an "inspection fee." One of the policies listed a \$25.00 inspection fee and a \$50.00 service fee. In that instance, the Company obtained the insured's written consent to the \$50.00 service fee, but not to the \$25.00 inspection fee. This was the only instance in which the Company obtained the insured's written consent to a fee.

The Company never performed an inspection for 27 of 30 insureds to which it charged a \$50.00 inspection fee (54.0 percent error ratio). The Company is deemed to be in apparent violation of Article 63 of Chapter 58 by charging a \$50.00 inspection fee without ever performing an inspection.

On August 7, 2009, the examiner submitted an MC-2 form and a spreadsheet illustrating the examiner's findings for the 2008 General Liability sample and requested a written response from the Company. [See **Exhibit E**, August 7, 2009 MC-2 Response Request form and Company response for General Liability Rating 2008 policies and spreadsheet.] In its written response, the Company does not dispute that it failed to obtain the insureds' written consent to these fees in the 50 instances referenced in the MC-2 and spreadsheet. The Company also does not dispute that it charged an inspection fee to 27 insureds without ever performing an inspection. The Company reiterated its previous explanation for discontinuing use of the consent to fee form after November 1, 2001.

In its written response, the Company also noted that it had filed a service fee and service fee consent form which the Department approved for use for policies effective on or after April 8, 2008. The Company stated that: "[t]he service fee could be charged in addition to the inspection fee. For a period from April 8 to mid October [2008], we charged the inspection fee as we always had previously, and *if we had an inspection performed, we charged the*

service fee in addition and obtained the signed service fee consent form. From mid October until December 31 [2008] we charged a service fee and obtained the signed service fee consent form, but only charged an inspection fee (ranging from \$25.00 to \$50.00) if we had an inspection performed on the risk. We had no intent to be unfair or deceptive as the fees were prominently displayed on the Declaration page of the policies where fees were charged. We believe that issues of communication and interpretation affected our attempts to file and implement these fees in a manner satisfactory to the Department.” (Emphasis added).

The examiner also reviewed the electronic files of all new, renewed, non-renewed, and cancelled General Liability policies for the period January 1, 2008 through December 31, 2008 (inclusive thereof) that were charged an inspection and/or policy fee for purpose of determining compliance with NCGS 58-33-85(b), Article 63 of Chapter 58, and related North Carolina statutes and regulations. There was a total population of 3,422 new, renewed, non-renewed, and cancelled General Liability policies which were charged a \$50.00 fee. The examiner determined that the Company never obtained the insured’s written consent prior to charging the \$50.00 fee to each of the 3,422 insureds. [See **Exhibit D**, spreadsheet for 2008 General Liability policies] Thus, the Company is deemed to be in apparent violation of NCGS 58-33-85(b) by charging and collecting a total of \$171,100.00 in fees for the period January 1, 2008 through December 31, 2008 without obtaining the insureds’ prior written consent to the fees.

The Company charged a \$50.00 inspection fee to 2,598 of the 3,422 insureds without obtaining the insureds’ prior written consent. The Company never performed an inspection for 2,563 of the 2,598 insureds to which it charged an inspection fee (98.7% error ratio). [See **Exhibit D**, spreadsheet showing 2008 General Liability Policies with Inspection Fee/No Inspection] The Company is deemed to be in apparent violation of Article 63 of Chapter 58 by charging a \$50.00 inspection fee without ever performing an inspection.

The examiner recommends that the Company: (a) issue refund checks to each of the 3,422 insureds to which the Company charged a fee without obtaining the insured's prior written consent in order to cure these violations of NCGS 58-33-85(b), (b) only list an "inspection fee" on the policy declaration page when it performs an inspection, and (c) that the Company obtain the insured's prior written consent to the inspection fee on a consent to fee form. Since the only consent to fee form which the Company has filed and approved is for the service fee, the examiner recommends that the Company file a separate consent to fee form for the inspection fee with the Property and Casualty Division in accordance with NCGS 58-41-50(a) and that the Company use this form whenever it charges an inspection fee.

TERMINATIONS

Overview

The Company's termination procedures were reviewed to determine compliance with the appropriate North Carolina statutes and rules, policy provisions, and the applicable policy manual rules. The review focused on the following lines of business:

1. Private Passenger Automobile
2. Commercial Automobile
3. General Liability

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 54,024 policies were terminated during the period under examination. The examiners randomly selected 300 terminations for review.

Private Passenger Automobile Cancellations

One hundred cancelled private passenger automobile policies were randomly selected and received for review from a population of 44,772.

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

Reason for Cancellation	Number of Policies	Percentage
Nonpayment of premium	60	60.0
Coverage rewritten	28	28.0
Insured's request	7	7.0
Finance company request	5	5.0
Total	100	100.0

The Company was not required to issue cancellation notices for 35 of the cancellations reviewed as these policies were cancelled at the request of the insured or the coverage was rewritten. Cancellation notices for the remaining 65 policies stated the specific reason for cancellation.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-30(a) and Rule 10 of the North Carolina Personal Automobile Manual as the return premiums for 11 policies, cancelled at the request of the insured (11.0 percent error ratio), were incorrectly calculated at 0.90 of the pro rata unearned premium rather than short rate. Ten errors resulted in overstatement of refund, and 1 error resulted in understatement of refund. At the request of the examiners, the Company issued an additional refund in the amount of \$12.98. The remaining premium refunds were deemed correct. The Company issued the refunds in a timely manner.

The Company was reminded of the provisions of NCGS 58-36-85(c) and the policy termination provisions as 3 cancellation notices (3.0 percent error ratio) were not issued at least 15 days prior to the cancellation date of the policy.

The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 1 file (1.0 percent error ratio) did not contain proof of mailing of the cancellation notice.

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

The Company sent the North Carolina Notice of Termination Form (FS-4) to the North Carolina Division of Motor Vehicles (DMV) when liability coverages were cancelled. The Company was deemed to be in compliance with the provisions of NCGS 20-309(e).

Commercial Automobile Cancellations

Fifty cancelled commercial automobile policies were randomly selected and received for review from a population of 4,417 policies.

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

Reason for Cancellation	Number of Policies	Percentage
Finance company request	26	52.0
Insured's request	19	38.0
Nonpayment of premium	4	8.0
Underwriting reasons	1	2.0
Total	50	100.0

The Company was not required to issue cancellation notices for 19 of the cancellations reviewed as these policies were cancelled at the request of the insured. Cancellation notices for the remaining 31 policies stated the specific reason for cancellation. All insureds were given proper and timely notification of cancellation.

All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

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

Commercial General Liability Cancellations

Fifty cancelled commercial general liability policies were randomly selected and received for review from a population of 4,560 policies.

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

Reason for Cancellation	Number of Policies	Percentage
Finance company request	42	84.0
Underwriting reasons	5	10.0
Nonpayment of premium	2	4.0
Insured's request	1	2.0
Total	50	100.0

The Company was not required to issue cancellation notices for 43 of the cancellations reviewed as these policies were cancelled at the request of the insured or finance company. Cancellation notices for the remaining 7 policies stated the specific reason for the cancellation. All insureds were given proper and timely notification of cancellation.

All premium refunds were deemed correct. The Company issued the refunds in a timely manner.

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

Private Passenger Automobile Nonrenewals

The Company reported no private passenger automobile policies were nonrenewed during the period under examination.

Commercial Automobile Nonrenewals

Fifty nonrenewed commercial automobile policies were randomly selected and received for review from a population of 52.

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

Reason for Nonrenewal	Number of Policies	Percentage
Agent no longer represents the Company	33	66.0
Underwriting reasons	17	34.0
Total	50	100.0

The Company was reminded of the provisions of NCGS 58-41-20(e) as 2 nonrenewal notices (4.0 percent error ratio) did not state the precise reason for nonrenewal. The Company was reminded of the provisions of NCGS 58-41-20(b) as 1 insured (2.0 percent error ratio) was not provided at least 45 days notice of nonrenewal.

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

Commercial General Liability Nonrenewals

Fifty nonrenewed commercial general liability policies were randomly selected and received for review from a population of 223.

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

Reason for Nonrenewal	Number of Policies	Percentage
Underwriting reasons	37	74.0
Agent no longer represents the Company	13	26.0
Total	50	100.0

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. The Company was reminded of the provisions of NCGS 58-41-20(b) as 1 insured (2.0 percent error ratio) was not provided at least 45 days notice of nonrenewal.

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

Claims service in North Carolina is under the direction of the Vice President of Claims and is provided from the home office located in Goldsboro, North Carolina. The staff is comprised of 1 claims manager, 1 litigation manager, 1 claims supervisor, 2 litigation examiners, 3 claims examiners, 4 claims adjusters and 3 claims assistants/clerks. Company adjusters provide the claim service with some assistance, at times, from independent adjusters. Independent adjusters have no check or draft authority. The Claims Supervisor maintains the Company's salvage register system. The Company's agency force does not have check or draft authority.

Five hundred fifty claims were randomly selected for review from a population of 31,592.

Paid Claims

The examiners randomly selected and received 200 of the 15,958 first party automobile physical damage and third party property damage claims paid during the period under examination. 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:

Type of Claim	Payment Time
Automobile physical damage	13.5
Third party property damage	10.8

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.

First party claims were not appraised in a timely manner for 2 claims (2.0 percent error ratio). First party claims were not investigated in a timely manner for 1 claim (1.0 percent error ratio). First party claims were not paid in a timely manner for 1 claim (1.0 percent error ratio). Third party claims were not appraised in a timely manner for 1 claim (1.0 percent error ratio). This matter could result in an apparent violation of the provisions of NCGS 58-63-15(11) if the occurrence is of such frequency as to be considered a general business practice.

Automobile Medical Payment Claims

Fifty automobile medical payment claims were randomly selected and received for review from a population of 1,945. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. Claims were not acknowledged in a timely manner for 2 claims (4.0 percent error ratio). This matter could result in an apparent violation of the provisions of NCGS 58-63-15(11) if the occurrence is of such frequency as to be considered a general business practice.

First and Third Party Bodily Injury Claims

Fifty first and third party bodily injury claims were randomly selected and received for review from a population of 3,526. The claim files were reviewed to determine if the Company had engaged in any unfair claims practices. The review of first and third party bodily injury claims disclosed no apparent violations of the provisions of NCGS 58-63-15.

Closed Without Payment Claims

One hundred closed without payment claims were randomly selected and received for review from a population of 6,915. 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 7 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.

Subrogated Claims

Fifty subrogated claims were randomly selected and received for review from a population of 547. The claim files were reviewed to determine if the insured's deductible was properly reimbursed by the Company when subrogation was successful.

The insured's deductible was not reimbursed in a timely manner for 1 claim (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of NCGS 58-63-15(11) if the occurrence is of such frequency as to be considered a general business practice.

The remaining reimbursements were deemed to be correct and were issued on an average of 2.3 calendar days from the date the Company collected the monies.

Total Loss Settlement Claims

Fifty total loss settlement claims were randomly selected and received for review from a population of 2,311. The claim files were reviewed to determine if the settlements were equitable and timely.

The Company primarily used guidebook values and dealer quotes as provided through CCC Valuescope Claim Services to establish the actual cash value of totaled vehicles. All settlements were deemed equitable.

Claims were not appraised in a timely manner for 1 claim (2.0 percent error ratio). This matter could result in an apparent violation of the provisions of NCGS 58-63-15(11) if the occurrence is of such frequency as to be considered a general business practice.

The Company settled all remaining claims in a timely manner. The payments were issued on a 3-year average of 20 calendar days. No apparent violations of the provisions of 11 NCAC 4.0418, or 4.0421 were noted during this review.

Litigated Claims

Fifty litigated claims were randomly selected and received for review from a population of 390. 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 violation of the provisions of NCGS 58-63-15.

SUMMARY

The Market Conduct examination revealed the following:

1. Marketing

- a. The Company was deemed to be in apparent violation of the provisions of 11 NCAC 6A.0412(2) as background checks were not performed on 100 percent of the appointed producers reviewed.
- b. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-56(d) as notification of termination was not sent to 27.3 percent of the terminated producers reviewed.

2. Underwriting and Rating

- a. The Company was reminded of the provisions of NCGS 58-37-35(l) as 8.0 percent of the active private passenger automobile policies reviewed were rated incorrectly.
- b. 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)(h) as 15.0 percent of the active private passenger automobile files reviewed did not contain proper file documentation.
- c. The Company was reminded of the provisions of NCGS 58-37-35(l) as 4.0 percent of the active commercial automobile policies reviewed were rated incorrectly.

- d. The Company was deemed to be in apparent violation of the provisions of NCGS 58-3-150(a) and 11 NCAC 10.1201 as various policy forms for the active commercial general liability policies had not been filed with and approved by the Department.
- e. The Company was reminded of the provisions of NCGS 58-41-50(f) as 1.0 percent of the active commercial general liability policies reviewed were rated incorrectly.
- f. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-85(b) by failing to obtain the insureds written consent before charging a \$50 policy/inspection fee on 86.0 percent of the active commercial general liability policies reviewed.
- g. The Company was reminded of the provisions of NCGS 58-41-50(f) as 6.0 percent of the active 2008 commercial general liability policies reviewed were rated incorrectly.
- h. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-85(b) by failing to obtain the insureds written consent before charging a \$50 policy/inspection fee on 70.0 percent of the active 2008 commercial general liability policies reviewed.
- i. The Company was deemed to be in apparent violation of the provisions of Article 63 of NCGS Chapter 58 by charging a \$50 inspection fee without performing an inspection on 54.0 percent of the active 2008 general liability policies reviewed.

3. Terminations

- a. The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-30(a) and Rule 10 of the North Carolina Personal Auto Manual as the return premium for 11.0 percent of the cancelled private passenger automobile policies reviewed was computed using an incorrect cancellation method.
- b. The Company was reminded of the provisions of NCGS 58-36-85(c) and the policy termination provisions as the cancellation notice for 3.0 percent of the cancelled private passenger automobile policies reviewed was not issued at least 15 days prior to the termination date.
- c. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104, and 19.0106(a)(4)(h) as 1.0 percent of the cancelled private passenger automobile files reviewed did not contain proof of mailing of the cancellation notice.
- d. The Company was reminded of the provisions of NCGS 58-41-20(e) as the nonrenewal notice for 4.0 percent of the nonrenewed commercial automobile policies reviewed did not state the precise reason for nonrenewal.
- e. The Company was reminded of the provisions of NCGS 58-41-20(b) as the nonrenewal notice for 2.0 percent of the nonrenewed commercial automobile policies reviewed was not issued at least 45 days prior to the termination date.

- f. The Company was reminded of the provisions of NCGS 58-41-20(b) as the nonrenewal notice for 2.0 percent of the nonrenewed commercial general liability policies reviewed was not issued at least 45 days prior to the termination date.

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 58-3-150	Forms to be approved by Commissioner.
NCGS 58-7-15	Kinds of insurance authorized.
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 58-36-30	Deviations.
NCGS 58-36-85	Termination of a nonfleet private passenger motor vehicle insurance policy.
NCGS 58-37-35	The Facility; functions; administration.
NCGS 58-39-25	Notice of insurance information practices.
NCGS 58-39-26	Federal privacy disclosure notice requirements.
NCGS 58-39-27	Privacy notice and disclosure requirement exceptions.
NCGS 58-41-20	Notice of nonrenewal, premium rate increase, or change in coverage required.
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.

<u>Statute/Rule</u>	<u>Title</u>
11 NCAC 4.0418	Total Losses on Motor Vehicles.
11 NCAC 4.0421	Handling of Loss and Claim Payments.
11 NCAC 6A.0412	Appointment of Agent: Responsibility of Company.
11 NCAC 10.1201	General Requirements.
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 Atlantic Casualty Insurance Company for the period January 1, 2005 through December 31, 2007 with analyses of certain operations of the Company being conducted through September 21, 2009. The Company's response to this report, if any, is available upon request.

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 and rating, terminations, and claims practices.

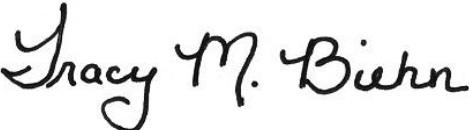
In addition to the undersigned, James P. McQuillan, CPCU and Letha Lombardi, North Carolina Market Conduct Examiners, participated in this examination.

Respectfully submitted,



Norma M. Rafter, CPCU
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.

Handwritten signature of Tracy M. Biehn in black ink.

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