



REPORT ON  
MARKET CONDUCT EXAMINATION

of the

FIRST BENEFITS INSURANCE MUTUAL, INC

Raleigh, North Carolina

BY REPRESENTATIVES OF THE  
NORTH CAROLINA DEPARTMENT OF INSURANCE

as of

August 1, 2012

---

---



## TABLE OF CONTENTS

SALUTATION .....	1
FOREWORD.....	2
SCOPE OF EXAMINATION .....	2
EXECUTIVE SUMMARY .....	3
COMPANY OVERVIEW .....	3
History and Profile .....	3
Company Operations and Management .....	4
Certificates of Authority .....	4
Disaster Recovery Procedures.....	5
POLICYHOLDER TREATMENT .....	5
Consumer Complaints.....	5
MARKETING.....	5
Policy Forms and Filings .....	5
Sales and Advertising.....	6
Social Media .....	6
Producer Licensing.....	6
Agency Management.....	7
UNDERWRITING PRACTICES .....	7
Overview .....	7
Workers' Compensation.....	7
TERMINATIONS.....	8
Workers' Compensation Cancellations.....	9
Workers' Compensation Nonrenewals .....	10
SUMMARY.....	10
TABLE OF STATUTES AND RULES .....	11
CONCLUSION.....	12



Raleigh, North Carolina  
August 1, 2012

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

**FIRST BENEFITS INSURANCE MUTUAL, INC**  
**(NAIC #13098)**

NAIC Exam Tracking System Exam Number: NC094-M51  
Raleigh, North Carolina

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 First Benefits Insurance Mutual, Inc. 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 23, 2012 and covered the period of January 1, 2008 through December 31, 2010 with analyses of certain operations of the Company being conducted through August 1, 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 and terminations.

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 of Producers* - background checks were not performed.

*Underwriting Practices* - applications accepted from a producer who was not properly appointed by the Company, schedule rating worksheets not provided.

*Terminations* – refunds calculated incorrectly, charged an unfiled late fee.

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

First Benefits Insurance Mutual, Inc. (FBI) is a mutual insurance company specializing in workers' compensation coverage for North Carolina employers. FBI is the surviving corporation

after a 2008 merger with the North Carolina Retail Self Insurers Fund. Prior to the merger, the Company operated as a self-insured fund under the name CompCarolina. CompCarolina was established in 1992 and provided workers' compensation coverage for North Carolina employers.

#### Company Operations and Management

The Company writes workers' compensation insurance coverages exclusively and is licensed only in North Carolina. Two separate Third Party Administration companies are responsible for the operation of FBI. Brentwood Services Administrators, Inc. provides policy services, premium collections, financial reports and claim management. Total Quality Management, Inc. provides underwriting, marketing, agent and board administration tasks.

Direct written premium for the Company in 2010 was \$5,937,668. Premiums written in North Carolina between 2008 and 2010 decreased approximately 18.4 percent. The charts below outline the Company's mix of business for selected lines in 2010 and loss ratios for the examination period.

<b>Line of Business</b>	<b>Written Premium</b>	<b>Percentage</b>
Workers' Compensation	\$5,937,668	100.0
<b>Total</b>	<b>\$5,937,668</b>	<b>100.0</b>

<b>Year</b>	<b>Written Premium</b>	<b>Earned Premium</b>	<b>Incurred Losses*</b>	<b>Loss Ratio</b>
2008	\$7,275,922	\$7,275,922	\$5,000,006	68.7
2009	\$7,312,069	\$6,756,190	\$2,852,230	42.2
2010	\$5,937,668	\$6,402,909	\$2,489,506	38.9
<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 established disaster recovery procedures to specifically address protection and recovery of information in the event of an unexpected and unscheduled interruption. Backup processes are in place to reduce the loss of data. The process consists of disk-to-disk backups that are performed nightly and disk-to-tape backups that are performed the following morning. All disk-to-tape backup copies are kept offsite for safekeeping and disaster recovery purposes. The Company has also employed the traditional GFS (Grandfather-Father-Son) tape rotation scheme for rotating backup media.

Brentwood Services satellite office in Birmingham, Alabama serves as a warm site with the ability to restore data to servers at their main location in Nashville, Tennessee.

### **POLICYHOLDER TREATMENT**

#### Consumer Complaints

The Company's complaint handling procedures were reviewed to determine compliance with applicable North Carolina statutes and rules. There were no complaints reported for the period under examination.

### **MARKETING**

#### Policy Forms and Filings

Policy forms and filings for the Company were reviewed to determine compliance with appropriate North Carolina statutes and rules. Filings for the workers' compensation line of business were made by the North Carolina Rate Bureau on behalf of the Company. Deviations for this line of business were made to the Department by the Company.

### 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 distribute sales material directly to insureds or prospective insureds. The Company utilizes a network of independent agencies which are responsible for their own advertising. Print media is limited to occasional advertisements in newsletters for the North Carolina Retail Merchants Association and the Carolina Food Industry Council. There are no regularly scheduled newsletters or bulletins to producers. The Company occasionally sends promotional emails to appointed producers. The Company also maintains a website at [www.firstbenefits.org](http://www.firstbenefits.org).

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

### Social Media

The Company does not use any social media outlets. Producers contracted by the Company may or may not use social media in the operation of their independent businesses.

### 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 and 50 terminated producer files were randomly selected and received for review from populations of 704 and 184, respectively.

All producer appointments were submitted to the Department in accordance with the time requirement stipulated under the provisions of NCGS 58-33-40. The Company was deemed to be in apparent violation of the provisions of Title 11 of the North Carolina Administrative Code (NCAC), Chapter 6A, Section 0412(2) as background checks were not performed on any of the 50 appointed producers reviewed (100 percent error ratio).

The Company was reminded of the provisions of NCGS 58-33-56(b) as 2 of the producer terminations reviewed (4.0 percent error ratio) were not submitted to the Department within 30 days of the termination date.

#### Agency Management

The Company's marketing effort in North Carolina is under the direction of the Executive Vice President located in the home office in Raleigh, North Carolina. The Company currently utilizes a network of 212 appointed independent agencies with 562 producers. The independent agencies do not have binding authority under the contract terms; therefore, formal agency reviews are not conducted by the Company.

Producer appointments, terminations and licensing are the responsibility of the Director of Agency Services.

### **UNDERWRITING PRACTICES**

#### Overview

The Company's marketing philosophy in North Carolina focuses on the workers' compensation line of business. The Company's 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.

#### Workers' Compensation

The Company provided a listing of 1,715 active workers' compensation policies issued during the period under examination. Fifty policies were randomly 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.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40 as the producers were not properly appointed by the Company for 5 of the active files reviewed (10.0 percent error ratio).

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) as 9 of the files reviewed (18.0 percent error ratio) did not contain a copy of the required schedule rating worksheet.

The Company was reminded of the provisions of NCGS 58-36-100 as incorrect rating factors were applied to 3 policies reviewed (6.0 percent error ratio). The rating errors consisted of the following:

- 2 policies were rated with the incorrect lost cost multiplier.
- 1 policy was rated with the incorrect Terrorism rate.

The rating errors resulted in 1 premium undercharge and 2 premium overcharges to the insureds. At the request of the examiners, refunds in the amount of \$105.00 were issued by the Company for the overcharges. The remaining 47 premiums charged were deemed correct.

### **TERMINATIONS**

The Company's termination procedures for its 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 495 policies were terminated during the period under examination. The examiners randomly selected 61 terminations for review.

### Workers' Compensation Cancellations

Fifty cancelled workers' compensation policies were randomly selected for review from a population of 484. The Company was unable to provide 1 of the files requested (2.0 percent error ratio) and was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104 and 19.0106(a)(4). The review was based on the remaining 49 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>
Nonpayment of premium	26	53.0
Insured's request	19	38.8
Underwriting reasons	4	8.2
<b>Total</b>	<b>49</b>	<b>100.0</b>

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 30 policies stated the specific reason for cancellation.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-100 and Rule 3 of the National Council on Compensation Insurance Manual as the return premium was calculated incorrectly for 6 policies reviewed (12.2 percent error ratio). The errors consisted of the following:

- A prior audit credit was applied twice on 1 policy.
- 2 policies were cancelled using an incorrect cancellation method.
- 3 insureds were due a refund or an additional refund.

The errors resulted in overstatement of refund to the insured for 2 policies and understatement of refund to the insured for 4 policies. At the request of the examiners, additional refunds in the amount of \$653.98 were issued by the Company for the understatement of refunds.

The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-1 and 58-36-100 as 13 insureds (26.5 percent error ratio) were charged a \$25.00 late fee(s) prior to Departmental approval of the fee. As a result, the Department requested the Company to conduct a self-audit in this area. The Company identified an additional 951 policies affected (excluding those that were reviewed by the examiners as noted above). Refunds totaling \$50,127.92 were issued for the overcharges. All refund checks were mailed to the insureds by June 29, 2012.

The remaining 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.

#### Workers' Compensation Nonrenewals

The entire population of 11 nonrenewed workers' compensation policies was received for review.

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

<b>Reason for Nonrenewal</b>	<b>Number of Policies</b>	<b>Percentage</b>
Underwriting reasons	11	100.0
<b>Total</b>	<b>11</b>	<b>100.0</b>

The nonrenewal notices for the policies reviewed stated the specific reason for nonrenewal. All insureds were given timely notification 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.

#### **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 reminded of the provisions of NCGS 58-33-56(b) as 4.0 percent of the producer terminations reviewed were not submitted to the Department within 30 days of the termination date.
2. Underwriting Practices
  - a. The Company was deemed to be in apparent violation of the provisions of NCGS 58-33-40 as the producers were not properly appointed by the Company for 10.0 percent of the active workers' compensation files reviewed.
  - 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) as 18.0 percent of the active workers' compensation files reviewed did not contain a copy of the required schedule rating worksheet.
  - c. The Company was reminded of the provisions of NCGS 58-36-100 as incorrect rating factors were applied to 6.0 percent of the active workers' compensation policies reviewed.
3. Terminations
  - a. The Company was reminded of the provisions of 11 NCAC 19.0102(a), 19.0104 and 19.0106(a)(4) as 2.0 percent of the cancelled workers' compensation policies requested were not provided for review.
  - b. The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-100 and Rule 3 of the National Council on Compensation Insurance Manual as the return premium was calculated incorrectly for 12.2 percent of the cancelled workers' compensation policies reviewed.
  - c. The Company was deemed to be in apparent violation of the provisions of NCGS 58-36-1 and 58-36-100 as 26.5 percent of the cancelled workers' compensation policies reviewed were charged a \$25.00 late fee(s) prior to Departmental approval of the fee.

#### **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 58-7-15	Kinds of insurance authorized.

NCGS 58-33-40	Appointment of agents.
NCGS 58-33-56	Notification to Commissioner of termination.
NCGS 58-36-1	North Carolina Rate Bureau created.
NCGS 58-36-100	Prospective loss costs filings and final rate filings for workers' compensation and employers' liability insurance.
NCGS 58-63-15	Unfair methods of competition and unfair or deceptive acts or practices defined.
11 NCAC 6A.0412	Appointment of Agent: Responsibility of Company.
11 NCAC 19.0102	Maintenance of 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 First Benefits Insurance Mutual, Inc. for the period January 1, 2008 through December 31, 2010 with analyses of certain operations of the Company being conducted through August 1, 2012. 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 practices and terminations.

In addition to the undersigned, Kelvin A. Owens, North Carolina Market Conduct Examiner, participated in this examination.

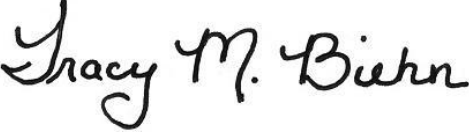
Respectfully submitted,





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.

A handwritten signature in black ink that reads "Tracy M. Biehn". The signature is written in a cursive style with a large initial 'T' and 'B'.

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