

**First Acceptance Insurance Company, Inc.**

**MARKET CONDUCT EXAMINATION REPORT**

**DATE OF EXAMINATION:** March 16, 2009 through May 8, 2009

**EXAMINATION OF:** First Acceptance Insurance Company,  
Foreign Stock

**LOCATION OF EXAMINATION:** 3813 Green Hills Village Drive  
Nashville, TN 37215

**PERIOD COVERED BY  
EXAMINATION:** January 1, 2008 through December 31, 2008

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## I. SUMMARY

1. The Company was criticized under 215 ILCS 5/143.15 for failing to provide a specific explanation of the reason or reasons for cancellation or failing to provide at least 30 days notice.

A Class Criticism was issued in the Private Passenger Automobile Cancellation Survey.

2. The Company was criticized under 215 ILCS 5/143.20 for failing to notify the named insured of his or her possible eligibility for insurance through the Illinois Automobile Insurance Plan.

A Class Criticism was issued in the Private Passenger Automobile Nonrenewal Survey.

3. The Company was criticized under 215 ILCS 5/143.23 for failing to advise the named insured of his or her right to appeal and the procedure to follow for such appeal.

A Class Criticism was issued in the Private Passenger Automobile Nonrenewal Survey.

4. The Company was criticized under 215 ILCS 5/143.17(e) for failing to provide a specific explanation of the reasons for nonrenewal.

A Class Criticism was issued in the Private Passenger Automobile Nonrenewal Survey.

5. The Company was criticized for being in conflict with 50 Ill. Adm. Code 754.10(b)(1) and/or 50 Ill. Adm. Code 754.10(b)(2) when failing to follow the rules for applying rates and rating plans which had been filed with the Illinois Department of Insurance or failing to use the rates filed with the Illinois Department of Insurance creating Miscellaneous Rating Errors (MRE's) of one (1) annual overcharge totaling \$24.00 and 36 annual undercharges totaling \$4576.00. Reimbursement has been made on the overcharge.

A Class Criticism was issued in the Private Passenger Automobile New Business Survey.

6. The Company was criticized for being in conflict with 50 Ill. Adm. Code 753.10(a)(3) for using applications not filed with the Illinois Department of Insurance.

A Class Criticism was issued in the Private Passenger Automobile New Business Survey.

7. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(2) for failing to send a written explanation for the delay to the insured when the claim remained unresolved for more than 40 calendar days or failing to provide the correct and/or complete address of the Illinois Department of Insurance.

A Class Criticism was issued in the Private Passenger Automobile First Party Median & Paid Survey.

8. The Company was criticized under 50 Ill. Adm. Code 919.60(a) for indicating on the payment draft or check to the insured that the payment was "full and final".

A General Trend Criticism was issued in the Private Passenger Automobile First Party Median & Paid Survey.

9. The Company was criticized under 50 Ill. Adm. Code 919.50(a)(1) in the Private Passenger Automobile First Party Median & Paid Survey for failing to provide the insured a written explanation of the basis of the lower payment when the payment made was less than the estimate in the file creating an underpayment of \$29.71. The Company has made the payment to the insured.

10. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(2) for failing to send a written explanation for the delay to the insured when the claim remained unresolved for more than 40 calendar days or failing to provide the correct and/or complete address of the Illinois Department of Insurance.

A Class Criticism was issued in the Private Passenger Automobile First Party Closed Without Payment Survey.

11. The Company was criticized under 50 Ill. Adm. Code 919.50(a)(1) for failing to provide the insured a reasonable written explanation of the basis of the denial when closing the file without payment and/or failing to provide the Notice of Availability of the Illinois Department of Insurance.

A Class Criticism was issued in the Private Passenger Automobile First Party Closed Without Payment Survey.

12. The Company was criticized in the Private Passenger Automobile First Party Closed Without Payment Survey for failing to offer payment as required and outlined in 50 Ill. Adm. Code 919.50(a) creating three (3) underpayments totaling \$526.44. The Company has made the proper reimbursements.
13. The Company was criticized for failing to provide a written explanation for the delay to the third party claimant, failing to provide that explanation by the 60<sup>th</sup> day from the date the claim was reported, or failing to provide the correct Notice of Availability of the Illinois Department of Insurance as outlined in 50 Ill. Adm. Code 919.80(b)(3).

A Class Criticism was issued in the Private Passenger Automobile Third Party Median & Paid Survey.

14. The Company was criticized under 50 Ill. Adm. Code 919.30(c) for failing to maintain detailed documentation in order to permit reconstruction of the company's activities relative to the claim when the payment to the third party was reduced by a certain percentage.

A General Trend Criticism was issued in the Private Passenger Automobile Third Party Median & Paid Survey.

15. The Company was criticized for failing to provide a written explanation for the delay to third party claimant as outlined in 50 Ill. Adm. Code 919.80(b)(3).

A Class Criticism was issued in the Private Passenger Automobile Third Party Closed Without Payment Survey.

16. The Company was criticized under 50 Ill. Adm. Code 919.50(a)(2) for failing to provide a reasonable explanation for the denial.

A General Trend Criticism was issued in the Private Passenger Automobile Third Party Closed Without Payment Survey.

17. The Company was criticized under 215 ILCS 5/143b for failing to return the full pro-rata share of the insured's deductible as required creating 12 underpayments totaling \$6000.00 and one (1) overpayment of \$500.00. Reimbursement has been made on the underpayments. The Company reviewed additional files as a result of the criticism and identified 27 more files that needed return of the insured deductible. The Company has also made payment on those deductibles in the amount of \$11,500.00.

A General Trend Criticism was issued in the Private Passenger Automobile Subrogation Survey.

18. The Company was criticized under 50 Ill. Adm. Code 919.80(b)(2) for failing to send a written explanation for the delay to the insured when the claim remained unresolved for more than 40 calendar days and/or failing to provide the written explanation by the 40<sup>th</sup> day and/or failing to provide the correct/complete address of the Illinois Department of Insurance.

A Class Criticism was issued in the Private Passenger Automobile First Party Total Loss Survey.

19. The Company was criticized under 50 Ill. Adm. Code 919.80(c)(2)(E) for failing to have documentation in the file to show how the market value of the insured vehicle was determined creating 11 underpayments totaling \$2283.00. Reimbursement has been made to these insureds.

A General Trend Criticism was issued in the Private Passenger Automobile Total Loss Survey.

20. The first party median was 12 days. As outlined in 50 Ill. Adm. Code 919.80(b)(2), an unreasonable delay to pay automobile collision claims exists when the median payment period exceeds 40 calendar days.
21. The third party median was 26 days with subrogation, arbitration and litigation files included and 15 days when excluded. As outlined in 50 Ill. Adm. Code 919.80(b)(3), an unreasonable delay to pay automobile property damage claims exists when the median payment period exceeds 60 calendar days.

In addition to the individual survey findings noted above, the following was discovered:

22. From the Company response to Interrogatory #1 - The Company is criticized under 215 ILCS 5/143.25a of the Illinois Insurance Code for failing to inform automobile insureds, prior to the first renewal, of the availability of higher collision and comprehensive deductibles and that a premium savings could result if the higher deductibles were purchased.

A Class Criticism applies.

23. From the response to Interrogatory #4 and discovered during the Private Passenger Automobile Total Loss Survey - The Company was criticized under 50 Ill. Adm. Code 919.80(c) for failing to use one (1) of the methodologies or sources as described in 50 Ill. Adm. Code 919.80(c)(2)(A), 919.80(c)(2)(B) or 919.80(c)(2)(C). The Company used dealer quotes or similar vehicles for sale *with* NADA or CCC to determine the actual cash value of the insured total loss vehicle sometimes increasing the value from the quoted NADA or CCC amount and sometimes decreasing the value from the quoted NADA or CCC amount. The Company must use one (1) of the methodologies described in 50 Ill. Adm. Code 919.80(c)(2)(A), 919.80(c)(2)(B) or 919.80(c)(2)(C) such as NADA, CCC, ADP, Redbook etc. and may not use or incorporate dealer quotes unless the vehicle is not quoted in one (1) of the aforesaid as is outlined in 50 Ill. Adm. Code 919.80(c)(2)(D). All of the vehicles were quoted in the source used by the Company. The Company, therefore, has failed to use one of the sources as outlined in 50 Ill. Adm. Code 919.80(c)(2)(A), 919.80(c)(2)(B) or 919.80(c)(2)(C). They must use the CCC or NADA quote, if that is the source(s) they choose to use, and the insured has the "Right of Recourse" if they cannot locate a replacement vehicle at that NADA or CCC amount.

A Class Criticism applies for violation of 50 Ill. Adm. Code 919.80(c)(2).



## II. BACKGROUND

The following company was the subject of the Market Conduct Examination.

### FIRST ACCEPTANCE INSURANCE COMPANY, Inc.

This First Acceptance Insurance Company, Inc. ("Company") was incorporated in Tennessee on July 12, 1995 as USAuto Insurance Company. It commenced business on October 7, 1995. The current title was adopted on January 6, 2006. On November 20, 2006 the Company domesticated from Nashville, Tennessee to Grand Prairie, Texas.

The Company began writing non-standard personal automobile insurance in the State of Tennessee in 1995. By the end of 2003, the Company was licensed in 18 states and writing business in six (6) states. Following the merger of Liberte Investors, Inc. and USAuto Holdings, Inc. in April 2004, USAuto Holdings, Inc. became the surviving corporation of the merger and subsequently changed its name to FAC.

The Company is currently licensed in 25 states and writing business in 10 states. The Company's subsidiary, First Acceptance Insurance Company of Georgia, Inc. writes only in Georgia, and First Acceptance Insurance Company of Tennessee, Inc. writes only in Tennessee, making a total of 12 states for all companies combined.

### III. METHODOLOGY

The Market Conduct examination places emphasis on evaluating an insurer's systems and procedures in dealing with insureds and claimants.

The following categories are the general areas examined:

1. Risk Selection
2. Underwriting
3. Claims
4. Complaints

The review of these categories is accomplished through examination of individual underwriting and claim files, written interrogatories, interviews with company personnel, analysis of policy forms and endorsements, and verification of computer rating accuracy. Each of these categories is examined for compliance with Departmental Rules and Regulations and applicable state law.

The report concerns itself with improper practices performed with such frequency as to indicate general business practices. Individual criticisms are identified and communicated to the insurer but are not cited in the report if not indicative of a general trend, except if there were underpayments and/or overpayments in claim surveys or undercharges and/or overcharges in underwriting surveys.

The following methods were used to obtain the required samples to assure a methodical selection.

#### Risk Selection

Cancellations and nonrenewals were requested on the basis of the effective date of the transaction falling within the period under examination and were reviewed for their compliance with statutory requirements, the accuracy and validity of reasons given and for any possible discrimination.

#### Underwriting

Files were selected based on the inception date falling within the period under examination. New policies were reviewed for rating accuracy, use of filed rates, use of filed forms, compliance with company underwriting guidelines and to insure that the protection provided was as requested.

**Claims**

Claims were requested based on the final settlement occurring within the period under examination.

**Complaints**

Complaints were requested based on those received by the company in calendar year 2008.

## Selection of Samples

	<u>Total Files</u>	<u># Reviewed</u>	<u>% Reviewed</u>
<b>A. Risk Selection</b>			
1. Auto Cancellations	13	13	100.00
2. Auto Nonrenewals	60	60	100.00
<b>B. Underwriting</b>			
1. Auto – New Business	53,058	116	.22
<b>C. Claims</b>			
1. First Party Auto Median & Paid	1647	109	6.62
2. First Party Auto Closed Without Payment	1210	107	8.84
3. Third Party Auto Median & Paid	3240	113	3.49
4. Third Party Auto Closed Without Payment	3378	113	3.35
5. Auto Subrogation	186	80	43.01
6. Auto Total Losses - First Party	483	95	19.67
<b>D. Complaints</b>			
1. Department Complaints	56	56	100
2. Consumer Complaints	0	0	N/A

## IV. FINDINGS

### A. Risk Selection

#### 1. Private Passenger Automobile Cancellations

In 13 files or 100.00% of the 13 reviewed, the Company was in violation of 215 ILCS 5/143.15 for failing to provide a specific explanation of the reason or reasons for cancellation and in seven (7) of those also failed to give at least 30 days advance notice. A Class Criticism was issued.

#### 2. Private Passenger Automobile Nonrenewals

In 60 files or 100% of the 60 reviewed, the Company was in violation of 215 ILCS 5/143.20 for failing to notify the named insured of his/her possible eligibility for insurance through the Illinois Automobile Insurance Plan. A Class Criticism was issued.

In 60 files or 100% of the 60 reviewed, the Company failed to advise the named insured of his/her right to appeal and the procedure to follow for such appeal as outlined in 215 ILCS 5/143.23. A Class Criticism was issued.

In 45 files or 75% of the 60 reviewed, the Company failed to provide a specific explanation of the reasons for nonrenewal as mandated by 215 ILCS 5/143.17(e). A Class Criticism was issued.

### B. Underwriting

#### 1. Private Passenger Automobile – New Business

In 116 files or 100% of those reviewed, the Company was in conflict with 50 Ill. Adm. Code 753.10(a)(3) for using applications not filed with the Illinois Department of Insurance. A Class Criticism was issued.

In 59 files or 50.86% of the 116 reviewed, the Company was in conflict with 50 Ill. Adm. Code 754.10(b)(1) and/or 754.10(b)(2) for failing to use the filed rules for applying rates and/or failing to use the filed rates creating miscellaneous Rating Errors (MRE's) of one (1) annual overcharge of \$24.00 and 36 annual undercharges of \$4576.00. A Class Criticism was issued.

C. Claims

1. Private Passenger Automobile First Party Median and Paid.

The median payment period was 12 days distributed as follows:

No. Days Category	MEDIAN DISTRIBUTION	
	Number	Percent
0-30	83	76.14%
31-60	15	13.76%
61-90	5	4.59%
91-180	5	4.59%
181-365	1	0.92%
over 365	0	0.00%
Total	109	100.00%

One hundred nine files were reviewed. Seventeen of those files required a reasonable written explanation for the delay to the insured. In 17 of those files or 100%, the Company failed to send a reasonable written explanation for the delay to the insured as outlined in 50 Ill. Adm. Code 919.80(b)(2). A written explanation was not sent in 11 files and in six (6) files the Notice of Availability of the Illinois Department of Insurance was incorrect or incomplete. A Class Criticism was issued.

In 16 files or 14.68% of the 109 files reviewed, the Company indicated on the payment draft or check to the insured that the payment was "full and final" in violation of 50 Ill. Adm. Code 919.60(a). A General Trend Criticism was issued.

In one (1) file or 0.92% of those reviewed, the Company made payment to the insured in an amount lower than the estimate in the file with no explanation of the lower payment in violation of 50 Ill. Adm. Code 919.50(a)(1) creating an underpayment totaling \$29.71. The Company has made payment to the insured.

## 2. Private Passenger Automobile First Party Closed Without Payment

One hundred seven files were reviewed. In 27 files, a written explanation for the delay was due the insured and/or was sent. In 25 of the 27 files or 92.60%, the Company failed to send a reasonable written explanation for the delay to the insured as outlined in 50 Ill. Adm. Code 919.80(b)(2). A written explanation was not sent in six (6) files and in 19 files the Notice of Availability of the Illinois Department of Insurance was incorrect or incomplete. A Class Criticism was issued.

Sixty eight files or 63.55% of the 107 files reviewed were criticized for failing to provide the insured a reasonable written explanation of the basis of the denial and/or failing to provide the Notice of Availability of the Illinois Department of Insurance as outlined in 50 Ill. Adm. Code 919.50(a)(1). In one (1) file the explanation provided failed to be reasonable, in two (2) files a letter of explanation was not sent, in two (2) files the Availability of the Illinois Department of Insurance was not provided, in two (2) files the reason provided did not match the reason stated in the file notes and the wrong address for the Chicago office of the Illinois Department of Insurance was given, and in 61 files the incorrect address was given for the Chicago office of the Illinois Department of Insurance. A Class Criticism was issued.

In three (3) files or 2.80% of the 107 reviewed, the Company failed to offer payment within 30 days as required by and outlined in 50 Ill. Adm. Code 919.50(a) creating underpayments totaling \$526.44. Proper reimbursements have been made.

In two (2) files or 1.87% of the 107 files reviewed, the Company failed to contain documentation on why the claim file was closed without payment in violation of 50 Ill. Adm. Code 919.30(c).

3. Private Passenger Automobile Third Party Median and Paid

The median payment period with subrogation, arbitration and litigation files included was 26 days. The median payment period without those files was 15 days distributed as follows:

No. Days Category	MEDIAN DISTRIBUTION	
	Number	Percent
0-30	52	81.25%
31-60	6	9.38%
61-90	3	4.69%
91-180	1	1.56%
181-365	1	1.56%
over 365	1	1.56%
Total	64	100.00%

One hundred thirteen files were reviewed. Five (5) files remained unresolved for more than 60 days and required a written explanation for the delay to the third party claimant. In four (4) of those files or 80.00%, the Company failed to send the written explanation for the delay as outlined in 50 Ill. Adm. Code 919.80(b)(3). A delay letter was not sent in one (1) file, sent late in another file, and the Company failed to include the Availability of the Illinois Department of Insurance in one (1) file and had the incorrect address for the Chicago office in another. A Class Criticism was issued.

In nine (9) files, payment for property damage to the third party claimant had been reduced from the damage estimate (excluded were claims involving arbitration, subrogation and litigation). In two (2) of those files or 22.22%, no documentation could be found to indicate how the lower payment percentage had been determined in violation of 50 Ill. Adm. Code 919.30(c), creating two (2) underpayments totaling \$1014.95. Payments have been made to the third party claimants. A General Trend Criticism was issued.

4. Private Passenger Automobile Third Party Closed Without Payment

One hundred thirteen files were reviewed. Six (6) files required a reasonable written explanation for the delay to the third party claimant or an explanation was sent. In four (4) of those files or 66.67%, the Company failed to send a reasonable written explanation for the delay to the insured as outlined in 50 Ill. Adm. Code 919.80(b)(3). A written explanation was not sent in two (2) files and in two (2) files in which an explanation had been sent the Notice of Availability of the Illinois Department of Insurance had the incorrect address for the Chicago office. A Class Criticism was issued.



In 50 files a written explanation of the basis of the denial was sent to the third party claimant. In seven (7) of these files or 14.00% the explanation given failed to be a *reasonable* explanation in violation of 50 Ill. Adm. Code 919.50(a)(2). A General Trend Criticism was issued.

5. Private Passenger Automobile Subrogation

Thirteen files or 16.25% of the 80 reviewed were criticized for failing to pay the full pro-rata share of the deductible to the insured out of the net recovery on the subrogated claim in violation of 215 ILCS 5/143b, creating 12 underpayments totaling \$6000.00 and one (1) overpayment of \$500.00. The Company has made the proper reimbursements. The Company reviewed additional files as a result of this criticism and identified 27 more files that needed return of the insured deductible. The Company returned an additional \$11,500.00 to insureds. A General Trend Criticism was issued.

6. Private Passenger Automobile Total Losses – First Party

Ninety-five files were reviewed. Fifty-four of those files required a reasonable written explanation for the delay to the insured or a written explanation was sent to the insured. In 54 of those files or 100%, the Company failed to send a reasonable written explanation for the delay to the insured as outlined in 50 Ill. Adm. Code 919.80(b)(2). A written explanation was not sent in 27 files. In 10 files a timely written explanation was sent but included the incorrect address of the Illinois Department of Insurance and no reasonable explanation. In 10 files, a timely and reasonable explanation was provided but the address of the Illinois Department of Insurance was incorrect. In four (4) files, a written explanation was provided, but was provided late and included the incorrect address of the Illinois Department of Insurance and in three (3) files the written explanation was late, included the incorrect address of the Illinois Department of Insurance and failed to provide a reasonable explanation. A Class Criticism was issued.

Thirteen claim files or 13.68% of the 95 reviewed were criticized for failing to contain documentation of how the market value of the insured vehicle was determined creating 11 underpayments totaling \$2283.00 and violation of 50 Ill. Adm. Code 919.80(c)(2)(E). The Company has made the proper reimbursements. A General Trend Criticism was issued.

Three files or 3.16% of the 95 reviewed were criticized for failing to contain detailed documentation of how the company computed the sales tax and fees on the insured vehicle in violation of 50 Ill. Adm. Code 919.30(c).

**D. Complaints**

**1. Illinois Department of Insurance Complaints**

**There were no trends or areas of concern.**

**2. Consumer Complaints**

**There were no Consumer Complaints logged by the Company.**

## V. INTERRELATED FINDINGS

1. From the response to Interrogatory #1 - The Company had no procedure to inform automobile insureds, prior to the first renewal, of the availability of higher collision and comprehensive deductibles and that a premium savings could result if the higher deductibles were purchased. The Company corrected this onsite and the information will be given to the insured during the renewal process. A Class Criticism applies for a violation of 215 ILCS 5/143.25a.
2. From the response to Interrogatory #4 and discovered during the Private Passenger Automobile Total Loss Survey - The Company used dealer quotes or similar vehicles for sale *with* NADA or CCC to determine the actual cash value of the insured total loss vehicle sometimes increasing the value from the quoted NADA or CCC amount and sometimes decreasing the value from the quoted NADA or CCC amount. The Company must use one (1) of the methodologies described in 50 Ill. Adm. Code 919.80(c)(2)(A), 919.80(c)(2)(B) or 919.80(c)(2)(C) such as NADA, CCC, ADP, Redbook etc. and may not use or incorporate dealer quotes unless the vehicle is not quoted in one of the aforesaid as is outlined in 50 Ill. Adm. Code 919.80(c)(2)(D). All of the vehicles were quoted in the source used by the Company. The Company, therefore, has failed to use one (1) of the sources as outlined in 50 Ill. Adm. Code 919.80(c)(2)(A), 919.80(c)(2)(B) or 919.80(c)(2)(C). They must use the CCC or NADA quote, if that is the source(s) they choose to use, and the insured has the "Right of Recourse" if he/she cannot locate a replacement vehicle at that NADA or CCC amount. A Class Criticism applies.

## VI. TECHNICAL APPENDICES