

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

ATLANTIC SPECIALTY INSURANCE COMPANY

Administrative Proceeding No. 19-MC-THP-02002

AGREED ORDER ADOPTING REPORT OF
MARKET CONDUCT COMPLIANCE EXAMINATION

NOW COMES, the Insurance Commissioner of the State of West Virginia, and makes the following findings of fact, conclusions of law and order regarding the Report of Market Conduct Compliance Examination for the targeted examination of Atlantic Specialty Insurance Company (hereinafter referred to as "Atlantic Specialty") for the examination period ending September 30, 2019.

FINDINGS OF FACT

1. Atlantic Specialty is a foreign insurer, licensed to do business in West Virginia, and incorporated in New York.
2. This Targeted Market Conduct Examination was instituted as a result of the Final Order entered in Administrative Proceeding 18-THP-02147. The Administrative Order concluded that Atlantic Specialty committed a violation of W. Va. Code R. §§ 114-14-5.3, 114-14-6.2.a. and 114-14-6.2.c., which constitutes a violation of W. Va. Code §§ 33-11-4(9)(b) and 33-11-4(9)(c).
3. The primary purpose of this targeted examination was to determine Atlantic Specialty's compliance with West Virginia insurance laws relating to treatment of third-party claimants and to determine if any of the violations cited in Administrative Proceeding 18-THP-02147 occurred with such frequency as to constitute a general business practice. Examination information contained in the Market Conduct Report should serve only these purposes. The

conclusions and findings of the Market Conduct Examination are public record.

4. The Targeted Market Conduct Examination reviewed the company's claims practices. The examination was conducted in accordance with West Virginia Code §33-2-9(c) by examiners duly appointed by the West Virginia Offices of the Insurance Commissioner.

5. A total of ten (10) standards were reviewed during this targeted examination. The Company was compliant or predominately compliant in all standards.

6. The examiner filed with the Insurance Commissioner, pursuant to W.Va. Code §33-2-9(j)(2), a Report of Market Conduct Examination.

7. A true copy of the Report of Market Conduct Examination was sent to Atlantic Specialty. Atlantic Specialty was notified that, pursuant to W.Va. Code §33-2-9(j)(2), it had thirty (30) days after receipt of the Report of Market Conduct Compliance Examination to file a submission or rebuttal with the Insurance Commissioner. Atlantic Specialty has submitted no objections and agrees to the entry of this Order.

8. Atlantic Specialty waives notice of administrative hearing, any and all rights to an administrative hearing, and to judicial review of this matter.

CONCLUSIONS OF LAW

1. The Insurance Commissioner is charged by law with the duty of administering and enforcing, among other duties, the provisions of Chapter 33 of the West Virginia Code of 1931, as amended, and the Insurance Commissioner has jurisdiction over the subject matter and the parties to this proceeding.

2. This proceeding is conducted pursuant to and in accordance with W.Va. Code §§33-2-9, and 33-11-4a.

3. The Insurance Commissioner is charged with the responsibility of verifying continued compliance with the West Virginia Code and the West Virginia Code of State Rules

by Atlantic Specialty as well as all other provisions of regulations to which Atlantic Specialty is subjected by virtue of its Certificate of Authority to operate in the State of West Virginia.

4. Atlantic Specialty was found to be compliant with seven (7) standards tested and predominately compliant with three (3) standards tested. All standards were within the error ratio established by the NAIC *Market Regulation Handbook*. Atlantic Specialty did not fail any of the standards tested.

5. Atlantic Specialty committed violations of three state rules which were not violations included in Administrative Proceeding 18-THP-02147. The violations were within the error ratio established by the NAIC *Market Regulation Handbook*. The violations included:

One (1) claim violated W.Va. Code R. §114-14-3 because a written response letter was not maintained in the claim file;

One (1) claim violated W.Va. Code R. §114-14-6.7 because a notice of necessary delay letter was not sent; and

One (1) claim violated W.Va. Code R. §114-14-6.17 which requires the insurer to include the Insurance Commissioner's contact information in claim denial letters.

6. Atlantic Specialty DID NOT commit the violations found in Administrative Proceeding 18-THP-02147 with such frequency as to constitute a general business practice.

ORDER

Pursuant to W.Va. Code §33-2-9(j), following the review of the Report of Market Conduct Compliance Examination, the examination work papers, and Atlantic Specialty's response thereto, if any, the Insurance Commissioner and Atlantic Specialty have agreed to the terms of this Agreed Order adopting the Report of Market Conduct Compliance Examination.

It is accordingly **AGREED** and **ORDERED** as follows:

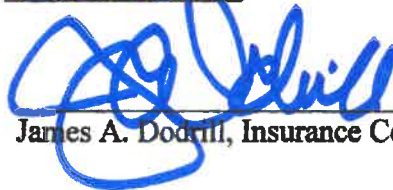
1. The Report of Market Conduct Compliance Examination of Atlantic Specialty

Property Casualty Company of America for the period ending September 30, 2019, is hereby ADOPTED and APPROVED.

2. Within thirty (30) days of the next regularly scheduled meeting of its Board of Directors, Atlantic Specialty shall file with the Insurance Commissioner, in accordance with W.Va. Code §33-2-9(j), affidavits executed by each of its directors stating under oath that they have received a copy of the adopted Report of Market Conduct Compliance Examination and a copy of this AGREED ORDER ADOPTING REPORT OF MARKET CONDUCT COMPLIANCE EXAMINATION.

3. All statutory notices, administrative hearings and appellate rights are hereby waived by Atlantic Specialty concerning this Report of Market Conduct Compliance Examination and Agreed Order.

ENTERED this 23rd day of June, 2020.



James A. Dodrill, Insurance Commissioner

REVIEWED AND AGREED TO BY:

On behalf of the Insurance Commissioner:


Jeffrey C. Black, Attorney Supervisor
Regulatory Compliance and Enforcement

On behalf of Atlantic Specialty Insurance Company:

By: T. Michael Miller

Print Name

Its: President and Chief Executive Officer

Signature: T. M. Miller

Date: May 27, 2020

Report of Market Conduct Compliance Examination

As of September 30, 2019



**Atlantic Specialty Insurance Company
605 Hwy 169 North, Suite 800
Plymouth, MN 55441**

**NAIC COMPANY CODE: 27154
Examination Number: 19-MC-THP-02002**

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March 13, 2020

The Honorable James A. Dodrill,
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25305

Dear Commissioner Dodrill:

Pursuant to your instructions and in accordance with West Virginia Code § 33-2-9, a Market Conduct examination has been made for the period of 01/01/2018 through 09/30/2019 on:

**Atlantic Specialty Insurance Company
605 Hwy 169 North, Suite 800
Plymouth, MN 55441**

hereinafter referred to as "ASIC" or the "Company". The following report of the findings of this examination is herewith respectfully submitted.

PURPOSE AND SCOPE OF THE EXAMINATION

Market conduct examiners with the West Virginia Offices of the Insurance Commissioner (“WVOIC”) reviewed certain business practices of Atlantic Specialty Insurance Company. W. Va. Code §33-2-9 empowers the Commissioner to examine any entity engaged in the business of insurance. The findings in this report, including all work products developed in producing it, are the sole property of the WVOIC.

The purpose of this targeted examination was to determine the Company’s compliance with West Virginia insurance laws relating to treatment of third-party claimants. Examination information contained in this report should serve only this purpose. The conclusions and findings of this examination are public record.

The basic business areas that were reviewed and tested under this examination were:

- Claims Practices

EXECUTIVE SUMMARY

The examination began January 13, 2020 and concluded on March 5, 2020. The examination was called as a result of the Final Order entered in Administrative Proceeding No. 18-THP-02147/18AP-THP-02147. The Administrative Order concluded that the Company was non-compliant with the following sections of the Unfair Claims Settlement Act by violating W.Va. Code §§ 33-11-4(9)(b) and (c) (failing to acknowledge and to act reasonably promptly upon communications with respect to claims arising under insurance policies and failing to adopt and implement reasonable standards for prompt investigation of claims arising under insurance policies) and W. Va. Code R. §§ 114-14-6.2a, 114-14-6.2c, (procedures to commence an investigation of any claim...within fifteen (15) working days and claims filed with an agent of an insurer) and 114-14-5.3 (replies to other pertinent communications).

W. Va. Code §§ 33-11-4a(e) and (f) imply that, upon any finding that a company committed an unfair claims settlement practice with respect to a third-party claimant, the Commissioner determines whether the practice occurred with such frequency as to be construed as a general business practice of the Company. In this case, the Commissioner determined that the most efficient way to make this determination was through a targeted Market Conduct Examination. The examination primarily focused on third-party claims handling with attention to the Company’s claims investigatory actions (Standard G2), timely investigations and (Standard G4), timely response to communications. Other standards from the Company Operations/Management and Claims Section of the Market Regulation Handbook were also included within this examination report which are further explained later in the report.

A total of ten (10) standards were reviewed for compliance during this examination. Of those ten (10) standards, the Company was compliant or predominantly compliant with all ten (10) standards.

Violations found not cited in Administrative Proceeding 18-THP-02147/18AP-THP-02147:

G2 – The Company failed to issue a notice of necessary delay letter on one (1) denied claim as required by W. Va. Code R. § 114-14-6.7. As only a single violation was noted, the Company is found to be predominantly compliant with this standard and the examiner is unable to determine the practice occurred with such frequency as to be construed as a general business practice.

G5 – The Company failed to maintain all work papers pertaining to the claim in one (1) paid claim file as required by W. Va. Code R. § 114-14-3. As only a single violation was noted, the Company is found to be predominantly compliant with this standard and the examiner is unable to determine the practice occurred with such frequency as to be construed as a general business practice.

G9 – The Company failed to give claimants the option of contacting the Commissioner's Office, providing claimants with its mailing address, telephone number, and web site address on one (1) denied claim as required by W. Va. Code R. § 114-14-6.17. As only a single violation was noted, the Company is found to be predominantly compliant with this standard and the examiner is unable to determine the practice occurred with such frequency as to be construed as a general business practice.

HISTORY AND PROFILE

ASIC was incorporated on June 27, 1986 as the Atlantic Reinsurance Company under the laws of the state of New York. The Company was organized by Atlantic Mutual Insurance Company as a wholly owned subsidiary and commenced business on December 24, 1986. The Company discontinued operations in 1993. Prior to 1994, the Company operated as a reinsurance Company. On February 14, 1995 the Company changed its name to Atlantic Specialty Insurance Company.

On March 31, 2004, One Beacon Insurance Group acquired the Company. On December 23, 2012, the Company's ownership was transferred and as a result, the company became a wholly owned subsidiary of OneBeacon Insurance Group, LLC. On September 28, 2017 Intact Financial Corporation completed its acquisition of OneBeacon Insurance Group Holdings, Ltd.

The Company's West Virginia written premium for 2019 was \$4,249,010 and had a market share of 0.984% specific to their commercial liability line of business.

METHODOLOGY

The examination was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners (“NAIC”) and West Virginia’s applicable statutes and regulations. This is a report by test of Company compliance with selected Standards contained in the NAIC’s *2019 Market Regulation Handbook* (“Handbook”) and Standards approved by the WVOIC which are based on applicable West Virginia statutes and administrative rules, as referenced herein. Testing is based on guidelines contained in the Handbook. All tests applied are included in this report.

The examiners used the NAIC standards of 7% error ratio on claims tests (93% compliance rate) and 10% error ratio on all other tests (90% compliance rate) to determine whether an apparent pattern or practice of being compliant, predominantly compliant, or non-compliant existed for any given test. The review was limited to third-party claims. The examiner reviewed a population of twenty-five (25) paid claim files and twenty-five (25) denied/closed without payment (CWOP) claim files for compliance.

Tests designed to measure the level of compliance with West Virginia statutes, rules and regulations were applied to the files. Each area of the examination has specific elements that were tested and are listed below. As this was a third-party, targeted examination, not all standards and areas were reviewed. The examiners may not have discovered every unacceptable or non-compliant activity in which the Company is engaged. The failure to identify, comment on, or criticize specific practices does not constitute an acceptance of the practices by the WVOIC or its’ designee. A compliance table follows containing results of each area of review with the compliance percentage for the Company and final examination results.

STANDARDS & REVIEW ELEMENTS

A7. RECORDS: Records are adequate, accessible, consistent and orderly and comply with state record retention and provided timely. (2019 NAIC Market Regulation Handbook Chapter 20, § A Standard 7)

- Are the records adequate and accessible? [W. Va. § 33-11-4 and W. Va. Code R. §§ 114-14-3 & 15-4]

A9. RECORDS: The Company cooperates on a timely basis with the examiners performing the examination. (2019 NAIC Market Regulation Handbook Chapter 20, § A Standard 9)

- Did the Company provide records and cooperate with examiners on a timely basis? [W. Va. Code § 33-2-9 and W. Va. Code R. § 114-15-1 et seq.]

G1. CLAIMS: Initial contact by the Company with the claimant is within the required timeframe. (2019 NAIC Market Regulation Handbook Chapter 20, § G Standard 1)

- Was the claimant contacted within 15 working days (or mandated emergency order timeframe) from the date of the loss notice required by W.Va. Code § 33-11-4(9)(b) and W. Va. Code R. § 114-14-5.1?

G2. CLAIMS: Timely investigations are made. (2019 NAIC Market Regulation Handbook Chapter 20, § G Standard 2)

- Did the investigation commence within fifteen (15) working days of any claim filed as required by W. Va. Code § 33-11-4(9)(c) and W. Va. Code R. § 114-14-6.2.a?
- Did the Company promptly conduct and diligently pursue a thorough, fair and objective investigation and not unreasonably delay resolution by persisting in seeking information not reasonably required for or material to the resolution of the claim dispute as required by W. Va. Code R. §114-14-6.1?
- Is the investigation continuing more than 30 calendar days? If so, was a notice of necessary delay sent within 15 working days after the 30 calendar days AND if the investigation continued, were subsequent notices of necessary delay sent with 45 calendar days as required by W. Va. Code R. § 114-14-6.7?

G3. CLAIMS: Claims are resolved in a timely manner. (2019 NAIC Market Regulation Handbook Chapter 20, § G Standard 3)

- Did the Company affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed as required by W. Va. Code § 33-11-4(9)(e)?
- Did the Company deny the claim or make a written offer within ten (10) working days of completing its investigation as required by W. Va. Code R. § 114-14-6.3?
- Did the Company pay any amount agreed upon within (15) working days as required by W. Va. Code R. §114-14-6.11?

G4. CLAIMS: The regulated entity responds to claim correspondence in a timely manner. (2019 NAIC Market Regulation Handbook Chapter 20, § G Standard 4)

- Did the Company reply within fifteen (15) working days to pertinent communications from a claimant which reasonably suggests that a response is needed as required by W. Va. Code § 33-11-4(9)(b) and W. Va. Code R. § 114-14-5.3?

G5. CLAIMS: Claim files are adequately documented. (2019 NAIC Market Regulation Handbook Chapter 20, § G Standard 5)

- Do the files contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed as required by W. Va. Code R. §§ 114-14-3, 114-15-4.2a & 114-15-4.4?
- Are the communications properly dated?

G6. CLAIMS: Claims are properly handled according with policy provisions and applicable statutes, rules and regulations. (2019 NAIC Market Regulation Handbook Chapter 20, § G Standard 6)

- Did the Company attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear as required by W. Va. Code § 33-11-4(9)(f) and W. Va. Code R. §§ 114-14-6.4 & 6.10?
- Was coverage checked for proper application of deductible or appropriate exclusionary language as required by W. Va. Code § 33-11-4(9)(a)?
- Is the claimant who is neither an attorney or represented by an attorney given written notice of that statute of limitation as required by W. Va. Code R. § 114-14-6.12?
- Does the Company ensure where liability and damages are reasonably clear, that no person recommends that third-party claimants make claim under their own policies solely to avoid paying claims under an insurer's insurance policy or insurance contract as required by W. Va. Code § 33-11-4(9)(m) and W. Va. Code R. § 114-14-6.13?
- Does the Company ensure they do not require a claimant to travel unreasonably as required by W. Va. Code R. § 114-14-6.14?
- Does the Company ensure that claim proceeds are not used to pay premiums under another policy unless the insured consents as required by W. Va. Code R. § 114-14-6.16?
- Does the Company ensure, if it furnishes to the claimant the names of one or more conveniently located motor vehicle repair shop that will perform the repairs, that it doesn't require the claimant to use a particular repair shop or location to obtain the repairs as required by W. Va. Code R. § 114-14-6.18?
- Did the Company adopt and communicate to all its claims agents written standards for prompt investigation and processing of claims in accordance with W. Va. Code R. § 114-14-8?

G9. DENIED/CWOP CLAIMS: Claims are handled in accordance with policy provisions and state law. (2019 NAIC Market Regulation Handbook Chapter 20, § G Standard 9)

- Did the Company attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear as

required by W. Va. Code § 33-11-4(9)(f) and W. Va. Code R. §§ 114-14-6.4 & 6.10?

- Is the denial based upon specific policy provisions or exclusions, if so, is the reason included in the denial as required by W. Va. Code § 114-14-6.5?
- Is the claimant provided with a reasonable basis for the denial when required by statute or regulation as required by W. Va. Code § 33-11-4(9)(n)?
- Does the Company provide the claimant not represented by an attorney a written notice that the claimant's rights may be affected by a statute of limitations to third-party claimants not less than sixty (60) days before the time limit expires as required by W. Va. Code R. § 114-14-6.12?
- Does the company refrain from recommending that a third-party claimant make claim under their own policies to avoid paying claims under an insurer's insurance policy or insurance contract as required by W. Va. Code R. § 114-14-6.13?
- Is the claimant given the option of contacting the WVOIC and provided with its mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17?

G10. CLAIMS: Cancelled checks and drafts reflect appropriate claim handling practices. Payments are handled correctly. (2019 NAIC Market Regulation Handbook Chapter 20, § G Standard 10)

- Do the checks include the correct payee and are they for the correct amount?
- Do payment checks indicate the payment is "final" when such is not the case?
- Do checks or drafts purport to release the insurer from total liability when such is not the case?

COMPLIANCE TABLE

<u>Review Section</u>	<u># Pass</u>	<u># Fail</u>	<u>Minimum Standard Compliance %</u>	<u>Compliance Result %</u>	<u>Examination Result</u>		
					Compliant	Predominantly Compliant	Non-Compliant
A7	N/A	N/A	N/A	N/A			
A9	N/A	N/A	N/A	N/A			
G1	50	0	93	100	X		
G2	49	1	93	98		X	
G3	50	0	93	100	X		
G4	50	0	93	100	X		
G5	49	1	93	98		X	
G6	50	0	93	100	X		
G9	24	1	93	96		X	
G10	50	0	93	100	X		

OBSERVATIONS

A7 – Records were adequate, accessible, consistent and orderly and comply with state record retention and provided.

A9 – Company’s representatives were cooperative and timely responded to examiners requests.

G1 – All claim files reviewed indicated the claimant was contacted within fifteen (15) working days (or mandated emergency order timeframe) from the date of the loss notice.

G2 – On one (1) denied claim the Company did not provide a notice of necessary delay letter as required by W. Va. Code R. § 114-14-6.7, which conveys that if the claim investigation continues more than thirty (30) calendar days, a notice of necessary delay is to be sent within fifteen (15) working days after the thirty (30) calendar days and if the investigation continued, subsequent notices of necessary delay are to be sent every forty-five (45) calendar days. The Company agreed that the necessary delay letter was not sent as required.

G3 – The Company affirmed or denied coverage of claims within a reasonable time after proof of loss statements had been completed, denied the claims or made a written offer within ten (10) working days of the completed investigation and made timely payments on any amounts agreed upon.

G4 – The company responded to all claimants within fifteen (15) working days as required by W. Va. Code § 33-11-4(9)(b) and W. Va. Code R. § 114-14-5.3.

G5 – On one (1) paid claim the claimants attorney sent a letter of representation to the Company. The claims representative documented in the claim file that a written response to the attorney was made however, the letter was not maintained in the file. In response to the examiner’s inquiry, the Company acknowledged the letter should have been maintained in the claim file as required by W. Va. Code R. § 114-14-3.

G6 – The Company complied with policy provisions applicable statutes, rules and regulations under this standard.

G9 – On one (1) claim that required a denial letter, the Company failed to provide the claimant the option of contacting the WVOIC, providing claimants with its mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17. In this instance, the Company agreed the language informing the claimant was not included in the claim denial letter and have reminded their claims representatives of the requirement to utilize the claims reference guidelines made available its adjusters.

G10 – All claim file payments were handled appropriately.

RECOMMENDATIONS

G2 – The Company should continue to ensure they are diligent in utilizing the claims reference guidelines made available to their claims representatives to make certain that all claim investigations continuing more than 30 calendar days are sent a written notice of necessary delay letter as required by W. Va. Code R. § 114-14-6.7. Prior to the examination conclusion, the adjuster and her supervisor were reminded of the requirement in this instance.

G5 – The Company should continue to ensure they are diligent in utilizing the claims reference guidelines made available to their claims representatives to make certain that claim files contain all notes and work papers pertaining to the claim as required by W. Va. Code R. § 114-14-3. Prior to the examination conclusion, the adjuster in this instance was reminded of the requirement.

G9 – The Company should continue to ensure they are diligent in utilizing the claims reference guidelines made available to their claims representatives to make certain that claimants are given the option of contacting the WVOIC, providing claimants with its mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17. Prior to the examination conclusion, the adjuster in this instance was reminded of the requirement.

EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT

The examiner would like to acknowledge the cooperation and assistance extended by the Company during the examination.

Letha G. Tate, ALMI, MCM

Letha G. Tate, ALMI, MCM
Examiner-in-Charge

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES USED

State of West Virginia

County of Kanawha

I, Letha G. Tate, being duly sworn, states as follows:

1. I have the authority to represent West Virginia in the examination of Atlantic Specialty Insurance Company.
2. I have reviewed the examination work papers and examination report, and the examination of Specialty Insurance Company was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.

Letha G. Tate, ALMI, MCM
Letha G. Tate, ALMI, MCM

Subscribed and sworn before me by Letha G. Tate on this 16 day of March 2020.

Janice L. Hemmelgarn
Notary Public

My commission expires: March 23, 2024

