

FEB 13 2023

# CERTIFICATION

FILED

February 13, 2023

I, Eric Dunning, Director of Insurance of the State of Nebraska, do hereby certify that the attached is a full and correct copy of the Financial Examination Report of

**AZGUARD INSURANCE COMPANY**

**AS OF**

**DECEMBER 31, 2021**

The report is now on file and forming a part of the records of this Department.

I hereto subscribe my name under the seal of my office at Lincoln, Nebraska.



A handwritten signature in blue ink, appearing to read "Eric Dunning".

DIRECTOR OF INSURANCE

CERTIFICATE OF ADOPTION

Notice of the proposed report for the financial examination of

**AZGUARD INSURANCE COMPANY**

**39 PUBLIC SQUARE**

**WILKES-BARRE, PA 18701**

dated as of December 31, 2021, verified under oath by the examiner-in-charge on January 20, 2023, and received by the company on January 20, 2023, has been adopted without modification as the final report pursuant to Neb. Rev. Stat. § 44-5906(3) (a).

Dated this 3<sup>rd</sup> day of February 2023.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



Lindsay Crawford, CFE  
Chief Financial Regulator

**STATE OF NEBRASKA**

**Department of Insurance**

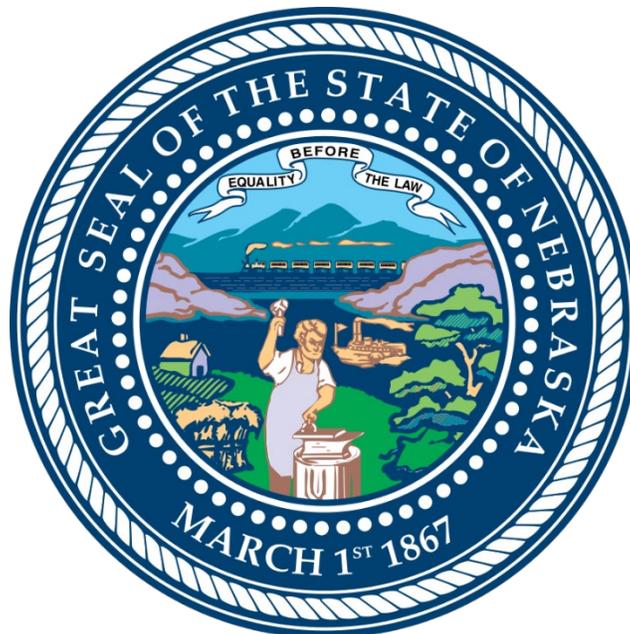
**EXAMINATION REPORT**

**OF**

**AZGUARD INSURANCE COMPANY**

**as of**

**December 31, 2021**



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Lincoln, Nebraska  
December 09, 2022

Honorable Eric Dunning  
Director of Insurance  
Nebraska Department of Insurance  
1526 K Street, Suite 200  
Lincoln, Nebraska 68508

Dear Sir:

Pursuant to your instruction and authorizations, and in accordance with statutory requirements, an examination has been conducted of the financial condition and business affairs of:

**AZGUARD INSURANCE COMPANY**

which has its Statutory Home Office located at

1314 Douglas Street, Ste 1400  
Omaha, NE 68102-3580

with its Principal Executive office located at

39 Public Square  
Wilkes-Barre, PA 18701

(hereinafter also referred to as the “Company”), and the report of such examination is respectfully presented herein.

**INTRODUCTION**

This is the first full-scope examination of the Company conducted by the State of Nebraska since the incorporation of the Company. A qualifying examination was conducted as of October 31, 2018. The current financial condition examination covers the intervening period to and includes the close of business on December 31, 2021 and such subsequent events and

transactions as were considered pertinent to this report. The States of Nebraska and Pennsylvania participated in this examination and assisted in the preparation of this report.

The same examination staff conducted concurrent financial condition examinations of the Company's affiliates, WestGUARD Insurance Company, EastGUARD Insurance Company, NorGUARD Insurance Company and AmGUARD Insurance company.

### **SCOPE OF EXAMINATION**

The examination was conducted pursuant to and in accordance with both the NAIC Financial Condition Examiners Handbook (Handbook) and Section §44-5904(1) of the Nebraska Insurance Statutes. The Handbook requires that examiners plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company, including but not limited to: corporate governance, identifying and assessing inherent risks within the Company, and evaluating system controls and procedures used to mitigate those risks. The examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation and management's compliance with Statutory Accounting Principles and Annual Statement Instructions when applicable to domestic state regulations.

The examination was completed under coordination of the holding company group approach with the Pennsylvania Insurance Department as the coordinating state and the Nebraska Department of Insurance as a participating state. The companies examined under this approach benefit to a large degree from common management, systems and processes, and internal control and risk management functions that are administered at the consolidated or business unit level.

The coordinated examination applies procedures sufficient to comprise a full scope financial examination of each of the companies in accordance with the examination procedures

and standards promulgated by the NAIC and by the respective state insurance departments where the companies are domiciled. The objective is to enable each domestic state to report on their respective companies' financial condition and to summarize key results of examination procedures.

The Nebraska Department of Insurance made a general review of the Company's operations and the manner in which its business has been conducted in order to determine compliance with statutory and charter provisions. The Company's history was traced and has been set out in this report under the caption "Description of Company." All items pertaining to management and control were reviewed, including provisions for disclosure of conflicts of interest to the Board of Directors and the departmental organization of the Company. The Articles of Incorporation and By-Laws were reviewed, including appropriate filings of any changes or amendments thereto. The minutes of the meetings of the Shareholder and Board of Directors held during the examination period were read and noted. Attendance at meetings, proxy information, election of Directors and Officers, and approval of investment transactions were also noted.

The fidelity bond and other insurance coverages protecting the Company's property and interests were reviewed. Certificates of Authority to conduct the business of insurance in the various states were inspected, and a survey was made of the Company's general plan of operation.

Data reflecting the Company's growth during the period under review, as developed from the Company's filed annual statements, is reflected in the financial section of this report under the caption "Body of Report."

The Company's reinsurance facilities were ascertained and noted and have been commented upon in this report under the caption "Reinsurance." Accounting records and procedures were tested to the extent deemed necessary through the risk-focused examination process. The Company's method of claims handling and procedures pertaining to the adjustment and payment of incurred losses were also noted.

All accounts and activities of the Company were considered in accordance with the risk-focused examination process. This included a review of workpapers prepared by KPMG LLP, the Company's external auditors, during their audit of the Company's accounts for the year ended December 31, 2021. Portions of the auditor's workpapers have been incorporated into the workpapers of the examiners and have been utilized in determining the scope and areas of emphasis in conducting the examination. This utilization was performed pursuant to Title 210 (Rules of the Nebraska Department of Insurance), Chapter 56, Section 013.

Any failure of items to add to the totals shown in schedules and exhibits appearing throughout this report is due to rounding.

## **DESCRIPTION OF COMPANY**

### **HISTORY**

The Company was formed as a Nebraska domestic stock insurance company on August 13, 2018. The company received its Certificate of Authority to write business as a Property and Casualty insurer on January 8, 2019.

The Company's primary operations are conducted pursuant to pooling and service agreements. As a subsidiary of WestGUARD Insurance Company (WestGUARD), the Company participates in an Intercompany Services and Cost Sharing agreement. WestGUARD provides the reimbursable services to its subsidiaries. NorGUARD Insurance Company (NorGUARD)

administers the pooling of underwriting results among the participants per the agreed percentage in the signed agreement.

## **MANAGEMENT AND CONTROL**

### **Holding Company**

The Company is a member of an insurance holding company system as defined by Nebraska Statute. An organizational listing flowing from the “Ultimate Controlling Person,” as reported in the 2021 Annual Statement, is represented by the following (subsidiaries are denoted through the use of indentations, and unless otherwise indicated, all subsidiaries are 100% owned):

- Berkshire Hathaway Inc.
- National Indemnity Company
- WestGUARD Insurance Company
- NorGUARD Insurance Company
- AmGUARD Insurance Company
- EastGUARD Insurance Company
- AzGUARD Insurance Company

This listing includes only direct and indirect parents and subsidiaries of the insurance companies under examination.

### **Shareholder**

Article I of the Articles of Incorporation provides that, “the total number of shares of stock which the Corporation shall have the authority to issue is one million (1,000,000) shares of par value \$10.00 each, all of one class, of which one hundred thousand (100,000) shares will be issued to its parent corporation WestGUARD Insurance Company. The amount of capital which shall be subscribed and actually paid in before said corporation shall commence business is twenty-five million dollars (\$25,000,000.00) of which twenty-four million dollars

(\$24,000,000.00) shall be additional paid in capital.” All of the issued shares are held by the parent company, WestGUARD.

The By-Laws Article I, Section 3 provides that, “the annual Shareholders' meeting shall be held at a time and on a date set by the President of the Company, during the first five months of the calendar year and at a place within or without its state of domicile. Shareholders of record as of the close of business thirty (30) calendar days before the date of the annual meeting shall be entitled to vote thereat. Notice of the time and place of the annual meeting of Shareholders shall be given to each Shareholder of record of the Company entitled to go to such meeting, by mailing or emailing to each Shareholder, at least ten (10) days prior to said meeting, a notice thereof, postage prepaid, addressed to the last known post office address. However, such notice need not be given if a waiver thereof in writing, signed by the persons entitled to such notice, is obtained and filed with the minutes of such meeting.” Section 3 goes on to state, “at said meeting, the Shareholders shall elect a Board of Directors consisting of not less than five (5) nor more than nine (9) members who shall hold office for one year or until their successors are elected and qualified. At such meeting there may be transacted any other business that may be brought before it. Should it happen from any cause whatsoever that the annual election of Directors should not take place in any year on the date hereinbefore fixed therefor, such election may be held on such other day within six (6) months thereafter as may be appointed therefor by the Board of Directors, they giving notice thereof as in the case of the annual meeting.”

### **Board of Directors**

Per the Articles of Incorporation, Article VII, “the affairs and business of the Corporation shall be conducted and operated by a Board of Directors as determined in a manner set out in its By-Laws and by a President, one or more Vice Presidents, a Secretary, a Treasurer, and such

other Officers or assistants thereto as are found from time to time appropriate, convenient, or necessary to the conduct or operation of its affairs or business.”

The By-Laws Article II, Section 1 states, “a regular meeting of the Board of Directors shall be held without other notice than these By-Laws, immediately after and on the same date as the annual meeting of Shareholders. The Board of Directors may provide, by resolution, the time and place, either within or without the state of incorporation, for the holding of additional regular meetings without such other notice than such resolution. Notices of regular meetings of the Board of Directors stating the time and place of the meeting shall be given to each Director at least twenty-four (24) hours prior to the time of such meeting, but failure to give such notice shall not invalidate the proceedings thereof.”

As of December 31, 2021, the Company had seven (7) members on the Board of Directors which has remained consistent during this exam period. The following persons were serving as Directors on December 31, 2021:

<b><u>Name and Residence</u></b>	<b><u>Principal Occupation</u></b>
Eitan Ajchenbaum Weekawken, NJ	Chief Financial Officer and Treasurer Berkshire Hathaway GUARD Insurance Companies
Bruce John Byrnes New York, NY	Senior Counsel, VP and Chief Compliance Officer Berkshire Hathaway Reinsurance Division
Sy Foguel New York, NY	Chief Executive Officer and President Berkshire Hathaway GUARD Insurance Companies
Zach Royse Omaha, NE	Assistant Controller National Indemnity Company
Peter Michael Shelley Darien, CT	Chairperson of the Board and President Berkshire Hathaway Direct Insurance Company
Brian Gerard Snover Stamford, CT	SVP and General Counsel Berkshire Hathaway Reinsurance Division

**Name and Residence**

**Principal Occupation**

Carl John Witkowski  
Duryea, PA

Chief Operating Officer  
Berkshire Hathaway GUARD Insurance Companies

Zach Royse has been a Director for the Company since March 28, 2019 but his name did not appear in the 2019 and 2021 Annual Statements. This error has been corrected beginning with the 2022 First Quarter Statement.

**Officers**

The By-Laws Article III, Section 1 provide that, “the Officers of the Corporation shall be the President, one or more Vice Presidents, a Secretary, an Assistant Secretary, a Treasurer, and such other Officers as may be appointed in accordance with the provisions of this Article III. Any one person may hold any two or more such offices except that no person may hold the offices of both President and Vice President.”

The following is a listing of Senior Officers elected and serving the Company on December 31, 2021:

**Name**

**Office**

Sy Foguel

President and Chief Executive Officer

Matthew O’Connor

General Counsel and Secretary

Eitan Ajchenbaum

Chief Financial Officer and Treasurer

Carl John Witkowski

Chief Operating Officer and Executive Vice President

Peter Michael Shelley

Chairperson of the Board

Lyle Shawn Hitt

Chief Insurance Officer and Executive Vice President

Amber Ng

Chief Actuary and Executive Vice President

Dave Simmons

Senior Vice President of Insurance Operations

**Name**

**Office**

Sarah Starkey

Assistant Secretary

**TRANSACTIONS WITH AFFILIATES**

**Intercompany Pooling Agreement**

The Pooling agreement was originally entered into between NorGUARD, WestGUARD, AmGUARD Insurance Company (AmGUARD) and EastGUARD Insurance Company (EastGUARD). The agreement was amended in 2019 to include the Company. Under this pooling agreement, underwriting results which includes all new, renewal, or in-force insurance policies written or assumed by the parties, are pooled to NorGUARD (45%), AmGUARD (35%), EastGUARD (10%), WestGUARD (5%), and the Company (5%). This agreement is administered by NorGUARD.

**Intercompany Services and Cost Sharing Agreement**

The original agreement has been in effect since January 1, 2015 but the Company was made a party to this agreement effective January 1, 2019. According to the agreement, WestGUARD provides services to AmGUARD, NorGUARD, EastGUARD and the Company in accordance with the companies' guidelines, including the underwriting of risks, adjudication of claims, performance of all administrative services, collection of premium, payment of claims and all other administrative functions.

**Tax Sharing Agreement**

Effective April 30, 2019, tax sharing agreement was entered into with Berkshire Hathaway Inc. (BHI), the Company's ultimate parent, where the Company joins BHI to file a consolidated federal income tax return. Under the agreement, the tax liability of the affiliated group is allocated to several members of the group on the basis of the percentage of the total tax

which the tax of such member if computed on a separate return or financial statement would bear to the total amount of the taxes for all members of the group so computed. Any resulting tax balance due to or from any one of the GUARD Insurers will be paid each year prior to the due date (including extensions) of the tax return. The original tax allocation agreement with the other Guard companies and BHI has been in effect since October 26, 2012.

### **TERRITORY AND PLAN OF OPERATION**

As evidenced by a current Certificate of Authority, the Company is licensed to transact business in Nebraska. The Company is also licensed as an eligible Surplus Lines carrier in 42 other States, of which it wrote business in 5 States in 2021.

The Company predominantly sells higher risk Homeowners policies in addition to several other property & casualty products which are marketed to its small to medium size commercial clients. It complements the group by insuring additional classes of business that are best served by an excess and surplus lines carrier.

### **REINSURANCE**

#### **Ceded**

Beginning in 2019, the Company joined the reinsurance agreement between WestGUARD, NorGUARD, AmGUARD, EastGUARD, and National Indemnity Company (NICO). The Company cedes the 50% quota share it has retained from the pool to NICO. The pool is administered by NorGUARD and the Company retains 5% of the total risk in the pool. The agreement covers all lines of business and the aggregate retention limit is three times net earned premiums.

Effective July 1, 2021, the Company also has an excess of loss and catastrophe reinsurance agreement with NICO. The retention is \$2 million and the deductible is 2.75% of

gross net earned premium income for the term, where the reinsurer limit of the pay is 10.88% of gross net earned premium income for the term.

In addition, the Company has a Contractors Errors and Omission reinsurance agreement with The Hartford Steam Boiler Inspection and Insurance Company effective on December 1, 2020. Under the agreement the Company has no retention and the limit of coverage is \$1 million for each wrongful act.

The Company entered into a property facultative reinsurance agreement with General Reinsurance Corporation effective September 15, 2020. Under this agreement the covered line of business have limits of \$50 million retention for the Company, and the limit of coverage is either \$50 million or \$25 million depending on the line of business.

As of December 31, 2021, the Company had \$6,724,553 in reinsurance recoverable net of the ceding commissions and \$15,082,220 ceded reinsurance premium payable.

### **General**

All contracts reviewed contained standard insolvency, arbitration, errors and omissions, and termination clauses where applicable. All contracts contained the clauses necessary to assure reinsurance credits could be taken.

## **BODY OF REPORT**

### **GROWTH**

The following comparative data reflects the growth of the Company during the period covered by this examination:

	<u>2019</u>	<u>2020</u>	<u>2021</u>
Bonds	\$ 120,020	\$ 154,357	\$ 151,734
Cash, cash equivalents, and short-term investment	61,207,736	85,553,290	100,906,870
Admitted assets	109,330,854	137,755,182	158,398,344
Losses	17,778,078	34,227,379	44,781,431
Unearned premium	21,354,046	22,358,547	23,819,577
Total liabilities	56,626,343	85,164,206	106,071,414
Capital and surplus	52,704,511	52,590,976	52,326,930
Premium earned	39,204,008	45,305,498	47,662,826
Net investment income	1,065,785	470,801	48,053
Net income	1,277,055	(495,257)	(695,821)

### **FINANCIAL STATEMENTS**

The following financial statements are based on the statutory financial statements filed by the Company with the State of Nebraska Department of Insurance and present the financial condition of the Company for the period ending December 31, 2021. The accompanying comments on financial statements reflect any examination adjustments to the amounts reported in the annual statements and should be considered an integral part of the financial statements. A reconciliation of the capital and surplus account for the period under review is also included.

**FINANCIAL STATEMENT**  
**December 31, 2021**

<b><u>Assets</u></b>	<b><u>Assets</u></b>	<b><u>Assets Not Admitted</u></b>	<b><u>Net Admitted Assets</u></b>
Bonds	\$ 151,734		\$ 151,734
Cash, cash equivalents, and short-term investments	<u>100,906,870</u>		<u>100,906,870</u>
Subtotals, cash and invested assets	\$101,058,604		\$101,058,604
Investment income due and accrued	1,312		1,312
Uncollected premiums	19,254,072		19,254,072
Deferred premiums	29,259,180		29,259,180
Amounts recoverable from reinsurers	6,724,553		6,724,553
Net deferred tax asset	<u>2,100,623</u>		<u>2,100,623</u>
Totals	<u>\$158,398,344</u>		<u>\$158,398,344</u>

**Liabilities, Surplus and Other Funds**

Losses	\$ 44,781,431
Reinsurance payable on paid losses and loss adjustment expenses	13,362,605
Loss adjustment expenses	8,532,506
Taxes, licenses, and fees	450
Current federal and foreign income taxes	361,530
Unearned premiums	23,819,577
Ceded reinsurance premiums payable (net of ceding commissions)	15,082,220
Payable to parent, subsidiaries, and affiliates	<u>131,096</u>
Total liabilities	<u>\$ 106,071,414</u>
Common capital stock	\$ 1,000,000
Gross paid in and contributed surplus	49,000,000
Unassigned funds (surplus)	<u>2,326,930</u>
Surplus as regards policyholders	<u>\$ 52,326,930</u>
Total liabilities, capital, and surplus	<u>\$ 158,398,344</u>

**Statement of Income – 2021**

**Underwriting Income**

Premiums earned	<u>\$47,662,826</u>
Losses incurred	\$31,589,095
Loss adjustment expenses incurred	5,969,535
Other underwriting expenses incurred	<u>11,058,823</u>
Total underwriting deductions	<u>\$48,617,453</u>
Net underwriting gain or (loss)	\$ (954,627)

**Investment Income**

Net investment income earned	<u>\$ 48,053</u>
Net investment gain	<u>\$ 48,053</u>

**Other Income**

Net gain (loss) from agents' or premium balances charged off	<u>\$ 616,664</u>
Total other income	<u>\$ 616,664</u>
Net income before dividends to policyholders	\$ (289,910)
Dividends to policyholders	44,325
Federal income taxes	<u>361,586</u>
Net income	<u>\$ (695,821)</u>

**CAPITAL AND SURPLUS ACCOUNT**

	<u>2019</u>	<u>2020</u>	<u>2021</u>
Capital and surplus, beginning	<u>\$25,140,330</u>	<u>\$52,704,511</u>	<u>\$52,590,976</u>
Net income	\$ 1,277,055	\$ (495,257)	\$ (695,821)
Change in net deferred income tax	1,287,126	381,722	431,775
Surplus adjustment (paid-in)	<u>25,000,000</u>	<u>                    </u>	<u>0</u>
Net change for the year	<u>\$27,564,181</u>	<u>\$ (113,535)</u>	<u>\$ (264,046)</u>
Capital and surplus, ending	<u>\$52,704,511</u>	<u>\$52,590,976</u>	<u>\$52,326,930</u>

## **EXAMINATION CHANGES IN FINANCIAL STATEMENTS**

Unassigned funds (surplus) in the amount of \$(2,326,930) as reported in the Company's 2021 Annual Statement, has been accepted for examination purposes. Examination findings, in the aggregate, were considered to have no material effect on the Company's financial condition.

## **COMPLIANCE WITH PREVIOUS RECOMMENDATIONS**

This exam conducted by the Nebraska Department of Insurance is the first of this kind since the establishment of the Company. Thus, no recommendations were made or due for the Company's remedial actions.

## **COMMENTARY ON CURRENT EXAMINATION FINDINGS**

### **Quarterly Investment Review**

During the review of the Board of Directors minutes, the examiner noted that the Board of Directors were not reviewing and approving the investments transactions made by the Company on a quarterly or more often basis. It is noted, however, that the Company reviews the investment transactions by a Management Committee, not a committee of the Board, which includes a Board member. It is recommended that the Company comply with the Nebraska Rev. Statute §44-5105(3) that states, "on no less than a quarterly basis, and more often if deemed appropriate, the Board of Directors or committee of the Board of Directors shall: (a) Receive and review a summary report on the insurer's investment portfolio, investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan."

## **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

The following comments and recommendations have been made as a result of this examination:

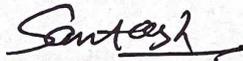
**Quarterly Investment Review** - It is recommended that the Company comply with the Nebraska Rev. Statute §44-5105(3) that states, “on no less than a quarterly basis, and more often if deemed appropriate, the board of directors or committee of the board of directors shall: (a) Receive and review a summary report on the insurer's investment portfolio, investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan.”

## **ACKNOWLEDGMENT**

The courteous cooperation extended by the Officers and employees of the Company during this examination is hereby acknowledged.

In addition to the undersigned, Financial Examiners, Information Systems Specialists, and Actuarial Examiners with or contracted by the Pennsylvania Insurance Department, participated in this examination and assisted in the preparation of this report.

Respectfully submitted,



---

Santosh Ghimire, CFE  
Examiner-in-Charge  
Department of Insurance  
State of Nebraska

State of Nebraska,

County of Lancaster,

Santosh Ghimire, being duly sworn, states as follows:

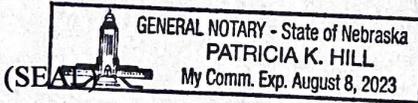
1. I have authority to represent the Department of Insurance of the State of Nebraska in the examination of AzGUARD Insurance Company.
2. The Department of Insurance of the State of Nebraska is accredited under the National Association of Insurance Commissioners Financial Regulation Standards and Accreditation.
3. I have reviewed the examination work papers and examination report, and the examination of AzGUARD Insurance Company was performed in a manner consistent with the standards and procedures required by the Department of Insurance of the State of Nebraska.

The affiant says nothing further.

Santosh

Examiner-in-Charge's Signature

Subscribed and sworn before me by Santosh Ghimire on this 20 day of January 2023.



Patricia K Hill

Notary Public

My commission expires 8-8-2023 [date].