

No. 2018-5363

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: JAN 12 2018

Subjects Considered:

FOREMOST COUNTY MUTUAL INSURANCE COMPANY
P.O. Box 2450
Caledonia, MI 49316

21ST CENTURY CENTENNIAL INSURANCE COMPANY
21ST CENTURY NORTH AMERICA INSURANCE COMPANY
21ST CENTURY PREFERRED INSURANCE COMPANY
3 Beaver Valley Road
Wilmington, DE 19803

CONSENT ORDER

TDI ENFORCEMENT FILE NOS. 13833, 13834, 13835, 13836

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Foremost County Mutual Insurance Company, 21st Century Centennial Insurance Company, 21st Century North America Insurance Company, and 21st Century Preferred Insurance Company (collectively, the "Companies").

WAIVER

The Companies acknowledge that the Texas Insurance Code and other applicable law provide certain rights. The Companies waive all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

FINDINGS OF FACT

1. Foremost County Mutual Insurance Company is a domestic county mutual insurance company holding a certificate of authority to transact business in Texas.
2. 21st Century Centennial Insurance Company and 21st Century North America Insurance Company are foreign fire and casualty insurance companies holding certificates of authority to transact business in Texas.

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3. 21st Century Preferred Insurance Company is a foreign casualty insurance company holding a certificate of authority to transact business in Texas.
4. Foremost County Mutual Insurance Company, 21st Century Centennial Insurance Company, 21st Century North America Insurance Company, and 21st Century Preferred Insurance Company are all part of the Farmers Insurance Group.
5. Effective, September 1, 2015, Section 1953.051(b) of the Texas Insurance Code prohibits a rating plan regarding personal automobile insurance from (1) assigning a rate consequence solely to a consumer inquiry made by an applicant or insured or a claim filed by an insured under a personal automobile insurance policy that is not paid or payable under the policy or (2) otherwise causing premium for personal automobile insurance to be increased solely because of an inquiry or claim not paid or payable under the policy.
6. On and after September 1, 2015, Foremost County Mutual Insurance Company assigned a rate consequence to claims that were not paid or payable under the policy under its New Business Tier Model, Renewal Tier Model, and/or Rules for Surcharge for its Safe Driver Insurance Plan.
7. Foremost County Mutual Insurance Company ceased issuing new business as of April 1, 2016.
8. Foremost County Mutual Insurance Company estimates that, to date, 72 policies were charged a rate or premium that was increased solely because of a claim not paid or payable. The estimated increase in the premium amount charged is \$9,972.
9. Since September 1, 2015, 21st Century Preferred Insurance Company, 21st Century North America Insurance Company, and 21st Century Centennial Insurance Company included claims that were not paid or payable when applying and/or reducing the Claim Free Discount and application of the Rules for Surcharge for their Safe Driver Insurance Plan.
10. 21st Century Preferred Insurance Company and 21st Century North America Insurance Company represent that no policyholders have been assigned a rate consequence based on the consideration of a claim not paid or payable in application of the Claim Free Discount.
11. 21st Century Centennial Insurance Company estimates that one policyholder was charged a rate or premium that was increased solely because of a claim not paid or payable. The estimated premium amount charged is \$41.49.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 801.052-801.053, 912.002, 912.101-912.102, and 941.001-941.054, 1953.051.

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2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. The Companies have knowingly and voluntarily waived all procedural rights to which they may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. The Companies violated TEX. INS. CODE § 1953.051(b) by assigning a rate consequence for claims that were not paid or payable since September 1, 2015.
5. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct the Companies to make complete restitution to each policyholder harmed by the violations.

The Companies are ordered to comply with the following:

- a. Not later than 60 days from the date of this order, the Companies must make a new rate filing which removes from their rating plans claims that were not paid or payable, with the removal to be effective no later than January 31, 2018. The Companies must also update any applicable underwriting guidelines or manual rule filings filed with TDI no later than January 31, 2018.
- b. The Companies must identify all personal automobile insurance policies issued by it in Texas with effective dates from September 1, 2015 through January 31, 2018 (the "Review Period").
- c. For each policy in the Review Period, the Companies must calculate the Corrected Premium without using consumer inquiries or claims not paid or payable in consideration of tier placement.
- d. For each policy in the Review Period, the Companies must calculate and determine whether the dollar amount of the premium charged for each policy is less than or more than the Corrected Premium. If the premium charged is more than the Corrected Premium, the difference constitutes the Overcharge.
- e. The Companies must pay restitution in the form of a company check or account credit to each policyholder identified in the Review Period as having an Overcharge (the "Qualifying Policyholders"). The restitution check and/or account credit must include both the dollar amount of the overcharge, plus simple interest due on the overcharge. The rate of interest shall be 5 percent per annum.
- f. The Companies must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders on or before March 19, 2018.

- g. Any restitution checks that are returned to the Companies with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned thereafter for incorrect addresses and from checks that are not negotiated must be delivered to the comptroller pursuant to the procedures set forth in TEX. PROP. CODE §§ 72.001 *et. seq.* The Companies must copy the department on any correspondence pertaining to abandoned funds that is sent to the comptroller.
- h. On or before March 30, 2018, the Companies must report the restitution paid to the Qualifying Policyholders by submitting a complete and sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:
- i. name of the company issuing the policy;
 - ii. policy number;
 - iii. policyholder name;
 - iv. policyholder address;
 - v. effective date of the policy;
 - vi. expiration date of the policy;
 - vii. amount of Overcharge;
 - viii. dollar amount of simple interest;
 - ix. amount of Overcharge and interest;
 - x. date(s) of mailing of restitution check or credits;
 - xi. the total sum of all Overcharges;
 - xii. the total sum of all simple interest; and,
 - xiii. the total sum of all restitution paid (total Overcharges plus the total of the simple interest).
- i. The Companies must send all submissions required under the terms of this order by email to: mandy.meeseey@tdi.texas.gov, and catherine.bell@tdi.texas.gov, or their successors.

Foremost County Mutual Insurance Company, 21st Century Centennial Insurance Company, 21st Century North America Insurance Company, and 21st Century Preferred Insurance Company are further ordered to pay, jointly and severally, an administrative penalty of \$50,000. The administrative penalty must be paid within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Kent C. Sullivan
Commissioner of Insurance

2018- 5363

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APPROVED AS TO FORM AND CONTENT:



Amanda Meesey
Director, Enforcement Section
Texas Department of Insurance

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 _____

Signature of Document Signer No. 1 *Signature of Document Signer No. 2 (if any)*

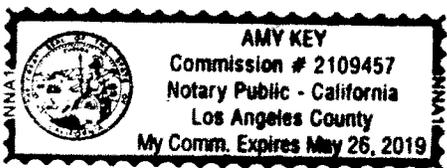
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me
 on this 26th day of October, 2017,
 by _____
 Date Month Year
 (1) Victoria L. McCarthy

 (and (2) _____),
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.



Signature Amy Key
 Signature of Notary Public

Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
 Title or Type of Document: Affidavit - Inc. Co Document Date: 10/26/17
 Number of Pages: 1 Signer(s) Other Than Named Above: None

CALIFORNIA JURAT WITH AFFIANT STATEMENT

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6 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

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Signature Amy Key
 Signature of Notary Public

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OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document 21st century centennial
 Title or Type of Document: Affidavit - Ins. Co Document Date: 10/26/17
 Number of Pages: 1 Signer(s) Other Than Named Above: None

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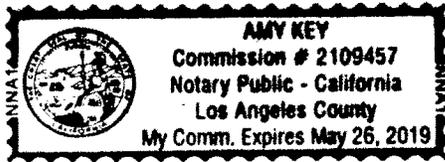
Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

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State of California
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me
 on this 21th day of October, 20 17,
 by _____ Date _____ Month _____ Year _____
 (1) Victoria L. McCarthy
 (and (2) _____),
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Signature Amy Key
 Signature of Notary Public

Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document 21st century Preferred
 Title or Type of Document: Affidavit - Ins. Co. Document Date: 10/26/17
 Number of Pages: 1 Signer(s) Other Than Named Above: None