

No. 4093

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

Date: AUG 21 2015

**Subject Considered:**

AMERICAN RISK INSURANCE COMPANY, INC.  
4669 Southwest Freeway, 7<sup>th</sup> Floor  
Houston, TX 77027

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 7429

**General remarks and official action taken:**

The commissioner of insurance considers whether disciplinary action should be taken against American Risk Insurance Company, Inc. (ARIC).

**WAIVER**

ARIC acknowledges that the Texas Insurance Code and other applicable law provide certain rights. ARIC waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

**FINDINGS OF FACT**

1. ARIC is a fire and casualty company currently holding a certificate of authority to transact business in Texas.
2. The department conducted a market conduct examination of ARIC from September 13, 2008, through April 27, 2009, which concluded with the entry of Commissioner's Order No. 12-0698, dated August 16, 2012.
3. The department conducted a targeted market conduct examination of ARIC covering the period of September 1, 2012, through August 31, 2013, pursuant to Chapter 751 of the Insurance Code (the "2013 exam"). The 2013 exam focused on a review of sales, advertising and marketing, underwriting and rating, claims practices, and consumer complaints and inquiries.
4. During the 2013 exam, the department found violations of the Texas Insurance Code and the Texas Administrative Code.

# 4093

## COMMISSIONER'S ORDER

American Risk Insurance Company, Inc.

Page 2 of 5

5. ARIC's agreements with two of its managing general agents (MGAs), Patriot National Underwriters, Inc. (Patriot) and U.S. Risk, Inc., did not include ten mandatory contractual provisions.
6. ARIC failed to conduct semiannual examinations of three MGAs during the 2013 exam period, specifically: Patriot; Select Insurance Markets, LP (Select); and Ralph Nannola Insurance Agency, Inc. d/b/a American Casualty Agency (Nannola).
7. In nine instances, ARIC failed to notify the claimant in writing of the acceptance or rejection of the claim not later than 15 business days after the date ARIC received all items, statements, and forms required by the insurer to secure final proof of loss.
8. In 21 instances, ARIC failed to pay a claim or part of a claim not later than five business days after the date ARIC notified the claimant of acceptance of the claim.
9. In four instances, ARIC failed to adopt and implement reasonable standards for the prompt investigation of a claim.
10. In four instances, ARIC did not attempt in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability had become reasonably clear.
11. In one instance, ARIC withheld further investigation of a claim until receipt of a loss affidavit from the insured.
12. On October 11, 2013, ARIC amended its MGA agreement with Patriot to include some of the mandatory contractual provisions required by the department's rule.
13. Effective December 23, 2013, ARIC implemented a claim investigation procedure for claims reported three or more months after the date of loss. Under this procedure, ARIC requests a loss affidavit from the insured, but continues its investigation by assigning an independent adjuster, when necessary, and prepares a loss estimate of the property damage.
14. From February 2014 through April 2015, ARIC instructed and permitted Patriot, Select, and Nannola to conduct their own semiannual "self audits" and to provide the information to ARIC by report because its MGAs either wrote a very small number of policies or no policies for ARIC during the prior six-month time period.
15. In February 2015, ARIC informed the department that in spite of the MGA contract between ARIC and U.S. Risk, Inc., U.S. Risk, Inc. has never written any business for ARIC. On February 11, 2015, ARIC terminated its contract with U.S. Risk, Inc., and canceled that appointment.
16. In February 2015, ARIC informed the department that in spite of the MGA contract between ARIC and Select, ARIC did not intend to authorize Select to perform any acts of an MGA. ARIC pays Select override commissions on the business that Select's

subagents write. In May 2015, ARIC and Select terminated their MGA contract and executed a general agency agreement.

17. In May 2015, ARIC informed the department that it stopped using its "late notice" letter, a standardized form letter sent to any claimant making a claim three or more months after the date of loss. The "late notice" letter advised the claimant that a loss affidavit must be completed prior to ARIC's inspection of a claimed loss. ARIC informed the department that less than 50 of these "late notice" letters were sent out in 2014. ARIC expressly agrees it will not use the "late notice letter" in the future and will not wait to inspect a loss until receipt of a loss affidavit from the claimant.
18. In June 2015, ARIC provided the department with a newly executed MGA agreement between ARIC and Patriot which included all mandatory contractual provisions required by the department's rule.

### CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, and 751.351.
2. The commissioner has the authority to informally dispose of this matter as set out in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. ARIC has knowingly and voluntarily waived all procedural rights to which it 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. ARIC violated 28 TEX. ADMIN. CODE § 19.1204(b) by failing to include mandatory contractual provisions in two MGA contracts, and by failing to conduct semiannual examinations of three MGAs.
5. ARIC violated TEX. INS. CODE § 542.003 by failing to adopt and implement reasonable standards for the prompt investigation of four claims, and by failing to attempt in good faith to effect a prompt, fair, and equitable settlement of four claims.
6. ARIC violated TEX. INS. CODE § 542.055 by withholding further investigation of a claim until receipt of a loss affidavit from the insured.
7. ARIC violated TEX. INS. CODE § 542.056 by failing to accept or reject nine claims within 15 business days after the date the insurer received all items, statements, and forms required by the insurer to secure final proof of loss.
8. ARIC violated TEX. INS. CODE § 542.057 by failing to process 21 claim payments within five business days after each claim was approved for payment.

# 4093

COMMISSIONER'S ORDER  
American Risk Insurance Company, Inc.  
Page 4 of 5

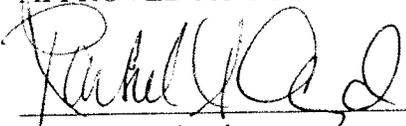
The commissioner orders ARIC to conduct all future semiannual examinations of its MGAs itself, to comply with the provisions of 28 TEX. ADMIN. CODE §§ 19.1204(b)(19)(A) and 19.1204(b)(20). An examination must not be a "self audit" performed by the MGA.

The commissioner further orders ARIC to comply with the Prompt Payment of Claims Act, including, but not limited to, all provisions in TEX. INS. CODE §§ 542.003, 542.055, 542.056, and 542.057.

The commissioner further orders ARIC to pay an administrative penalty of \$60,000 within 30 days from the date of this order. The payment must be paid by cashier's check or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance, Attn: Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

  
\_\_\_\_\_  
David E. Mattax  
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Rachel A. Cloyd  
Staff Attorney, Enforcement Section  
Texas Department of Insurance

COUNSEL FOR RESPONDENT:

  
\_\_\_\_\_  
Kerri K. Fields  
Law Office of Kerri K. Fields, P.C.

