

No. 4387

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

Date: APR 01 2016

Subject Considered:

FIREMAN'S FUND INSURANCE COMPANY
777 San Marin Drive
Novato, California 94998

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 7206

General remarks and official action taken:

The commissioner of insurance considers disciplinary action against Fireman's Fund Insurance Company.

WAIVER

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

Pursuant to TEX. INS. CODE § 82.055(b), Fireman's Fund agrees to this consent order with the express reservation that it does not admit to a violation of the code or of a rule and that the existence of a violation is in dispute.

FINDINGS OF FACT

1. Fireman's Fund is a fire and casualty company currently holding a certificate of authority issued by the Texas Department of Insurance.
2. TDI reviewed sample rate filings for personal automobile insurance submitted by Fireman's Fund for usage with www.helpinsure.com.
3. TDI found that the sample rates differed when comparing "no violations" to "1 speeding ticket," when holding all other variables constant.

4. Section 1953.051 of the Texas Insurance Code prohibits a rating plan for automobile insurance from assigning a rate consequence to, or otherwise causing premiums to be increased because of a charge or conviction for a violation of Subtitle C, Title 7, Transportation Code (“non-chargeable traffic violations”).
5. Fireman’s Fund began using its rating plan, the “Accident/Violation Free Discount” Rule on June 1, 2005.
6. Fireman’s Fund’s rating plan operated such that a policyholder’s “Accident/Violation Free Discount” would be applied at a different level of credit in the event of a speeding violation.
7. As of September 1, 2015, Fireman’s Fund ceased using this rating plan.
8. According to information provided by Fireman’s Fund, for the period of September 1, 2013, through September 1, 2015:
 - a. 50 policyholders received a different rate as the result of a speeding violation; and
 - b. The total premium involved was \$12,224.47.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 84.021-84.051, and 1953.051; and TEX. GOV’T CODE §§ 2001.051-2001.178.
2. The commissioner has the authority to dispose of this matter informally as set out in TEX. GOV’T CODE § 2001.256, TEX. INS. CODE §§ 36.104 and 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Fireman’s Fund violated TEX. INS. CODE § 1953.051.

The commissioner orders Fireman’s Fund to comply with the following:

- a. Fireman’s Fund must pay restitution in the form of a company check to each policyholder identified as having an overcharge (the “Qualifying Policyholders”). The restitution check must include both the dollar amount of the overcharge, plus simple interest due on the overcharge. The rate of interest shall be 5% per annum.
- b. Any restitution checks that are returned to Fireman’s Fund 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 prior to one year after the date of the issuance of the check will be presumed abandoned and delivered to the comptroller pursuant to the procedures set forth in TEX. PROP. CODE §§ 72.001 *et. seq.* Fireman’s Fund must copy the

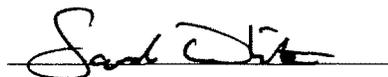
- department on any correspondence pertaining to abandoned funds that is sent to the comptroller.
- c. On or before May 1, 2016, Fireman's Fund must report the restitution paid to the Qualifying Policyholders by submitting a complete and sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:
- i. policy number;
 - ii. policyholder name;
 - iii. policyholder address;
 - iv. effective date of the policy;
 - v. expiration date of the policy;
 - vi. amount of overcharge;
 - vii. dollar amount of simple interest;
 - viii. date(s) of mailing of restitution check;
 - ix. the total sum of all overcharges;
 - x. the total sum of all simple interest; and,
 - xi. the total sum of all restitution paid (total overcharges plus the total of the simple interest).
- d. Fireman's Fund must send all submissions required under the terms of this order by email to: sarah.white@tdi.texas.gov, and catherine.bell@tdi.texas.gov, or their successors.

The commissioner orders Fireman's Fund Insurance Company to pay an administrative penalty of \$15,000 within 30 days from the date of this order. Fireman's Fund Insurance Company must pay the administrative penalty by cashier's check or money order payable to the State of Texas. Fireman's Fund Insurance Company must mail the payment to the Texas Department of Insurance, Attn: Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



David C. Mattax
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



Sarah White
Staff Attorney
Compliance Division, Enforcement Section
Texas Department of Insurance

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AFFIDAVIT

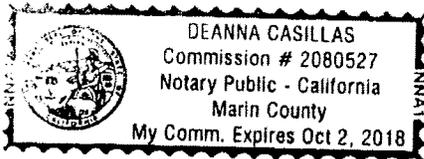
STATE OF California §
COUNTY OF Sonoma §

BEFORE ME, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follow:

1. "My name is Robin Clover. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated herein.
2. I hold the office of Assistant Vice President and the authorized representative of Fireman's Fund Insurance Company and am duly authorized to execute this affidavit.
3. Fireman's Fund Insurance Company waives rights provided by the Texas Insurance Code and other applicable law and acknowledges the jurisdiction of the commissioner of insurance of the state of Texas.
4. Fireman's Fund Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the foregoing consent order by the commissioner of insurance of the state of Texas."

Robin Clover
Affiant

SWORN TO AND SUBSCRIBED before me on this 23rd day of March, 2016.



(NOTARY STAMP)

Dianna Casillas
Signature of Notary Public