

No. **2016-4721**

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

Date: OCT 11 2016

Subject Considered:

OKLAHOMA SPECIALTY INSURANCE COMPANY
800 Gessner Road Suite 600
Houston, Texas 77024-4538

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 11102

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Oklahoma Specialty Insurance Company (OSIC).

WAIVER

OSIC acknowledges that the Texas Insurance Code and other applicable law provide certain rights. OSIC waives all of 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), OSIC 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. OSIC is a surplus lines insurer eligible to transact business in Texas.
2. On or about March 31, 2013, OSIC issued a one-year master group insurance policy no. PRO***118 to "Risk Point, LLC Vehicle Inventory Program Group" in care of Risk Point, LLC in Texas. The master policy titled "Automobile Physical Damage Policy" provided coverage to all existing members of the named insured group, and any other members for which the group has responsibility for placing insurance and for which coverage was not otherwise more specifically provided by another insurer, policy, or certificate of insurance.
3. Risk Point, LLC Vehicle Inventory Program Group ("Risk Point VIP Group") is registered as a domestic nonprofit corporation with the Texas Secretary of State. Risk Point VIP Group does not hold any license or authorization to transact the business of insurance in Texas.

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4. Risk Point, LLC, firm identification no. 76709, holds general lines property and casualty, managing general agent, and surplus lines agent licenses with the department.
5. The 2013 – 2014 master group policy was renewed for the 2014 – 2015 term in Texas.
6. The 2013 – 2014 and 2014 – 2015 master group policies contained a self-funded aggregate deductible (SFAD), which was removed by OSIC when the policy was renewed for the 2015 – 2016 term.
7. OSIC issued the 2015 – 2016 master group insurance policy no. PRO***118-02 to “Risk Point Vehicle Inventory Program Group” in care of Risk Point, LLC in Texas. This master policy was also titled “Automobile Physical Damage Policy,” and provided automobile physical damage insurance coverage to all existing members of the named insured group, and any other members for which the group has responsibility for placing insurance and for which coverage was not otherwise more specifically provided by another insurer, policy, or certificate of insurance.
8. The members and certificate-holders of the Risk Point VIP Group are commercial automobile dealerships.
9. OSIC represents that the dates of coverage for each certificate-holder do not necessarily correspond or coincide with the dates of the master group policy. Because members are accepted into the Risk Point VIP Group on a rolling basis, certificates are issued and delivered to members of the Risk Point VIP Group throughout the term of the master group policy.
10. During the 2015 – 2016 policy term, there were approximately 818 dealership members and certificate-holders nationwide, including approximately 117 Texas dealerships with 514 Texas locations.
11. At this time, no complaints of consumer harm to Texans or the owners of Texas risks related to the group master insurance policy delivered, issued for delivery, and renewed by OSIC have been filed with the department. Similarly, at this time no complaints from dealerships holding certificates under the group policy have been filed with the department.
12. OSIC disagrees with the department regarding the line of insurance coverage provided to the members and certificate-holders under the master group policies.
13. To avoid the cost, delay, and uncertainty of any formal administrative hearing and decision, OSIC has voluntarily agreed to resolve this dispute by consent. OSIC agrees to the following action plan:
 - a. For any dealerships which are quoted or have been quoted an estimated premium for automobile physical damage insurance coverage with OSIC beginning March 31,

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2016, OSIC agrees to issue individual policies to such dealerships. OSIC and any applicable surplus lines agent remain obligated to comply with TEX. INS. CODE § 981.004, and any and all other applicable statutes, rules, and regulations.

- b. Not later than 30 days after entry of this order, OSIC must transition all in force certificate-holders in Texas or having Texas risks from coverage under the master group policy to coverage under individually issued policies, with the coverage period to be effective through the original expiration date under each certificate and the master group policy. To achieve this transition, OSIC must deliver individual policies to those in force certificate-holders. There must be no break in coverage for the dealership when transitioning from the master group policy to the individual policy, and the terms of the individual policies must provide each dealership with identical coverage, limits, deductibles, and premium as that provided under the certificate.
- c. OSIC agrees to honor, handle, and adjust any claims reported under the master group policies for which it remains liable under the terms of those contracts.
- d. To facilitate an anticipated refund of previously paid surplus lines taxes from the Texas Comptroller of Public Accounts for certificate-holders not domiciled in Texas and not having Texas risks (the non-Texas certificate-holders), OSIC represents that within 90 days from the date of this order, it (or an affiliate) will transition the non-Texas certificate holders to a new master policy in another state's jurisdiction, if permitted by law. Regardless of whether or not the anticipated refund is made, OSIC expressly agrees that the master group policy must have no remaining in-force certificate-holders on and after 90 days from the date of this order.
- e. Not later than 90 days after the date of this order, OSIC agrees to send the following to the department by e-mail to both: rachel.cloyd@tdi.texas.gov and catherine.bell@tdi.texas.gov, or their successors:
 - i. the date(s) of delivery of the individual policies to the dealerships;
 - ii. the number of individual policies delivered; and,
 - iii. the date the master group policy no longer had any in-force certificate-holders.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 101.101 – 101.156, and 981.006.
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. OSIC 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. Garage insurance is a form of automobile insurance which the department is authorized to regulate under TEX. INS. CODE art. 5.01(b) and (e) and TEX. INS. CODE § 1952.251(2).
5. Under TEX. INS. CODE §§ 2251.003(b)(2), 2251.003(b)(14), 2301.003(b)(2), and 2301.003(b)(14), commercial automobile insurance is separate and distinct from commercial property insurance, and may not be written on a group basis under TEX. INS. CODE §§ 2171.001 – 2171.005.
6. The department alleges that OSIC's issuance, delivery, and renewal of the master group insurance policies in Texas were not lawful transactions of surplus lines insurance contemplated by TEX. INS. CODE § 101.053(b)(1), and were therefore not excepted from conduct constituting the business of insurance under TEX. INS. CODE § 101.053(b).
7. The department alleges OSIC violated TEX. INS. CODE § 101.102(a) by performing acts that constitute the business of insurance, as that term is defined in TEX. INS. CODE § 101.051.

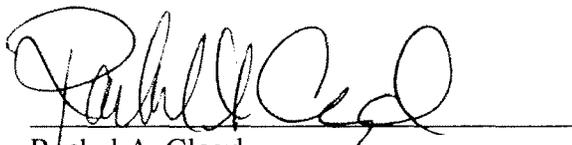
The commissioner orders Oklahoma Specialty Insurance Company to comply with the agreed action plan described in Finding of Fact No. 13.

The commissioner further orders OSIC to immediately cease and desist from engaging in acts that constitute the business of insurance in Texas, except as authorized, and except as contemplated by TEX. INS. CODE § 101.201(a) to service and fulfill any and all remaining obligations for which it may be liable under the terms of its contracts. OSIC is subject to all applicable statutory penalties and relief should it engage in acts, except as authorized, that constitute the business of insurance in Texas.



David C. Mattax
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



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

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AFFIDAVIT

STATE OF TEXAS §

COUNTY OF HARRIS §
§

Before me, the undersigned authority, personally appeared PETER B. SMITH, who being by me duly sworn, deposed as follows:

"My name is PETER B. SMITH. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of PRESIDENT, and am the authorized representative of Oklahoma Specialty Insurance Company. I am duly authorized by said organization to execute this statement.

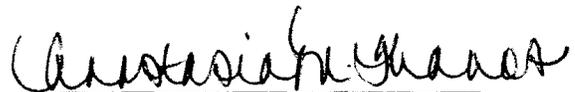
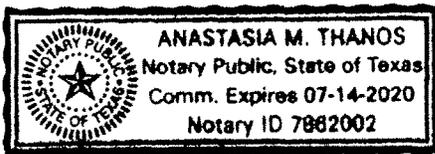
Oklahoma Specialty Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."



Affiant

SWORN TO AND SUBSCRIBED before me on SEPTEMBER 26, 2016.

(NOTARY SEAL)



Signature of Notary Public

ANASTASIA M. THANOS

Printed Name of Notary Public