

No. **2016-4769**

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

Date: NOV 02 2016

Subjects Considered:

ALINSCO INSURANCE COMPANY
6030 Lake Worth Boulevard
Fort Worth, Texas 76135

EMPOWER MANAGING GENERAL AGENCY, INC.
P.O. Box 137089
Fort Worth, Texas 76136

CONSENT ORDER
TDI ENFORCEMENT FILE NOS. 9371 and 8407

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Alinsco Insurance Company and Empower Managing General Agency, Inc.

WAIVER

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

FINDINGS OF FACT

1. Alinsco is a fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.
2. Empower has held a managing general agency (MGA) license with the department under firm identification number 20801, since April 2, 2004.

Lack of Appointment

3. Alinsco and Empower are affiliated entities. Effective March 1, 2014, Alinsco and Empower entered into a contract whereby Alinsco contracted with Empower to act as its MGA, as that term is defined in TEX. INS. CODE § 4053.001(3). However, at that time, Alinsco failed to report the appointment to the department.

4. On April 1, 2014, Empower began operating and continues to operate as Alinsco's MGA, writing personal automobile insurance in Texas.
5. Alinsco reported Empower's appointment to act on its behalf as its MGA to the department effective October 21, 2016.

Failure to Renew Named Driver Policies

6. Section 1952.0545 of the Insurance Code [S.B. 1567 (83rd Leg. R.S., Davis), eff. Sept. 1, 2013], requires insurers and agents to make written and oral disclosures to the applicant or insured, and obtain contemporaneous written confirmation of the oral disclosure, of the nature and limitations of named driver automobile insurance policies. Disclosures must be made before accepting any premium or fee for the named driver policy. S.B. 1567 applies only to named driver policies delivered, issued for delivery, or renewed on or after January 1, 2014.
7. On March 25, 2014, under department filing link number 132982, the department approved Alinsco's form POLICYAV001, Ed. Date 04/14, as its standard personal automobile insurance policy (PAP).
8. Under filing link number 132982, the department also approved Alinsco's filing of several endorsement forms, including, but not limited to AIC.CP.013 (the Covered Person Endorsement) and AIC.AuthDriv.003 (the Authorized Driver Endorsement).
9. When form POLICYAV001 is endorsed by either endorsement form AIC.CP.013 or AIC.AuthDriv.003, the policy is a named driver policy within the meaning of TEX. INS. CODE § 1952.0545.
10. Alinsco informed the department that they offer four optional personal automobile insurance coverage levels:
 - Select: This 6-month term program includes form POLICYAV001 with no endorsements, and is not a named driver policy.
 - Limited: This 6-month term program includes form POLICYAV001 endorsed by form AIC.CP.013 and AIC.AuthDriv.003, and is a named driver policy providing both liability and physical damage coverage.
 - Bravo: This 6-month term program includes form POLICYAV001 endorsed by form AIC.CP.013 and AIC.AuthDriv.003, and is a named driver policy providing both liability and physical damage coverage, but is issued only to applicants or insureds based upon specified credit scores.
 - Priority: This 1-month term program includes form POLICYAV001 endorsed by form AIC.CP.013, and is a named driver policy that only provides liability coverage.
11. On April 28, 2014, the department adopted amendments to 28 TEX. ADMIN. CODE § 5.204, effective May 18, 2014, to partially implement provisions of S.B. 1567 requiring that liability insurers writing a named driver policy must include the named driver disclosure in the standard proof of motor vehicle liability insurance form, i.e. the "Texas Liability Insurance Card."

12. On January 8, 2015, the department adopted 28 TEX. ADMIN. CODE § 5.208, effective January 28, 2015, to implement the remaining disclosure requirements in S.B. 1567 for both new and renewal named driver policies.
13. On and after January 28, 2015, Empower delivered, issued for delivery, and renewed named driver policies for Alinsco.
14. On January 30, 2015, Alinsco submitted rate filing no. S14581 to the department indicating it would apply a 6% premium surcharge effective February 9, 2015, if the insured had not signed and returned confirmation of the oral and written named driver disclosure prior to renewal.
15. Presently, Empower writes named driver policies for Alinsco in 6-month and 1-month terms.
16. For new business, Empower collects premium and fees for its named driver policies in person and on-line. If the applicant appears in person in the agent's office, Empower collects premium and fees by credit card, check, money order, or in cash. If the applicant applies on-line, Empower collects premium and fees by credit card or e-check (by routing number).
17. For renewals, Empower collects premium and fees for its named driver policies in person, on-line, and by mail. If the insured appears in person to renew in the agent's office, Empower collects the premium and fees by credit card, check, money order and in cash. If the insured renews on-line, Empower collects the premium and fees by credit card or e-check (by routing number). If the insured renews by mail, Empower collects premium and fees by check or money order.
18. In 2015, Empower also collected premium and fees for renewals of its named driver policies through electronic automated clearing house (ACH) transactions.
19. Empower's current policies, procedures, and practices with respect to named driver policy renewals are as follows:
 - a. For 1-month term named driver policies, Empower sends the insured a notice by mail 15 days before the expiration date of the policy, instructing the insured to sign and return confirmation of the provision of written and oral disclosure prior to renewal in order to avoid removal of the named driver endorsements and an increase to the renewal premium.
 - b. For 6-month term named driver policies, Empower sends the insured a notice by mail 21 days before the expiration date of the policy, instructing the insured to sign and return confirmation of the provision of written and oral disclosure prior to renewal in order to avoid removal of the named driver endorsements and an increase to the renewal premium.
 - c. The notices for both 1-month and 6-month terms also include two alternative premium quotes: (1) a renewal premium amount at the named driver rate for renewal of the named driver policy; or (2) an increased premium amount including the 6% premium surcharge for a policy without named driver endorsements.

- d. Both notices include the requisite, written named driver disclosure.
 - e. Both notices provide instructions to the insured to either call a toll-free telephone number or to visit Empower's website to log into the insured's account to listen to the oral disclosure.
 - f. Both notices instruct the insured to provide an e-signature on-line through the insured's account accessible through Empower's website, or to return the signed, paper confirmation by mail with the insured's payment.
 - g. If Empower receives the signed confirmation prior to renewal by either delivery method, then the insured's policy is renewed as a named driver policy and the insured is charged premium at the named driver rate.
 - h. If the insured does not return the signed confirmation prior to the renewal effective date, Empower converts the policy from a named driver policy to its standard PAP, by removing the named driver endorsement forms AIC.CP.013 and AIC.AuthDriv.003, and issuing and delivering form POLICYAV001 at an increased premium to the insured, including the 6% surcharge.
 - i. If the insured returns the signed confirmation after the renewal effective date, Empower retroactively endorses form POLICYAV001, with the named driver endorsement forms AIC.CP.013 and/or AIC.AuthDriv.003, effective as of the renewal inception date. Empower also then adjusts the premium to reflect the named driver rate.
 - j. After the renewal effective date, Empower represents that it handles claims based upon the presence or lack of named driver endorsements at the time of the loss.
20. The conversion of the named driver policy to Alinsco's standard PAP at renewal, and the imposition of the 6% surcharge, can result from either one of two situations:
- 1) an insured does not respond at all to the notice requesting the signed confirmation;
or
 - 2) an insured pays the named driver premium at the named driver rate, but does not return the signed confirmation with the payment.
21. In either of the two situations, the insured has not made or expressed an affirmative choice or request to obtain the standard PAP without the named driver endorsements, at an increased cost.
22. Based upon these policies, procedures, and practices, Empower is unilaterally, of its own volition, and without a request from the insured, issuing and delivering standard PAPs and accepting increased premiums and fees for expanded coverage when neither Empower nor Alinsco have received the signed confirmation from the named insured prior to the renewal effective date.

23. Alinsco and Empower do not renew named driver policies with terms of less than 12 months so as to allow them to accrue 12 months of continuous coverage.
24. On and after January 28, 2015, Empower's practices, as applied to any 1-month or 6-month named driver policy which had or has not yet accumulated 12 months of continuous coverage, constitute a non-renewal of named driver policies.
25. Alinsco and Empower sought guidance from the department on the best practices for renewal of named driver policies.
26. On July 7, 2016, Alinsco and Empower proposed a new business model to the department for their named driver book of business. Alinsco and Empower propose and voluntarily agree that they will:
 - a. on or before the date of this order, submit to the department for approval a new named driver policy form filing with a term of 12 months or more; and
 - b. on December 1, 2016, cease writing new named driver policies with terms of less than 12 months.
27. In an effort to settle all allegations against them, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, Alinsco and Empower propose and voluntarily agree they will implement the following transition plan with respect to all named driver policies with terms of less than 12 months in force on December 1, 2016 (the "Affected Policies," and the named insureds on such policies are identified as the "Affected Policyholders"):
 - a. Alinsco and Empower agree they will send a mass notification not later than December 1, 2016, to all Affected Policyholders (regardless of term length, and regardless of whether or not any Affected Policyholder has accumulated a minimum of 12 months of continuous coverage under the Affected Policies). The mass notification will provide each Affected Policyholder with a minimum of 30 days written notice that beginning January 1, 2017, the Affected Policies will not be renewed with the named driver endorsement forms AIC.CP.013 and AIC.AuthDriv.003, and that as a result, the Affected Policyholder's premium will change. The mass notification may include an offer to purchase an approved non-named driver policy or any approved named driver policy with a term of 12 months or more. The mass notification will be in the form shown in Exhibit A.
 - b. Beginning January 1, 2017, Alinsco and Empower agree that when each Affected Policy reaches its monthly or semi-annual renewal date thereafter, the Affected Policyholder will also be sent a second notification informing the Affected Policyholder of the removal of named driver endorsement forms AIC.CP.013 and AIC.AuthDriv.003, and the resulting change to the Affected Policyholder's premium. This second notification will be sent to the Affected Policyholder not later than 30 days before the renewal date of the Affected Policy. The second notification may include an offer to purchase an approved non-named driver policy or any approved named driver policy with a term of 12 months or more. The second notification will be in the form shown in Exhibit B. The language shown in Exhibit C will accompany the invoice sent with any offer to purchase an approved non-named driver policy.

- c. Not later than February 1, 2017, Alinsco and Empower must provide the department with: the number of Affected Policies; the number of mass notifications mailed; a copy of one mass notification sent to an actual Affected Policyholder; and, a copy of a second notification sent to an actual Affected Policyholder.
 - d. Not later than August 1, 2017, Alinsco and Empower must provide the department with: the date when the last Affected Policy non-renewed; the number of Affected Policyholders who accepted any offer to purchase an approved non-named driver policy; and, the number of Affected Policyholders who accepted any offer to purchase an approved named driver policy with a term of 12 months or more.
 - e. All information and documents agreed and required to be submitted to the department under the terms of this order must be sent electronically in portable document format (*.pdf) by e-mail to both: rachel.cloyd@tdi.texas.gov and catherine.bell@tdi.texas.gov, or their successors.
28. Alinsco and Empower consent to the terms of this order with the express understanding that this order does not address or approve under TEX. INS. CODE § 2301.006, the contemplated new form filing as described in Finding of Fact no. 26(a). Moreover, Alinsco and Empower consent to the terms of this order with the express understanding that this order does not address whether or not any corresponding rate filing meets the rate standards described in Subchapter B, Chapter 2251 of the Texas Insurance Code.
29. Alinsco and Empower expressly consent to the terms of this order on the condition that they reserve the right to change their business model for named driver policies in the event that the Texas Legislature enacts any changes to TEX. INS. CODE § 1952.0545, and/or if the department adopts any changes to its rules related to named driver policies. Should Alinsco and Empower exercise this right, they also expressly agree and understand that any such revisions to their named driver business model must conform and comply with all applicable Texas insurance laws.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 801.051-801.053, 4005.101, and 4053.151.
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 § 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Alinsco and Empower 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 intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. As applicable to personal automobile policies, TEX. INS. CODE § 551.105 requires an insurer to renew an insurance policy on the expiration of the policy, at the request of the insured, unless

the insurer mails written notice of nonrenewal to the insured not later than the 30th day before the date on which the insurance policy expires.

5. Pursuant to TEX. INS. CODE § 551.106(b), an insurer shall renew a personal automobile policy that was written for a term of less than one year, except that the insurer may refuse to renew the policy on any 12-month anniversary of the original effective date of the policy.
6. As contemplated in 28 TEX. ADMIN. CODE § 5.7005(c), personal automobile policies which are written for a period of less than one year must be renewed, at the option of the insured, for additional periods so as to accumulate a minimum of 12 months of continuous coverage.
7. Under 28 TEX. ADMIN. CODE § 5.7007(a), a policy must be renewed at expiration, at the option of the policyholder, unless the company has mailed written notice to the policyholder of its intention to decline renewal at least 30 days in advance of the policy expiration date. The company may comply with this provision by requiring or permitting its agent to notify the policyholder. However, the responsibility of giving notice to the insured remains with the company if the agent fails to carry out its instructions to notify the insured.
8. Under 28 TEX. ADMIN. CODE § 5.208(e), noncompliance with TEX. INS. CODE § 1952.0545 or 28 TEX. ADMIN. CODE § 5.208 is not grounds for cancellation of a named driver policy under TEX. INS. CODE § 551.104.
9. For named driver policies that were written for terms less than 12 months, and which were renewed on and after January 28, 2015, Alinsco and Empower violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by unilaterally expanding insureds' coverage at renewal at an additional premium cost without the insureds' request or consent when those insureds had not yet accumulated the minimum 12 months of continuous coverage, and by failing to properly renew those policies before accepting a premium or fee.
10. Alinsco and Empower violated TEX. INS. CODE §§ 4001.202(b) and 4053.054(a), by failing to report the appointment of Empower as Alinsco's MGA to the department on the prescribed form not later than 30 days after the appointment.

The commissioner orders Alinsco Insurance Company and Empower Managing General Agency, Inc. to comply with the following compliance plan:

1. On and after July 10, 2017, Alinsco and Empower must renew, at the request or option of the insured, all named driver personal automobile insurance policies, so as to allow each insured to accumulate a minimum of 12 months of continuous coverage.
2. On and after July 10, 2017, Alinsco and Empower must cease and desist at renewal the practice of unilaterally and of their own volition, unless the insured requests or expressly consents, issuing and delivering their standard PAP and invoicing an increased premium, to named driver insureds who have not yet accumulated a minimum of 12 months of continuous named driver coverage and who have not returned the signed confirmation.

3. Not later than 90 days from the date of this order, Alinsco must make a new rate filing which removes from their rating plans the 6% surcharge included in rate filing number S14581, with the removal to be effective no later than July 10, 2017.
4. If Alinsco has appointed and/or contracted with any other MGA to write named driver policies on its behalf, Alinsco must implement policies, procedures, and other safeguards designed to ensure that those other MGAs:
 - a. are appointed and the department has been timely and properly notified of that appointment;
 - b. on and after July 10, 2017, renew all named driver policies, at the request or option of the insured, so as to allow each insured to accumulate a minimum of 12 months of continuous coverage; and
 - c. on and after July 10, 2017, cease and desist at renewal any practice of unilaterally and of their own volition, unless the insured requests or expressly consents, issuing and delivering a standard PAP and invoicing an increased premium, to named driver insureds who have not yet accumulated a minimum of 12 months of continuous named driver coverage and who have not returned the signed confirmation.

The commissioner orders Alinsco and Empower to comply with their voluntary agreement described in Findings of Fact Nos. 26 – 29.

The commissioner further orders Alinsco and Empower to pay, jointly and severally, an administrative penalty of \$100,000. The penalty payment is due on or before 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: Compliance Division, Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner further orders that if it is found after a public hearing that either or both Alinsco and Empower have failed to comply with any of the terms of this Order, Alinsco and/or Empower may be subject to further action by the commissioner under the provisions of TEX. INS. CODE § 82.054.

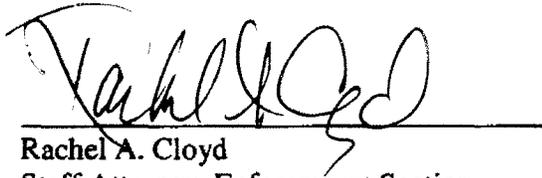


David C. Mattax
Commissioner of Insurance

2016-4769

COMMISSIONER'S ORDER
Alinsco Insurance Company, *et al.*
Page 9 of 14

APPROVED AS TO FORM AND CONTENT:



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

COUNSEL FOR RESPONDENTS:



Anthony Icenogle
Icenogle & Boggins, PLLC

EXHIBIT A

<Named Insured>
<Address Line 1>
<City><ST><Zip>

Notice to Named Driver Policyholders

Policy: <Policy #>

Expiration Date: <Expiration Date>

Empower Insurance is pleased to announce we are offering you a choice of new policy options at the expiration of your current policy. Because we are ceasing to write certain named driver policies with terms of less than 12 months, we are offering and making available to you a choice of two other coverage options when your current policy expires.

A New Policy with Broader Coverage

Currently your policy includes one or both of our Named Driver Endorsements. You may refer to your Declarations Page and your Personal Auto Policy to review. The Named Driver Endorsements appear as AIC.AuthDriv.003 and AIC.CP.013.

Effective at the expiration of your current policy, you may purchase a new policy with broader coverage. The new policy will not include the named driver endorsements and the broader coverage will increase your premium by 6%.

Or, Keep Saving with Named Driver Endorsements

If you wish to continue receiving a discount by utilizing the Named Driver endorsements you may do so by moving to a new policy, **Empower Annual Savings**. This product is available to you through your independent insurance agent or you can learn more at www.empowerins.com.

You may purchase the Empower Annual Savings product that includes the same Named Driver Endorsements AIC.AuthDriv.003 and AIC.CP.013.

You Choose

You will receive another notice concerning this change in our product offerings and your options 30 days prior to the expiration of your current policy, followed by your new policy invoice.

Your choice:

1. Purchase a new policy with broader coverage, or
2. Retain your Named Driver savings by moving to the **Empower Annual Savings** policy.

If you have any questions you may contact your independent insurance agent or Empower Customer Service at 1-877-437-5010.

It remains our privilege and pleasure to serve you,

Empower Insurance Team

2016-4769

COMMISSIONER'S ORDER
Alinsco Insurance Company, *et al.*
Page 13 of 14

EXHIBIT B

<Named Insured>
<Address Line 1>
<City><ST><Zip>

30 Day Notice to Named Driver Policyholders

Policy: <Policy #>

Expiration Date: <Expiration Date>

Empower Insurance is pleased to announce we are offering a choice of new policy options at the expiration of your current policy. Because we are ceasing to write certain named driver policies with terms of less than 12 months, we are offering and making available to you a choice of two other coverage options when your current policy expires.

A New Policy with Broader Coverage

Currently your policy includes one or both of our Named Driver Endorsements. You may refer to your Declarations Page and your Personal Auto Policy to review. The Named Driver Endorsements appear as AIC.AuthDriv.003 and AIC.CP.013.

Effective at the expiration of your current policy you may purchase a new policy with broader coverage. The new policy will not include the named driver endorsements and the broader coverage will increase your premium by 6%.

Or, Keep Saving with Named Driver Endorsements

If you wish to continue receiving a discount by utilizing the Named Driver endorsements you may do so by moving to a new policy, Empower Annual Savings. This product is available to you through your independent insurance agent or you can learn more at www.empowerins.com.

You may purchase the Empower Annual Savings product that includes the same Named Driver Endorsements AIC.AuthDriv.003 and AIC.CP.013.

You Choose

Your current policy is expiring and a new offer invoice will follow this notice.

Your choice:

1. Purchase a new policy with broader coverage, or
2. Retain your Named Driver savings by moving to the **Empower Annual Savings** policy.

If you have any questions you may contact your independent insurance agent or Empower Customer Service at 1-877-437-5010.

It remains our privilege and pleasure to serve you,

Empower Insurance Team

2016-4769

COMMISSIONER'S ORDER

Alinsco Insurance Company, *et al.*

Page 14 of 14

EXHIBIT C

Your new policy no longer includes certain Named Driver endorsements. The Named Driver Endorsements appear as AIC.AuthDriv.003 and/or AIC.CP.013 on the Declarations Page of your expiring Personal Auto Policy. The removal of these endorsements broadens your coverage, and also causes an increase in premium. The enclosed offer reflects this change.

If you wish to continue receiving a discount by utilizing the Named Driver endorsements you may do so by moving to a new policy, **Empower Annual Savings**. This product is available to you through your independent insurance agent or you can learn more at www.empowerins.com.