

No. 2017- 5048

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

Date: APR 25 2017

Subject Considered:

INFINITY COUNTY MUTUAL INSURANCE COMPANY
2201 4th Avenue North
Birmingham, Alabama 35203

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 12210

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Infinity County Mutual Insurance Company which holds a certificate of authority issued by the department.

WAIVER

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

FINDINGS OF FACT

1. Infinity County Mutual Insurance Company is a domestic county mutual company currently holding a certificate of authority to transact business in Texas.
2. The department conducted a market conduct examination of the private passenger automobile lines of business for the period of October 1, 2014, through September 30, 2015. The examination reviewed the advertising and marketing, underwriting, policy forms, claims practices, and consumer complaints for that period. The purpose of the examination was to verify compliance with the Texas Insurance Code, Chapter 28 of the Texas Administrative Code, the Texas Automobile Rules and Rating Manual, and the Texas Standard Provisions for Automobile Policies. Infinity was previously examined as of March 31, 2012.
3. During the exam, the department found violations of the Texas Insurance Code and Texas Administrative Code.

Sales, Advertising and Marketing review

4. Infinity had 233 active agents and terminated 121 during the examination period. A sample of 50 private passenger automobile policies issued during the examination period revealed that five policies were issued by an un-appointed agent.
5. Effective February 22, 2016, Infinity appointed two of the five un-appointed agents that had produced business during the examination period.

Policy Issuance review

6. The examination reviewed Infinity's private passenger automobile policies for compliance with the use of proper rates, forms, and endorsements, for timely handling of transactions and policy service requests, and adherence to consistent and nondiscriminatory underwriting practices. The examination looked at 50 issued policies, 50 canceled policies, 50 non-renewed policies, and 15 rescinded policies.
7. Infinity did not calculate premiums in accordance with the rates filed with the department. Specifically, in two instances, Infinity overcharged premium by \$43 due to the use of an incorrect rating factor. An Infinity representative indicated this overcharge was due to a system error applying an incorrect factor when calculating premiums that first occurred on November 17, 2014, resulting in a system fix implemented on November 26, 2014.
8. Infinity calculated the amount of overcharged premiums totaled \$6,169 and impacted 938 policies.
9. An Infinity representative indicated that of the 938 policies affected by the rating error, 458 policies did not receive refunds because the error was corrected by recalculating the premium and reissuing the policy with the correct rate, or an account credit was applied on the overcharged premium to the account balance on the policy. For 284 policies, there was an undercharge and therefore no refund was due. For the remaining 196 insureds, including the two instances found as a result of department's examination, a total refund totaling \$6,812 minus \$643 in balances owed to Infinity was due, for a net refund total of \$6,169.
10. Between March 17, 2016, and April 25, 2016, Infinity issued refunds totaling \$6,169 on 196 policies for overcharged premiums due to the use of an incorrect rating factor.

Named Driver Underwriting Practices

11. 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.
12. 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."
 13. 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.
 14. Infinity's policy once endorsed, resulted in a named driver personal automobile policy. A review of Infinity's named driver policies, issued and/or renewed during the examination period, was conducted to determine compliance with the requirements mandated for these types of policies.
 15. On and after January 28, 2015, Infinity delivered, issued for delivery, and renewed named driver policies in 6-month and 12-month terms.
 16. Infinity's procedures for new business policies at the time of the examination were as follows:
 - Prior to acceptance of premium payment and upload of the policy to Infinity, the agent is required to read the named driver disclosure to the applicant. Additionally, the applicant must read and sign the named driver disclosure.
 - The named driver disclosure will be signed again with the signing of the application and any applicable selection/rejection forms as well as a separate "Features and Limitations" disclosure. Copies of all signed documents are to be provided to the insured.
 - The insurance liability ID card is issued with the policy and displays the requisite disclosure.
 17. Infinity does not have procedures to obtain the required disclosures for policy renewals of named driver policies. An Infinity representative indicated that named driver coverage restrictions are not enforced for any applicable claim reported on a renewed version of a policy containing named driver coverage.
 18. Infinity represents it does not treat these as "named driver policies" until Infinity receives the signed confirmations of the written and oral disclosures. When it has not received those signed confirmations, Infinity provides coverage to household residents not named on the policy in the event of a claim.
 19. Infinity provided documentation that it paid 45 claims on named driver policies during the examination period that would have been denied because the driver of the vehicle at the time of the accident was a household resident not named on the policy.

20. During the examination, the department reviewed a sample of 40 named driver policies. In 18 instances, six new and 12 renewal, for named driver policies delivered, issued for delivery, and renewed on and after February 1, 2015, through September 30, 2015, the following deficiencies were noted:
- Infinity failed to make the requisite oral disclosure;
 - Infinity failed to receive a signed copy of the requisite written disclosure; and
 - Infinity failed to confirm contemporaneously in writing the provision of the oral disclosure.
21. Infinity submitted updated policy forms and rules regarding Named Driver policy renewals in late 2016; the filings are pending approval.

Claims Practices review

22. Claims files were reviewed for compliance with policy provisions, timeliness and accuracy of payments, supporting documentation, and general claim handling. The examination looked at a sample of 100 paid claims, 50 denied or claims closed without payment, and 15 pending claims.
23. For paid claims, the audit found the following violations of Chapter 542 of the Texas Insurance Code:
- In one instance, Infinity did not acknowledge receipt of the claim within 15 business days after receipt of the claim; and
 - In two instances, Infinity did not notify the insured in writing of a settlement no later than the 30th day after the date a claim against a named insured under a casualty insurance policy issued to the insured is settled.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE chs. 801 and 912; TEX. INS. CODE §§ 82.051-82.055 and 84.021-84.051; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has the authority to dispose of this matter informally, 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. Infinity County Mutual Insurance Company waives all procedural requirements for the entry of an order in this matter, including but not limited to the issuance and service of a notice of intention to institute disciplinary action, a notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Infinity violated TEX. INS. CODE § 542.055(a)(1) because it failed to acknowledge receipt of a claim not later than the 15th business day after the date it received the claim in one instance.

5. On or after January 28, 2015, Infinity violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 because it failed to have any policies or procedures in place related to these provisions for named driver personal automobile insurance policies renewed during the examination period.
6. Infinity violated TEX. INS. CODE § 542.153(b) because it failed to notify the insured in writing not later than the 30th day after the date a claim against a named insured under a casualty insurance policy issued to the insured is settled in two instances.
7. On and after January 28, 2015, Infinity violated TEX. INS. CODE § 1952.0545(b) and 28 TEX. ADMIN. CODE § 5.208(c)(1)(A) by accepting a premium or fee for named driver policies without making the oral disclosure to applicants and insureds for new and renewal named driver personal automobile insurance policies in 18 instances.
8. On and after January 28, 2015, Infinity violated TEX. INS. CODE § 1952.0545(c) and 28 TEX. ADMIN. CODE § 5.208(c)(1)(D) by accepting a premium or fee for named driver policies without receiving a signed copy of the written disclosure to applicants and insureds for new and renewal named driver personal automobile insurance policies in 18 instances.
9. On and after January 28, 2015, Infinity violated TEX. INS. CODE § 1952.0545(e) and 28 TEX. ADMIN. CODE § 5.208(c)(1)(B) by accepting a premium or fee for named driver policies without requiring applicants and insureds for new and renewal named driver personal automobile insurance policies to confirm contemporaneously in writing the provision of oral disclosure in 18 instances.
10. Infinity violated TEX. INS. CODE § 2251.101 because it did not calculate premiums in accordance with the rates on file with the department in 938 instances.
11. Infinity violated TEX. INS. CODE § 4001.201 because it issued five private passenger automobile policies by and through un-appointed agents during the examination period.

The commissioner orders Infinity County Mutual Insurance Company to pay a \$200,000 administrative penalty within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order payable to the State of Texas. Infinity County Mutual Insurance Company must mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, TX 78714-9104.


Kevin Brady
Deputy Commissioner For Agency Affairs
Texas Department of Insurance
Delegation Order 4506

APPROVED AS TO FORM AND CONTENT:

nafraser

Whitney A. Fraser, Staff Attorney
Compliance Division, Enforcement Section
Texas Department of Insurance

AFFIDAVIT

STATE OF GEORGIA §

COUNTY OF FULTON §

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

1. "My name is MITCHELL SILVERMAN. 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 SECRETARY. I am the authorized representative of Infinity County Mutual Insurance Company and am duly authorized to execute this affidavit.
3. Infinity County Mutual 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."

Mitchell Silverman

Affiant

SWORN TO AND SUBSCRIBED before me on this 28 day of March, 2017.

Patricia Finn Dowd

Signature of Notary Public

(NOTARY STAMP)

