

No. 2017- 5167

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

Date: AUG 0 1 2017

Subjects Considered:

ANCHOR GENERAL INSURANCE COMPANY
P.O. Box 509020
San Diego, California 92150-9020

ANCHOR GENERAL INSURANCE AGENCY OF TEXAS, INC.
10256 Meanley Drive
San Diego, California 92131

CONSENT ORDER
TDI ENFORCEMENT FILE NOS. 11525 and 11526

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Anchor General Insurance Company ("Anchor General") and Anchor General Insurance Agency of Texas, Inc. ("AGIAT").

WAIVER

Anchor General and AGIAT acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Anchor General and AGIAT waive 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), Anchor General and AGIAT agree to this consent order with the express reservation that they do 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. Anchor General is a fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.
2. AGIAT has held a managing general agency (MGA) license with the department under firm identification number 25843, since July 6, 2006.
3. Anchor General and AGIAT are affiliated entities. AGIAT operates as Anchor General's MGA, and writes personal automobile insurance on its behalf in Texas.
4. 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.

5. On June 26, 2010, under department filing link number 107159, the department approved Anchor General's form AGIC_TX_PAP (03/10), as its standard personal automobile insurance policy (PAP).
6. On November 19, 2013, under department filing link number 130233, the department approved Anchor General's filing of endorsement forms CP.AGIC.2013.NDL (the Covered Person Endorsement) and AGIC.AD.08/13 (the Authorized Driver Endorsement). Those endorsement forms contain the requisite named driver disclosure.
7. When form AGIC_TX_PAP (03/10) is endorsed by the Covered Person Endorsement and the Authorized Driver Endorsement, Anchor General's policy is a named driver policy within the meaning of TEX. INS. CODE § 1952.0545.¹
8. Effective January 28, 2015, the department adopted 28 TEX. ADMIN. CODE § 5.208, implementing disclosure requirements in S.B. 1567 applicable to both new and renewal named driver policies.
9. On and after January 28, 2015, AGIAT delivered, issued for delivery, and renewed named driver policies in 6-month terms for Anchor General.
10. On February 27, 2015, Anchor General submitted rate filing number S16272 to the department stating it would begin applying a 20% premium surcharge to all coverages if an applicant or insured for a named driver policy had not signed and returned confirmation of the oral and written named driver disclosure prior to AGIAT's collection of the premium and fees for the named driver policy. In the rate filing, Anchor General provided to the department an explanation of the application and removal of the surcharge. Anchor General began applying the surcharge for new policies effective March 15, 2015, and for renewals effective April 19, 2015.
11. On March 27, 2015, under department filing link number S16271, the department approved two Anchor General disclosure forms, specifically AGICTX.DISC1.NB.2015 and AGICTX.DISC2.NB.2015, for use with new insurance business (the approved disclosure forms).
 - a. Form AGICTX.DISC1.NB.2015 provides to the applicant or insured disclosure of the limitations of Anchor General's named driver policy, including the Covered Person and Authorized Driver Endorsements. It includes the requisite named driver disclosure, and includes a signature block for the applicant or insured to confirm provision of the oral

¹ On behalf of Anchor General, AGIAT delivers both the Covered Person and Authorized Driver Endorsements to its named driver insureds even if the named insured only purchases liability coverage (necessitating the Covered Person Endorsement), but does not purchase collision coverage (necessitating the Authorized Driver Endorsement).

- and written disclosures. It also includes a signature block for the agent to confirm the same.
- b. Form AGICTX.DISC2.NB.2015 provides to the applicant or insured disclosure of the limitations of an Anchor General PAP that is not endorsed as a named driver policy.
12. Although disclosure forms AGICTX.DISC1.NB.2015 and AGICTX.DISC2.NB.2015 were not required to be filed with the department, Anchor General voluntarily submitted them for approval by contending they are part of the policy in filing link number S16271. Each of those disclosure forms state: "INSURED MUST BE GIVEN A COPY OF THIS FORM AS PART OF THE POLICY."
13. Without seeking approval from the department, Anchor General and AGIAT altered the two approved forms and created two additional disclosure forms for use solely with its renewal business. Although the additional forms were not submitted to the department for approval, they were similar to the approved forms.
- a. Anchor General and AGIAT use form AGICTX.DISC1.2015 (the unapproved disclosure form) at renewal to provide to insureds disclosure of the limitations of Anchor General's named driver policy, including the Covered Person and Authorized Driver Endorsements. It includes the requisite named driver disclosure, and includes a signature block for the insured to confirm that he or she has read the written disclosure and listened to an audio recording of the oral disclosure by either calling a toll-free telephone number or by logging into the insured's account on AGIAT's website. Further, it informs the insured that the form can be submitted electronically on that website. It does not contain a signature block for the agent.
- b. Anchor General and AGIAT use form AGICTX.DISC2.2015 (the second unapproved form) at renewal to provide to insureds disclosure of the limitations of an Anchor General PAP that is not endorsed as a named driver policy.
14. For both new and renewal business, AGIAT collects premium and fees for Anchor General's named driver policies by mail, telephone, in person, and by recurring electronic funds transfer from a bank account. AGIAT collects those premium and fees by credit card (for one-time, but not recurring payments), debit cards (with Visa or MasterCard), check, money order, or in cash.
15. Anchor General and AGIAT's current policies, procedures, and practices with respect to named driver policy renewals are as follows:
- a. Before the named driver policy expires, AGIAT sends the insured a renewal packet containing: (1) the unapproved disclosure form; (2) the insured's future declarations page showing the Covered Person and Authorized Driver Endorsements and indicating imposition of a surcharge for a "missing form"; (3) the Texas Liability Insurance Card showing the named driver disclosure; and, (4) a cover letter.

- b. The cover letter informs the insured that a surcharge will be imposed upon expiration of the current policy, and that it will not be removed until the unapproved disclosure form is signed and returned. Insureds are instructed to review, sign, and return that disclosure form with payment. Insureds on an automated payment plan are informed that they need not include payment with the signed form. Insureds are further informed that they may review, sign, and submit the disclosure form electronically on AGIAT's website.
 - c. If the insured reads the unapproved disclosure form, the insured is instructed to call AGIAT's toll-free telephone number or logging into the insured's account on AGIAT's website to hear the oral disclosure.
 - d. AGIAT's toll-free telephone number delivers an audio recording of the named driver disclosure. If the insured logs into AGIAT's website, an audio file of the oral disclosure is available in English or Spanish, and the insured can provide an e-signature to confirm the provision of written disclosure and contemporaneous confirmation of the oral disclosure.
 - e. Separate from the renewal packet, and before expiration of the in force policy, AGIAT also sends the insured a premium invoice and specifies any applicable installment payment plan. If the insured pays by recurring electronic funds transfer, the insured is informed that the payment will be automatically deducted from the insured's bank account.
 - f. The invoiced premium includes the 20% surcharge.
 - g. If AGIAT receives a signed copy of the unapproved disclosure form from the insured prior to renewal, then AGIAT removes the 20% surcharge.
 - h. If the insured fails to return a signed copy of the unapproved disclosure form, AGIAT accepts payment of premium and fees from the insured at the increased, surcharged amount. AGIAT does not deliver or issue for delivery to the insured a new policy (not endorsed with the Covered Person and Authorized Driver Endorsements), or a new Texas Liability Insurance Card without the named driver disclosure warning.
 - i. However, when handling claims under policies where the insured has not returned a signed copy of the unapproved disclosure form, AGIAT treats the policy as if it is not a named driver policy, i.e. Anchor General's PAP not endorsed by the Covered Person and Authorized Driver Endorsements. In other words, when imposing the 20% surcharge AGIAT does not also inform the named insured that the terms of the insured's contract have in fact changed to include coverage for household residents not named on the policy.
16. Based upon these policies, procedures, and practices, Anchor General and AGIAT are unilaterally, and without a request from the insured, treating a named driver policy as a non-named driver policy (i.e. one with expanded coverage for household residents not named on the policy), and accepting premium or fees for the named driver policies when neither AGIAT nor Anchor General received from the named insured the signed confirmations of the provision of the written and oral disclosures.

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17. The department alleges that Anchor General and AGIAT do not properly renew named driver policies with terms of less than 12 months so as to allow them to accrue 12 months of continuous coverage.
18. The department alleges that on and after January 28, 2015, Anchor General's and AGIAT's practices, as applied to any 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.
19. In March 2017, Anchor General and AGIAT proposed and voluntarily agreed that on or before July 1, 2017, they will cease writing new named driver policies with terms of less than 12 months.
20. Anchor General submitted rate filing number S634689 to the department in December 2016. That filing includes an overall base rate increase as well as the 20% premium surcharge applicable when an applicant or insured for a named driver policy has not signed and returned confirmation of the oral and written named driver disclosure. While corresponding with the department, Anchor General agreed to postpone the effective date of the filed rate changes. Anchor General made some requested changes to its document titled "Rate Pages" and its underwriting guidelines titled "Underwriting & Product Guide." After further discussions with the department in May 2017, Anchor General amended rate filing number S634689, including removal of the 20% premium surcharge from the filing.
21. In an effort to settle all allegations against them, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, Anchor General and AGIAT 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 July 1, 2017 (the "Affected Policies," and the named insureds on such policies are identified as the "Affected Policyholders"):
 - a. Anchor General and AGIAT agree that they will send a general notification not later than August 5, 2017, 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 Policy) to inform the Affected Policyholders that their current policies will expire at the end of their term. The general notification may include an offer to purchase an approved non-named driver policy or an approved named driver policy with a term of 12 months or more. The general notification will be in the form shown in Exhibit A.
 - b. Beginning September 1, 2017, Anchor General and AGIAT agree that not later than 30 days before each Affected Policy reaches its expiration date thereafter, they will send each Affected Policyholder a second notification to inform each Affected Policyholder that their current policy will expire at the end of its term. The second notification may include an offer to purchase an approved non-named driver policy or an approved named driver policy with a term of 12 months or more. The second notification will be in the form shown in Exhibit B.

- c. Not later than October 1, 2017, Anchor General and AGIAT must provide the department with: the number of Affected Policies; the number of general notifications mailed; a copy of one general notification sent to an actual Affected Policyholder; and, a copy of a second notification sent to an actual Affected Policyholder.
 - d. Not later than May 15, 2018, Anchor General and AGIAT must provide the department with: the date when the last Affected Policy non-renewed or otherwise expired; 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 an 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.
22. Anchor General and AGIAT 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 Anchor General and AGIAT 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. Anchor General and AGIAT 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, Anchor General and AGIAT violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by unilaterally expanding insureds' coverage at renewal at an increased, surcharged premium 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. Anchor General and AGIAT violated TEX. INS. CODE § 1952.0545(c) and (e) and 28 TEX. ADMIN. CODE §§ 5.208(c)(1)(B) and 5.208(c)(1)(D) by accepting premium or fees for renewals of named driver policies without receiving the signed copy of the written disclosure and the contemporaneous confirmation of the oral disclosure.
11. For named driver policies that have already accumulated the minimum 12 months of continuous coverage, Anchor General violated TEX. INS. CODE § 525.002(a)(1)(A) and 28 TEX. ADMIN. CODE § 5.204(b)-(c) by failing to timely deliver or issue for delivery its PAP without the Covered Person and Authorized Driver Endorsements and a Texas Liability Insurance Card not showing the named driver disclosure to insureds when it did not receive the signed copy of the written disclosure and the contemporaneous confirmation of the oral disclosure.
12. Anchor General and AGIAT violated TEX. INS. CODE § 2301.006 by using two unapproved forms.

The commissioner orders Anchor General Insurance Company and Anchor General Insurance Agency of Texas, Inc. to comply with the following compliance plan:

1. No later than March 7, 2018, Anchor General and AGIAT must cease and desist use of the unapproved disclosure forms AGICTX.DISC1.2015 and AGICTX.DISC2.2015.
2. No later than March 7, 2018, Anchor General and AGIAT must renew, at the request or option of the insured, all named driver personal automobile insurance policies with terms of less than 12 months in accord with Texas law, so as to allow each insured to accumulate a minimum of 12 months of continuous coverage.

3. No later than March 7, 2018, Anchor General and AGIAT must cease and desist at renewal the practice of unilaterally treating named driver policies as non-named driver policies with expanded coverage for household residents not named on the policy, and must cease and desist accepting premium or fees for named driver policies when neither AGIAT nor Anchor General has received from the named insured the signed confirmations of the provision of the written and oral disclosures.
4. If Anchor General has appointed and/or contracted with any other MGA to write named driver policies on its behalf, Anchor General must implement policies, procedures, and other safeguards designed to ensure that those other MGAs comply with ordering paragraphs 1 – 3 of this compliance plan.

The commissioner orders Anchor General and AGIAT to comply with their voluntary agreement described in Findings of Fact Nos. 19 – 22.

The commissioner further orders Anchor General and AGIAT to pay, jointly and severally, an administrative penalty of \$125,000. 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 Anchor General and AGIAT have failed to comply with any of the terms of this Order, Anchor General and/or AGIAT may be subject to further action by the commissioner under the provisions of TEX. INS. CODE § 82.054.



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

2017- 5167

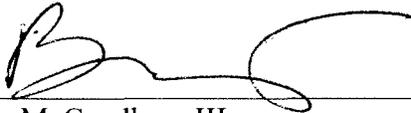
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APPROVED AS TO FORM AND CONTENT:



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

COUNSEL FOR RESPONDENTS:



Bruce McCandless, III
Mitchell, Williams, Selig, Gates & Woodyard, PLLC

Anchor General Insurance Agency of Texas, Inc.

AFFIDAVIT

STATE OF CALIFORNIA §
§
COUNTY OF SAN DIEGO §

Before me, the undersigned authority, personally appeared Angie Van Cleaf, who being by me duly sworn, deposed as follows:

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

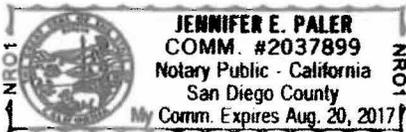
I hold the office of CHIEF FINANCIAL OFFICER, and am the authorized representative of Anchor General Insurance Agency of Texas, Inc. I am duly authorized by said organization to execute this statement.

Anchor General Insurance Agency of Texas, Inc. 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."

Angie Van Cleaf
Affiant

SWORN TO AND SUBSCRIBED before me on July 18, 2017.

(NOTARY SEAL)



J. E. Paler
Signature of Notary Public

Jennifer E. Paler
Printed Name of Notary Public

EXHIBIT A

IMPORTANT AUTO INSURANCE POLICY NOTICE

Dear Policyholder,

Your current personal automobile insurance policy is about to expire. We are pleased to announce you have two new coverage options you may purchase when your current policy expires.

1. Broader Coverage under the "Plus" Policy

Currently your policy includes two named driver endorsements, the Authorized Driver and Covered Person Endorsements. Generally, these endorsements restrict coverage under your policy to the residents of your household you have specifically asked to be named as drivers on your policy. You may refer to your policy to review these endorsements, which appear as forms AGIC.AD.08/13 and CP.AGIC.2013.NDL on your declarations page.

Purchasing a "Plus" policy with broader coverage will remove those two endorsements from your policy. This means coverage will expand to cover residents of your household not currently named on your policy. The "Plus" policy will cost more than your current policy.

2. Named Driver Coverage under the "Value" Policy

If you wish to purchase the restricted, named driver coverage at a discounted rate you may do so by switching to the new "Value" policy. This new 12-month policy, which includes the Authorized Driver and Covered Person Endorsements currently on your policy, is available to you for purchase through your independent insurance agent.

You will receive another notice concerning this change and the coverage options available to you about 30 days prior to the expiration of your current policy, when we send you a new policy offer and invoice. If we do not hear from you, or you haven't visited your independent insurance agent to request the Anchor General "Value" policy, you will be sent an offer and invoice for the broader coverage "Plus" policy described in option 1 above.

If you have any questions you may contact your independent insurance agent or Anchor General Insurance Agency of Texas, Inc. Customer Service at 1-800-542-6246.

EXHIBIT B

**IMPORTANT AUTO INSURANCE POLICY NOTICE:
YOUR CURRENT POLICY IS EXPIRING.
PLEASE CAREFULLY REVIEW THIS NOTICE AND NEW POLICY OFFER.**

Dear Policyholder,

Your current personal automobile insurance policy is about to expire. We are pleased to announce you have two new coverage options you may purchase when your current policy expires.

1. Broader Coverage under the “Plus” Policy

Currently your policy includes two named driver endorsements, the Authorized Driver and Covered Person Endorsements. Generally, these endorsements restrict coverage under your policy to the residents of your household you have specifically asked to be named as drivers on your policy. You may refer to your policy to review these endorsements, which appear as forms AGIC.AD.08/13 and CP.AGIC.2013.NDL on your declarations page.

Purchasing a “Plus” policy with broader coverage will remove those two endorsements from your policy. This means coverage will expand to cover residents of your household not currently named on your policy. The “Plus” policy will cost more than your current policy.

2. Named Driver Coverage under the “Value” Policy

If you wish to purchase the restricted, named driver coverage at a discounted rate you may do so by switching to the new “Value” policy. This new 12-month policy, which includes the Authorized Driver and Covered Person Endorsements currently on your policy, is available to you for purchase through your independent insurance agent.

Your new policy offer is attached, and includes an offer to purchase the broader coverage “Plus” policy described in option 1 above, at an increase in premium. If you wish to purchase this “Plus” policy, please pay the premium amount shown in the enclosed invoice as soon as possible to avoid a lapse in coverage.

If you would rather purchase the restricted, named driver coverage at a discounted rate, please contact your independent insurance agent and request an Anchor General “Value” policy as soon as possible to avoid a lapse in coverage.

If you have any questions you may contact your independent insurance agent or Anchor General Insurance Agency of Texas, Inc. Customer Service at 1-800-542-6246.