

No. 2018-5469

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

Date: APR 20 2018

Subject Considered:

BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY
REDWOOD FIRE AND CASUALTY INSURANCE COMPANY
1314 Douglas Street, Suite 1300
Omaha, Nebraska 68102

CONSENT ORDER
TDI ENFORCEMENT FILE NOS. 14723 and 14722

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Berkshire Hathaway Homestate Insurance Company and Redwood Fire and Casualty Insurance Company.

WAIVER

Berkshire Hathaway Homestate Insurance Company and Redwood Fire and Casualty Insurance Company acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Berkshire Hathaway Homestate Insurance Company and Redwood Fire and Casualty Insurance Company waive all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

1. Berkshire Hathaway Homestate Insurance Company is a foreign fire and casualty insurer domiciled in the state of Nebraska and has been licensed by the Texas Department of Insurance (TDI) since November 18, 2008.
2. Redwood Fire and Casualty Insurance Company is a foreign fire and casualty insurer domiciled in the state of Nebraska and has been licensed by TDI since December 29, 1978.
3. Berkshire Hathaway Homestate Insurance Company and Redwood Fire and Casualty Insurance Company are part of Berkshire Hathaway Homestate Companies, and will herein be referred to as "BHHC."

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4. TDI conducted an evaluation in September 2017 to determine the adequacy of BHHC's Texas loss control program for general liability insurance and commercial automobile liability insurance. The evaluation resulted in an inadequate rating for BHHC.
5. TDI's 2017 evaluation found the following deficiencies:
 - a. BHHC was unable to demonstrate an effective process for providing service as needed during the policy period.
 - b. BHHC's loss control files revealed a pattern of failing to provide information or services during the policy period or following up with recommendations.
 - In two files, BHHC made recommendations to its insureds, but failed to verify the insureds implemented these changes.
 - Four files did not contain evidence of providing any loss control information or services, even though the policies met BHHC's frequency trigger and the files had high loss ratios.
 - In one file, the BHHC insurer non-renewed a policy due to loss history. The insured never received loss control information or services.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 84.021-84.044, 801.052-801.053, 1903.051, and 1952.058; and 28 TEX. ADMIN. CODE §§ 5.301-5.311 and 5.1721-5.1731.
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. Pursuant to TEX. INS. CODE § 1903.051, an insurer must provide loss control information to policyholders as a prerequisite to writing professional liability, medical professional insurance for insureds other than hospitals or general liability insurance in this state. The loss control information must be reasonably commensurate with the risks, exposures, and experience of the insured's business.
4. Additional loss control information to be provided by insurers writing the above listed insurance is further described in 28 TEX. ADMIN. CODE §§ 5.1721-5.1731.
5. Pursuant to 28 TEX. ADMIN. CODE § 5.1723, at least every two years the department conducts an evaluation of the loss control information and services of each insurer writing professional liability insurance for insureds other than hospitals, of each insured writing general liability insurance, and of each insurer writing medical professional liability insurance for insureds other than hospitals in Texas.

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6. BHHC violated TEX. INS. CODE § 1903.051 by failing to provide to its general liability insurance policyholders loss control information reasonably commensurate with the risks, exposures, and experience of the insured's business.
7. Pursuant to TEX. INS. CODE § 1952.058, an insurer must provide loss control information to policy holders as a prerequisite to writing professional liability, medical professional insurance for insureds other than hospitals, general liability insurance, and commercial automobile liability insurance in Texas. The loss control information must be reasonably commensurate with the risks, exposures, and experience of the insured's business.
8. Additional loss control information to be provided by insurers writing the above listed insurance is further described in 28 TEX. ADMIN. CODE §§ 5.301-5.311.
9. Pursuant to 28 TEX. ADMIN. CODE § 5.303, at least every two years the department conducts an evaluation of the loss control information and services of each insurer writing commercial automobile liability insurance.
10. BHHC violated TEX. INS. CODE § 1952.058 by failing to provide to its commercial automobile insurance policyholders loss control information reasonably commensurate with the risks, exposures, and experience of the insured's business.

It is ordered that Berkshire Hathaway Homestate Insurance Company and Redwood Fire and Casualty Insurance Company pay, jointly and severally, an administrative penalty of \$12,500 within 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 sent to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Kent C. Sullivan
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT



Natalie Olvera
Staff Attorney, Enforcement Section
Texas Department of Insurance

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AFFIDAVIT

STATE OF Georgia §
COUNTY OF Forsyth §

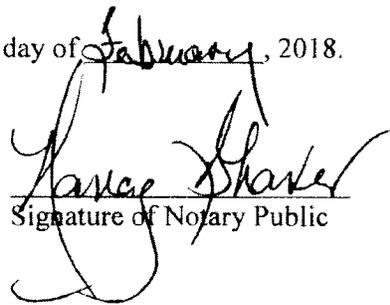
BEFORE ME, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

1. "My name is Brian Hall. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated herein.
2. I hold the office of Vice President. I am the authorized representative of Berkshire Hathaway Homestate Insurance Company and am duly authorized to execute this affidavit.
3. Berkshire Hathaway Homestate 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. Berkshire Hathaway Homestate 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."


Affiant

SWORN TO AND SUBSCRIBED before me on this 2nd day of February, 2018.

Nancy Shaver
NOTARY PUBLIC
DeKalb County, GEORGIA
My Comm. Expires
09/21/2021


Signature of Notary Public

(NOTARY STAMP)

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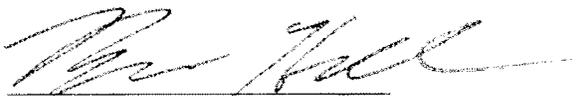
AFFIDAVIT

STATE OF Georgia §

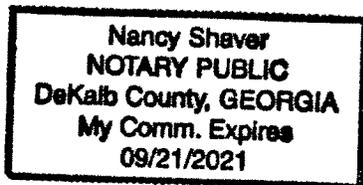
COUNTY OF Forsyth §

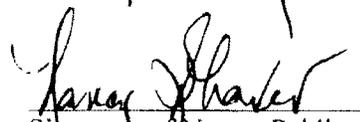
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- 5. "My name is Brian Hall. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated herein.
- 6. I hold the office of Vice President. I am the authorized representative of Redwood Fire and Casualty Insurance Company and am duly authorized to execute this affidavit.
- 7. Redwood Fire and Casualty 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.
- 8. Redwood Fire and Casualty 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."


Affiant

SWORN TO AND SUBSCRIBED before me on this 2nd day of February 2018.




Signature of Notary Public

(NOTARY STAMP)