

No. 2018-5746

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

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**Date:** DEC 1 2 2018

**Subjects Considered:**

HOME STATE COUNTY MUTUAL INSURANCE COMPANY  
P.O. Box 8036  
Waco, Texas 76714-8036

ALL MOTORISTS INSURANCE AGENCY, INC. d/b/a  
WESTERN GENERAL INSURANCE SERVICES  
5230 Las Virgenes Road, No. 100  
Calabasas, California 91302-3447

CARTEL MARKETING INC. d/b/a  
INSURE EXPRESS INSURANCE SERVICE INC.  
5230 Las Virgenes Road, Suite 250  
Calabasas, California 91302-3463

**CONSENT ORDER**

SOAH DOCKET NO. 454-18-2633.C  
TDI ENFORCEMENT FILE NOS. 11399, 13979, and 12974

**General remarks and official action taken:**

The subject of this order is whether disciplinary action should be taken against Home State County Mutual Insurance Company (Home State), All Motorists Insurance Agency, Inc. d/b/a Western General Insurance Services (All Motorists), and Cartel Marketing Inc. d/b/a Insure Express Insurance Service Inc. (Cartel).

**WAIVER**

Home State, All Motorists, and Cartel acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Home State, All Motorists, and Cartel 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), Home State, All Motorists, and Cartel agree to this consent order with the express reservation that they do not admit to a violation of the Texas Insurance Code or of a rule and that the existence of a violation is in dispute.

**FINDINGS OF FACT**

1. Home State is a county mutual insurance company holding a certificate of authority to transact business in the state of Texas.

2. All Motorists has held a general lines property and casualty license with the department since August 26, 2010, and a managing general agent (MGA) license since June 6, 2011, under firm identification number 38539.
3. Cartel has held a general lines property and casualty license with the department since April 29, 2002, and a MGA license since September 4, 2002, under firm identification number 16280.
4. Home State, All Motorists, and Cartel are unaffiliated entities.

### **The Approved Form**

5. On December 22, 2010, under department filing link 111734, the department approved Home State's filing to use forms approved for use by Great American Insurance Company in 2004 under department filing link 74265. Filing link 74265 includes a "Dealers Contingent Liability and Physical Damage Policy" form SSI-GN-1001 (03/01).
6. Form SSI-GN-1001 (03/01) is a commercial insurance product. It is a contingent liability and physical damage policy designed to protect the interests of an automobile dealership immediately following the sale of a car, while the new title is being registered to the purchaser and while the dealer still retains a degree of liability exposure. Under filing link 74265, the dealer is the named insured on the policy, while car purchasers are provided with excess insurance coverage as additional insureds.

### **The MGA Agreement**

7. On June 7, 2011, Home State and All Motorists entered into a MGA agreement numbered AMIA-06072011. Under this agreement, All Motorists was given the authority and duty to act on behalf of Home State in all respects as an MGA, and assumed all duties, responsibilities, and obligations which Home State had agreed upon with another agent under another agreement identified as the "Goldsmith Agreement".
8. On June 7, 2011, Home State also amended its quota share reinsurance agreement with Western General Automobile Insurance Company for all risks written under the Goldsmith Agreement to acknowledge that All Motorists assumed those duties, responsibilities, and obligations.
9. All Motorists is affiliated with Western General Automobile Insurance Company, a general casualty company which holds a certificate of authority to transact business in Texas.

### **The Unapproved Form and Operation of the Dealership Program**

10. Beginning in February 2011, Home State issued policies to dealerships in Texas using a "Dealer's Contingent Commercial Liability and Physical Damage Policy" which it identified as form TX-IE 1001-HS (09/11). That form is an altered version of form SSI-GN-1001 (03/01), and while similar, it is not identical to the approved Great American policy in all respects.

11. From February 19, 2011, to May 13, 2017, Home State insured 60 dealerships in Texas and a total of 10,604 vehicles under the altered policy form.
12. Each dealership was issued a policy of indeterminate term length, from the date of issuance “until cancelled.”
13. Home State insured these dealerships through All Motorists as its MGA, and Cartel as its producing agency.
14. The department alleges that some dealerships’ declarations pages did not provide the minimum coverage limits to establish financial responsibility for the vehicles insured.<sup>1</sup> Home State, All Motorists, and Cartel represent that some dealerships had multiple iterations of declarations pages related to the transfer of the program to Home State from a prior insurer, and that some iterations may not have provided for the minimum coverage limits to establish financial responsibility for the vehicles insured under the dealership policies. Home State, All Motorists, and Cartel represent they do not have documentation to demonstrate issuance and delivery of either correct or incorrect iterations of the declarations pages to the dealerships.
15. Cartel instructed dealerships to use its website portal, ExpressLink, to add vehicles and car purchasers as additional insureds under each dealership’s policy. Dealerships were permitted to choose the term length of coverage for each individual vehicle insured under their policy, either for a period of 21 days, or for a period ranging from 3 – 20 days.
16. Home State, All Motorists, and Cartel represent that the ExpressLink portal is solely an electronic tool to facilitate communication between the producing agent and the insured dealerships, allowing each insured dealership to request that its agent add to its policy additional vehicles, and each driver’s name, address, and driver’s license number. Further, they represent that the ExpressLink portal is not intended to enable insured dealerships to underwrite, bind coverage, or otherwise engage in the acts of an agent.

### **The Texas Liability Insurance Cards**

17. When adding a vehicle to the dealership policy, each insured dealership issued to the purchaser a Texas Liability Insurance Card for the initial coverage period, and informed the purchaser that there would be a six-month “continuation coverage period” if the purchaser accepted the offer and paid the premium.
18. The Texas Liability Insurance Cards provided to car purchasers omitted the identity of the insured dealership and the applicable commercial automobile policy number. Instead, it included a unique “policy number” for each individual car purchaser which was different from, and not identical to, the applicable dealership’s policy number. Home State, All Motorists, and Cartel contend this unique number was designed to assist in policy management and expedite claims handling.

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<sup>1</sup> See TEX. TRANSP. CODE §§ 601.051, 601.072.

19. Without such identifying information, the Card appeared to indicate that the car purchasers were insured under private passenger automobile policies because of the unique "policy numbers" assigned to the car purchasers.
20. Moreover, the Texas Liability Insurance Cards given to the car purchasers did not include a short-term disclosure under TEX. INS. CODE § 1952.054 to prevent purchasers from using the Card to obtain a motor vehicle inspection certificate, original driver's license, renewal driver's license, automobile registration, or license plates.

### **Other Proof of Insurance Documents**

21. Home State, through All Motorists and Cartel, also instructed the dealerships to provide each car purchaser with a "Confirmation of Automobile Insurance," and ensure the purchaser signed it.
22. The Confirmation stated that the purchaser was insured with the minimum coverage limits required to establish financial responsibility for an initial coverage period of 3 – 21 days. The department alleges the Confirmation may have been inaccurate and misleading in any instance where a dealership's declarations page did not actually provide the minimum coverage limits required to establish financial responsibility.
23. Like the Cards, the Confirmation did not disclose the dealership's policy number, but instead included a unique "policy number" for each individual car purchaser.
24. The Confirmation also did not disclose that short term coverage could not and should not be used by the car purchasers to obtain a motor vehicle inspection certificate, an original or renewal driver's license, or an automobile registration or license plates.
25. The Confirmation identified and included a six-month "continuation coverage period" immediately below the "initial coverage period" of 3 – 21 days. The "continuation coverage period" was inaccurate and misleading because coverage did not continue under the dealership's policy. The fine print in the Confirmation informed the car purchaser that in 3 – 5 days the purchaser would "be mailed a quote to continue coverage under a private passenger automobile insurance plan with Home State . . . ."
26. The quote mailed to the purchaser by Cartel was for an entirely different personal automobile insurance policy, and did not "continue coverage" under the dealership's commercial policy. Specifically, the purchaser was mailed an offer to purchase the "Laredo" policy, written under the Texas Promulgated Automobile Policy (PAP) approved for use by Home State on January 11, 2011, under department filing link 111733.
27. In addition, Cartel's written instructions to the dealership directed the dealership to orally inform the purchaser that information would be mailed to the purchaser "to maintain coverage." That instruction and oral notification to the purchaser was also false and misleading because the car purchaser was mailed a personal automobile policy, and the excess coverage was not maintained or continued under the dealership's policy.

28. Regarding Findings of Fact Nos. 25 – 27, Home State, All Motorists, and Cartel contend there was no break or gap between the two periods of coverage for the car purchaser, but concede that the second period of coverage was provided under a different policy and term length.
29. On or about May 15, 2017, Home State, All Motorists, and Cartel voluntarily ceased the program and use of the altered policy form.
30. Home State, All Motorists, and Cartel acknowledge that the altered form, proof of insurance documents, and the Texas Liability Insurance Card used in the program may have caused confusion and misunderstanding as to whether the program provided personal automobile insurance coverage to car purchasers rather than commercial coverage on an excess basis to the car purchaser. Home State, All Motorists, and Cartel also acknowledge that the program operation may have caused confusion as to the role of the dealership in its relationship to the car purchaser and as to whether any activity that occurred may have required a license.

**Cartel's Failure to Notify and Update the Department**

31. In June 2017 correspondence to the department, Cartel identified Mr. Brian A. Murphy as its CEO.
32. According to the department's records at that time, Cartel had four officers or directors, none of which was Mr. Murphy.
33. In October 2017, Cartel provided the department with a list of eight officers and directors, only one of which was shown in the department's records.
34. On or about November 1, 2017, Cartel submitted to the department a biographical form, including fingerprints, to notify and update the department as to its controlling officers and directors. At that time, Cartel reported to the department that Mr. Murphy was Cartel's president, Cesar Soriano was its CEO, and Carol Renee Newman was its secretary.
35. As of May 2018, Cartel websites continue to identify Mr. Murphy as Cartel's CEO and secretary, and Jack Edelstein as its president. Further, its publicly available websites list additional officers and directors not presently reported to the department.

**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, 912.002, 912.101 – 912.152, 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.

## COMMISSIONER'S ORDER

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3. Home State, All Motorists, and Cartel 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. Home State, All Motorists, and Cartel violated TEX. INS. CODE § 2301.006 by using an altered version of an approved form.
5. Home State, All Motorists, and Cartel violated TEX. INS. CODE §§ 1952.054 and 1952.0515 by delivering or issuing for delivery in this state Texas Liability Insurance Cards which omitted the identity of the named insured dealership and the applicable commercial automobile policy number, by falsely purporting to provide at least the minimum coverage amounts to establish financial responsibility for the specified vehicles and named insureds, and by failing to state that the delivered or issued Texas Liability Insurance Cards should not and could not be used to obtain a motor vehicle inspection certificate, an original or renewal driver's license, or an automobile registration or license plates.
6. Home State, All Motorists, and Cartel violated 28 TEX. ADMIN. CODE § 5.204(c)(1) and (c)(5) by delivering or issuing for delivery in this state Texas Liability Insurance Cards which omitted the identity of each insured, specifically the named insured dealership, and the applicable commercial automobile policy number.
7. Cartel violated TEX. INS. CODE § 4001.252(b) and (c)(3) by failing to notify the department of the addition or removal of an officer, director, partner, member, or manager of the corporation, not later than the 30<sup>th</sup> day after the addition or removal.

Home State County Mutual Insurance Company, All Motorists Insurance Agency, Inc. d/b/a Western General Insurance Services, and Cartel Marketing Inc. d/b/a Insure Express Insurance Service Inc. voluntarily agree to comply, and it is ordered that they must comply, with the following plan:

- a. To the extent they have not already done so, Home State, All Motorists, and Cartel must cease and desist issuing, delivering, and using form TX-IE 1001-HS (09/11), and cease and desist issuing and delivering Texas Liability Insurance Cards and the "Confirmation of Automobile Insurance" for any vehicles insured under form TX-IE 1001-HS (09/11).
- b. If Home State, All Motorists, and Cartel use the approved form in department filing link 111734, they will clarify and emphasize to any car purchasers or lessees that any quote or offer of a future private passenger automobile policy does not and will not constitute a continuation of coverage under any dealership's commercial policy.
- c. Home State, All Motorists, and Cartel must not pass on the cost of the insured dealership's premium to the car purchaser or lessee, and they will instruct and inform dealerships to not seek reimbursement of the dealership's premium from car purchasers or lessees added as additional insureds to the dealership's policy.

d. If Home State, All Motorists, and Cartel choose to deliver or issue a Texas Liability Insurance Card, certificate, or other proof of insurance document to any additional insured for a coverage term of less than 30 days and for any vehicle insured under a policy delivered, issued for delivery, or renewed under the form approved for use in department filing link 111734:

i. The Texas Liability Insurance Card, certificate, or proof of insurance document must correctly identify the automobile dealership as the insured, correctly identify the commercial automobile policy number, and must include the following statement:

TEXAS LAW PROHIBITS USE OF THIS DOCUMENT  
TO OBTAIN A MOTOR VEHICLE INSPECTION  
CERTIFICATE, AN ORIGINAL OR RENEWAL  
DRIVER'S LICENSE, OR AN AUTOMOBILE  
REGISTRATION OR LICENSE PLATES.

ii. Home State, All Motorists, and Cartel may instruct and inform each insured dealership that it may provide a copy of the Texas Liability Insurance Card, certificate, or other proof of insurance document issued by Home State, All Motorists, and/or Cartel to its car purchasers and lessees, provided the copy identifies those purchasers and lessees as additional insureds under the dealership's policy.

e. If Home State, All Motorists, and Cartel choose to provide the Department of Motor Vehicles (DMV) with evidence of financial responsibility as contemplated in TEX. TRANSP. CODE § 601.083, on behalf of any dealership insured under a policy delivered, issued for delivery, or renewed under the form approved for use in department filing link 111734, the certificate must correctly identify the automobile dealership as the insured, correctly identify the commercial automobile policy number, and may include a listing of all additional insureds.

f. Cartel must make the following changes to its ExpressLink website portal:

i. From the electronic page entitled "Welcome [Dealership Name]," Cartel must delete the following phrase: "and provides a six (6) month policy to all customers."

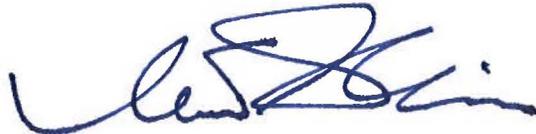
ii. To prevent dealerships from collecting electronic data which may be perceived as an act of solicitation or act of an agent, Cartel must remove the following data fields found on two electronic pages entitled "Complete customer information," under both the "InsureExpress" and "BridgePlan" options:

- "Years of Driving Exp." and
- "Is This Force Placed Coverage?"

- g. Not later than 30 days from the date of this order, Cartel must revise all of its websites to both accurately identify all of its officers, directors, partners, members, and managers, and to remove any persons not then holding those positions with Cartel.
- h. Not later than 30 days from the date of this order, and to the extent Cartel has not already reported its current officers, directors, partners, members, and managers, Cartel must submit biographical form FIN531 to the department to make any corrections and notify the department of the addition or removal of an officer, director, partner, member, or manager.

It is further ordered that Home State, All Motorists, and Cartel pay, jointly and severally, an administrative penalty of \$140,000. The penalty payment is due on or before 30 days from the date of this order. The penalty 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: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

This consent order pertains solely to the resolution of the department's allegations against Home State, All Motorists, and Cartel, regarding their use of the "Dealer's Contingent Commercial Liability and Physical Damage Policy" identified as form TX-IE 1001-HS (09/11). This consent order does not: resolve any allegations or violations with respect to any other pending or anticipated Enforcement investigations; address or impact other department sections' and divisions' actions, proceedings, examinations, investigations, or duties; or, limit the authority of the commissioner or the department to initiate any action with respect to any other pending or anticipated Enforcement investigation.



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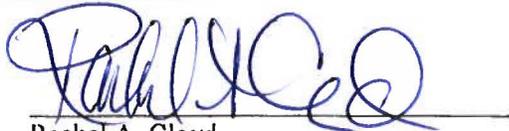
Kent C. Sullivan  
Commissioner of Insurance

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APPROVED AS TO FORM AND CONTENT:

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

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