

No. 2018-5825

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

Date: DEC 28 2018

Subject Considered:

ASSURANCEAMERICA INSURANCE COMPANY
5500 Interstate North Pkwy, Ste 600
Atlanta, Georgia 30328

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 17191

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against AssuranceAmerica Insurance Company (AssuranceAmerica).

WAIVER

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

FINDINGS OF FACT

1. AssuranceAmerica is a foreign casualty insurance company holding a certificate of authority to transact business in Texas.
2. During the review of personal automobile rate filing ASRN-131427930 made by AssuranceAmerica revising rates originally filed in rate filing ASRN-130652299, effective August 15, 2016, department staff determined that AssuranceAmerica had been using claims not paid or payable to calculate certain rates and discounts resulting in increased rates compared to the rates if such claims had not been considered.

3. Effective September 1, 2015, Section 1953.051(b) of the Texas Insurance Code prohibits a rating plan regarding personal automobile insurance from (1) assigning a rate consequence solely to a consumer inquiry made by an applicant or insured or a claim filed by an insured under a personal automobile insurance policy that is not paid or payable under the policy or (2) otherwise causing premium for personal automobile insurance to be increased solely because of an inquiry or claim not paid or payable under the policy.
4. AssuranceAmerica incorporated claims that were not paid or payable under the policy in its calculation of "Violation Charges At Fault Accidents" and the "Valued Customer Renewal Discount."
5. AssuranceAmerica represents that the cause of the calculation error was an inadvertent programming error such that they failed to program the requirement that only accidents with payments greater than \$0 be considered.
6. AssuranceAmerica represents that the programming error was corrected on September 28, 2018, and that the refunds and credits to the estimated 245 affected policyholders began on October 12, 2018, and will continue until completed.

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, and 1953.051.
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 §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. AssuranceAmerica has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. AssuranceAmerica violated TEX. INS. CODE § 1953.051(b) by assigning a rate consequence to claims that were not paid or payable.

5. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct AssuranceAmerica to make complete restitution to each policyholder impacted by the violations.

AssuranceAmerica is ordered to comply with the following:

- a. AssuranceAmerica must identify all affected personal automobile insurance policies issued by it in Texas with effective dates from August 15, 2016, through September 28, 2018 (the "Review Period").
- b. For each policy in the Review Period, AssuranceAmerica must calculate the Corrected Premium without using claims not paid or payable in its calculations.
- c. For each policy in the Review Period, AssuranceAmerica must calculate and determine whether the dollar amount of the premium charged for each policy is less than or more than the Corrected Premium. If the premium charged is more than the Corrected Premium, the difference constitutes the Overcharge.
- d. AssuranceAmerica must pay restitution in the form of a company check or account credit to each policyholder identified in the Review Period as having an Overcharge (the "Qualifying Policyholders"). The restitution check and/or account credit must include both the dollar amount of the Overcharge, plus simple interest due on the Overcharge. The rate of interest shall be 5 percent per annum.
- e. AssuranceAmerica must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders on or before December 31, 2018.
- f. Any restitution checks that are returned to AssuranceAmerica with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned thereafter for incorrect addresses and from checks that are not negotiated must be delivered to the comptroller pursuant to the procedures set forth in TEX. PROP. CODE §§ 72.001 *et. seq.* AssuranceAmerica must copy the department on any correspondence pertaining to abandoned funds that is sent to the comptroller.

- g. On or before February 1, 2019, AssuranceAmerica must report the restitution paid to the Qualifying Policyholders by submitting a complete and sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:
- i. policy number;
 - ii. policyholder name;
 - iii. policyholder address;
 - iv. effective date of the policy;
 - v. expiration date of the policy;
 - vi. amount of Overcharge;
 - vii. dollar amount of simple interest;
 - viii. amount of Overcharge and interest;
 - ix. date(s) of mailing of restitution check or credits;
 - x. the total sum of all Overcharges;
 - xi. the total sum of all simple interest; and,
 - xii. the total sum of all restitution paid (total Overcharges plus the total of the simple interest).
- h. AssuranceAmerica must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

AssuranceAmerica is further ordered to pay an administrative penalty of \$20,000. The administrative penalty must be paid within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas." Mail the administrative penalty 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

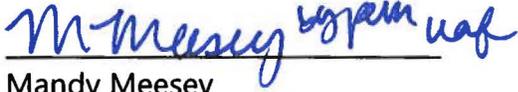
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COMMISSIONER'S ORDER

AssuranceAmerica Insurance Company

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APPROVED AS TO FORM AND CONTENT:

Handwritten signature in blue ink, appearing to read "M. Meesey" with additional scribbles.

Mandy Meesey

Director, Enforcement Section

Texas Department of Insurance

