

No. 2019-6033

**Official Order
of the
Texas Commissioner of Insurance**

Date: JUL 3 1 2019

Subject Considered:

Foremost County Mutual Insurance Company
15700 Long Vista Drive
Austin, Texas 78728

Consent Order
TDI Enforcement File No. 17311

General remarks and official action taken:

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

Waiver

Foremost acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Foremost waives 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), Foremost agrees to this consent order with the express reservation that it does 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. Foremost is a county mutual insurance company holding a certificate of authority to transact business in Texas.
2. The Texas Department of Insurance conducted a market conduct examination for the period of January 1, 2015, through December 31, 2015. The examination reviewed the sales, advertising and marketing, underwriting and rating, claims practices, and consumer complaints/inquiries of Foremost's private passenger automobile business.

3. Foremost underwrites private passenger automobile policies through a Bristol West insurance program and a 21st Century insurance program. Foremost ceased writing insurance through the 21st Century insurance program in the first quarter of 2016.
4. The purpose of the examination was to verify compliance with the Texas Insurance Code, Title 28 of the Texas Administrative Code, and the Texas Automobile Rules and Rating Manual.
5. During the exam, the department found violations of the Texas Insurance Code and Texas Administrative Code in the sample of policies and claims reviewed.

Sales, Advertising, and Marketing

6. A review of advertising and marketing materials found that Foremost:
 - Failed to state the full licensed name of the insurer at or before the first appearance of any shortened or substituted name in the body of text;
 - Failed to provide the underwriter's full name and a disclosure that Foremost had sole financial responsibility in the footnotes of the advertisement, thereby minimizing the information and rendering it obscure and inconspicuous;
 - Failed to indicate whether statistics related to average annual savings among different insurers were national or regional, and if regional, failed to identify the region;
 - Failed to explain coverages or benefits when comparing average annual savings with other insurers, thus the comparisons were incomplete comparisons of policies, benefits, dividends, or rates, or compared noncomparable policies; and
 - Provided statements in the advertisements that could imply an offer or tend to offer a good, service, or contractual right outside of the express terms of the policy.

Underwriting and Rating Practices Review

7. The examination reviewed Foremost's issued policies to determine accuracy of rating, use of proper forms and endorsements, timely handling of transactions and policy service requests, adherence to consistent and nondiscriminatory underwriting practices, and compliance with Texas law.

8. Foremost's Credit Information Disclosure Form failed to provide the department's correct header on top of the form, email address, phone number, fax number, and mailing address.
9. Foremost's Notice of Toll-Free Telephone Numbers, Information, and Complaint Procedures failed to provide the department's correct fax number, web address, and email address.
10. Foremost did not have evidence of insureds' written rejections of uninsured or underinsured motorists coverage in issued policies.
11. Foremost did not have evidence of insureds' written rejections of personal injury protection in issued policies.

Claims Practices

12. The examination reviewed Foremost's claim files for compliance with policy provisions, timeliness and accuracy of payments, supporting documentation, general claim handling, and legal compliance. Sampled claims included paid claims, denied or closed without payment claims, and pending claims.
13. Foremost allowed a person to act and represent themselves as an adjuster without a license.

Subsequent Events

14. Foremost discontinued writing through the 21st Century insurance program that advertised in violation of Texas law. The last policy non-renewed through this program on February 27, 2018.
15. Foremost made system enhancements as of March 2016 to block unlicensed adjusters from inadvertently receiving assignments.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 751, and 801.051-801.053.

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. Foremost 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. Foremost violated 28 TEX. ADMIN. CODE § 5.9940 by failing to provide the necessary and correct information on its Company's Credit Information Disclosure Form.
5. Foremost violated 28 TEX. ADMIN. CODE § 1.601(a)(3) and (b)(6) by failing to provide the necessary and correct information on its Company's Notice of Toll-Free Telephone Numbers, Information, and Complaint Procedures.
6. Foremost's advertising materials violated 28 TEX. ADMIN. CODE § 21.103(c) by minimizing the underwriter's full name and disclosure of each insurer's financial responsibility rendering it obscure and inconspicuous.
7. Foremost's advertising materials violated 28 TEX. ADMIN. CODE § 21.104(a)(1) by failing to state the full licensed name of the insurer at or before the first appearance of any shortened or substitute named in the body of text.
8. Foremost's advertising materials violated 28 TEX. ADMIN. CODE § 21.108(c) by failing to indicate whether the statistics about average savings among different insurers were national or regional, and if regional, failed to identify the region.
9. Foremost's advertising materials violated 28 TEX. ADMIN. CODE § 21.109(a) by making statements that implied an offer or tended to offer a good, service, or contractual right outside the express terms of the policy.
10. Foremost's advertising materials violated 28 TEX. ADMIN. CODE § 21.111(a) by failing to explain coverages or benefits when comparing average annual savings among insurers, thereby providing incomplete comparisons of policies, benefits, dividends, or rates, or comparing non-comparable policies.

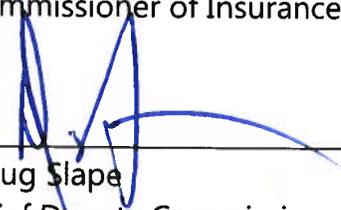
- 11. Foremost violated TEX. INS. CODE § 1952.101(c) by failing to maintain evidence of insureds' written rejections of uninsured or underinsured motorist's coverage in 13 instances.
- 12. Foremost violated TEX. INS. CODE § 1952.152(b) by failing to maintain evidence of insureds' written rejections of personal injury protection in 14 instances.
- 13. Foremost violated TEX. INS. CODE § 4101.051 by allowing a person to act or represent that the person was an adjuster in this state without the person holding a license in this state in one instance.

Order

It is ordered that Foremost County Mutual Insurance Company pay an administrative penalty of \$75,000 within 30 days of 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.

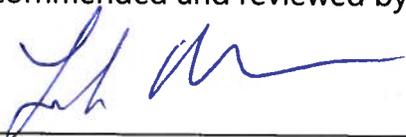
Kent C. Sullivan
Commissioner of Insurance

By:



Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended and reviewed by:



Leah Gillum, Associate Commissioner
Enforcement Section



Whitney Fraser, Staff Attorney
Enforcement Section

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

1 _____

2 _____

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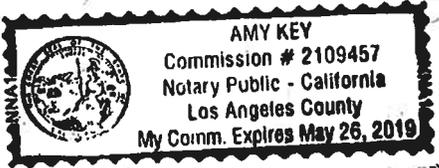
8 _____

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me
 on this 6th day of May, 2019,
 by Victoria McCarthy
 (1) _____
 (and (2) _____),
 Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence
 to be the person(s) who appeared before me.
 Signature Amy Key
 Signature of Notary Public

Seal
 Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
 Title or Type of Document: Affidavit Document Date: _____
 Number of Pages: 1 Signer(s) Other Than Named Above: None