

No. 2021-6702

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

Date: 03/03/2021

Subjects Considered:

American Casualty Company of Reading, Pennsylvania
Continental Casualty Company
The Continental Insurance Company
National Fire Insurance Company of Hartford
Transportation Insurance Company
Valley Forge Insurance Company
151 N Franklin St
Chicago, Illinois 60606

Consent Order

TDI Enforcement File Nos. 26825, 26827, 26828, 26829, 26830, 26831

General remarks and official action taken:

This is a consent order with American Casualty Company of Reading, Pennsylvania; Continental Casualty Company; The Continental Insurance Company; National Fire Insurance Company of Hartford; Transportation Insurance Company; and Valley Forge Insurance Company (collectively, the "CNA Companies"). The CNA Companies self-reported rating errors and have agreed to pay restitution with interest to the affected policyholders.

Waiver

The CNA Companies acknowledge that the Texas Insurance Code and other applicable law provide certain rights. The CNA Companies waive all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

1. The CNA Companies are all foreign fire and casualty insurance companies that hold certificates of authority to transact business in Texas.
2. In January 2021, the CNA Companies notified the department that they discovered system errors related to certain commercial general liability policies. The programming errors caused the CNA Companies to charge rates different than those on file with the department.
3. Specifically, the error caused the CNA Companies to incorrectly calculate experience rating factors. The CNA Companies reported that the rating errors resulted in undercharges and overcharges from January 1, 2018, through December 31, 2020. The CNA Companies estimate 450 Texas policyholders were undercharged an aggregate of \$5,000,000 and 642 Texas policyholders were overcharged an aggregate of \$3,100,000.
4. The CNA Companies represent that they made system changes effective January 1, 2021, to prevent further rating errors.

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 2251.101.
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. The CNA Companies 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 intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. The CNA Companies violated TEX. INS. CODE § 2251.101 by charging rates different than those on file with the department.

Order

The CNA Companies are ordered to comply with the following:

- a. The CNA Companies must identify all commercial general liability insurance policies issued or renewed by it in Texas with effective dates from January 1, 2018, through December 31, 2020 (the "Review Period").
- b. For each policy in the Review Period, the CNA Companies must calculate the Corrected Premium using the rate on file with the department.
- c. For each policy in the Review Period, the CNA Companies 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. The CNA Companies 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. The CNA Companies must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders on or before August 15, 2021.
- f. Any restitution checks that are returned to the CNA Companies 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 reported and delivered to the comptroller pursuant to the procedures and deadlines set forth in TEX. PROP. CODE §§ 72.001 et. seq., 73.001 et. seq., and 74.001 et. seq. The CNA Companies must copy the department on any correspondence pertaining to presumed abandoned funds that is sent to the comptroller.
- g. On or before December 15, 2021, the CNA Companies must report the restitution paid to the Qualifying Policyholders by submitting a complete

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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. The CNA Companies must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

Commissioner of Insurance

DocuSigned by:

By: _____
Doug Slape
Chief Deputy Commissioner
TEX. GOV'T CODE § 601.002
Commissioner's Order No. 2018-5528

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Mandy Meesey, Associate Commissioner
Enforcement Division

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Affidavit

STATE OF _____
COUNTY OF _____

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

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

SVP, General Liability & Umbrella, Middle Market
I hold the office of _____, and am the authorized representative
of American Casualty Company of Reading, Pennsylvania. I am duly authorized by said
organization to execute this statement.

American Casualty Company of Reading, Pennsylvania 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."

KELLY WALSH
KELLY WALSH (Feb 16, 2021 08:22 CST)

Feb 16, 2021

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Note: No notarization required per TDI on February 12, 2021.

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Affidavit

STATE OF _____
COUNTY OF _____

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

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

SVP, General Liability & Umbrella, Middle Market
I hold the office of _____, and am the authorized representative
of Continental Casualty Company. I am duly authorized by said organization to execute
this statement.

Continental Casualty Company 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."

KELLY WALSH
KElly Walsh (Feb 16, 2021 08:22 CST)

Feb 16, 2021

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

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Affidavit

STATE OF _____ §
§
COUNTY OF _____ §

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

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

SVP, General Liability & Umbrella, Middle Market
I hold the office of _____, and am the authorized representative of The Continental Insurance Company. I am duly authorized by said organization to execute this statement.

The Continental Insurance Company 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."

Kelly Walsh

Kelly Walsh (Feb 16, 2021 08:22 CST)

Feb 16, 2021

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Note: No notarization required per TDI on February 12, 2021.

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Affidavit

STATE OF _____
COUNTY OF _____

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

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

SVP, General Liability & Umbrella, Middle Market

National Fire Insurance Company of Hartford 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."

KELLY WALSH
KELLY WALSH (Feb 16, 2021 08:22 CST)

Feb 16, 2021

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Note: No notarization required per TDI on February 12, 2021.

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Affidavit

STATE OF _____ §
§
COUNTY OF _____ §

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

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

SVP, General Liability &Umbrella, Middle Market
I hold the office of _____, and am the authorized representative of Transportation Insurance Company. I am duly authorized by said organization to execute this statement.

Transportation Insurance Company 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."

Kelly Walsh
Kelly Walsh (Feb 16, 2021 08:22 CST)

Feb 16, 2021

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Note: No notarization required per TDI on February 12, 2021.

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Affidavit

STATE OF _____
COUNTY OF _____

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

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

SVP, General Liability & Umbrella, Middle Market

Valley Forge Insurance Company 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."

KELLY WALSH
KElly Walsh (Feb 16, 2021 08:22 CST)

Feb 16, 2021

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Note: No notarization required per TDI on February 12, 2021.