

No. **2021-6972**

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

Date: 08/26/2021

Subject Considered:

National Specialty Insurance Company
1900 L Don Dodson Drive
Bedford, Texas 76021

Consent Order
TDI Enforcement File No. 25742

General remarks and official action taken:

This is a consent order with National Specialty Insurance Company (NSIC). The Texas Department of Insurance (TDI) conducted a targeted market conduct examination and found violations of Texas law. NSIC has agreed to pay an \$80,000 administrative penalty.

Waiver

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

Findings of Fact

1. NSIC is a domestic fire and casualty insurance company holding a certificate of authority to transact business in Texas.
2. TDI conducted a targeted market conduct examination of NSIC for the period of January 1, 2017, through December 31, 2017, on NSIC's homeowners line of business.

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3. The purpose of the examination was to determine NSIC's compliance with the Texas Insurance Code and Title 28 of the Texas Administrative Code related to sales, advertising, marketing, underwriting and rating, claims practices, and consumer complaints.
4. During the examination, TDI found violations of the Texas Insurance Code and the Texas Administrative Code.

Use of Unlicensed Managing General Agent (MGA)

5. On November 1, 2013, NSIC entered into a General Agency Agreement (the Agreement) with NGLS Insurance Services, Inc., formerly known as QBE First Insurance Agency, Inc. (QBE), and QBE Insurance Corporation (QBEIC).
6. On October 1, 2015, QBE assigned its responsibilities and obligations under the Agreement to Westwood Insurance Agency (Westwood). As part of this assignment, homeowners policies were ceded to and reinsured by QBEIC.
7. Westwood is a California-domiciled agency holding a general lines property and casualty license and a surplus lines license in Texas. It does not hold an MGA license in Texas.
8. Under the Agreement, Westwood provided customary agent services on those homeowners policies for which Westwood or Westwood's sub-producers were the agent of record. In effect, certain agents had produced homeowners' policies as contracted sub-producers of Westwood.
9. On behalf of NSIC, Westwood performed the acts of an MGA in Texas without holding the appropriate license.
10. NSIC represents that the program Westwood provided services for was closed to new business and that Westwood did not accept or process new homeowners policies through its sub-producers. Further, NSIC represents Westwood did not administer or adjudicate claims, or negotiate reinsurance, on behalf of NSIC.

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Agents' Licensing and Appointments

11. NSIC used 189 active agents and terminated 16 agents during the period under examination. TDI sampled 100 issued policies to determine compliance with agent licensing and appointment requirements.
12. In nine instances, NSIC issued policies in which the agent or subagent of record who performed acts related to the policies, including soliciting insurance, receiving the insurance application, receiving premium, or binding coverage, was not appointed by NSIC or was not appointed as a subagent by NSIC's agent.

Policy Forms and Consumer Notices

13. During the period of examination, NSIC used the Texas promulgated policy forms and endorsements as authorized under TEX. INS. CODE § 2301.008, and its own policy forms and endorsements as authorized under TEX. INS. CODE § 2301.006(a).
14. NSIC's Toll-Free Telephone Numbers and Information and Complaint Procedures form did not include the current TDI mailing address, website, and email address.
15. NSIC's Consumer Bill of Rights form did not include the current, local TDI telephone number and the correct fax number for complaints.

Claims Practices

16. TDI reviewed a sampling of claims to determine compliance with policy provisions, timeliness and accuracy of payment, supporting documentation, general claims handling, and compliance with the Texas Insurance Code and Texas Administrative Code.
17. In one instance, NSIC did not timely pay the claim within five business days after NSIC accepted the claim. Further, NSIC did not pay the statutory interest at the rate of 18% on the amount of this claim.
18. In one instance, NSIC failed to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 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. NSIC 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. NSIC violated TEX. INS. CODE § 4053.051 by allowing Westwood to perform the acts of an MGA on its behalf without holding the required license.
5. NSIC violated TEX. INS. CODE § 4001.201 and 4001.205 by issuing policies in which the agent or subagent who performed acts constituting acts of an agent related to the policies, was not appointed by NSIC or was not appointed as a subagent by NSIC's agent.
6. NSIC violated 28 TEX. ADMIN. CODE § 1.601¹ by not including the current TDI mailing address, website, and email address in its Toll-Free Telephone Numbers and Information and Complaint Procedures form.
7. NSIC violated 28 TEX. ADMIN. CODE § 5.9970(d)² by failing to include the current, local TDI telephone number and the correct fax number for complaints in its Consumer Bill of Rights form.
8. NSIC violated TEX. INS. CODE §§ 542.057(a), 542.058 and 542.060(a) by not timely paying a claim within five business days after its acceptance of the claim, and not

¹ This citation is to the version adopted May 29, 2015, because this exam covered the 2017 period. The rule was subsequently amended and adopted on two additional occasions, with the current version adopted on December 18, 2020.

² This citation is to the version adopted January 31, 2013, because this exam covered the 2017 period. The rule was subsequently amended and, as of May 16, 2021, 28 TEX. ADMIN. CODE § 5.9971 applies to homeowners insurance.

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paying the policyholder or beneficiary making the claim statutory interest at the rate of 18% on the amount of the claim.

9. NSIC violated TEX. INS. CODE § 542.003(b)(3) by failing to adopt and implement reasonable standards for the prompt investigation of a claim.
10. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct NSIC to make complete restitution to the policyholder or beneficiary making the claim harmed by NSIC's prompt pay violations.

Order

It is ordered that NSIC pay an administrative penalty of \$80,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.

It is further ordered that not later than 30 days after the date of this order, NSIC make and pay restitution to the policyholder or beneficiary making the claim identified in Finding of Fact No. 17, in the form of a company check or account credit for any outstanding unpaid amounts plus statutory interest.

It is further ordered that NSIC comply with the following:

- a. Not later than 30 days after the date of this order, NSIC must report the payment of the restitution to TDI.
- b. The report must contain the following information:
 - i. policy number;
 - ii. claim number;
 - iii. date of loss;
 - iv. amount agreed to pay;
 - v. date agreed to pay;
 - vi. date paid;
 - vii. number of days of interest due;
 - viii. amount of interest paid;
 - ix. date interest paid;
 - x. grand total paid.

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- c. Any payments that are returned to NSIC with an address correction must be promptly resent to the correct address. Funds from any payments that are returned thereafter for incorrect addresses and from any 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.* NSIC must copy the department on any correspondence pertaining to presumed abandoned funds that is sent to the comptroller.
- d. All information required to be submitted to TDI under the terms of this order must be sent electronically to EnforcementReports@tdi.texas.gov.

Commissioner of Insurance

By:  C77A87C8C21B435...

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



Kaycee Crisp, Staff Attorney
Enforcement Division

Affidavit

STATE OF Texas §

COUNTY OF Tarrant §

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

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

I hold the office of VP of Compliance and am the authorized representative of National Specialty Insurance Company. I am duly authorized by said organization to execute this statement.

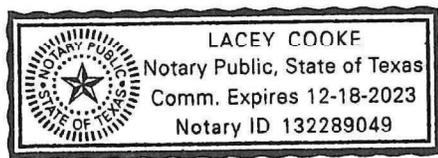
National Specialty Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."



Affiant

SWORN TO AND SUBSCRIBED before me on August 19, 2021.

(NOTARY SEAL)



Lacey Cooke

Signature of Notary Public

Lacey Cooke

Printed Name of Notary Public