

No. **2023-8024**

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

**Date: 6/16/2023**

**Subject Considered:**

Home State County Mutual Insurance Company  
P.O. Box 8036  
Waco, Texas 76714-8036

Consent Order  
TDI Enforcement File No. 28940

**General remarks and official action taken:**

This is a consent order with Home State County Mutual Insurance Company (Home State). The Texas Department of Insurance (TDI) conducted a targeted market conduct examination and found violations of Texas law. Home State has agreed to make restitution to qualifying policyholders and to pay an administrative penalty of \$185,000.

**Waiver**

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

**Findings of Fact**

Licensure and Background

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

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2. TDI conducted a targeted market conduct examination of Home State on its private passenger automobile line of business for the period of January 1, 2019, through December 31, 2019.
3. The purpose of the examination was to determine Home State'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. The examination focused on two of Home State's unaffiliated and nonexclusive managing general agencies (MGAs) at that time, specifically, Network E&S Insurance Brokers, LLC (Network E&S) and Kemper Personal Insurance General Agency, Inc. (Kemper).
5. During the examination, TDI found violations of the Texas Insurance Code and the Texas Administrative Code.

### Prior Examination and Disciplinary History

6. On May 24, 2018, the commissioner entered Order No. 2018-5518 against Home State for violations found during a 2015 market conduct examination which imposed a \$20,000 administrative penalty. That examination focused on Home State's business written through two other unaffiliated MGAs, specifically Aggressive Insurance Services, LLC and All Motorists Insurance Agency, Inc.
7. On September 30, 2021, the commissioner entered Order No. 2021-7006, against Home State and one of its other unaffiliated MGAs, AmWins Specialty Auto, Inc. (AmWins). This order found that they improperly deducted betterment from first-party automobile claims payments between April 2017 and October 2020. Home State and AmWins were ordered to pay restitution and a \$20,000 administrative penalty.

### MGA Agreement with Network E&S

8. The contract between Home State and Network E&S failed to comply with several provisions of the Texas Administrative Code. The contract did not require Network E&S to:

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- a. remit funds due to Home State not later than 90 days from the end of the month in which coverage is issued; and
  - b. submit an account report to Home State monthly.
9. The company amended the MGA agreement effective May 19, 2021, to include the required provisions.

### Agents' Licensing and Appointments

10. The examination reviewed a random sample of 100 policies issued by both Network E&S and Kemper, on behalf of Home State, during the exam period to determine compliance with agents' licensing and appointment requirements in the Insurance Code.
11. In 7% (7 of 100) of the policies reviewed, Home State had agents who were not appointed to issue or service policies. This occurred in:
  - a. 7% (5 of 71) of Network E&S policies; and
  - b. 7% (2 of 29) of Kemper policies.
12. In 3% (1 of 29) of the policies reviewed, Kemper, on behalf of Home State, allowed an agent who was not licensed to issue or service policies.

### Advertising

13. The examination reviewed various randomly selected advertising materials to determine compliance with insurance statutes and regulations.
14. In 8% (1 of 12) of the advertisements reviewed, Network E&S, on behalf of Home State, failed to indicate the publication date for three citations.
15. Home State represents that after the examination, Network E&S removed these advertising materials and has worked with their marketing department to prevent this error in other current and future advertisement materials.

### Policy Forms and Filings

16. The examination reviewed 100 of Home State's policies issued by both Network E&S and Kemper, to determine the accuracy of rating, use of proper forms and

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endorsements, timely handling of transactions and policy service requests, adherence to consistent and nondiscriminatory underwriting practices, mandatory coverages, and compliance with statutes and regulations.

17. In 10% (3 of 29) of the policies reviewed, issued by Kemper, Home State failed to provide a clear and conspicuous notice that accurately reflected its privacy policies and practices.
18. In 17% (5 of 29) of the policies issued by Kemper, Home State failed to issue Form CD-1, Credit Information Disclosure Form, indicating whether the credit information pertaining to the applicant, insured, or other household member(s), will be obtained and used as part of the insurance credit scoring process.
19. In 21% (6 of 29) of the policies issued by Kemper, Home State failed to provide a copy of the Personal Automobile Insurance Consumer Bill of Rights with each new policy of personal automobile insurance.
20. In 100% (71 of 71) of the policies issued by Network E&S, Home State did not attach the Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures as the first, second, or third page in a packaged set of documents.

### Issued Policies

21. The examination reviewed 100 of Home State's policies issued by both Network E&S and Kemper, to determine the accuracy of underwriting and rating and to determine compliance with mandatory coverages, including uninsured and underinsured (UM/UIM) motorists and personal injury protection (PIP).
22. In 12% (12 of 100) of the policies reviewed, Home State obtained signed, written rejections for PIP coverage after the policy was issued. This occurred in:
  - a. 13% (9 of 71) of Network E&S policies; and
  - b. 10% (3 of 29) of Kemper policies.
23. In 14% (1 of 71) of the policies issued by Network E&S, Home State obtained signed, written rejections for UM/UIM coverage after the policy was issued.

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### Cancellations and Nonrenewals

24. The examination reviewed 25 cancellations and non-renewals to determine the accuracy of the premium refunding and compliance with policy termination requirements.
25. In 20% (1 of 5) of the policies nonrenewed through Kemper, Home State failed to mail written notice of nonrenewal to the insured not later than 30 days before the policy's expiration date. This finding was repeated from the 2015 examination but decreased in percentage.

### Claims Payments

26. The examination reviewed 69 claims to determine Home State's compliance with policy provisions, timeliness and accuracy of payment, supporting documentation, general claims handling, adjuster licensing, and compliance with other applicable law.
27. In 7% (5 of 69) of claims reviewed, Home State failed to notify the insured of the initial offer to settle a claim. This occurred in:
  - a. 5% (2 of 44) of Network E&S claims; and
  - b. 12% (3 of 25) of Kemper claims.
28. In 2% (1 of 44) of the Network E&S claims, Home State failed to acknowledge receipt of the claim within 15 days.
29. In 8% (2 of 25) of the Kemper claims, Home State used unlicensed adjusters.

### Betterment Deductions from First-Party Claims

30. In eight Network E&S claims reviewed for the period of the examination, Home State improperly deducted betterment from the first-party claims payments.
31. In 15 Kemper claims reviewed for the period of the examination, Home State improperly deducted betterment from the first-party claims payments.

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32. Home State represented to TDI that it instructed Network E&S and Kemper to process refunds to the Home State claimants including statutory, prompt pay interest.
33. After the examination, Home State provided documentation to TDI demonstrating that Network E&S and Kemper paid partial restitution from January 1, 2017, to present, including statutory, prompt pay interest. Home State represents Network E&S and Kemper completed the remaining restitution payments in August of 2022.
34. Home State represents that after the examination, Kemper and Network E&S provided training to their adjusters to prevent prohibited betterment deductions.
35. Home State represents it ceased doing business with and cancelled the appointments of some of the 34 MGAs it had at the time of the examination. As of the date of this order, Home State represents it has 28 unaffiliated and nonexclusive MGAs.

## Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 801.051-801.053, 912.002, and 912.101-912.152, and TEX. GOV'T CODE §§ 2001.051-2001.178.
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. Home State 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. Home State, through Network E&S and Kemper, violated TEX. INS. CODE § 542.003(b)(4) by deducting betterment from first party claims payments and otherwise failing to attempt in good faith to effect a prompt, fair, and equitable settlement of claims submitted in which liability had become reasonably clear.

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5. Home State, through Network E&S, violated TEX. INS. CODE § 542.055(a) by failing to acknowledge receipt of a claim within 15 days.
6. Home State, through Network E&S and Kemper, violated TEX. INS. CODE § 542.153(a) by failing to notify the insured of the initial offer to settle a claim.
7. Home State, through Kemper, violated TEX. INS. CODE § 551.105 by failing to timely provide written notice of nonrenewal.
8. Home State, through Network E&S, violated TEX. INS. CODE § 1952.101 by obtaining signed, written rejections for UM/UIM coverage after the policy was issued.
9. Home State, through Network E&S and Kemper, violated TEX. INS. CODE § 1952.152 by obtaining signed, written rejections for PIP coverage after the policy was issued.
10. Home State, through Network E&S and Kemper, violated TEX. INS. CODE § 4001.201 by allowing unappointed persons to issue or service policies.
11. Home State, through Kemper, violated TEX. INS. CODE § 4051.051 by using an unlicensed agent to issue or service policies.
12. Home State, through Kemper, violated TEX. INS. CODE § 4101.051 by using unlicensed adjusters.
13. Home State, through Network E&S, violated 28 TEX. ADMIN. CODE § 1.601(a)(2)(A) by failing to attach the Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures as the first, second, or third page in a packaged set of documents.
14. Home State, through Kemper, violated 28 TEX. ADMIN. CODE § 5.9940(d) by failing to issue Form CD-1, Credit Information Disclosure Form, to indicate whether credit information pertaining to the applicant, insured, or other household members, would be obtained and used as a part of the insurance credit scoring process.
15. Home State, through Kemper, violated 28 TEX. ADMIN. CODE § 5.9970(c) by failing to provide, with each new policy, a copy of the Personal Automobile Insurance Consumer Bill of Rights.

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16. Home State violated 28 TEX. ADMIN. CODE § 19.1204(b)(4) and (b)(5) by failing to include required provisions in its MGA contract with Network E&S.
17. Home State, through Network E&S, violated 28 TEX. ADMIN. CODE § 21.108(b) by failing to indicate the publication date of citations in an advertisement.
18. Home State, through Kemper, violated 28 TEX. ADMIN. CODE § 22.8(a) by failing to provide a clear and conspicuous notice that accurately reflected its privacy policies and practices.
19. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct Home State to make complete restitution to each policyholder harmed by the violations.

### Order

The commissioner orders Home State County Mutual Insurance Company to comply with the following:

1. Not later than 90 days from the date of this order, Home State must provide the department with a written explanation of the processes, procedures, and controls each of its 28 MGAs has implemented, to prevent any future deductions for betterment in first-party claims on both personal and commercial automobile policies.
2. Not later than 90 days from the date of this order, Home State must identify all first-party claims payments in which betterment deductions were improperly taken by any of its former or current MGAs for the time period of January 1, 2017, to the present (the Review Period). Home State is not required to identify such claims payments associated with AmWins Specialty Auto, Inc. or any former MGA that is no longer in legal existence.
3. For each claim in the Review Period, Home State must refund any identified betterment deductions, which constitute the "Underpayment."
4. Home State must pay restitution in the form of a company check or account credit to each policyholder identified in the Review Period with Underpayments (the Qualifying Policyholders). The restitution check and/or account credit must include both the dollar amount of Underpayment plus prompt pay interest as required by TEX. INS. CODE § 542.060.



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5. Home State must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders within 120 days of the date of this order.
6. Any restitution checks that are returned to Home State or any of the MGAs 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.*
7. Within 180 days from the date of this order, Home State, must report the restitution paid to the Qualifying Policyholders, by submitting a complete and sortable electronic spreadsheet to the department for each MGA. The spreadsheet for each MGA must identify that MGA and contain the following information:
  - a. policy number;
  - b. policyholder name;
  - c. policyholder address;
  - d. effective date of the policy;
  - e. expiration date of the policy;
  - f. date of loss;
  - g. claim number;
  - h. total amount of original claim payment(s);
  - i. amount of Underpayment;
  - j. dollar amount of prompt pay interest;
  - k. amount of Underpayment plus prompt pay interest;
  - l. date(s) of mailing of restitution checks or issuance of credit;
  - m. the total sum of all Underpayments;
  - n. the total sum of all prompt pay interest; and
  - o. the total sum of all restitution paid (total underpayments plus the total sum of prompt pay interest).
8. Within 180 days from the date of this order, Home State must submit to the department a written statement affirming and identifying any individual MGA(s) it finds has no restitution payable to Qualifying Policyholders in the Review Period.
9. Home State must send all submissions required under the terms of this order by email to: [Enforcementreports@tdi.texas.gov](mailto:Enforcementreports@tdi.texas.gov).

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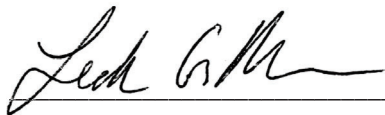
10. Any submissions required under the terms of this order must be made solely by Home State. Any submissions made by or through individual MGAs will not be accepted by the department and will not constitute compliance by Home State with the terms of this order.

The commissioner further orders that Home State County Mutual Insurance Company must pay an administrative penalty of \$185,000 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.

DocuSigned by:  
  
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Cassie Brown  
Commissioner of Insurance

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner  
Fraud & Enforcement Division



Sarah White, Staff Attorney  
Enforcement

**Affidavit**

STATE OF Texas §

COUNTY OF Hays §

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

"My name is Jennifer Davis. 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 President and am the authorized representative of Home State County Mutual Insurance Company. I am duly authorized by said organization to execute this statement.

Home State County Mutual 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."

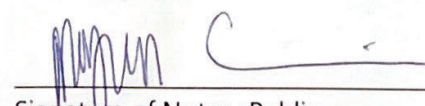
  
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Affiant

SWORN TO AND SUBSCRIBED before me on June 6, 2023.

(NOTARY SEAL)



  
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Signature of Notary Public

Morgan Cummins  
\_\_\_\_\_

Printed Name of Notary Public