

No. **2021-7038**

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

Date: 11/05/2021

Subject Considered:

Dairyland County Mutual Insurance Company of Texas
1800 N. Point Dr.
Stevens Point, Wisconsin 54481

Consent Order
TDI Enforcement File Nos. 24803 and 25555

General remarks and official action taken:

This is a consent order with Dairyland County Mutual Insurance Company of Texas (Dairyland). Dairyland used claims not paid or payable to assign a rate consequence to certain motorcycle and personal automobile insurance policies. Dairyland also violated Texas law as found in a targeted market conduct examination. Dairyland has agreed to pay restitution to the affected policyholders and a \$140,000 administrative penalty.

Waiver

Dairyland acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Dairyland waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order. Under TEX. INS. CODE § 82.055(b), Dairyland 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. Dairyland is a domestic county mutual insurance company that holds a certificate of authority to transact business in Texas.

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Use of Claims Not Paid or Payable

2. 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 to a claim filed by a 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.
3. During the review of a motorcycle rate filing and a personal automobile rate filing made by Dairyland, the department found that Dairyland was using claims not paid or payable to increase rates.
4. On and after September 1, 2015, Dairyland assigned a rate consequence to claims not paid or payable under its motorcycle and personal automobile policies by assigning points in instances of an open claim. If the claim was later closed without payment, Dairyland removed the points at the next renewal but did not refund excess premium collected due to the temporary points.
5. Dairyland represents that approximately 12,000 policies in the current system and additional policies in the legacy system were affected.
6. Dairyland amended the rules in filing VKNG-132416727 on October 9, 2020, to remove the assignment of the rate consequence.
7. Dairyland was cooperative and responsive to the department during its investigation.
8. In an effort to settle these allegations, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, Dairyland agrees to pay restitution to the qualifying policyholders who were overcharged premium.

Market Conduct Examination

9. The department conducted a market conduct examination for the period of January 1, 2017, through December 31, 2017. The examination reviewed sales,

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advertising and marketing, underwriting and rating, claims practices, and consumer complaints/inquiries of Dairyland's private passenger automobile business.

10. The purpose of the examination was to verify compliance with the Texas law.
11. During the exam, the department found violations of Texas law in the sample of policies and claims reviewed.

Issued Policies

12. The examination reviewed a sampling of 100 issued policies to determine compliance with mandatory coverages under Texas law, including uninsured or underinsured motorist coverage, and personal injury protection.
13. A review of the policies found that Dairyland:
 - a. failed to obtain insureds' written rejections for uninsured or underinsured motorists' coverage in 12 policies under which no claims were made; and
 - b. failed to obtain insureds' written rejections for personal insurance protection in 12 policies under which no claims were made.

Policy Forms and Filings

14. In 41 instances, Dairyland failed to provide policyholders with a Notice of Toll-Free Numbers Information and Complaint Procedures.
15. In seven instances, Dairyland failed to provide the Credit Information Disclosure.
16. In one instance, Dairyland failed to provide the Consumer Bill of Rights for Personal Automobile Insurance.

Sales, Advertising, and Marketing

17. Dairyland utilized 3,616 agents and terminated 653 during the examination period. The examination reviewed 100 issued policies to determine compliance with agent's licensing and appointment requirements.
18. A review of the policies found that Dairyland:

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- a. issued policies serviced by an unappointed agent or subagent in 11 instances;
- b. issued policies serviced by an unlicensed and unappointed agent or subagent in two instances;
- c. issued policies where Dairyland could not tell the examiner or provide documentation of the name of the agent who transacted business or bound coverage for the policies in eight instances;
- d. listed a licensed agent on the declarations page that was not appointed to act on behalf of Dairyland in nine instances; and
- e. failed to disclose the full licensed name of the insurer at or before the first appearance of any shortened or substituted name in the body of the text in five advertisements.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 751.351, 801.052-801.053, 912.002, and 912.101-912.152.
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. Dairyland 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. Dairyland violated TEX. INS. CODE § 1953.051(b) by assigning a rate consequence since September 1, 2015, for claims that were not paid or payable.
5. Dairyland violated TEX. INS. CODE § 1952.101 by failing to obtain insureds' written rejections for uninsured or underinsured motorist coverage.

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6. Dairyland violated TEX. INS. CODE § 1952.152 by failing to obtain insureds' written rejections for personal injury protection.
7. Dairyland violated TEX. INS. CODE § 4001.051(b) by issuing policies and failing to show compliance with agent and subagent licensing and appointment requirements.
8. Dairyland violated TEX. INS. CODE §§ 4001.201 and 4001.205 by allowing an unappointed person to issue or service policies on Dairyland's behalf.
9. Dairyland violated TEX. INS. CODE §§ 4001.101, 4001.201, and 4001.205 by allowing an unappointed and unlicensed person to issue or service policies on Dairyland's behalf.
10. Dairyland violated TEX. INS. CODE § 4001.201 by listing an unappointed but licensed agent's name on the declarations page.
11. Dairyland violated 28 TEX. ADMIN. CODE § 1.601(b)(1) by failing to provide policyholders with a Notice of Toll-Free Telephone Numbers Information and Complaint Procedures.
12. Dairyland violated 28 TEX. ADMIN. CODE § 5.9940 by failing to provide the Credit Information Disclosure.
13. Dairyland violated 28 TEX. ADMIN. CODE § 5.9970(c) by failing to provide the Consumer Bill of Rights for Personal Automobile Insurance.
14. Dairyland violated 28 TEX. ADMIN. CODE § 21.104(a)(1) by failing to disclose its full licensed name at or before the first appearance of any shortened or substituted name in the body of Texas.
15. Pursuant to TEX. INS. CODE § 82.053, the Commissioner is authorized to direct Dairyland to make complete restitution to each policyholder harmed by the rate violations.

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Order

Dairyland County Mutual Insurance Company of Texas is ordered to comply with the following:

- a. Dairyland must identify all motorcycle and personal automobile insurance policies issued or renewed by Dairyland with effective dates on or after September 1, 2015, through October 9, 2020 (the Review Period).
- b. For each policy in the Review Period, Dairyland must calculate the corrected premium without using claims not paid or payable in their rating plans. If the premium charged is more than the corrected premium, the difference constitutes the "Overcharge."
- c. For each policy in the Review Period, Dairyland 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 five percent per annum.
- d. Dairyland must mail restitution checks and/or issue the account credits to Qualifying Policyholders on or before December 31, 2021.
- e. Any restitution checks that are returned to Dairyland 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.*
- f. On or before 140 days from the date of this order, Dairyland must report the restitution paid to the Qualifying Policyholders by submitting a sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:
 - i. policy number;
 - ii. policyholder name;
 - iii. policyholder address;

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- iv. effective date of the policy;
 - v. expiration date of the policy;
 - vi. premium charged;
 - vii. corrected premium;
 - viii. amount of Overcharge;
 - ix. dollar amount of simple interest;
 - x. amount of Overcharge and interest;
 - xi. date(s) of mailing of restitution checks or credits;
 - xii. the total sum of all Overcharges;
 - xiii. the total sum of all simple interest; and
 - xiv. the total sum of all restitution paid (total Overcharge plus the total of simple interest).
- g. Dairyland must sent all submissions under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

It is ordered that Dairyland County Mutual Insurance Company of Texas pay an administrative penalty of \$140,000 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

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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Sarah White, Staff Attorney
Enforcement Division

Affidavit

STATE OF Wisconsin §

§

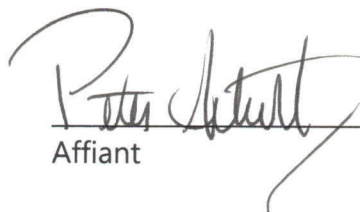
COUNTY OF Dane §

Before me, the undersigned authority, personally appeared Peter G. Anhalt, who being by me duly sworn, deposed as follows:

"My name is Peter G. Anhalt. 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 Dairyland County Mutual Insurance Company of Texas. I am duly authorized by said organization to execute this statement.

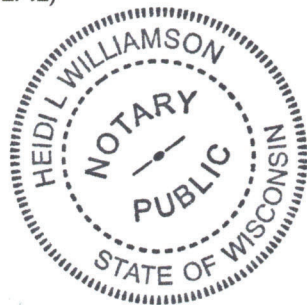
Dairyland County Mutual Insurance Company of Texas has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."

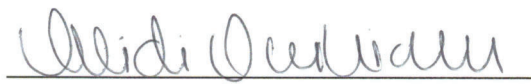


Affiant

SWORN TO AND SUBSCRIBED before me on October 21st, 2021.

(NOTARY SEAL)





Signature of Notary Public

Heidi L. Williamson

Printed Name of Notary Public