

No. **2023-7896**

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

**Date: 4/19/2023**

**Subject Considered:**

Clear Spring Property and Casualty Company  
10555 Group 1001 Way  
Zionsville, Indiana 46077-9845

Consent Order  
SOAH Docket No. 454-23-03276  
TDI Enforcement File No. 26723

**General remarks and official action taken:**

This is a consent order with Clear Spring Property and Casualty Company (Clear Spring). Clear Spring self-reported that its managing general agent, Jubilee General Agency, Inc. (Jubilee) used unapproved policy forms on Clear Spring's behalf and continued to write new personal automobile insurance policies after Clear Spring terminated Jubilee's authority to do so. TDI confirmed the use of unapproved forms, and during a statutory examination of Jubilee, also found significant and egregious violations of Texas law. Clear Spring has voluntarily withdrawn from the Texas personal automobile insurance market, cancelled Jubilee's appointment for cause, and cooperated throughout TDI's investigation. Clear Spring consents to the voluntary restriction of its authority to write personal automobile liability and personal physical damage lines of business for five years. Subject to certain conditions, Clear Spring also agrees to pay restitution to Texans impacted and harmed by certain violations, and to pay an administrative penalty of \$425,000.

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## Waiver

Clear Spring acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Clear Spring 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), Clear Spring 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. Clear Spring is a domestic fire and casualty company holding a certificate of authority to transact business in Texas.

### Background

2. Prior to 2019, Clear Spring primarily wrote commercial lines, including workers' compensation and credit lines of business and had not previously written private passenger automobile insurance business in Texas. However, Clear Spring has authority to write both automobile liability and automobile physical damage lines of business.
3. TDI's records show that on January 25, 2019, Clear Spring appointed Jubilee as its managing general agent (MGA). At that time, Jubilee was not appointed to act for any other insurer.
4. Jubilee is a Texas-domiciled corporation. Under firm identification number 133806, Jubilee held an MGA license issued by TDI on August 16, 2018, but which expired on August 16, 2022, and was not renewed.
5. Rehmat Ali Peerbhai (Peerbhai) is the sole owner, officer, director, and designated-responsible-licensed-person (DRLP) for Jubilee, according to TDI's records. Peerbhai, individual identification number 47666, holds two active licenses with TDI, including a general lines license with a property and casualty qualification, and an individual MGA license.

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6. In November 2020, Clear Spring self-reported to TDI that Jubilee was using unapproved policy forms and continued to write new personal automobile insurance policies after Clear Spring had terminated its authority to do so.
7. Throughout TDI's investigation of the allegations Clear Spring self-reported, Clear Spring has been, and continues to be, transparent and cooperative.

### Clear Spring's Agreement with Jubilee and the Use of Unapproved Forms

8. Effective January 1, 2019, Jubilee entered into an MGA contract with Clear Spring to write private passenger automobile insurance business on Clear Spring's behalf. The contract allowed Jubilee to annually write a maximum of \$25 million in gross premium.
9. On January 16, 2019, Clear Spring submitted a policy form filing to TDI for review and approval in SERFF tracking number WESA-131773780. The filing was described as Clear Spring's initial personal automobile program with Jubilee, and was made by a third-party filer, Westmont Law (Westmont), with express written authority from Clear Spring's chief actuary.
10. The filing contained numerous forms displaying the "named driver" disclosure warning.<sup>1</sup> At the time of the filing, such disclosures were required by law if the insurer intended to deliver, issue for delivery, or renew a "named driver" policy in Texas.
11. Texas is a "prior approval" state, meaning that an insurer must file policy forms with TDI for review and await approval before using those forms.<sup>2</sup> A filed form is

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<sup>1</sup> S.B. 1567 (83<sup>rd</sup> R.S., eff. Sept. 1, 2013) previously defined a "named driver policy" to mean an automobile insurance policy that does not provide coverage for an individual residing in a named insured's household specifically unless the individual is named on the policy or, is named by endorsement. On or after January 1, 2014, and prior to the repeal of S.B. 1567, an insurance company that delivered, issued for delivery, or renewed a named driver policy was required to take certain actions before accepting any premium for such a policy. This included giving the following written warning in the policy: "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY."

<sup>2</sup> Section 2301.006(a) of the Insurance Code provides in part that an insurer may not deliver or issue for delivery in this state a form for use in writing insurance described in Section 2301.003, unless the form has been filed with and approved by the commissioner.

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approved at the expiration of 60 days after it is filed, unless the commissioner by order approves or disapproves it.<sup>3</sup> The 60th day after filing is known as the "deemer" date, and by rule, can be waived by the filer. Using a policy form before it is approved or "deemed" approved is prohibited.

12. In the filing, Clear Spring was also required to provide state-specific filing information, including answering the question: "Deemer waived under 28 TAC 5.9321?"<sup>4</sup> Clear Spring waived the 60-day "deemer" when it answered "yes" to that question.
13. On behalf of Clear Spring, Peerbhai authorized Westmont to file the policy submission, waiving the deemer.
14. TDI made written objections in the filing and provided appropriate time for Clear Spring and Jubilee to respond to each objection and to revise or add provisions to the forms to address each objection.
15. At no time throughout TDI's review of the filing did Clear Spring or Jubilee withdraw the waiver of the deemer. Peerbhai, Jubilee, and Clear Spring knew or should have known the form filing was not approved for use at that time because the deemer had been waived.
16. Regardless, on or about April 9, 2019, Jubilee began writing new insurance business in Texas for Clear Spring using forms that had been filed but not yet approved for use in Texas. Jubilee wrote policies in both one-month and six-month term lengths.
17. Four months later, Jubilee started to alter nearly all of the filed forms and then, without Clear Spring's authorization, used these altered and still unapproved forms for Clear Spring business. Indeed, Jubilee altered some of the forms multiple times, including the application and the policy itself.

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<sup>3</sup> TEX. INS. CODE § 2301.006(c)-(d) (setting the 60-day deem period and allowing the commissioner to extend the period by 10 days).

<sup>4</sup> At that time, section 5.9321 (*Request for Deemer Period Waiver*) read as follows: "An insurer may, by sending written notice to TDI, waive the deadlines by which the commissioner, under Insurance Code § 2301.006, must approve or disapprove a form before it is deemed approved." This version of the rule was subsequently amended effective July 28, 2019, and was relocated and adopted at 28 TEX. ADMIN. CODE § 5.9325.

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18. By January 1, 2020, Jubilee had issued at least 18,845 Clear Spring policies to Texas consumers using unapproved policy forms.
19. House Bill 259 (86th R.S.) amended Chapter 1952 of the Texas Insurance Code to prohibit insurers from delivering, issuing for delivery, or renewing named driver policies on and after January 1, 2020.<sup>5</sup> In September 2019, the commissioner issued a bulletin to all insurers writing personal automobile insurance. The bulletin outlined the statute, explaining that a named driver policy written on or before December 31, 2019, could continue in force for the length of its term, but could not be renewed at any time on or after January 1, 2020, and that no insurer should have any named driver policies in force after December 31, 2020.
20. On February 14, 2020, Clear Spring's form filing was eventually approved for use in Texas after revisions to the initial filing were made, including removal of "named driver" disclosure warnings and policy provisions or exclusions which limited any coverage to named drivers.

### Prohibited Named Driver Policies and Misrepresentations of Coverage

21. Using some of the forms that had not yet been approved by TDI, Jubilee delivered, issued for delivery, and/or renewed named driver policies on Clear Spring's paper, on and after January 1, 2020.
22. This practice lasted at least until February 14, 2020, when TDI eventually approved Clear Spring's form filing, but it may have continued longer.
23. In May and June of 2020, Jubilee issued declarations pages to new and renewal Clear Spring policyholders which contained the "named driver" warning disclosure. Jubilee admitted to TDI that approximately 7,124 policyholders were sent these declarations pages containing the prohibited disclosure.
24. Jubilee further represented to TDI that on June 7, 2020, it stopped using that version of the declarations page. However, Jubilee did not take any corrective

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<sup>5</sup> Under TEX. INS. CODE § 1952.351(3), a "named driver policy" is an automobile insurance policy that provides any type of coverage for individuals named on the policy but that does not provide coverage for every individual who has permission to use a covered vehicle and who resides in a named insured's household.

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measures at that time or issue new declarations pages to Clear Spring policyholders.

25. Jubilee represented that it did not treat those policies with declarations pages containing the prohibited disclosure as actual "named driver" policies for purposes of claims handling despite the express language in the declarations pages.
26. TDI alleges that writing and renewing prohibited named driver policies on and after January 1, 2020, and making misrepresentations to Clear Spring policyholders that unnamed, household residents and permissive users are not covered under the policy might have caused harm to Texans related to the denial of claims, in whole or in part.

### Unlicensed Person and Entity Adjusting Claims

27. Texas law defines an adjuster to include a business entity which: investigates or adjusts losses on behalf of an insurer as an independent contractor or as an employee of: a property and casualty agent, an independent contractor, an insurer, or an MGA; supervises the handling of claims; or, investigates, adjusts, supervises the handling of, or settles workers' compensation claims.<sup>6</sup>
28. Since September 1, 2011, business entities have been required to hold an adjuster's license in order to perform the acts of an adjuster.<sup>7</sup> To qualify for licensure, a business entity must also designate a licensed adjuster responsible for the entity's compliance with Texas law.<sup>8</sup>
29. Clear Spring gave Jubilee claims handling authority in their MGA contract. Jubilee then directly delegated this authority to an unlicensed entity, Insurance Claims Associates Agency Inc. (ICA), through an oral agreement or arrangement, and without Clear Spring's authorization as required by the MGA contract.
30. According to the Texas Secretary of State's records, ICA's sole officer and director is Daniel LaRue Deschamps (Deschamps).

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<sup>6</sup> TEX. INS. CODE § 4101.001(a)(1).

<sup>7</sup> TEX. INS. CODE §§ 4101.001(a)(3) and (a)(5), 4101.051, and 4101.053(c).

<sup>8</sup> *Id.*

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31. According to TDI's records, Deschamps does not presently hold any license or authorization to engage in the business of insurance in Texas. TDI's records show Deschamps held an adjuster all-lines license from November 15, 2018, until July 31, 2020, when that license expired because he failed to renew it. Deschamps also previously held both a temporary life agent and life agent licenses, which expired in 2009 and 2013, respectively.
32. According to TDI's records, ICA does not hold an adjuster license or any other license or authorization to engage in the business of insurance in Texas.
33. ICA used adjusters who worked remotely as independent contractors, most of whom appear to have been individually licensed by TDI or exempt from licensure.
34. However, Jubilee authorized Deschamps, as Jubilee's "Senior Claims Manager," to make coverage decisions on Clear Spring policies.
35. Jubilee directed and instructed Clear Spring policyholders, claimants, their attorneys or representatives, and even subrogating insurers to contact ICA directly about claims or losses, including contacting them by email at: ica@icausaclaims.com.
36. TDI alleges that the name "Insurance Claims Associates Agency Inc." suggests to the public that ICA is licensed or authorized to engage in the business of insurance or adjusting, when in fact, it is not licensed or authorized to do any of those things.
37. Jubilee, under Peerbhai's direct control, paid the unlicensed ICA at least \$3.5 million to handle and adjust Texas claims on Clear Spring policies.

### Termination of Jubilee's Contractual Authority

38. By June 1, 2020, Jubilee had at least 40,229 Clear Spring policies in force, most of which had initially been issued with unapproved forms.
39. On or about August 24, 2020, Clear Spring received a complaint alleging that Jubilee violated the prohibition against named driver policies. Clear Spring immediately investigated the complaint and found declarations pages and applications forms that were neither approved by TDI nor complied with Texas law.

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Clear Spring represents it was not aware of Jubilee's use of these unapproved and noncompliant forms prior to its investigation of this complaint.

40. On August 31, 2020, Clear Spring notified Jubilee and Peerbhai of the termination of their agreement. Specifically, Clear Spring immediately terminated Jubilee's authority to write new policies. Clear Spring also instructed Jubilee to continue to administer policies in force and handle claims associated with those policies until the business ran off.
41. Jubilee completely disregarded this termination of authority and instead continued to write new business for Clear Spring. In fact, during the month of September 2020, Jubilee wrote 11,431 new policies for an additional \$856,251 in net written premium, while continuing to renew the 41,863 policies in force at that time. In other words, by the end of September 2020, the policy count had *increased* to a total of 53,294 policies in force.
42. On September 14, 2020, Clear Spring reiterated to Jubilee that it had no authority to write any new business for Clear Spring, stating Jubilee may only offer renewals up to 12 months, as required by law and further instructed Jubilee:

Once a policyholder has been an insured of Clear Spring for 12 months, *no renewal of that policyholder is permissible*. All renewals must be with policy forms, applications, Declaration pages, etc. *that are currently approved* by the Texas Department of Insurance. . . . We expect that Jubilee will run off the book of business as expeditiously as possible. All claim adjudications must be made consistent with all applicable provisions of Texas law, including the new named driver law.

(emphasis added).

43. Clear Spring subsequently contracted with a third party to audit Jubilee. In November 2020, that auditor informed Clear Spring that Jubilee:
  - a. continued to write new policies despite termination of authority;
  - b. continued to use an unapproved application form; and



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- c. exceeded its contracted annual premium authority of \$25 million, by writing \$30.9 million in annual premium as of September 30, 2020.
44. Then, three months after termination of the MGA agreement, on November 30, 2020, Jubilee submitted a rate filing to TDI proposing an increase for both new and renewal Clear Spring business, in SERFF tracking number PARE-132627240 (the rate filing). The rate filing was submitted to TDI without Clear Spring's knowledge or authorization.
45. The rate filing proposed increases in premium for both new and renewal business, with the changes to be effective for new policies on December 1, 2020, and for renewals on January 1, 2021. The proposed changes included a 15% increase in premium for bodily injury and physical damage coverage, with an overall 9.2% increase.
46. On December 9, 2020, Clear Spring demanded that Jubilee and Peerbhai withdraw the rate filing because it included a rate increase for new business, which Jubilee had no authority to write.
47. Jubilee and Peerbhai failed and refused to follow Clear Spring's clear directive and did not withdraw the rate filing. As a result, on December 15, 2020, Clear Spring submitted its own request to withdraw the rate filing.<sup>9</sup>
48. In December 2020, Jubilee filed suit against Clear Spring in Harris County District Court, Texas, seeking a temporary restraining order, injunctive relief, and a declaratory judgment that Clear Spring had not terminated their agreement. Jubilee took a nonsuit on December 29, 2020, after Clear Spring moved to dismiss alleging a forum-selection clause controlled the dispute's venue and jurisdiction.
49. On or about December 24, 2020, Clear Spring filed suit against Jubilee in the Circuit Court of Cook County, Illinois (the Illinois Lawsuit),<sup>10</sup> seeking a preliminary injunction to prevent Jubilee from issuing any new policies, using unapproved applications and forms, and to prevent Jubilee from denying coverage contradictory to Clear Spring's instructions or in violation of Texas law.

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<sup>9</sup> Clear Spring also withdrew separately filed underwriting guidelines in SERFF tracking number PARE-132627329.

<sup>10</sup> Case No. 2020CH07467.

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50. As of December 31, 2020, Jubilee had at least 48,315 Clear Spring policies in force. Nearly all of these policies had monthly terms.
51. On January 6, 2021, an Agreed Preliminary Injunction was entered in the Illinois Lawsuit in which the parties agreed to arbitration and preliminary injunctive relief, which remains in force until an arbitration award is entered. Jubilee then agreed to be enjoined from:
  - a. issuing any new policies in Clear Spring's name and purportedly on Clear Spring's behalf;
  - b. using or relying on any applications, declaration pages or policy jackets not approved by the Texas Department of Insurance; and
  - c. denying coverage to any insured under any Clear Spring policy in violation of Clear Spring's instructions or in violation of any Texas statutory provision.
52. As of the date of this order, the Illinois Lawsuit has not been resolved.

### More Unapproved Forms

53. On January 22, 2021, TDI received a new form filing for Clear Spring.<sup>11</sup> This filing was submitted by Westmont without Clear Spring's knowledge and under cover of a fabricated letter of Clear Spring's authorization.
54. Despite a lack of TDI's approval and Clear Spring's waiver of the deemer, Jubilee immediately began to use that policy form without Clear Spring's authority on January 22, 2021.
55. As of January 31, 2021, Jubilee had at least 29,845 Clear Spring policies in force, some of which were issued or renewed using unapproved forms.
56. TDI did not approve that policy form for use until nearly six months later, on July 14, 2021, after several required revisions were made to what had been originally filed and illicitly used by Jubilee.

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<sup>11</sup> SERFF tracking number WESA-132688727 (policy form filing to remove a class of driver exclusion).

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### Clear Spring's Withdrawal from Personal Automobile Market and Transfer of Claims

57. On February 19, 2021, Clear Spring voluntarily submitted for approval by TDI its proposed plan for an orderly withdrawal from writing personal automobile insurance in Texas, as required by law. Clear Spring proposed to reduce its total annual premium for private passenger liability, physical damage, and personal injury protection (PIP) coverages by 50% or more in Texas, but to maintain its certificate of authority.
58. In the plan, Clear Spring reported that in 2020, Jubilee had written \$44.5 million in gross premium, greatly exceeding its \$25 million contractual limit of authority. Indeed, that limit had been exceeded only halfway through 2020. Clear Spring further represented that as of December 31, 2020, its estimated total reserves for outstanding losses, including incurred-but-not-reported (IBNR) losses, was over \$19.7 million.
59. Meanwhile, Clear Spring reported that Jubilee was paid more than \$9 million in commissions for policies sold between April 2019 through December 2020, with the vast majority of that amount, \$7.7 million, attributed to sales solely in 2020.
60. Clear Spring's plan included a notice of nonrenewal it intended to send to approximately 44,558 policyholders within 30 days of TDI's approval.
61. TDI began its review of the proposed withdrawal plan and corresponded with Clear Spring about certain deficiencies over the next few months.
62. In August 2021, Clear Spring had separately discovered that Jubilee had settled a single claim for \$300,000, grossly in excess of Jubilee's \$25,000 settlement authority and the insurance policy's limits.
63. On August 20, 2021, Jubilee informed Clear Spring of its intent to shut down its operations and sought Clear Spring's approval to shift claims handling to a third party, The Littleton Group Western Division, Inc. (Littleton),<sup>12</sup> because Clear Spring would bear the expense of future claims administration.

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<sup>12</sup> The Littleton Group Western Division, Inc., firm identification number 78897, holds an adjuster-all lines license issued by TDI on April 12, 2013.

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64. Clear Spring agreed and instructed Jubilee to notify "all policyholders and third-party claimants by August 27, 2021," of the change in claims administrator and to provide Littleton's contact information. Jubilee expressly agreed to notify "policyholders and third-party claimants."
65. On or about September 1, 2021, Littleton began adjusting the claims on Clear Spring's policies initially written by Jubilee.
66. The notice may have only been sent to first and third-party claimants, and does not appear to have been sent to all policyholders in force at that time.
67. On November 24, 2021, TDI approved Clear Spring's withdrawal from writing personal automobile insurance in Texas.
68. On December 28, 2021, Clear Spring then sent out notices of non-renewal to (what it believed were) all of its then-remaining 2,874 monthly policyholders. Clear Spring represented to TDI that the policyholders were informed that coverage would end on the expiration date of their monthly policy.
69. Based on the information provided to TDI by Clear Spring, the expectation was that the last policy would expire on February 7, 2022, and no policies should have remained in force after that date.

### Targeted MGA Examination

70. TDI initiated a targeted examination of Jubilee under TEX. INS. CODE § 4053.107 in mid-September 2021, while Jubilee's license was still active and while TDI was reviewing Clear Spring's withdrawal plan.
71. The exam initially focused on Jubilee's private passenger automobile policies issued or renewed on behalf of Clear Spring from January 1, 2020, to September 1, 2021. On or about April 13, 2022, TDI expanded the scope of the examination to include policies issued or renewed on or after September 2, 2021, through April 13, 2022.
72. The purpose of the examination was to determine Jubilee's compliance with Texas law related to agents' licensing and appointments, rescinded policies, claims

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practices, consumer complaints, a review of sales, advertising, marketing, and underwriting and rating.

73. During the examination, TDI found that Jubilee continued to renew Clear Spring policies well into 2022 and well after the 12-month anniversary of the policies' original effective dates. Jubilee did this despite Clear Spring's TDI-approved withdrawal, and despite termination of the MGA agreement, a civil injunction, and formal termination of Jubilee's appointment to act as Clear Spring's MGA.
74. TDI also found other significant violations of Texas law during the exam, including, but not limited to the:
  - a. failure to send required notices during claims handling;
  - b. failure to notify policyholders of the reason(s) for nonrenewal;
  - c. use of agents and agencies not appointed by Clear Spring; and
  - d. use of rates not on file.

### Claims Review

75. TDI conducted stratified sampling to include all policy and coverage types for claims Jubilee processed in the initial exam period to determine compliance with policy provisions, timeliness and accuracy of payment, supporting documentation, general claims handling, adjuster licensing, and compliance with Texas law.
76. Jubilee failed to provide TDI with any requested claims data for total loss payments, preventing TDI from performing any claims review on that data or even determining if accepted total losses had been paid at all. Jubilee contended the vendor (that it should have been able to control), PC Processing, had system limitation issues and was unable to create a report with the requested information.
77. Based on the sampling TDI was able to review, TDI found multiple instances in which Jubilee failed:
  - a. to provide the claimant with the Notice of Rights Regarding Repair of Motor Vehicle;
  - b. to send to the insured the notice of initial offer to settle a claim;
  - c. to send to the insured any notice of claim settlement; and

- d. to timely send to the insured, within 30 days of claim settlement, the notice of claim settlement.

Underwriting and Rating

- 78. TDI reviewed samples of newly issued and renewed policies, cancellations, and non-renewals to determine the accuracy of underwriting and rating as filed with TDI under the applicable statutes and rules.
- 79. TDI found that, in multiple instances, Jubilee:
  - a. failed to state the reason for non-renewal in the notices sent to the insureds.
  - b. did not identify the insurer's (i.e. Clear Spring's) mailing address and email address<sup>13</sup> in the Notice of Toll-Free Telephone Numbers and Procedures for Obtaining Information and Filing Complaints.
  - c. used agents that were not appointed with Clear Spring to issue or service policies.<sup>14</sup>
  - d. used insurance agencies that were not appointed with Clear Spring to issue or service policies.<sup>15</sup>
  - e. failed to ensure premiums were accurately billed in accordance with filed rates, applicable rating manuals, supplementary rating information, and any additional information, and specifically that Jubilee:
    - i. used driver class factors that were not filed with TDI, and
    - ii. failed to follow the rating algorithm filed with TDI for rental coverage, comprehensive coverage, collision coverage, uninsured motorist (UM) bodily injury and UM property damage coverages.

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<sup>13</sup> Stating the insurer's email address was required by law on and after May 1, 2020. See 44 Tex.Reg. 6541, eff. November 4, 2019.

<sup>14</sup> The contract between Jubilee and Clear Spring did not give Jubilee authority to appoint producers. Clear Spring retained its appointing authority, and Jubilee agreed that it would not delegate any authority to any licensed producer other than to produce eligible business.

<sup>15</sup> *Id.*

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80. Within the sampling TDI examined, Jubilee's use of unfiled driver class factors and non-adherence to the filed rating algorithm caused some policyholders to be either overcharged or undercharged premium. In the samples reviewed, the majority of overcharged premium was less than \$1.
81. During the exam, TDI requested that Jubilee provide more information about these rating issues and the impact on policyholders. However, Jubilee did not respond to that request. Clear Spring represents Jubilee has restricted access to the information related to the rating issues.

### Missing Provision in the MGA Contract

82. TDI reviewed the MGA contract between Jubilee and Clear Spring during the examination and found that the contract did not fully comply with the Texas Administrative Code. The contract was missing a contractual provision that Jubilee was not required to return, as commission or return commission, monies greater than the total commission paid or otherwise payable to Jubilee.

### Jubilee Renewed, Re-issued, or Reinstated Policies Previously Non-Renewed

83. Under the TDI-approved withdrawal plan, no Clear Spring policies should have been in force after February 7, 2022, because the last policy was scheduled to expire on February 7, 2022.
84. On or about March 15, 2022, Jubilee emailed Clear Spring a list identifying 2,772 active policies in force which Jubilee renewed, re-issued, or reinstated contrary to Clear Spring's repeated express instructions, Clear Spring's approved withdrawal plan, and the Agreed Preliminary Injunction in the Illinois Lawsuit. Many of these one-month policies were on the list of policyholders to whom Clear Spring had previously sent nonrenewal notices, and which had effective dates starting on and after February 15, 2022.
85. TDI's examiner found policies in Jubilee's system showing that despite notices of nonrenewal sent to policyholders in accord with the TDI-approved withdrawal plan, Jubilee continued to renew some policies after that nonrenewal and after the policies had reached the 12-month anniversary of their original effective date.

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86. On March 23, 2022, Clear Spring notified TDI that it cancelled Jubilee's appointment for cause effective March 18, 2022, following the expected run-off or expiration of the remaining policies at their 12-month anniversaries.
87. TDI's examiner found that Jubilee renewed some policies as late as April 2022, and did so after the injunction, contract termination, and Clear Spring's cancellation of its appointment for cause.

### Mitigating Circumstances

88. In June 2022, Clear Spring sought and obtained an Amended Preliminary Injunction Order in the Illinois Lawsuit, enjoining Jubilee from: issuing any new policies in Clear Spring's name and purportedly on Clear Spring's behalf; accepting premium payments and/or renewing any existing Clear Spring policies more than 30 days after the non-renewal notice is issued; permitting any policy reinstatements; and, using or relying on any application forms, declarations pages, and policy jackets other than those approved by TDI. This injunction remains in force in the Illinois Lawsuit.
89. Clear Spring represents that at this time it does not have possession, custody, or control over sufficient data or information to calculate any refund due to any policyholder who may have been overcharged premium by Jubilee.
90. Clear Spring represents that at this time it does not have possession, custody, or control over sufficient data or information to calculate underpayments due to first-party and third-party claimants whose claims were denied in whole or in part because of: prohibited named driver policy provisions or exclusions in a policy delivered, issued, renewed, or reinstated on or after January 1, 2020, through March 18, 2022; or, a misrepresentation of coverage in any unapproved policy form delivered, issued, renewed, or reinstated with policy effective dates between April 9, 2019, and March 18, 2022.

### **Conclusions of Law**

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 101.101-101.103, 101.151-101.156, and 801.052–801.053.



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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. Clear Spring 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. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct Clear Spring to make restitution to each policyholder impacted and each claimant harmed by the violations.
5. As contemplated in TEX. INS. CODE §§ 4001.002, 4001.003(2)(A), 4001.201, and 4053.001(3), all conclusions of law below were performed by Jubilee and its controlling persons, under the authority and appointment given by Clear Spring to Jubilee as its managing general agent.
6. Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE § 2301.006(a) by delivering or issuing for delivery personal automobile insurance policy forms which were not approved for use by the commissioner.
7. On and after January 1, 2020, Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE § 1952.353(a) by delivering, issuing for delivery, or renewing named driver policies.
8. Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE §§ 541.003, 541.051(1)(A)-(B) and (4), 541.052, and 541.061 by issuing and renewing policies on and after January 1, 2020, which contained named driver provisions, exclusions, disclosures, warnings, or other verbiage in policy forms, declarations pages, and/or Texas Liability Insurance Cards.
9. Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE § 2251.101 by using a rate different than that on file with the department, specifically, using driver class factors not on file and failing to follow the filed rating algorithm for certain coverages.

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10. Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE § 1952.305 and 28 TEX. ADMIN. CODE § 5.501 by failing to provide claimants with the Notice of Rights Regarding Repair of Motor Vehicle.
11. Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE § 542.153(a) by failing to send insureds the notice of initial offer to settle a claim.
12. Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE § 542.153(b) by failing to timely send to insureds the notice of claim settlement, and in some instances, failing to send the notice at all.
13. Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE §§ 551.055 and 551.002(b)-(c) and 28 TEX. ADMIN. CODE § 5.7012 by failing to state the reasons for non-renewal in notices sent to insureds.
14. Clear Spring, as a result of Jubilee's conduct, violated 28 TEX. ADMIN. CODE § 1.601(b)(2) by failing to identify its own mailing address and email address in the Notice of Toll-Free Telephone Numbers and Procedures for Obtaining Information and Filing Complaints.
15. Clear Spring, as a result of Jubilee's conduct, violated TEX. INS. CODE § 4001.201 by using numerous agents and agencies that were not appointed with Clear Spring to issue or service policies.
16. Clear Spring violated 28 TEX. ADMIN. CODE § 19.1204(b)(12) by failing to state in its contract that Jubilee was not be required to return, as commission or return commission, monies greater than the total commission paid or otherwise payable to Jubilee.
17. Clear Spring, as a result of Jubilee's unauthorized conduct, violated TEX. INS. CODE §§ 4101.051 and 4101.152, by indirectly assisting Deschamps and ICA with engaging in the acts of an adjuster in this state without licensure or authorization.

### Order

It is ordered that Clear Spring Property and Casualty Company must comply with the following:

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1. Restitution to Claimants with Improper Claim Denials: Clear Spring must pay restitution to certain claimants who qualify in accordance with the calculation described below (the Qualifying Claimants). Payment is conditioned upon such Qualifying Claimants submitting to Clear Spring sufficient data or information to allow Clear Spring to calculate any underpayments due to the claimants (the Qualifying Information). The calculation and payment of this restitution must be made and reported as follows:
  - a. Based on the Qualifying Information, Clear Spring must identify any first-party and third-party claims on Clear Spring policies which were denied in whole or in part because the policy contained:
    - i. a prohibited named driver policy provision or exclusion in a policy delivered, issued, renewed, or reinstated on or after January 1, 2020, through March 18, 2022; or
    - ii. any misrepresentation of coverage in any unapproved policy form delivered, issued, renewed, or reinstated with policy effective dates between April 9, 2019, and March 18, 2022.
  - b. Clear Spring must review and re-adjust each such claim identified without using any prohibited named driver policy provisions, prohibited named driver exclusions, or misrepresentations of coverage in any unapproved policy form (the Readjusted Amount). If the dollar amount previously paid to settle the claim was less than the Readjusted Amount, the difference constitutes the "Underpayment."
  - c. Clear Spring must pay restitution in the form of a company check or account credit to each Qualifying Claimant identified as having an Underpayment.
  - d. For first-party Qualifying Claimants, the restitution check or account credit must include both the dollar amount of Underpayment, plus prompt pay interest as required by TEX. INS. CODE § 542.060.
  - e. For third-party Qualifying Claimants, the restitution check must include both the dollar amount of Underpayment, plus simple interest due on the Underpayment. The rate of interest is five percent per annum.

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- f. Clear Spring must mail the restitution checks and/or issue the account credits to the Qualifying Claimants within 30 days after calculating any Underpayment.
  - g. Beginning six months after the date of this order, Clear Spring must submit semiannual reports to TDI to report any restitution paid to the Qualifying Claimants. The report will be in the form of a sortable, electronic spreadsheet, which contains 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. date of loss;
    - vii. claim number;
    - viii. whether it is a first or third party claim;
    - ix. total amount of original claim payment(s);
    - x. amount of Underpayment;
    - xi. for first-party claims, dollar amount of prompt pay interest;
    - xii. for third-party claims, dollar amount of simple interest;
    - xiii. amount of Underpayment plus interest;
    - xiv. date(s) of mailing of restitution checks or issuance of credit;
    - xv. the total sum of all Underpayments;
    - xvi. the total sum of all prompt pay interest;
    - xvii. the total sum of all simple interest; and
    - xviii. the total sum of all restitution paid (total Underpayments plus the total sum of prompt pay interest plus the total sum of simple interest).
6. Termination of Restitution and Reporting: Clear Spring shall continue calculating and paying any restitution owed to Qualifying Claimants until December 31, 2025. The submission of semi-annual restitution reports to TDI will continue until December 31, 2025.

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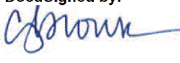
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7. Returned and Non-Negotiated Checks: Any restitution checks that are returned to Clear Spring with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned thereafter for incorrect addresses and from checks that are not negotiated must be reported and delivered to the Texas Comptroller of Public Accounts 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.*
8. Clear Spring must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

It is further ordered that Clear Spring Property and Casualty Company's authority to write personal automobile liability and personal automobile physical damage lines of business is restricted for five years from the date of this order.

It is further ordered that Clear Spring Property and Casualty Company pay an administrative penalty of \$425,000 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.

This consent order pertains solely to the resolution of TDI's allegations against Clear Spring Property and Casualty Company in SOAH Docket No. 454-23-03276. This consent order does not: resolve any allegations or violations with respect to any other party in that action; resolve any allegations or violations with respect to any other pending or anticipated Enforcement investigations; address or impact other TDI sections' and divisions' actions, proceedings, examinations, investigations, or duties; limit the authority of the commissioner or TDI to initiate any administrative, civil, or criminal proceeding; or, limit the authority of the commissioner or TDI to initiate any action, seek any remedy, or pursue any right, examination, investigation, or other action authorized by law.

DocuSigned by:  
  
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\_\_\_\_\_  
Cassie Brown  
Commissioner of Insurance

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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner  
Fraud and Enforcement Division



Mandy Meesey, Associate Commissioner  
Enforcement

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**Affidavit**

STATE OF Massachusetts §  
§  
COUNTY OF Middlesex §

Before me, the undersigned authority, personally appeared Scott A. Hanfling  
who being by me duly sworn, deposed as follows:

"My name is Scott A. Hanfling. 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 Chief Legal Officer and am the authorized representative of  
Clear Spring Property and Casualty Company. I am duly authorized by said organization  
to execute this statement.

Clear Spring Property and 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."

*Scott Hanfling*

Affiant

SWORN TO AND SUBSCRIBED before me on April 11, 2023.

(NOTARY SEAL)



*Maryellen Percuoco*  
Signature of Notary Public

Maryellen Percuoco  
Printed Name of Notary Public