

No. **2021-6656**

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

**Date: 01/15/2021**

**Subject Considered:**

Nationwide Property and Casualty Insurance Company  
Nationwide Mutual Insurance Company  
Nationwide Mutual Fire Insurance Company  
One West Nationwide Blvd.  
Columbus, Ohio 43215-2220  
TDI Enforcement File Nos. 22555, 22554, and 22557

Allied Property and Casualty Insurance Company  
AMCO Insurance Company  
Depositors Insurance Company  
Nationwide Agribusiness Insurance Company  
1100 Locus Street  
Des Moines, Iowa 50391-1100  
TDI Enforcement File Nos. 22551, 22552, 22553, and 22556

Colonial County Mutual Insurance Company  
9903 Nationwide Drive  
San Antonio, Texas 78251-3583  
TDI Enforcement File Nos. 22558 and 24563

Consent Order

**General remarks and official action taken:**

This is a consent order with several Nationwide insurance companies.<sup>1</sup> Texas law requires Nationwide to pay certain fees for insured motor vehicles to the Automobile Burglary and

---

<sup>1</sup> Allied Property and Casualty Insurance Company, AMCO Insurance Company, Depositors Insurance Company, Nationwide Mutual Insurance Company, Nationwide Property and Casualty Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, and Colonial County Mutual Insurance Company (collectively referred to as Nationwide).

# 2021-6656

Commissioner's Order

Nationwide Property and Casualty Insurance Company, et al.

Page 2 of 8

Theft Prevention Authority, now known as the Motor Vehicle Crime Prevention Authority. Nationwide failed to file with the department their rules and fees for recoupment of these fees from commercial automobile policyholders. Nationwide has agreed to pay a \$75,000 administrative penalty. Colonial County Mutual Insurance Company charged rates different than those on file with the department and has agreed to pay a \$15,000 administrative penalty and restitution to the affected policyholders.

## Waiver

Nationwide acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Nationwide waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order. Pursuant to TEX. INS. CODE § 82.055(b), Nationwide 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

### Licensure and Appointment

1. The Nationwide insurers, other than Colonial County Mutual Insurance Company, are foreign fire and casualty companies each holding a certificate of authority to transact business in Texas.
2. Colonial County Mutual Insurance Company (Colonial County Mutual) is a domestic county mutual insurance company holding a certificate of authority to transact business in Texas.

### Background on the ABTPA/MVCPA fee

3. Prior to September 1, 2019, the Automobile Burglary and Theft Prevention Authority (ABTPA) was statutorily authorized to collect a fee of \$2 per motor vehicle each year from each insurer.
4. H.B. 2048 (86th Leg., R.S.) increased this fee insurers must pay from \$2 to \$4 per motor vehicle each year for automobile insurance policies delivered, issued, or renewed on or after September 1, 2019.

## 2021-6656

Commissioner's Order

Nationwide Property and Casualty Insurance Company, et al.

Page 3 of 8

5. In addition, S.B. 604 (86th Leg., R.S.) changed the name of the ABTPA to the Motor Vehicle Crime Prevention Authority (MVCPA). It also moved the statutory language for the MVCPA to the Texas Transportation Code.
6. Beginning November 16, 2014, TDI rules required all insurers to file certain rating information, including fees, manuals, and supplementary rating information. This filing would include fees and other amounts collected by an insurer such as the ABTPA, now the MVCPA, Fee.
7. An insurer may recoup the fee from the policyholder if it is properly disclosed to each policyholder and properly filed pursuant to Texas law.

### Nationwide's Failure to Disclose Fee Recoupment

8. On September 2, 2019, Nationwide submitted filing S671066 in response to H.B. 2048 and S.B. 604. The updated rate and rule filing for Nationwide's commercial automobile insurance business described their recoupment of the \$4 MVCPA fee.
9. Nationwide's filing became effective on October 17, 2019. From November 16, 2014 to that date, Nationwide recouped ABTPA and MVCPA fees from policyholders without having any rate rule regarding recoupment of these fees on file with the department for commercial automobile.

### Colonial County Mutual's Use of Rates Not on File

10. On November 8, 2019, Colonial County Mutual submitted private passenger automobile filing S673026 for the purposes of "revising the accident threshold" from \$2,000 to \$1,000. The accident threshold is used to determine whether a policyholder's prior accident will impact his policy premium through the "merit rating plan factor" and/or the "accident forgiveness factor."
11. After correspondence from the department, Colonial County Mutual admitted that it began applying the \$1,000 accident threshold on August 1, 2018, prior to submitting the filing. Colonial County Mutual represents that the incorrect \$2,000 accident threshold was filed in error.
12. The rates and rating rules in use by the company for the period August 1, 2018, to November 8, 2019 were not those on file with the department.

# 2021-6656

Commissioner's Order

Nationwide Property and Casualty Insurance Company, et al.

Page 4 of 8

13. Colonial County Mutual agreed as part of the filing to pay restitution, including interest, to policyholders from August 1, 2018 to November 8, 2019 that had accidents where an amount greater than \$1,000 but less than \$2,000 was paid, and the company subsequently charged them a higher premium.

## Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 801.051-801.053, 912.002, and 912.101–912.152; and TEX. INS. CODE § 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. Nationwide 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. Nationwide recouped ABTPA and MVCPA fees from commercial automobile policyholders without having any rate rule regarding recoupment of these fees on file with the department, in violation of 28 TEX. ADMIN. CODE § 5.9334(b).
5. Colonial County Mutual violated TEX. INS. CODE § 2251.101, by charging a rate different than that on file with the department.
6. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct Colonial County Mutual to make complete restitution to each policyholder impacted by the violation.

## Order

It is ordered that Nationwide pay an administrative penalty of \$75,000 within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance, Attn: Enforcement Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

## 2021-6656

Commissioner's Order

Nationwide Property and Casualty Insurance Company, et al.

Page 5 of 8

It is further ordered that Colonial County Mutual pay an administrative penalty of \$15,000 within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance, Attn: Enforcement Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

Colonial County Mutual is also ordered to comply with the following:

- a. Colonial County Mutual must identify all personal automobile insurance policies issued in Texas with effective dates from August 1, 2018, through November 8, 2019 that had accidents where an amount greater than \$1,000 but less than \$2,000 was paid (the Review Period).
- b. For each policy in the Review Period, Colonial County Mutual must calculate the Corrected Premium using the rate rules on file with the department at the time.
- c. For each policy in the Review Period, Colonial County Mutual 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. Colonial County Mutual 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 is five percent per annum.
- e. Colonial County Mutual must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders on or before March 1, 2021.
- f. Any restitution checks that are returned to Colonial County Mutual with an address correction must be promptly re-sent 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.*,

# 2021-6656

Commissioner's Order

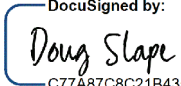
Nationwide Property and Casualty Insurance Company, et al.

Page 6 of 8

73.001 *et. seq.*, and 74.001 *et. seq.* Colonial County Mutual must copy the department on any correspondence pertaining to presumed abandoned funds that is sent to the comptroller.

- g. On or before April 15, 2021, Colonial County Mutual must report the restitution paid to the Qualifying Policyholders by submitting a complete 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. Colonial County Mutual must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

Commissioner of Insurance

DocuSigned by:  
By:   
C77A87C8C21B435.....

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

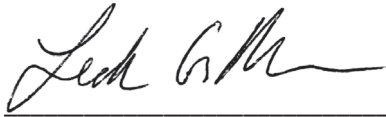
**2021-6656**

Commissioner's Order

Nationwide Property and Casualty Insurance Company, et al.

Page 7 of 8

Recommended and reviewed by:



---

Leah Gillum, Deputy Commissioner  
Enforcement Division



---

Allison J. Anglin, Staff Attorney  
Enforcement Division

**Affidavit**

STATE OF OHIO §

COUNTY OF FRANKLIN §

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

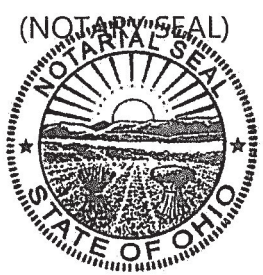
"My name is MARK BERVEN. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of PRESIDENT & COO, and am the authorized representative of Allied Property and Casualty Insurance Company, AMCO Insurance Company, Depositors Insurance Company, Nationwide Mutual Insurance Company, Nationwide Property and Casualty Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, and Colonial County Mutual Insurance Company. I am duly authorized by said organizations to execute this statement.

Allied Property and Casualty Insurance Company, AMCO Insurance Company, Depositors Insurance Company, Nationwide Mutual Insurance Company, Nationwide Property and Casualty Insurance Company, Nationwide Agribusiness Insurance Company, Nationwide Mutual Fire Insurance Company, and Colonial County Mutual Insurance Company have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the State of Texas."

Mark Berven  
Affiant

SWORN TO AND SUBSCRIBED before me on December 10, 2020.



LISA M. MILLER  
Notary Public, State of Ohio  
My Commission Expires 9-27-22

Lisa M. Miller  
Signature of Notary Public

LISA M. MILLER  
Printed Name of Notary Public