

No. 2021-7006

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

Date: 09/30/2021

Subject Considered:

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

AmWins Specialty Auto, Inc.
2600 N. Central Expy Ste 700
Richardson, Texas 75080-2063

Consent Order
TDI Enforcement File Nos. 25652 and 27381

General remarks and official action taken:

This is a consent order with Home State County Mutual Insurance Company (Home State) and AmWins Specialty Auto, Inc. (AmWins). Home State and AmWins improperly took betterment deductions in first party personal automobile claims. Home State and AmWins have agreed to pay restitution to the affected policyholders and a \$20,000 administrative penalty.

Waiver

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

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Findings of Fact

1. Home State is a domestic county mutual insurance company that holds a certificate of authority to transact business in Texas.
2. AmWins, firm ID number 15076, holds both a managing general agency (MGA) license and a general lines agency license with a property and casualty qualification.
3. Home State has entered into an MGA contract with AmWins authorizing it to act as Home State's MGA on its behalf.
4. Home State is ultimately responsible for the oversight of AmWins' practices and conduct on its behalf.

Betterment Deductions Taken in First Party Claims

5. In June 2020, TDI received a complaint showing that when AmWins settled a first party physical damage claim with a Home State policyholder, it deducted from the claim payment amounts for the "betterment" of the covered vehicle repaired to pre-loss condition.
6. Home State's approved policy form does not contemplate deducting from first party claims payments any amounts for betterment of the covered vehicle when it is repaired to pre-loss condition.
7. Between April 2017 and October 2020, AmWins represents it took betterment deductions in 31 first party claims, totaling \$8,352.82.
8. AmWins represents that the deductions resulted from a misinterpretation of the language in an endorsement. Specifically, AmWins erroneously adjusted the claim using an incorrect limit of liability under Part D – Coverage for Damage to Your Auto.
9. AmWins informed TDI that it voluntarily ceased taking betterment deductions in first party claims in October 2020. Further, AmWins represents that it has notified its staff to cease taking betterment deductions and has distributed amended guidelines.

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10. AmWins also notified TDI that it has taken action to compensate all policyholders affected by the betterment deductions. Specifically, AmWins identified all of its first party automobile insurance policy claims payments in Texas from April 2017 through October 23, 2020, (the "Review Period"), from which payments it deducted any amount for "betterment" of the covered vehicle. Any such amount deducted as betterment from a first party claim settlement within the Review Period constituted an "Underpayment." In December 2020, AmWins made restitution payments, in the form of a company check or account credit, to each such policyholder or their beneficiary identified within the Review Period as having an Underpayment (the "Qualifying Policyholders"). The restitution payments included the dollar amount of Underpayment, plus simple interest in the amount of five percent per annum.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 84.021-84.051, 801.052-801.053, 912.002, 912.101-912.152, 4001.002, 4005.101, 4005.102, 4051.051, and 4053.051.
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 and AmWins have 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 and AmWins, violated TEX. INS. CODE §§ 1952.301(a)(1) and 542.003(b)(3)-(b)(4) by taking betterment deductions when settling first party personal automobile claims.
5. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct Home State and AmWins to make complete restitution to each policyholder harmed by the violations.

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Order

It is ordered that Home State and AmWins pay the restitution as outlined in Finding of Fact No. 10, and comply with the following:

- a. Any restitution checks that are returned to Home State or AmWins 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.*
- b. On or before November 1, 2021, Home State and AmWins must report the restitution paid to the Qualifying Policyholders, to the extent they have not already done so, 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. date of loss;
 - vii. claim number;
 - viii. total amount of original claim payment(s);
 - ix. amount of Underpayment;
 - x. dollar amount of simple interest;
 - xi. amount of Underpayment plus interest;
 - xii. date(s) of mailing of restitution checks or issuance of credit;
 - xiii. the total sum of all Underpayments;
 - xiv. the total sum of all simple interest; and
 - xv. the total sum of all restitution paid (total Underpayments plus the total of all simple interest).
- c. Home State and AmWins must send all submissions required under the terms of this order by email to: Enforcementreports@tdi.texas.gov

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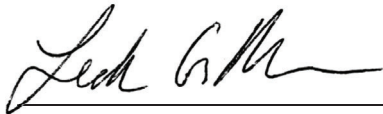
It is further ordered that Home State County Mutual Insurance Company and AmWins Specialty Auto, Inc. pay jointly and severally, an administrative penalty of \$20,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department 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
Enforcement Division



Sarah White, Staff Attorney
Enforcement Division

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Affidavit

STATE OF Texas §
§
COUNTY OF Dallas §

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.

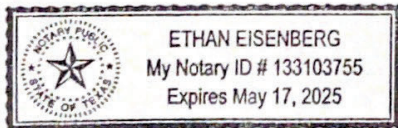
Home State County Mutual Insurance Company has knowingly and voluntarily entered
into the foregoing consent order and agrees with and consents to the issuance and service
of the same by the commissioner of insurance of the state of Texas."




Affiant

SWORN TO AND SUBSCRIBED before me on 6 September 22nd, 2021.

(NOTARY SEAL)





Signature of Notary Public

Ethan Eisenberg

Printed Name of Notary Public

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Affidavit

STATE OF Texas §

COUNTY OF Dallas §

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

"My name is DAVID SCRUGGS. 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 AmWins Specialty Auto, Inc. I am duly authorized by said organization to execute this statement.

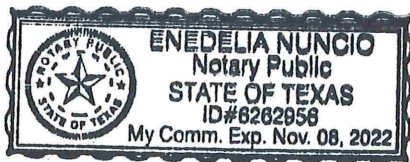
AmWins Specialty Auto, Inc. has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."

[Signature]

Affiant

SWORN TO AND SUBSCRIBED before me on September 20, 2021.

(NOTARY SEAL)



[Signature]
Signature of Notary Public

EneDelia Nuncio
Printed Name of Notary Public