

No. **2023-7967**

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

**Date: 05/15/2023**

**Subject Considered:**

AmGUARD Insurance Company  
39 Public Square  
PO Box A-H  
Wilkes-Barre, Pennsylvania 18703-0020

Consent Order  
TDI Enforcement File No. 31605

**General remarks and official action taken:**

This is a consent order with AmGUARD Insurance Company (AmGUARD). The department conducted a market conduct examination and found violations of Texas law. AmGUARD has agreed to an administrative penalty of \$65,000.

**Waiver**

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

**Findings of Fact**

1. AmGUARD is a foreign fire and casualty company holding a certificate of authority to transact business in the state of Texas.
2. The department conducted a targeted market conduct examination that covered activity between January 1, 2020, and December 31, 2020, on AmGUARD's homeowners line of business.

## 2023-7967

Commissioner's Order  
AmGUARD Insurance Company  
Page 2 of 10

3. The purpose of the examination was to determine AmGUARD's compliance with Texas statutes and regulations related to sales, advertising, marketing; underwriting and rating, claims practices, and consumer complaints.
4. During the examination, the department found violations of the Texas Insurance Code and the Texas Administrative Code.

### Agents' Licensing and Appointments

5. In 2% (2 of 100) of the policies staff reviewed, AmGUARD used agents listed on the declarations page that were not licensed to issue or service policies.
6. In 9% (9 of 100) of the policies staff reviewed, AmGUARD used agents listed on the declarations page that were not appointed to issue or service policies.
7. In 3% (3 of 100) of the policies staff reviewed, AmGUARD used agents and subagents that were not appointed to issue or service policies.

### Underwriting and Rating

8. Staff randomly sampled policies AmGUARD issued in 2020 to determine accuracy of rating, use of proper forms and endorsements, timely handling of transaction and policy service requests, adherence to consistent and nondiscriminatory underwriting practices, mandatory coverages, and compliance with statutes and regulations.
9. In 3% (3 of 100) of the policies staff reviewed, AmGUARD did not insert the Toll-Free Telephone Numbers and Information and Complaint Procedures as the first, second, or third page.
10. In 50% (50 of 100) of the policies staff reviewed, AmGUARD did not provide the Consumer Bill of Rights with new policies. AmGUARD stated that the issue was identified and corrected effective November 2021.
11. Staff reviewed a sample set of issued policies to determine the accuracy of underwriting and rating as filed with the Department under TEX. INS. CODE § 38.002 and § 2251.101 and 28 TEX. ADMIN. CODE §§ 5.9332 – 5.9342.

## 2023-7967

Commissioner's Order

AmGUARD Insurance Company

Page 3 of 10

12. AmGUARD's applicable rating manuals, supplementary rating information, and additional information required by the department did not include complete rules and comprehensive instructions on how to calculate premium. This did not cause policyholders to be overcharged premium.
  - a. The rating manual did not include complete instructions on how to determine the Building Code Effectiveness Grading Factor.
  - b. The Rate Order of Calculation included the Water Damage Coverage factor and the Dwelling Coverage factor as part of the Adjustment Factor which was in contradiction to AmGUARD's rating manual.
  - c. The table factors for the Water Damage Coverage and the Dwelling Coverage were listed incorrectly in the rating manual.
  - d. In 58% (58 of 100) of the policies staff reviewed, AmGUARD incorrectly applied the Protective Device factor when the policy included both a Local Burglar and a Fire Alarm. The rating manual did not include complete instructions on how to determine the Protective Devices factor when the policy premium includes a credit for both a Local Burglar and a Fire Alarm.
  - e. The rating manual did not include complete instructions on how to calculate the Personal Injury Coverage premium.
13. Staff reviewed a sample set of cancellations and non-renewals to determine the accuracy of premium refunding and compliance with policy termination requirements under TEX. INS. CODE, Chapters 551 and 558, and 28 TEX. ADMIN. CODE, Chapter 5, Subchapter H.
14. AmGUARD did not correctly apply the rating manual rules filed with the department related to canceling a policy.
  - a. AmGUARD did not correctly apply the percentages listed in the Short Rate Cancellation Table for the calculation of premium refunds.
  - b. In 2% (1 of 50) of the canceled policies staff reviewed, AmGUARD did not apply the straight pro rata basis to calculate the cancellation refund for a renewal policy as stated in the rating manual.

## 2023-7967

Commissioner's Order  
AmGUARD Insurance Company  
Page 4 of 10

15. In 2% (1 of 50) of the canceled policies staff reviewed, AmGUARD did not refund the appropriate portion of unearned premium to the policyholder.

### Claims

16. Staff conducted stratified sampling to include all policy and coverage types for claims AmGUARD processed in 2020 to determine compliance with policy provisions, timeliness and accuracy of payment, supporting documentation, general claims handling, adjuster licensing, and compliance with statutes and regulations.
17. In 1% (1 of 100) of the claims staff reviewed, AmGUARD did not pay the claim not later than the 5th business day and did not pay interest in addition to the amount of the claim. AmGUARD subsequently paid interest on June 23, 2022.
18. In 1% (1 of 100) of the claims staff reviewed, AmGUARD failed to notify the claimant in writing of the acceptance of the claim not later than the 15th business day.
19. In 1% (1 of 100) of the claims staff reviewed, AmGUARD failed to adopt and implement reasonable standards for the prompt investigation of a claim and did not attempt in good faith to affect a prompt, fair, and equitable settlement when liability was reasonably clear. AmGUARD paid the claim 112 days after receiving final documentation.
20. In 2% (1 of 50) of the claims staff reviewed that were denied or closed without claims payment, AmGUARD used an adjuster that was not properly licensed.
21. In 2% (1 of 50) of the claims staff reviewed that were denied or were closed without payment, AmGUARD failed to adopt and implement reasonable standards for prompt investigation of a claim arising under the insurer's policy on claims by not following up on the claim.
22. In 10% (5 of 50) of the claims staff reviewed, AmGUARD failed to notify the claimant in writing of the rejection of the claim not later than the 15th business day.
23. In 4% (1 of 25) of the policies staff reviewed with pending claims, AmGUARD used an adjuster who was not licensed.

## 2023-7967

Commissioner's Order  
AmGUARD Insurance Company  
Page 5 of 10

### Complaints

24. Staff sampled the complaints AmGUARD received in 2020 to determine compliance with TEX. INS. CODE § 38.001 and § 542.005; 28 TEX. ADMIN. CODE § 21.203(6); 28 TEX. ADMIN. CODE §§ 21.2501-21.2507; and other statutes and regulations.
25. Staff reviewed 27 complaints and 11 (41%) were considered confirmed.
26. In 11% (3 of 27) of the complaints staff reviewed, AmGUARD failed to respond to a department inquiry in writing not later than the 15th day after the date the inquiry was received.
27. In 7% (2 of 27) of the complaints staff reviewed, AmGUARD failed to notify the claimant in writing of the acceptance or rejection of the claim not later than the 15th business day.
28. In 4% (1 of 27) of the complaints staff reviewed, AmGUARD did not pay the claim not later than the 5th business day and did not pay interest in addition to the amount of the claims.
29. In 4% (1 of 27) of the complaints staff reviewed, AmGUARD failed to adopt and implement reasonable standards for the prompt investigation of a claim by delaying the investigation of the claim.

### Internal Control Observations

30. In 3% (3 of 100) of the issued policies staff reviewed, the agent listed on the declarations page did not file an assumed name certificate in accordance with 28 TEX. ADMIN. CODE § 19.902(a).
31. AmGUARD's Toll-Free Telephone Numbers and Information and Complaint Procedures did not contain the department's complete mailing address.

### Mitigation and Corrective Actions

32. AmGUARD represents that it has implemented a corrective action plan to address the violations found in the exam.

## 2023-7967

Commissioner's Order

AmGUARD Insurance Company

Page 6 of 10

33. AmGUARD represents that it has revised its processes and procedures to ensure compliance with insurance laws pertaining to licensing and appointments.
34. AmGUARD represents that it has revised its processes and procedures to ensure compliance with underwriting and rating requirements. AmGUARD filed an updated rating manual with the department on March 28, 2023, that addressed issues uncovered in the exam.
35. AmGUARD represents that it is in the process of refunding the appropriate amount of unearned premium.
36. AmGUARD represents that it will continue to enhance its file review process to ensure compliance with claims and complaint handling requirements.

### Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 751.001 *et seq.*, 801.051-801.053, 861.101 *et seq.*, 862.051, and 982.052.
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. AmGUARD 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. AmGUARD violated TEX. INS. CODE § 4001.101 by using an agent who was not properly licensed to issue or service policies.
5. AmGUARD violated TEX. INS. CODE § 4001.201 by using an agent who was not properly appointed to issue or service policies.
6. AmGUARD violated TEX. INS. CODE § 4001.201 and § 4001.205 by using an agent or subagent who was not properly appointed to issue or service policies. TEX. INS. CODE

## 2023-7967

Commissioner's Order

AmGUARD Insurance Company

Page 7 of 10

- § 4001.205 was repealed on September 1, 2021 but was in effect at the time of the violation.
7. AmGUARD violated 28 TEX. ADMIN. CODE § 1.601(a)(2)(A) by not inserting the Toll-Free Telephone Numbers and Information and Complaint Procedures as the first, second, or third page.
  8. AmGUARD violated 28 TEX. ADMIN. CODE § 5.9970 by not providing the Consumer Bill of Rights with new policies.
  9. AmGUARD violated TEX. INS. CODE § 2251.101 and 28 TEX. ADMIN. CODE Chapter 5, Subchapter M by not including complete rules and comprehensive instructions on how to calculate premium in applicable rating manuals, supplementary rating information, and additional information required by the department.
  10. AmGUARD violated TEX. INS. CODE § 2251.101 by not correctly applying the rating manual rules filed with the Department related to canceling a policy.
  11. AmGUARD violated TEX. INS. CODE § 558.002(b) by not refunding the appropriate portion of unearned premium to the policyholder on canceled policies.
  12. AmGUARD violated TEX. INS. CODE §§ 542.003(b)(3) and 542.003(b)(4) by not implementing reasonable standards for the prompt investigation of a claim and not attempting in good faith to affect a prompt, fair, and equitable settlement when liability was reasonably clear.
  13. AmGUARD violated TEX. INS. CODE § 542.056(a) by failing to notify the claimant in writing of the acceptance of the claim not later than the 15th business day.
  14. AmGUARD violated TEX. INS. CODE § 542.057(a), 542.058(a), and 542.060(a) by failing to pay the claim or a portion of a claim not later than the fifth business day.
  15. AmGUARD violated TEX. INS. CODE § 4101.051 by using adjusters that were not properly licensed.
  16. AmGUARD violated TEX. INS. CODE § 38.001(c) by failing to respond to a department inquiry not later than the 15th day after the date the inquiry was received.

# 2023-7967

Commissioner's Order  
AmGUARD Insurance Company  
Page 8 of 10

17. AmGUARD violated 28 TEX. ADMIN. CODE § 19.902(a) by using an agent on the declarations page that did not file an assumed name certificate.

## Order

It is ordered that AmGUARD pay an administrative penalty of \$65,000 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.

It is ordered that AmGUARD pay restitution to the policyholders who were not refunded the appropriate amount of unearned premium on canceled policies.

It is ordered that AmGUARD report the restitution within 30 days from the date of this order by submitting a complete and sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:

- a. policy number;
- b. policyholder name;
- c. policyholder address;
- d. effective date of the policy;
- e. cancellation date of the policy;
- f. amount of unearned premium owed;
- g. dollar amount of simple interest;
- h. amount of unearned premium owed and interest;
- i. date(s) of mailing of restitution check or credits;
- j. the total sum of all unearned premium owed;
- k. the total sum of all simple interest; and
- l. the total sum of all restitution paid (total unearned premium owed plus the total of the simple interest)

AmGUARD must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

DocuSigned by:  
  
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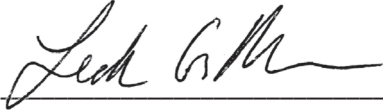
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Cassie Brown  
Commissioner of Insurance



**2023-7967**

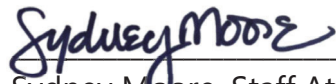
Commissioner's Order  
AmGUARD Insurance Company  
Page 9 of 10

Recommended and reviewed by:



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Leah Gillum, Deputy Commissioner  
Fraud and Enforcement Division



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Sydney Moore, Staff Attorney  
Enforcement

**Affidavit**


STATE OF PA §  
§  
COUNTY OF Luzerne §

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

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

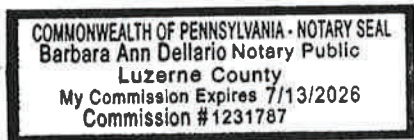
I hold the office of VP of FINANCIAL ADVT and am the authorized representative of AmGUARD Insurance Company I am duly authorized by said organization to execute this statement.

AmGUARD 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 5, May, 2023.

(NOTARY SEAL)



Barbara Ann Dellario  
Signature of Notary Public

Barbara Ann Dellario  
Printed Name of Notary Public

