

No. **2023-8002**

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

Date: 06/01/2023

Subject Considered:

Clear Blue Insurance Company
B-7 Calle Tabonuco St. Ste 912
Guaynabo, Puerto Rico 00698

Consent Order
TDI Enforcement File No. 29679

General remarks and official action taken:

This is a consent order with Clear Blue Insurance Company (Clear Blue). The Texas Department of Insurance (TDI) conducted a targeted market conduct examination and found violations of Texas law. In addition, TDI found that for at least four years, Clear Blue appointed and contracted with a licensed general lines agency to act as its managing general agent (MGA) in its homeowners line of business, without the agency having the authority to do so. Clear Blue has agreed to pay an administrative penalty of \$110,000.

Waiver

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

Findings of Fact

Licensure and Background

1. Clear Blue is a foreign fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.

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Market Conduct Examination

2. TDI conducted a targeted market conduct examination of Clear Blue on its homeowners line of business for the period of January 1, 2019, through December 31, 2019.
3. The purpose of the examination was to determine Clear Blue's compliance with the Texas Insurance Code and Title 28 of the Texas Administrative Code related to sales, advertising, marketing, underwriting and rating, claims practices, and consumer complaints.
4. During the examination, TDI found violations of the Texas Insurance Code and the Texas Administrative Code.

MGA agreement with Swyfft, LLC

5. Clear Blue and Swyfft, LLC (Swyfft) entered into an agreement on January 1, 2017. The agreement was amended on September 15, 2019, to grant Swyfft claims handling authority.
6. Under the agreement and amendments, Swyfft was also authorized to underwrite policies, issue policies, process cancellations, and process claims.
7. According to TDI records, Swyfft, firm identification number 128510, has held two non-resident licenses since January 31, 2017, including a general license with a property and casualty qualification and a personal lines property and casualty agency license. Swyfft has also held a surplus lines agency license with TDI since August 7, 2018.
8. TDI records also show Clear Blue appointed Swyfft as its agent on September 30, 2018.
9. Swyfft does not hold an MGA license and is not exempt from that licensure.
10. Likewise, Swyfft does not hold an adjuster's license, and is not exempt from that licensure.

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11. The contract also failed to comply with several provisions of the Texas Administrative Code required for MGA contracts because:
 - a. although it specified that Clear Blue shall conduct examinations, it failed to include the timing of those on a semiannual basis; and
 - b. failed to specify that certain required information would be made available to the commissioner for review.

Policy Forms and Filings

12. The department randomly sampled 100 of Clear Blue's issued policies, to determine the accuracy of rating, use of proper forms and endorsements, timely handling of transactions and policy service requests, adherence to consistent and nondiscriminatory underwriting practices, mandatory coverages, and compliance with statutes and regulations.
13. In 100% (50 of 50) of new policies reviewed, Clear Blue failed to attach the initial privacy notice.
14. In 100% (50 of 50) of renewal policies reviewed, Clear Blue failed to attach the annual privacy notice.
15. In 100% (100 of 100) of the policies reviewed, Clear Blue failed to attach its Toll-Free Telephone Numbers and Information and Complaint Procedures on the first, second, or third page in the policy jacket.
16. In 100% (50 of 50) of new policies reviewed, Clear Blue failed to attach the Consumer Bill of Rights.

Cancellations and Nonrenewals

17. The department reviewed 50 cancellations and 50 non-renewals sampled to determine the accuracy of the premium refunding and compliance with policy termination requirements.
18. In 6% (3 of 50) of canceled policies reviewed, Clear Blue failed to refund the policyholder unearned premium within 15 days after the effective date of cancellation.

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Claims

19. The department conducted stratified sampling and reviewed 100 paid claims, 50 claims denied or closed without payment, and 25 pending claims, in order to determine Clear Blue's compliance with policy provisions, timeliness and accuracy of payment, supporting documentation, general claims handling, adjuster licensing, and compliance with other applicable law.
20. In 5% (5 of 100) of the paid claims reviewed, Clear Blue failed to pay a claim or a portion of a claim no later than the fifth business day after written notice of acceptance was given.
21. In 4% (4 of 100) of paid claims reviewed, Clear Blue failed to notify the claimant in writing of the acceptance of the claim not later than the 15th business day.
22. In 3% (3 of 100) of paid claims reviewed, Clear Blue delayed processing of the claim by failing to attempt in good faith to affect a prompt, fair, and equitable settlement of a claim submitted in which liability had become reasonably clear.
23. In 2% (1 of 50) of the claims reviewed, denied, or closed without payment, Clear Blue failed to notify the claimant in writing of the rejection of the claim not later than the 15th business day.

Complaints

24. The examination reviewed 35 complaints for compliance with insurance statutes and rules.
25. In 20% (7 of 35) of the complaints reviewed, Clear Blue failed to timely respond in writing to the department's initial inquiry.

Mitigating Circumstances

26. TDI's records show that on or about February 3, 2022, Swyfft submitted an application for licensure as an MGA under Application ID 2573149, which is still pending. This order does not resolve that application.

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27. On or about February 17, 2023, Clear Blue filed a Partial Withdrawal Plan for nonrenewing all in-force homeowners policies issued by Clear Blue and Swyfft. TDI approved the withdrawal on or about April 3, 2023.

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, 982.052, and TEX. GOV'T CODE §§ 2001.051–2001.178.
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 Blue 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. Clear Blue violated TEX. INS. CODE § 38.001(c) by failing to respond to a TDI inquiry in writing not later than 15 days after receiving it.
5. Clear Blue violated TEX. INS. CODE §§ 101.102(a), 4053.051, 4053.053, and 4101.051 by directly assisting Swyfft in engaging in unauthorized acts of insurance.
6. Clear Blue violated TEX. INS. CODE § 542.003(b)(4) by failing to attempt in good faith to affect a prompt, fair, and equitable settlement of claims.
7. Clear Blue violated TEX. INS. CODE § 542.056(a) by failing to notify claimants in writing of the acceptance of the claim not later than the 15th business day.
8. Clear Blue violated TEX. INS. CODE § 542.057 by failing to pay a claim, or portion of a claim, no later than the fifth business day after the date notice of acceptance is made.
9. Clear Blue violated TEX. INS. CODE § 558.002(d) by failing to refund policyholders unearned premiums within 15 days after the effective date of cancellation.

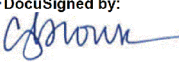
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10. Clear Blue violated 28 TEX. ADMIN. CODE § 1.601(a)(2)(A) by failing to attach the Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures in the first, second, or third page of a packaged set of documents.
11. Clear Blue violated 28 TEX. ADMIN. CODE § 5.9970 by failing to provide a copy of the Consumer Bill of Rights with each new policy.
12. Clear Blue failed to attach initial privacy notices in violation of 28 TEX. ADMIN. CODE § 22.8.
13. Clear Blue failed to attach annual privacy notices in violation of 28 TEX. ADMIN. CODE § 22.9.

Order

The commissioner orders Clear Blue Insurance Company to pay an administrative penalty of \$110,000 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
Fraud & Enforcement Division



Sarah White, Staff Attorney
Enforcement

Affidavit

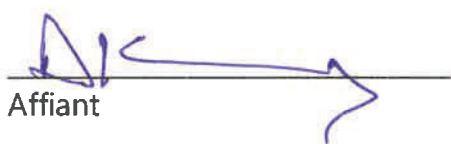
STATE OF North Carolina §
COUNTY OF Mecklenburg §

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

"My name is Daniel Kennedy. 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 Blue Insurance Company. I am duly authorized by said organization to execute this statement.


Clear Blue 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 05.17, 2023.

(NOTARY SEAL)

Paula Walton
NOTARY PUBLIC
Mecklenburg County, NC
My Commission Expires August 29, 2024


Signature of Notary Public
Paula Walton
Printed Name of Notary Public