

No. 2016- 4856

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: DEC 16 2016

Subjects Considered:

HALLMARK COUNTY MUTUAL INSURANCE COMPANY
777 Main Street, Suite 1000
Fort Worth, Texas 76102

AMERICAN HALLMARK GENERAL AGENCY, INC.
P.O. Box 250209
Plano, Texas 75025

CONSENT ORDER
TDI ENFORCEMENT FILE NOS. 11128 and 8406

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Hallmark County Mutual Insurance Company and American Hallmark General Agency, Inc. (AHGA).

WAIVER

Hallmark County Mutual and AHGA acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Hallmark County Mutual and AHGA waive all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

FINDINGS OF FACT

1. Hallmark County Mutual is a county mutual insurance company holding a certificate of authority to transact business in the state of Texas.
2. AHGA has held a managing general agency (MGA) license with the department under firm identification number 11716, since November 3, 1967. AHGA and Hallmark County Mutual are affiliated entities.
3. Section 1952.0545 of the Insurance Code [S.B. 1567 (83rd Leg. R.S., Davis), eff. Sept. 1, 2013], requires insurers and agents to make written and oral disclosures to the applicant or insured, and obtain contemporaneous written confirmation of the oral disclosure, of the nature and limitations of named driver automobile insurance policies. Disclosures must be made before accepting any premium or fee for the named driver policy. S.B. 1567 applies only to named driver policies delivered, issued for delivery, or renewed on or after January 1, 2014.

Lack of Disclosure in the Policy

4. On May 8, 2009, under SERFF tracking number PHXN-126145891, the department approved Hallmark County Mutual's filing of a personal automobile insurance declarations page HCN 05 09.
5. On May 9, 2009, under department filing link number 102563, the department approved Hallmark County Mutual's reference to use the promulgated Texas Personal Automobile Policy (PAP). Hallmark County Mutual identifies its PAP as form TX HCM PPA.
6. On May 25, 2010, under department filing link number 107766, the department approved Hallmark County Mutual's filing of endorsement forms HCM.CP.013.B (the Covered Person Endorsement) and HCM.AuthDriv.003A (the Authorized Driver Endorsement).
7. Also under department filing link number 107766, the department reviewed form HCM.Disclosure 2010 (the Texas Personal Auto Policy Features and Limitations Disclosure). This form is a summary, and is neither part of the policy itself nor a policy form subject to department approval. However, such summaries are commonly filed by carriers and reviewed by TDI to ensure consistency and conformity with the corresponding or accompanying policy forms which are subject to approval.
8. On May 29, 2016, under SERFF tracking number PHXN-130064689, the department approved Hallmark County Mutual's filing of a personal automobile insurance declarations page TX HCM AU DEC.
9. When policy form TX HCM PPA is endorsed by either endorsement form HCM.CP.013.B or HCM.AuthDriv.003A, the policy is a named driver policy within the meaning of TEX. INS. CODE § 1952.0545. Hallmark County Mutual and AHGA refer to this named driver policy as their "limited coverage" policy.
10. Hallmark County Mutual's endorsements and policy forms for the "limited coverage" policy do not include the required named driver disclosure. Form HCM.Disclosure 2010 does not contain the named driver disclosure. As approved by the department, declarations pages HCN 05 09 and TX HCM AU DEC do not contain the required named driver disclosure.
11. On and after January 1, 2014, Hallmark County Mutual and AHGA have used its two approved declarations pages with its named driver policies and its "standard policies," which are not named driver policies. Usage of declarations page HCN 05 09 versus page TX HCM AU DEC depends upon which policy issuance system is used by Hallmark County Mutual and AHGA. In either instance, Hallmark County Mutual and AHGA inconspicuously print the required disclosure on the declarations pages. These versions of the declarations pages were not filed for approval with the department.
12. On and after January 1, 2014, Hallmark County Mutual failed to update or file revised policy or endorsement coverage forms to specifically include the required disclosure in the policy.

13. Effective April 10, 2014, for its named driver policies, Hallmark County Mutual and AHGA began using a revised summary of features and limitations which it identifies as Form HCM.LDisclosure 4-14.
14. Although form HCM.LDisclosure 4-14 includes the named driver disclosure language, that form is not part of the policy, and has not been filed with TDI.
15. On and after January 1, 2014, Hallmark County Mutual and AHGA have delivered, issued for delivery, and renewed named driver policies in Texas without including the required disclosure in its policy coverage forms.

Failure to Renew Named Driver Policies

16. The department adopted 28 TEX. ADMIN. CODE § 5.208, effective January 28, 2015, to implement the remaining disclosure requirements in S.B. 1567 for both new and renewal named driver policies.
17. On and after January 28, 2015, AHGA delivered, issued for delivery, and renewed named driver policies in 6-month and 12-month terms exclusively for Hallmark County Mutual. Hallmark County Mutual has not appointed and/or contracted with any other MGAs to write named driver policies on its behalf.
18. Hallmark County Mutual and AHGA ceased writing new 12-month named driver policies on September 21, 2015, and ceased writing new 6-month named driver policies on July 25, 2016. They continue to renew in-force named driver policies.
19. For new business, AHGA collected premium and fees for its named driver policies by agency account sweep, i.e. electronic automated clearing house (ACH) transaction, credit card, and e-check.
20. For renewals, AHGA collects premium and fees for its named driver policies by the following methods: check, credit card, e-check, money order, agency account sweep, or a recurring payment option of either electronic funds transfer (EFT) or credit card.
21. Regardless of the term length, AHGA's current policies, procedures, and practices with respect to named driver policy renewals are as follows:
 - a. Sixty days before the expiration of a named driver policy, AHGA sends the insured a notice instructing the insured to sign and return confirmation of the provision of written and oral disclosure 30 days prior to renewal in order to avoid a premium increase, and instructs the insured on four delivery methods by which to return the form to AHGA or Hallmark County Mutual.
 - b. The sixty-day notice includes the requisite, written named driver disclosure.

- c. The sixty-day notice states : “Since Texas law requires the disclosure . . . to be provided both orally and in writing, please call your agent at [telephone number] to ask that they provide the disclosure to you orally before signing this form.” As written, AHGA asks, but does not expressly require, the insured to call their agent to hear the oral disclosure.
- d. Except for the insured’s signature, AHGA does not keep any other independent record or evidence regarding the actual provision of, or the date and time of the provision of, oral disclosure to insureds at renewal. AHGA relies solely upon the written confirmation received from the insured to indicate both that the agent provided the oral disclosure, and the insured contemporaneously signed the confirmation on receipt of the oral disclosure.
- e. If AHGA or Hallmark County Mutual receive the signed confirmation 30 days prior to renewal, then the insured’s policy is renewed as a named driver policy and the insured is invoiced for the renewal premium at the named driver rate.
- f. If AHGA or Hallmark County Mutual do not receive the signed confirmation from the insured 30 days prior to renewal, AHGA then sends the insured, at approximately 15 – 20 days prior to the renewal effective date, a second notice and an invoice at an increased premium for a standard PAP, i.e. form TX HCM PPA alone, without endorsement forms HCM.CP.013.B or HCM.AuthDriv.003A.
- g. The second notice informs the insured that the invoice is for a policy that does not include the “limited coverage” named driver policy provisions, and further instructs the insured to sign and return the confirmation to change the policy to a “limited coverage” policy and to lower policy premiums in future unbilled installments.
- h. The second notice requests that the insured call their agent to ask that the agent provide the oral disclosure before the insured signs the form.
- i. After the second notice is sent, if the insured returns the signed confirmation prior to the renewal effective date, AHGA renews the named driver policy and adjusts the premium to the named driver rate for future unbilled installments.
- j. If the insured does not return the signed confirmation prior to the renewal effective date, AHGA converts the policy from a named driver policy to a standard PAP, by issuing and delivering at an increased premium to the insured, a standard PAP, i.e. form TX HCM PPA, without endorsement forms HCM.CP.013.B and HCM.AuthDriv.003A.
- k. If the insured returns the signed confirmation after the renewal effective date, AHGA represents it will endorse its standard PAP, form TX HCM PPA, with the named driver endorsement forms HCM.CP.013.B and/or HCM.AuthDriv.003A, effective as of the date the signed confirmation is received. AHGA represents that premiums are then adjusted to reflect the named driver rate in future unbilled installments, or, if premium has already been paid in full, a credit is given.

1. After the renewal effective date, AHGA represents it handles claims dependent on whether or not the signed confirmation was received and whether or not the standard PAP, form TX HCM PPA, was endorsed with the named driver endorsement forms HCM.CP.013.B and/or HCM.AuthDriv.003A at the time when the loss occurred. If a loss occurs after the renewal date and the signed confirmation has not been received, AHGA handles the claim under the standard PAP. If after renewal the standard PAP is later endorsed to be a "limited coverage" named driver policy, and a loss occurs after the named driver endorsements are applied, AHGA handles the claim under the "limited coverage" named driver policy.
 - m. If the insured has provided AHGA with an email address, beginning November 15, 2015, AHGA also sends the insured the notices by email at 60, 30, and 15 days prior to expiration of the named driver policy if the insured has not yet returned the signed confirmation.
 - n. Beginning November 15, 2015, AHGA also revised its notice to be a single form for all notifications to the insured, and now includes "Estimated Renewal Premium" amounts in the notice for both the "limited coverage" named driver policy and for the standard PAP.
22. Based upon these policies, procedures, and practices, AHGA is unilaterally, of its own volition, and without a request from the insured, issuing and delivering standard PAPs and accepting increased premiums and fees for expanded coverage when neither AHGA nor Hallmark County Mutual have received the signed confirmation from the named insured prior to the renewal effective date.
 23. Hallmark County Mutual and AHGA do not renew named driver policies with terms of less than 12 months so as to allow them to accrue 12 months of continuous coverage.
 24. On and after January 28, 2015, AHGA's practices, as applied to any 6-month named driver policy which had or has not yet accumulated 12 months of continuous coverage, constitute a non-renewal of named driver policies.
 25. Hallmark County Mutual and AHGA sought guidance from the department on the best practices for renewal of named driver policies.
 26. In an effort to settle all allegations against them, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, Hallmark County Mutual and AHGA propose and voluntarily agree they will implement the following run-off plan with respect to all named driver policies in force on January 1, 2017, regardless of term length, and regardless of whether or not the named insured has accumulated a minimum of 12 months of continuous coverage under the named driver policy (the "Affected Policies," and the named insureds on such policies are identified as the "Affected Policyholders"):
 - a. Hallmark County Mutual and AHGA agree they will send a general notification not later than January 1, 2017, to all Affected Policyholders. The general notification must provide each Affected Policyholder with a minimum of 30 days written notice that beginning February 1, 2017, the Affected Policies will expire at the end of their current policy term and not be renewed with the named driver endorsement forms HCM.CP.013.B and/or

HCM.AuthDriv.003A, and that as a result, the Affected Policyholder's premium will change. The general notification will be in the form shown in Exhibit A, and will inform the Affected Policyholders of the forthcoming offer to purchase an approved non-named driver policy.

- b. Beginning February 1, 2017, Hallmark County Mutual and AHGA agree that when each Affected Policy reaches its semi-annual or annual expiration date thereafter, the Affected Policyholder will also be sent a second notification informing the Affected Policyholder of the removal of the named driver endorsement forms HCM.CP.013.B and HCM.AuthDriv.003A, and the resulting change to the Affected Policyholder's premium. This second notification will be sent to the Affected Policyholder not later than 30 days before the expiration date of the Affected Policy. The second notification will be in the form shown in Exhibit B, and will include an offer to purchase an approved non-named driver policy.
 - c. Not later than March 1, 2017, Hallmark County Mutual and AHGA must provide the department with: the number of Affected Policies; the number of general notifications mailed; a copy of one general notification sent to an actual Affected Policyholder with a semi-annual policy; and, a copy of a second notification sent to an actual Affected Policyholder with a semi-annual policy.
 - d. Not later than September 1, 2017, Hallmark County Mutual and AHGA must provide the department with the date when the last Affected Policy with a semi-annual term expired, and the number of Affected Policyholders with semi-annual terms who accepted any offer to purchase an approved non-named driver policy.
 - e. Not later than February 9, 2018, Hallmark County Mutual and AHGA must provide the department with: the date when the last Affected Policy with an annual term expired, and the number of Affected Policyholders with annual terms who accepted any offer to purchase an approved non-named driver policy.
 - f. Hallmark County Mutual and AHGA agree they will not deliver or issue for delivery any new named driver policies endorsed by forms HCM.CP.013.B and HCM.AuthDriv.003A.
 - g. All information and documents agreed and required to be submitted to the department under the terms of this order must be sent electronically in portable document format (*.pdf) by e-mail to both: rachel.cloyd@tdi.texas.gov and catherine.bell@tdi.texas.gov, or their successors.
27. Hallmark County Mutual and AHGA expressly consent to the terms of this order on the condition that they reserve the right to change their business model for named driver policies if the Texas Legislature enacts any changes to TEX. INS. CODE § 1952.0545, and/or if the department adopts any changes to its rules related to named driver policies. Should Hallmark County Mutual and AHGA exercise this right, they also expressly agree and understand that any such revisions to their named driver business model must conform and comply with all applicable Texas insurance laws.

Failure to Register Trade-Style

28. According to TDI records, AHGA has registered only one trade-style, "Phoenix General Agency," for use beginning August 2, 2005, as an assumed name in its business of insurance.
29. Renewal notices sent by AHGA to named driver insureds prior to the expiration of their named driver policy are on letterhead which included a header styled "Hallmark Insurance." The renewal notice does not identify the carrier, and the body of the notice falsely identifies "Hallmark Insurance" as "the company" underwriting each insured's named driver policy.
30. AHGA subagents were also provided sample copies of the renewal notice letters as part of the AHGA procedures guide and training materials.
31. AHGA claims the assumed name "Hallmark Insurance" is a "generic term which includes AHGA, Hallmark County Mutual, American Hallmark Insurance [*sic*] of Texas, Hallmark National Insurance [*sic*], and Hallmark Insurance Company."¹
32. AHGA has been operating and continues to operate under the assumed name "Hallmark Insurance" in the business of insurance without properly registering this trade-style with the department.

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, 912.101 – 912.152, 4005.101, and 4053.151.
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 § 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Hallmark County Mutual and AHGA have knowingly and voluntarily waived all procedural rights to which they may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. As applicable to personal automobile policies, TEX. INS. CODE § 551.105 requires an insurer to renew an insurance policy on the expiration of the policy, at the request of the insured, unless the insurer mails written notice of nonrenewal to the insured not later than the 30th day before the date on which the insurance policy expires.

¹ American Hallmark Insurance Company of Texas and Hallmark Insurance Company are fire and casualty companies holding certificates of authority to conduct business in Texas. Hallmark National Insurance Company is registered with the department as an eligible surplus lines carrier and is an accredited property and casualty reinsurer.

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5. Pursuant to TEX. INS. CODE § 551.106(b), an insurer shall renew a personal automobile policy that was written for a term of less than one year, except that the insurer may refuse to renew the policy on any 12-month anniversary of the original effective date of the policy.
6. As contemplated in 28 TEX. ADMIN. CODE § 5.7005(c), personal automobile policies which are written for a period of less than one year must be renewed, at the option of the insured, for additional periods so as to accumulate a minimum of 12 months of continuous coverage.
7. Under 28 TEX. ADMIN. CODE § 5.7007(a), a policy must be renewed at expiration, at the option of the policyholder, unless the company has mailed written notice to the policyholder of its intention to decline renewal at least 30 days in advance of the policy expiration date. The company may comply with this provision by requiring or permitting its agent to notify the policyholder. However, the responsibility of giving notice to the insured remains with the company if the agent fails to carry out its instructions to notify the insured.
8. Under 28 TEX. ADMIN. CODE § 5.208(e), noncompliance with TEX. INS. CODE § 1952.0545 or 28 TEX. ADMIN. CODE § 5.208 is not grounds for cancellation of a named driver policy under TEX. INS. CODE § 551.104.
9. For named driver policies that were written for terms less than 12 months, and which were renewed on and after January 28, 2015, Hallmark County Mutual and AHGA violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by unilaterally expanding insureds' coverage at renewal at an additional premium cost without the insureds' request or consent when those insureds had not yet accumulated the minimum 12 months of continuous coverage, and by failing to properly renew those policies before accepting a premium or fee.
10. On and after January 28, 2015, Hallmark County Mutual and AHGA violated TEX. INS. CODE § 1952.0545(e) and 28 TEX. ADMIN. CODE § 5.208(c)(1)(A)-(B) and (c)(4), by failing, at renewal, to require insureds to confirm contemporaneously in writing the provision of oral disclosure, and by failing to receive contemporaneous written confirmation of the oral disclosure.
11. Hallmark County Mutual and AHGA violated TEX. INS. CODE § 1952.0545(d) and 28 TEX. ADMIN. CODE § 5.208(c)(5)(A) by failing to include the requisite, conspicuous disclosure in their named driver personal automobile insurance policy forms.
12. AHGA violated 28 TEX. ADMIN. CODE § 19.902 by engaging in the business of insurance with an unregistered trade-style.

The commissioner orders Hallmark County Mutual Insurance Company and American Hallmark General Agency, Inc. to comply with the following compliance plan:

1. Not later than ten days after the date the last Affected Policy expires, Hallmark County Mutual must notify the department in writing that it withdraws from use endorsement forms HCM.CP.013.B and HCM.AuthDriv.003A in filing link number 107766.
2. AHGA must cease and desist use of the trade-style "Hallmark Insurance."

3. At any time in the future, should Hallmark County Mutual desire and intend to write named driver policies in Texas, it must file all named driver policy coverage and endorsement forms for review and approval as required under Chapter 2301 of the Insurance Code, and such forms must include the disclosure required under TEX. INS. CODE § 1952.0545(d) and 28 TEX. ADMIN. CODE § 5.208(c)(5)(A).
4. If Hallmark County Mutual and AHGA decide on or after August 1, 2017, to write named driver policies, Hallmark County Mutual and AHGA must renew, at the request or option of the insured, all named driver personal automobile insurance policies with terms of less than 12 months in accord with Texas law, so as to allow each insured to accumulate a minimum of 12 months of continuous coverage.
5. If Hallmark County Mutual and AHGA decide on or after August 1, 2017, to write named driver policies, they must not, unless an insured requests or expressly consents, unilaterally and of their own volition, issue and deliver standard PAPs and invoice an increased premium at renewal to named driver insureds who have not yet accumulated a minimum of 12 months of continuous named driver coverage and who have not returned the signed confirmation.

The commissioner further orders Hallmark County Mutual and AHGA to comply with their voluntary agreement described in Findings of Fact Nos. 26 – 27.

The commissioner further orders Hallmark County Mutual and AHGA to pay, jointly and severally, an administrative penalty of \$60,000. The penalty payment is due on or before 30 days from the date of this order. The payment 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: Compliance Division, Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner further orders that if it is found after a public hearing that either or both Hallmark County Mutual and AHGA have failed to comply with any of the terms of this Order, Hallmark County Mutual and/or AHGA may be subject to further action by the commissioner under the provisions of TEX. INS. CODE § 82.054.



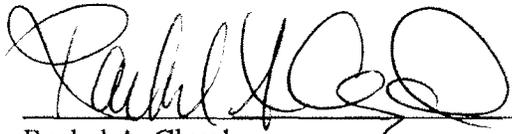
David C. Mattax

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APPROVED AS TO FORM AND CONTENT:



Rachel A. Cloyd
Staff Attorney, Enforcement Section
Texas Department of Insurance

COUNSEL FOR RESPONDENTS:



Thomas J. Bond
Greenberg Traurig, LLP

EXHIBIT A

<Insured Name>	Named Insured: <Name>
<Insured Address Line 1>	Policy No. <Number>
<Insured Address Line 2>	Agent: <Producer Name>
<City, State Zip Code>	Date of Mailing: <Date>

Named Driver Policy Expiration Date: <Date>

IMPORTANT AUTO INSURANCE POLICY NOTICE

What is happening to my current policy?

Hallmark County Mutual Insurance Company writes your automobile insurance policy using a limited coverage "named driver" policy. The company has ceased writing this type of policy and is no longer offering it. Because of this, we are offering you the option to purchase a new policy when your current policy expires.

How is the new policy different? Will it cost more?

Your current policy includes one or both of our Named Driver Endorsements. You may refer to your Declarations Page and your Personal Auto Policy to review. The Named Driver Endorsements appear as HCM.AuthDriv.003A and HCM.CP.013.B.

The new policy will not include the Named Driver Endorsements. This new coverage will be broader than your current policy because it will include coverage for household members who may not have been named under your "named driver" policy. As a result, this broader coverage will increase your premium.

What do I need to do?

You will soon receive an offer to purchase a new policy, which will allow you to continue your automobile insurance with us. If you want to purchase the new policy, pay the premium. At the same time, you will receive a non-renewal notice for your current policy, as required by state law.

If you have any questions, please contact your agent or our customer service at 800-486-5616. We appreciate your business and look forward to providing you with excellent claims and customer service for years to come.

Sincerely,

Hallmark County Mutual Insurance Company

EXHIBIT B

<Insured Name>	Insured: <Name>
<Insured Address Line 1>	Policy No. <Number>
<Insured Address Line 2>	Agent: <Producer Name>
<City, State Zip Code>	Date of Mailing: <Date>

Named Driver Policy Expiration Date: <Date>

**IMPORTANT AUTO INSURANCE POLICY NOTICE:
YOUR CURRENT POLICY IS EXPIRING.
PLEASE CAREFULLY REVIEW THIS NOTICE AND NEW POLICY OFFER.**

What is happening to my current policy?

Hallmark County Mutual Insurance Company writes your automobile insurance policy using a limited coverage "named driver" policy. The company has ceased writing this type of policy and is no longer offering it. Because of this, we are offering you the option to purchase a new policy.

How is the new policy different? Does it cost more?

Your current policy includes one or both of our Named Driver Endorsements. You may refer to your Declarations Page and your Personal Auto Policy to review. The Named Driver Endorsements appear as HCM.AuthDriv.003A and HCM.CP.013.B.

The new policy will not include the Named Driver Endorsements. This new coverage will be broader than your current policy because it will include coverage for household members who may not have been named under your "named driver" policy. As a result, this broader coverage increases your premium.

What do I need to do?

Enclosed is an offer to purchase the new policy, which allows you to continue your automobile insurance with us. If you want to purchase this new policy, pay the premium. Also enclosed is a non-renewal notice for your current policy, as required by state law.

If you have any questions, please contact your agent or our customer service at 800-486-5616. We appreciate your business and look forward to providing you with excellent claims and customer service for years to come.

Sincerely,

Hallmark County Mutual Insurance Company