

No. 2017- 4999

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

Date: MAR 2 1 2017

**Subject Considered:**

ENDEAVOR GENERAL AGENCY, LLC  
3723 S FM 551  
Royse City, Texas 75189-5763

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 8408

**General remarks and official action taken:**

The commissioner of insurance considers whether disciplinary action should be taken against Endeavor General Agency, LLC.

**WAIVER**

Endeavor acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Endeavor 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), Endeavor agrees to this consent order with the express reservation that it does not admit to a violation of the code or of a rule and that the existence of a violation is in dispute.

**FINDINGS OF FACT**

1. Endeavor has held a managing general agency (MGA) license with the department under firm identification number 19856, since October 17, 2003.
2. In November 2011, Endeavor entered into a written MGA agreement with National Unity Insurance Company (National Unity). According to department records, Endeavor has been appointed by National Unity to act as its MGA in the business of insurance since October 25, 2013. National Unity and Endeavor are unaffiliated entities.
3. Section 1952.0545 of the Insurance Code [S.B. 1567 (83<sup>rd</sup> 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.
4. On April 4, 2012, under department filing link number 120326, the department approved National Unity's reference filing to use the following forms: the promulgated Texas Personal

Automobile Policy (PAP), the promulgated form 515A (Exclusion of Named Driver and Partial Rejection of Coverages Endorsement), a Covered Person Endorsement, and an Authorized Driver Endorsement. National Unity identifies its Covered Person Endorsement as form NU.CP.013c and its Authorized Driver Endorsement as form NU.AuthDriv.003.

5. When the PAP is endorsed by form NU.CP.013c and/or NU.AuthDriv.003, the policy is a named driver policy within the meaning of TEX. INS. CODE § 1952.0545. However, those forms do not contain the required named driver disclosure.
6. Endeavor refers to this named driver policy as their “limited” policy underwritten by National Unity. Endeavor refers to a PAP that is not endorsed by forms NU.CP.013c and/or NU.AuthDriv.003, as their “broad” policy. A PAP that is endorsed with form 515A, but is not endorsed with form NU.CP.013c and/or NU.AuthDriv.003, is not a named driver policy within the meaning of TEX. INS. CODE § 1952.0545.
7. On and after January 1, 2014, Endeavor wrote and renewed named driver policies on behalf of National Unity in Texas without properly including the required disclosure.
8. 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.
9. On and after January 28, 2015, Endeavor delivered, issued for delivery, and renewed named driver policies for National Unity in 6-month terms. National Unity and Endeavor chose to cease writing new named driver business together in Texas on June 30, 2016.
10. For new business, Endeavor collected premium and fees for its named driver policies by credit card, debit card, check, or cash.
11. For renewals, Endeavor collects premium and fees for its named driver policies by credit card, debit card, check, money order, or cash, and accepts payment by mail, and through automatic withdrawal and electronic funds transfer (EFT) from the insured’s bank account, or by recurring payment made by credit or debit card.
12. On and after January 28, 2015, Endeavor’s policies, procedures, and practices with respect to named driver policy renewals were as follows:
  - a. Endeavor sent the insured a notice 14 days before the expiration date of the policy, instructing insured to sign and return confirmation of the provision of written and oral disclosure prior to renewal.
  - b. The notice included the requisite, written named driver disclosure. However, the disclosure in the notice did not appear in all capital letters.
  - c. The notice instructed the insured to call a dedicated, toll-free telephone number to listen to a recording of the oral disclosure in English and Spanish.

- d. The notice was unclear as to whether the insured's named driver policy was actually an excluded driver policy or a named driver policy. Specifically, the notice stated: "Texas Statute HB1567 [*sic*] now requires that you acknowledge that you were notified of the Named Driver exclusion on your policy both verbally and in writing."
  - e. The notice instructed the insured to return the signed, paper confirmation by mail whether the insured remitted payment by mail or made an automatic payment.
  - f. If the insured made their renewal payment in person, the oral disclosure was made live prior to acceptance of the premium.
  - g. If Endeavor received the signed confirmation prior to renewal, then the insured's policy was renewed as a named driver policy and the insured was charged premium at the named driver rate.
  - h. If the insured did not return the signed confirmation prior to the renewal effective date, Endeavor accepted payment of premium and fees from the insured at the named driver rate and renewed the policy as a named driver policy. However, when handling claims, Endeavor treated the policy as if it was a "broad" policy, one that was a PAP not endorsed by forms NU.CP.013c or NU.AuthDriv.003.
  - i. Although Endeavor did not charge the insured for the expanded coverage provided under its "broad" policy when the signed confirmation had not been returned, Endeavor did not disclose to the insured that the insured actually had expanded coverage under the "broad" policy once the named driver policy expired. Endeavor did not deliver or issue for delivery to the insured a new "broad" policy, or a new Texas Liability Insurance Card without the named driver disclosure warning.
13. Based upon these policies, procedures, and practices, Endeavor unilaterally, of its own volition, and without a request from the insured, converted "limited" named driver policies to standard PAPs and accepted premium or fees for the "limited" named driver policies when it had not received the signed confirmation of the provision of written and oral disclosure prior to renewal.
14. Endeavor did not properly renew named driver policies with terms of less than 12 months so as to allow them to accrue 12 months of continuous coverage.
15. On and after January 28, 2015, Endeavor's practices, as applied to any 6-month named driver policy which had or has not yet accumulated 12 months of continuous coverage, constituted a non-renewal of named driver policies.
16. Endeavor maintains a website, for use by its sub-agents and the public. Endeavor's website contained an unapproved form, specifically, two versions of the excluded driver endorsement form 515A which improperly included the named driver disclosure. In addition, Endeavor's website contained a Consumer Bill of Rights which did not conform to the prescribed English

language format in Figure 1 entitled "Consumer Bill of Rights Personal Automobile Insurance" (BRPA - Revised 2012), adopted by the department in 28 TEX. ADMIN. CODE § 5.9970(b).

17. On or about June 10, 2016, Endeavor removed from its website the unapproved versions of the 515A endorsement form and the non-prescribed Consumer Bill of Rights, and subsequently instructed its subagents to cease and desist using those documents.
18. Endeavor represents that as of December 31, 2016, there were 1,331 named driver policies in force with 6-month terms that it wrote on behalf of National Unity.
19. Endeavor sought guidance from the department on the best practices for renewal of named driver policies.
20. On January 4, 2017, Endeavor began non-renewing its named driver policies on their 12-month anniversary. In an effort to settle all allegations against it, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, Endeavor agrees it will continue that process of non-renewing all of its named driver policies written on behalf of National Unity.
21. Endeavor expressly consents to the terms of this order on the condition that it reserves the right to change its 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 Endeavor exercise this right, it also expressly agrees and understands that any such revisions to their named driver business model must conform and comply with all applicable Texas insurance laws.

**CONCLUSIONS OF LAW**

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 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. Endeavor 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 intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review. Pursuant to TEX. INS. CODE § 82.055(b), Endeavor agrees to this consent order with the express reservation that it does not admit to a violation of the code or of a rule and that the existence of a violation is in dispute.
4. 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.

5. 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.
6. For named driver policies that were written for terms less than 12 months, and which were renewed on and after January 28, 2015, Endeavor violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by unilaterally expanding insureds' coverage at renewal 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.
7. For named driver policies that had already accumulated the minimum 12 months of continuous coverage, Endeavor violated TEX. INS. CODE § 1952.0545(c) and (e) and 28 TEX. ADMIN. CODE §§ 5.208(c)(1)(B) and 5.208(c)(1)(D) by accepting premium or fees for renewals of named driver policies without receiving the signed confirmation of oral and written disclosure.
8. For named driver policies that had already accumulated the minimum 12 months of continuous coverage, National Unity violated TEX. INS. CODE § 525.002(a)(1)(A) by failing to timely deliver or issue for delivery its "broad" policy, i.e. the PAP without endorsement forms NU.CP.013c and/or NU.AuthDriv.003, to insureds when it did not receive the signed confirmation of oral and written disclosure.
9. Endeavor violated TEX. INS. CODE § 1952.0545(d) and 28 TEX. ADMIN. CODE § 5.208(c)(5)(A) by failing to include the requisite disclosure in their named driver personal automobile insurance policy forms.
10. Endeavor violated TEX. INS. CODE § 2301.006 by using unapproved forms.
11. Endeavor violated 28 TEX. ADMIN. CODE § 5.9970(b)-(c) by using a non-prescribed Consumer Bill of Rights Personal Automobile Insurance (BRPA - Revised 2012), required to be distributed on issuance of a policy by an insurer to each policyholder under TEX. INS. CODE § 501.156.

The commissioner orders Endeavor General Agency, LLC to comply with the following compliance plan:

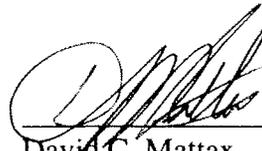
1. Endeavor must not use any unapproved versions of the 515A endorsement forms and must not use any non-prescribed Consumer Bill of Rights.
2. Not later than March 1, 2018, Endeavor must provide the department with the date when its last named driver policy written on behalf of National Unity non-renews, cancels, or otherwise expires. Endeavor must send this date electronically by e-mail to both [rachel.cloyd@tdi.texas.gov](mailto:rachel.cloyd@tdi.texas.gov) and [catherine.bell@tdi.texas.gov](mailto:catherine.bell@tdi.texas.gov), or their successors.

3. If Endeavor writes named driver policies in the future, it must not accept premium or fees for a renewal named driver policy unless it has received both a contemporaneous written confirmation of the oral disclosure, and a signed copy of the written disclosure.
4. If Endeavor writes named driver policies in the future, it 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 Endeavors writes named driver policies in the future, it must not, unilaterally and of its own volition, convert (unless the insured requests or expressly consents) or otherwise treat named driver policies as standard PAPs at renewal when the named insured has not yet accumulated a minimum of 12 months of continuous named driver coverage and does not return the signed confirmation.

The commissioner further orders Endeavor to comply with its voluntary agreement described in Finding of Fact No. 20.

The commissioner further orders Endeavor to pay an administrative penalty of \$50,000. 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.

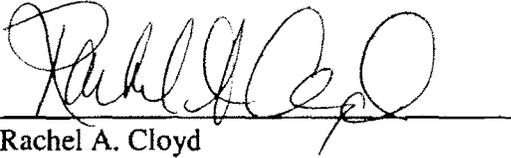
The commissioner further orders that if it is found after a public hearing that Endeavor has failed to comply with any of the terms of this Order, Endeavor may be subject to further action by the commissioner under the provisions of TEX. INS. CODE § 82.054.



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David C. Mattax  
Commissioner of Insurance  
~~By: Kevin Brady, Deputy Commissioner~~  
~~Delegation Order 4506~~

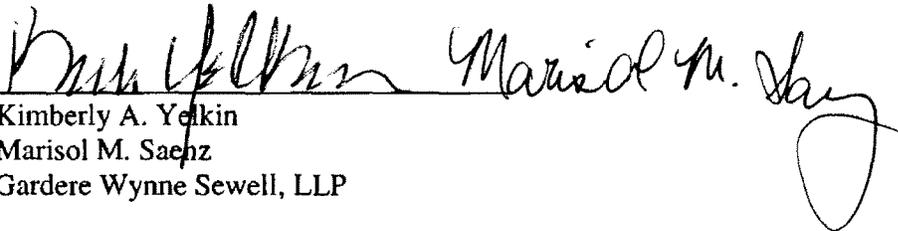
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APPROVED AS TO FORM AND CONTENT:



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