

No. 2017- 5047

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

Date: APR 25 2017

**Subject Considered:**

DAIRYLAND COUNTY MUTUAL INSURANCE COMPANY OF TEXAS  
1800 Northpoint Drive  
Stevens Point, WI 54481-1253

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 9159

**General remarks and official action taken:**

The commissioner of insurance considers whether disciplinary action should be taken against Dairyland County Mutual Insurance Company of Texas (Dairyland).

**WAIVER**

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

**FINDINGS OF FACT**

1. Dairyland is a county mutual insurance company holding a certificate of authority to transact business in the state of Texas.

**Named Driver Policies**

2. 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.
3. In February 2008, under department filing link number 92153, the department approved Dairyland's form PAP1-TX (2/08), as its standard personal automobile insurance policy (PAP).

4. In October 2013, under filing link number 129514, the department approved Dairyland's endorsement form BFN2-TX (1/14) entitled "Broad Form Named Driver Endorsement – Texas with Extended Non-Owner Protection," which contains the required named driver disclosure.
5. When Dairyland's PAP is endorsed by form BFN2-TX (1/14), the policy is a named driver policy within the meaning of TEX. INS. CODE § 1952.0545 because it does not cover household residents not named on the policy.
6. Due to the enactment of S.B. 1567, Dairyland decided and intended to cease writing new named driver policies effective January 1, 2014. On or about December 19, 2013, Dairyland notified its agents that: it would cease offering the PAP endorsed by form BFN2-TX (1/14) effective January 1, 2014 for new policies; claims would be adjusted as if no limitation applied to a household resident's permissive use of covered vehicles; and a rate increase would be applied to account for the additional coverage to be provided.
7. In mid-December, Dairyland instructed its claims team that losses occurring on those policies with an effective date of January 1, 2014 or later, must be handled as if there was no restriction for permissive use such that household residents would be covered while driving vehicles owned by the named insured (the "claims team notice").
8. On December 20, 2013, Dairyland made a rate filing under state tracking number 131888, including rate factor and fee changes resulting in an overall increase of 1.6% to its rates for new business effective January 1, 2014, for renewals of monthly policies effective January 18, 2014, and for renewals of six-month policies effective February 17, 2014. These rate increases impacted Dairyland's in force policies at renewal.
9. From January 1, 2014 until April 13, 2014, Dairyland renewed in force policies written under its PAP endorsed by form BFN2-TX (1/14) in one and six month terms.
10. Dairyland reported to the department that it had 44,937 named driver policies in force as of December 31, 2013.<sup>1</sup>
11. In February 2014, Dairyland sent its insureds with a PAP endorsed by form BFN2-TX (1/14) a written notice informing them that policies renewed on and after January 1, 2014, would have liability coverage extended to include coverage for household residents while those residents were driving a vehicle owned by the named insured and which was the named insured's car as defined in the policy (the "February notice").
12. The February notice did not disclose to the insureds that Dairyland would also impose a rate increase, as contemplated in state tracking number 131888. The insureds were informed of the premium increase when they received their renewal notices on or after January 18, 2014 for monthly policies, and on and after February 17, 2014 for six-month policies.
13. In March 2014, under filing link number 132585, the department approved Dairyland's endorsement form BFN2-TX-0414 entitled "Broad Form Named Driver Endorsement – Texas

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<sup>1</sup> That policy count included other named driver policies written under Dairyland's PAP endorsed by form HHE1-TX (1/14), which is a named driver policy within the meaning of TEX. INS. CODE § 1952.0545, and which contains the named driver disclosure. On or about November 14, 2016, Dairyland withdrew from use form HHE1-TX (1/14).

with Extended Non-Owner Protection,” which does not contain a named driver disclosure. Form BFN2-TX-0414 provides some broader coverage for relatives and household residents, as compared to Form BFN2-TX (1/14).

14. However, when Dairyland's PAP is endorsed by form BFN2-TX-0414, the policy does not provide automobile liability insurance coverage to household residents or spouses who do not have express permission from the named insured to use a car owned by the named insured, and thus contains a “permissive use restriction.”<sup>2</sup>
15. In addition, when Dairyland's PAP is endorsed by form BFN2-TX-0414, the policy provides liability coverage to the named insured(s) for both owned and “non-owned” vehicles, and thus the department contends it is a hybrid between an operator's and owner's policy, as those terms are defined in the Texas Transportation Code.<sup>3</sup> In spite of the provision of coverage for non-owned vehicles, the department also contends it is a named driver policy as defined by TEX. INS. CODE § 1952.0545.
16. Beginning April 14, 2014, without the named insureds' request at renewal, Dairyland replaced in force policies written under the PAP endorsed by form BFN2-TX (1/14), with new and different policies, i.e. the PAP endorsed by the newly approved form BFN2-TX-0414.
17. Dairyland disputes that its PAP endorsed by form BFN2-TX-0414 is a named driver policy. Dairyland contends that because those insureds were given the February notice, and because it distributed the claims team notice related to claims handling under the previous policy (the PAP endorsed by form BFN2-TX (1/14)), the policies written under the PAP endorsed by BFN2-TX-0414 are not and/or should not be treated as named driver policies.
18. Dairyland did not renew in force policies with terms of less than 12 months so as to allow them to accrue 12 months of continuous coverage. Specifically, prior to the 12-month anniversary of 22,293 named insureds' in force policies written under the PAP endorsed by form BFN2-TX (1/14), Dairyland only offered to renew those policies with a PAP endorsed by form BFN2-TX-0414, and at an increased cost to the insured. The renewal premium amount was included in the renewal offers, which the policyholder had the option to decline.
19. The department adopted amendments to 28 TEX. ADMIN. CODE § 5.204, effective May 18, 2014, to partially implement provisions of S.B. 1567 requiring that liability insurers writing a named driver policy must include the named driver disclosure in the standard proof of motor vehicle liability insurance form, i.e. the “Texas Liability Insurance Card.”
20. Dairyland's Texas Liability Insurance Cards issued with PAPs endorsed by form BFN2-TX-0414 did not contain a named driver disclosure on and after May 18, 2014.
21. Because Dairyland contends the PAP endorsed by form BFN2-TX-0414 is not a named driver policy and was not treated as a named driver policy, Dairyland contends it was not required to

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<sup>2</sup> An owner's motor vehicle liability insurance policy must provide coverage to a person who, as an insured, uses a motor vehicle with express or implied permission of the named insured. TEX. TRANSP. CODE § 601.076(2).

<sup>3</sup> A named non-owner policy is an operator's policy subject to the requirements of TEX. TRANSP. CODE § 601.077, while a named driver policy is an owner's policy subject to the requirements of TEX. TRANSP. CODE § 601.076. See Commissioner's Order No. 3756 adopting 28 TEX. ADMIN. CODE § 5.208, at 23-25.

include a named driver disclosure on those Texas Liability Insurance Cards. Further, Dairyland represents it believed in good faith that after January 1, 2014, it had taken actions so that its PAP endorsed by BFN2-TX-0414 would not require named driver disclosures.

22. Dairyland denied one liability claim (no. 92A\*\*\*668) under its PAP endorsed by form BFN2-TX-0414 where it appeared that a household resident was, at the time of the loss, driving a vehicle which was represented as owned by the named insured, and part of the reason for denial was due to lack of permission from the named insured, but which was also denied due to lack of cooperation by the insured. Dairyland later reopened this claim, processed and paid it without the permissive use restriction, and the claim has been settled.
23. 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.
24. On and after January 28, 2015, Dairyland had no policies, procedures, or practices in place for making the oral and written disclosures to the applicant or insured when renewing the PAP endorsed by form BFN2-TX-0414.
25. On and after January 28, 2015, Dairyland accepted a premium or fee for renewals of those policies without making the oral and written disclosures to its insureds, contemplated by 28 TEX. ADMIN. CODE § 5.208.
26. In response to Commissioner's Bulletin No. B-0004-15 dated February 13, 2015 (the "2015 data call"), Dairyland reported to the department that as of December 31, 2014, it had 29,409 vehicles covered under in force named driver policies. In November 2015, Dairyland contended its response to the 2015 data call was incorrect.
27. In August 2015, under filing link number 610272, the department approved Dairyland's endorsement form BFN2-TX-0915 entitled "Broad Form Named Driver Endorsement – Texas with Extended Non-Owner Protection," which does not contain a named driver disclosure.
28. When Dairyland's PAP is endorsed by form BFN2-TX-0915, the policy does not provide liability insurance coverage to household residents or spouses who: (1) do not have express permission from the named insured to use a car owned by the named insured; or (2) who transfer any given permission without authorization from the named insured.<sup>4</sup>
29. When Dairyland's PAP is endorsed by form BFN2-TX-0915, the policy provides liability coverage to the named insured(s), for both owned and "non-owned" vehicles, and thus the department contends it is a hybrid between an operator's and owner's policy, as those terms are defined in the Texas Transportation Code.<sup>5</sup> In spite of the provision of coverage for non-owned vehicles, the department also contends it is a named driver policy as defined by TEX. INS. CODE § 1952.0545.
30. Dairyland disputes that its PAP endorsed by form BFN2-TX-0915 is a named driver policy.

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<sup>4</sup> See *supra*, n.2.

<sup>5</sup> See *supra*, n.3.

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31. On and after September 21, 2015, without the named insureds' request at renewal, Dairyland replaced its in force policies written under the PAP endorsed by form BFN2-TX-0414, with new and different policies, i.e. the PAP endorsed by the newly approved form BFN2-TX-0915.
32. Dairyland's Texas Liability Insurance Cards issued with policies endorsed by form BFN2-TX-0915 do not contain a named driver disclosure.
33. As of October 31, 2015, Dairyland had 6,226 policies in force written under its PAP endorsed by either form BFN2-TX-0414 or form BFN2-TX-0915. As of October 31, 2015, it had no policies in force written under its PAP endorsed by form BFN2-TX (1/14).
34. As of December 31, 2015, Dairyland had 1,252 policies in force written under its PAP endorsed by form BFN2-TX-0414, and 3,527 policies in force under its PAP endorsed by form BFN2-TX-0915.
35. Beginning January 8, 2016, if a PAP endorsed by either form BFN2-TX-0414 or form BFN2-TX-0915 had three or more vehicles identified in its Texas Liability Insurance Card, Dairyland began to issue notices of non-renewal.
36. Beginning August 3, 2016, Dairyland began to issue notices of non-renewal for the remainder of those in force policies written under its PAP endorsed by either form BFN2-TX-0414 or form BFN2-TX-0915. Such policies were and continue to be non-renewed on their annual anniversary date.
37. As of July 31, 2016, Dairyland had 1,727 policies in force written under its PAP endorsed by form BFN2-TX-0915.
38. On October 21, 2016, Dairyland withdrew from use forms BFN2-TX (1/14), BFN2-TX-0414, and BFN2-TX-0915.
39. As of February 17, 2017, Dairyland had 189 policies in force written under its PAP endorsed by form BFN2-TX-0915 or form BFN2-TX-0416.<sup>6</sup>

Non-Owned Vehicles Identified by VIN in Texas Liability Insurance Cards

40. In October 2014, the department received a consumer complaint regarding a third party claim on a Dairyland policy written under its PAP endorsed by form BFN2-TX-0414.
41. The Texas Liability Insurance Card for that policy identified a vehicle identification number (VIN) for a vehicle not owned by the named insured, and which vehicle was involved in the third party's loss. The card did not contain a named driver disclosure.
42. Dairyland denied coverage for the third party claim on the basis that the vehicle was not covered by the named insured's policy because the person operating the vehicle at the time of the loss was a household resident of the named insured but was not named on the policy, the vehicle was not owned by the named insured, and the named insured was not driving the vehicle at the time of the loss.

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<sup>6</sup> In May 2016, the department approved endorsement form BFN2-TX-0416 for use in filing link 617886.

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43. Under Dairyland's PAP endorsed by either form BFN2-TX-0414 or form BFN2-TX-0915, Dairyland allowed its agents to input to its systems any VIN for printing on the applicant's or named insured's Texas Liability Insurance Card that was provided to the agents by the applicant or named insured.
44. When inputting the VIN into Dairyland's system, the agents did not confirm that the applicant or insured owned the vehicle. Further, Dairyland did not audit or verify that inputted VINs were, in fact, vehicles owned by the named insured(s) until a claim was made.
45. Dairyland contends it expected that its licensed agents would only input to its systems VINs for vehicles the named insured owned or was acquiring title to, or vehicles the named insured intended to use. Dairyland contends it relied upon its agents and the veracity of applicants and named insureds regarding vehicle ownership.
46. Dairyland's practices allowed named insureds on operator's policies to have a Texas Liability Insurance Card identifying a specific vehicle by VIN that was not owned by the named insured.
47. When driven by household residents not named on the policy, non-owned vehicles identified by VIN on Dairyland Texas Liability Insurance Cards are not covered by Dairyland policies providing the minimum amounts of liability insurance required by the Texas Motor Vehicle Safety Responsibility Act.<sup>7</sup> Only named insureds are covered under operator's policies when driving non-owned vehicles, but household residents and the vehicle itself are not covered.<sup>8</sup>
48. Dairyland made inaccurate statements in its Texas Liability Insurance Cards contrary to 28 TEX. ADMIN. CODE § 5.204(c)(8), that it was providing at least the minimum amount of liability insurance required by the Texas Motor Vehicle Safety Responsibility Act for specific vehicles identified by VIN when those vehicles were not owned by the named insured and were driven by household residents not named on Dairyland's PAP endorsed by either form BFN2-TX-0414 or form BFN2-TX-0915.
49. Dairyland inaccurately reported to the TexasSure Vehicle Insurance Verification program that some of its policies were owner's policies identifying them with code "P" for personal policy, rather than by code "N" for a non-owner or operator's policy when Texas Liability Insurance Cards had been issued identifying VINs for specific vehicles not owned by the named insured and not covered by Dairyland.
50. In April 2016, Dairyland implemented a systems change to display a message to its systems' operators or agents. The message requests that before the agent adds any vehicles to the Texas Liability Insurance Card for a PAP endorsed by either form BFN2-TX-0414 or form BFN2-TX-0915, the agent must confirm that any such vehicles are owned by the named insured(s).
51. On November 2, 2016, Dairyland voluntarily entered into an agreement with a third party contractor to audit and verify vehicle ownership for its remaining in force policies written under its PAP endorsed by form BFN2-TX-0915 and form BFN2-TX-0416.
52. As of December 16, 2016, there were 555 in force policies written under Dairyland's PAP endorsed by form BFN2-TX-0915 or form BFN2-TX-0416. As a result of the third party's

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<sup>7</sup> See TEX. TRANSP. CODE §§ 601.001 *et seq.*

<sup>8</sup> See TEX. TRANSP. CODE §§ 601.076 – 601.077.

audit, 154 policies were found to have 227 non-owned vehicles identified by VIN on Dairyland's Texas Liability Insurance Cards. Therefore, approximately 27.75% of Dairyland's in force policies written under its PAP endorsed by form BFN2-TX-0915 and form BFN2-TX-0416 were found to have non-owned vehicles identified by VIN on its Texas Liability Insurance Cards.

53. Dairyland expects the last PAP endorsed by form BFN2-TX-0915 to expire on or about May 1, 2017, and the last PAP endorsed by form BFN2-TX-0416 to expire on or about August 2017.

### 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, and 912.101 – 912.152.
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. Dairyland 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. Dairyland violated TEX. INS. CODE § 551.106(b) and 28 TEX. ADMIN. CODE § 5.7005(c), by replacing personal automobile insurance policies written for a term of less than one year without the insureds' request, prior to the 12-month anniversary of the original effective date of the policy.
5. On and after January 28, 2015, Dairyland violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by accepting a premium or fee for named driver policies without making the oral and written disclosures to applicants and insureds for new and renewal named driver personal automobile insurance policies.
6. Dairyland violated TEX. INS. CODE § 1952.0545(d) and 28 TEX. ADMIN. CODE §§ 5.204(c)(9) and 5.208(c)(5)(A) by failing to include the requisite disclosure in its named driver personal automobile insurance policies and in its Texas Liability Insurance Cards.
7. Dairyland violated 28 TEX. ADMIN. CODE § 5.204(c)(2) by including, identifying, and describing specific vehicles by VIN in its Texas Liability Insurance Cards, which vehicles were not owned by the named insured(s) and were not covered by Dairyland personal automobile insurance policies when driven by a spouse or household resident not named on the policy.
8. Dairyland violated 28 TEX. ADMIN. CODE § 5.604(c)(3) by inaccurately reporting to the TexasSure Vehicle Insurance Verification program that non-owned vehicles were covered under its personal automobile insurance policies.

The commissioner orders Dairyland County Mutual Insurance Company of Texas to comply with the following compliance plan:

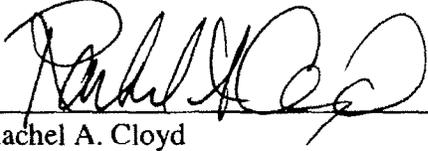
1. Dairyland must cease and desist from violations of 28 TEX. ADMIN. CODE § 5.204(c)(2), and must not identify specific vehicles by VIN in its Texas Liability Insurance Cards when the vehicle is not owned by the named insured and is not covered by a Dairyland policy.
2. Dairyland must cease and desist from making inaccurate reports to the TexasSure Vehicle Insurance Verification program.
3. To the extent not already completed, for any vehicle found by Dairyland and its third party contractor to be not owned by the named insured on any personal automobile insurance policy, Dairyland must promptly issue and send the named insured a corrected Texas Liability Insurance Card without the VIN and description of the non-owned vehicle in the card. If the policy is a named non-owner policy (i.e. operator's policy), the new card must comply in all respects with 28 TEX. ADMIN. CODE § 5.204, by including the appropriate wording, such as "any auto driven by the insured" or similar descriptive language.
4. Dairyland must timely submit accurate data, including the correct policy type identifier, on all of its personal automobile insurance policies in force to the TexasSure Vehicle Insurance Verification program. This provision of the compliance plan does not change or alter Dairyland's duty and continued obligation to provide accurate data to TexasSure in accordance with 28 TEX. ADMIN. CODE §§ 5.601 – 5.611.
5. Not later than ten days after the date its last policy written under a PAP endorsed by form BFN2-TX-0416 expires, non-renews, or cancels, Dairyland must notify the department in writing that it withdraws from use form BFN2-TX-0416.

The commissioner further orders Dairyland to pay an administrative penalty of \$150,000. 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.

  
Kevin Brady  
Deputy Commissioner for Agency Affairs  
Texas Department of Insurance  
Delegation Order 4506

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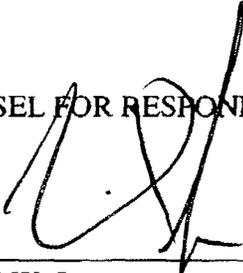
APPROVED AS TO FORM AND CONTENT:



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

COUNSEL FOR RESPONDENT:



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Michael W. Jones  
Jack M. Cleaveland, Jr.  
Thompson, Coe, Cousins & Irons, LLP

