

No. 2017- 5068

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

Date: MAY 09 2017

**Subject Considered:**

FALCON INSURANCE COMPANY  
TALON FINANCIAL SERVICES, LLC  
724 Enterprise Drive  
Oak Brook, Illinois 60523

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NOS. 12211 and 12212

**General remarks and official action taken:**

The commissioner of insurance considers whether disciplinary action should be taken against Falcon Insurance Company and Talon Financial Services, LLC, which hold a certificate of authority and a managing general agent license, respectively, issued by the department.

**WAIVER**

Falcon Insurance Company and Talon Financial Services, LLC, acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Falcon Insurance Company and Talon Financial Services, LLC, waive all of these rights and any other applicable, procedural rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

1. Falcon Insurance Company is a foreign property and casualty company currently holding a certificate of authority to transact business in Texas.
2. Talon Financial Services, LLC, is a managing general agency (MGA) currently holding a license to engage in business in Texas.
3. Effective January 1, 2013, Falcon Insurance Company entered into an exclusive MGA agreement with Talon Financial Services, LLC, in which the agency is authorized to appoint agents, underwrite, issue, cancel and non-renew policies, and provide reinsurance.
4. Both Falcon Insurance Company and Talon Financial Services, LLC, are wholly owned by Falcon Insurance Group, LLC.

5. The department conducted a market conduct examination of the conduct, performance, and practices of Falcon Insurance Company for the period of January 1, 2015, through December 31, 2015. The exam focused on a review of sales, advertising and marketing, underwriting and rating, claims practices and consumer complaints/inquiries of Falcon Insurance Company. The examination also made review of the MGA agreement and the required annual audit report between Falcon Insurance Company and Talon Financial Services, LLC.
6. During the exam, the department found violations of the Texas Insurance Code and Texas Administrative Code.

Violations of the Texas Administrative Code in the MGA agreement

7. The contract between Falcon and Talon failed to comply with several provisions of the Texas Administrative Code.
  - The contract did not state that all amendments and changes to the contract must be in writing and specify the effective date;
  - The contract did not specify the frequency with which the insurer shall cause to be conducted examinations of MGAs with which it is doing business in accordance with the following schedule. If the contract is with an MGA that is not an affiliate of the insurer, the contract must specify that the insurer shall cause to be conducted a semiannual examination of such nonaffiliated MGA if such nonaffiliated MGA has done business with the insurer within the previous six months. If the contract is with an MGA that is an affiliate of the insurer, the contract must specify that the insurer shall be caused to be conducted an annual examination of such affiliated MGA with which the insurer had done business within the previous year. If the insurer's aggregate premium volume increases by 30 percent in any 30-day period, the insurer shall cause to be conducted an examination within 90 days of any Texas MGA that writes more than 20 percent of the insurer's volume and that has experienced an increase of 20 percent in premium volume during the same 30-day period;
  - The contract did not specify that the examination must be made available to the commissioner for review, must remain on file with the insurer for at least three years, and must, at a minimum, contain the following information: timeliness of premium reporting and collection; compliance with underwriting guidelines; and reconciliation of policy inventory;
  - The contract did not state that the MGA must notify the insurer in writing within 30 days if there is a change in any of the following: ownership of 10 percent or more of the outstanding stock of the MGA; any principal officer of the MGA; or any director of the MGA; and
  - The contract improperly allowed the MGA to offset balances due under contracts with offsets due under any other contract.

Sales, Advertising and Marketing review

8. Falcon had 503 active agents and terminated two agents during the examination period. A sample of 100 private passenger automobile policies issued during the examination period revealed that 30 policies were issued by an un-appointed agent.

Policy Issuance review

9. The examination reviewed Falcon's private passenger automobile policies for compliance with the use of proper rates, forms, and endorsements, for timely handling of transactions and policy service requests, and adherence to consistent and nondiscriminatory underwriting practices. The examination looked at 100 issued policies, 50 canceled policies, and 41 non-renewed policies.
10. Falcon did not calculate premiums in accordance with the rates filed with the department. Specifically, in a sample of 100 policies consisting of new and renewal business, there were 24 instances in which Falcon was applying incorrect rating factors when calculating policy premiums. After recalculation using proper factors, it revealed all 24 policyholders were undercharged.
11. Falcon failed to obtain written rejection forms for uninsured or underinsured, or personal injury protection coverage. In 11 instances of the 100 policies sampled, the signed rejection form for the mandatory coverage was not included along with the policy.
12. In one instance, Falcon did not provide adequate notice of nonrenewal prior to the policy expiration date.

Claims Practices review

13. For paid claims, the audit reviewed 81 files for compliance with claims settlement practices and compliance with Chapter 542 of the Texas Insurance Code.
  - In 33 instances, Falcon did not provide the claimant with the Notice of Rights Regarding Repair of Motor Vehicle;
  - In one instance, Falcon did not mail the Notice of Rights Regarding Repair of Motor Vehicle to the claimant within 15 business days of receiving notice of the claim;
  - In 22 instances, Falcon did not adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies;
  - In 21 instances, Falcon did not attempt in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear;
  - In four instances, Falcon did not pay the claim not later than the fifth business day after the date notice is made; and
  - In one instance, Falcon did not notify a claimant in writing of the acceptance or rejection of a claim not later than the 15<sup>th</sup> business day after the date the insurer

receives all items, statements, and forms required by the insurer to secure final proof of loss.

14. For denied or closed claims, the audit reviewed 42 files for compliance with claims settlement practices and compliance with Chapter 542 of the Texas Insurance Code.
  - In five instances, Falcon did not provide the claimant with the required Notice of Rights Regarding Repair of Motor Vehicle;
  - In one instance, Falcon did not mail the required notice of Rights Regarding Repair of Motor Vehicle to the claimant within 15 business days of receiving notice of the claim;
  - In seven instances, Falcon did not adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies; and
  - In two instances, Falcon did not notify a claimant in writing of the acceptance or rejection of a claim not later than the 15<sup>th</sup> business day after the date the insurer receives all items, statements, and forms required by the insurer to secure final proof of loss.
  
15. For pending claims, the audit reviewed 45 files for compliance with claims settlement practices and compliance with Chapter 542 of the Texas Insurance Code.
  - In 12 instances, Falcon did not provide the claimant with the required Notice of Rights Regarding Repair of Motor Vehicle;
  - In five instances, Falcon did not mail the required Notice of Rights Regarding Repair of Motor Vehicle to the claimant within 15 business days of receiving notice of the claim;
  - In 18 instances, Falcon did not adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies; and
  - In three instances, Falcon did not attempt in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear.

Consumer Complaints/Inquiries review

16. Falcon's complaint files were reviewed for compliance with the provisions of Sections 38.001 and 542.005 of the Texas Insurance Code, and 28 TEX. ADMIN. CODE §§ 21.203(6) and 21.2501-21.2507. Falcon received a total of 79 complaints during the examination period, including 71 complaints made to the department, of which a sample of 40 were reviewed, and eight complaints made to the Better Business Bureau, all of which were reviewed.
  
17. All of the 48 complaints reviewed were related to delays in claims handling. Of these, at least 21, or approximately 44 percent, were confirmed as meritorious during the examination.

18. Specifically, in six instances Falcon did not attempt in good faith to effect a prompt, fair, equitable settlement of a claim submitted in which liability has become reasonably clear.
19. In 13 instances, Falcon did not adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies.
20. In one instance, Falcon did not notify a claimant in writing of the acceptance or rejection of a claim not later than the 15<sup>th</sup> business day after the date the insurer receives all items, statements, and forms required by the insurer to secure final proof of loss.
21. In one instance, Falcon did not respond to an inquiry made by the department within 15 days.

Subsequent Events and Other Disclosures

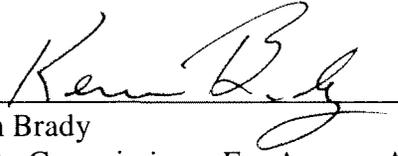
22. This was Falcon's and Talon's first market conduct examination. Prior to the examination and based on the examination's findings, substantial resources were expended internally and externally to address the cited violations.
23. Effective January 18, 2016, Falcon began requiring a copy of the original signed application for all new business submitted and agents are no longer allowed to retain copies on behalf of Falcon.
24. Effective June 1, 2015, for new business, and July 1, 2015, for renewal business, Falcon corrected all rating factors to calculate proper premiums.
25. As of June 30, 2016, the claims staff at Falcon's main office located in Oak Brook, Illinois, has grown from 15 to 48 people to handle incoming claims.
26. On March 8, 2016, Falcon entered into an agreement with a claims third party administrator and transferred approximately 1,000 open property damage claims for handling.
27. On April 6, 2016, Falcon opened a regional claims office, located at 5440 Harvest Hill Road, Dallas, Texas to handle all Texas claims.
28. On May 5, 2016, Falcon entered into an agreement with a dedicated call center third party administrator to take overflow notice of loss calls during regular hours, and all first notice calls after hours and on weekends.
29. Effective October 1, 2016, Falcon and Talon amended their MGA contact to comply with the Texas Administrative Code.

**CONCLUSIONS OF LAW**

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE chs. 801, 982 and 4053; TEX. INS. CODE §§ 82.051-82.055 and 84.021-84.051; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has the authority to dispose of this matter informally, 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. Falcon Insurance Company and Talon Financial Services, LLC, have waived all procedural requirements for the entry of an order in this matter, including but not limited to the issuance and service of a notice of intention to institute disciplinary action, a notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Falcon Insurance Company and Talon Financial Services, LLC violated 28 TEX. ADMIN. CODE § 19.1204(b) because the contract failed to state that any amendments and changes must be made in writing.
5. Falcon Insurance Company and Talon Financial Services, LLC violated 28 TEX. ADMIN. CODE § 19.1204(b)(19) because the contract did not state the frequency in which an examination would occur in accordance with the applicable schedule.
6. Falcon Insurance Company and Talon Financial Services, LLC violated 28 TEX. ADMIN. CODE § 19.1204(b)(2)(C), (D) and (E) because the contract did not specify the examination must be available to the Commissioner, remain on file for three years and contain minimum required information.
7. Falcon Insurance Company and Talon Financial Services, LLC violated 28 TEX. ADMIN. CODE § 19.1204(b)(21)(A), (B) and (C) because the contract did not specify the time periods in which Talon must notify Falcon of certain changes in ownership to Talon.
8. Falcon Insurance Company and Talon Financial Services, LLC violated 28 TEX. ADMIN. CODE § 19.1204(b)(22) because the contract allowed Talon to make certain improper offsets to balances due under contracts.
9. Falcon Insurance Company violated TEX. INS. CODE § 38.001(c) because it failed to respond to an inquiry by the department within 15 days.
10. Falcon Insurance Company violated TEX. INS. CODE § 542.003(b) because it failed to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies in 60 instances.

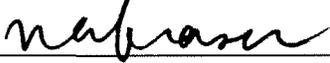
11. Falcon Insurance Company violated TEX. INS. CODE § 542.003(b)(4) because it failed in good faith to make a prompt, fair, and equitable settlement of a claim submitted in which liability was reasonably clear in 30 instances.
12. Falcon Insurance Company violated TEX. INS. CODE § 542.056(a) because it failed to notify the claimant in writing of acceptance or rejection of a claim not later than the 15<sup>th</sup> business day after the date it received all items, statements and forms required to secure proof of loss in four instances.
13. Falcon Insurance Company violated TEX. INS. CODE § 542.057(a) because it failed to pay a claim not later than the fifth business day after the date notice is made in four instances.
14. Falcon Insurance Company violated TEX. INS. CODE § 551.105 because it failed to provide adequate notice of nonrenewal prior to the policy expiration date in one instance.
15. Falcon Insurance Company violated TEX. INS. CODE §§ 1952.101 and 1952.152 because it failed to obtain uninsured or underinsured and obtain personal injury protection rejection forms in 11 instances.
16. Falcon Insurance Company violated TEX. INS. CODE § 1952.305 and 28 TEX. ADMIN. CODE § 5.501 because it failed to provide the Notice of Rights Regarding Repair of Motor Vehicle in 50 instances.
17. Falcon Insurance Company violated 28 TEX. ADMIN. CODE § 5.501(d)(2) because it did not mail the Notice of Rights Regarding Repair of Motor Vehicle within 15 business days of receiving notice of the claim in seven instances.
18. Falcon Insurance Company violated TEX. INS. CODE § 2251.101 because it did not calculate premiums in accordance with the rates on file with the department in 24 instances.
19. Falcon Insurance Company violated TEX. INS. CODE § 4001.201 because it issued 30 private passenger automobile policies by and through un-appointed agents during the examination period.

The commissioner orders Falcon Insurance Company and Talon Financial Services, LLC to pay, jointly and severally, a \$80,000 administrative penalty within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order payable to the State of Texas. Falcon Insurance Company and Talon Financial Services, LLC must mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 40111, MC 9999, P.O. Box 149104, Austin, TX 78714-9104.



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

APPROVED AS TO FORM AND CONTENT:



Whitney A. Fraser, Staff Attorney  
Compliance Division, Enforcement Section  
Texas Department of Insurance

AFFIDAVIT

STATE OF ILLINOIS §

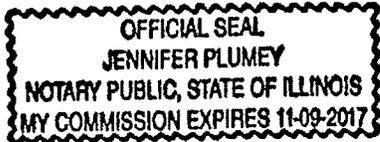
COUNTY OF DUPAGE §

BEFORE ME, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

1. "My name is MICHAEL R. PARRILLO. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated herein.
2. I hold the office of PRESIDENT. I am the authorized representative of Falcon Insurance Company and Talon Financial Services, LLC and am duly authorized to execute this affidavit.
3. Falcon Insurance Company and Talon Financial Services, LLC have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the foregoing consent order by the commissioner of insurance of the state of Texas."

*Michael R. Parrillo*  
Affiant

SWORN TO AND SUBSCRIBED before me on this 27 day of April, 2017.



*Jennifer Plume*  
Signature of Notary Public

(NOTARY STAMP)