

No. 2017-5147

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

Date: JUL 17 2017

Subject Considered:

NATIONAL UNITY INSURANCE COMPANY
15303 Huebner Road, Building 1
San Antonio, Texas 78248

CONSENT ORDER
SOAH DOCKET NO. 454-17-4056.C
TDI ENFORCEMENT FILE NO. 11129

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against National Unity Insurance Company.

WAIVER

National Unity acknowledges that the Texas Insurance Code and other applicable law provide certain rights. National Unity 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), National Unity agrees to this consent order 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. The parties are entering into this consent order by nature of a compromise and settlement and in order to avoid the time, trouble, and expense of resolving this dispute through further administrative and judicial proceedings.

FINDINGS OF FACT

1. National Unity is a fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.
2. In November 2011, National Unity entered into a written managing general agent (MGA) agreement with Endeavor General Agency, LLC (Endeavor). National Unity and Endeavor are unaffiliated entities.
3. On or about June 7, 2012, Endeavor began writing insurance business on behalf of National Unity.

4. According to department records, National Unity did not report to the department Endeavor's appointment to act as its MGA in the business of insurance until October 25, 2013. For nearly two years prior to notifying the department of Endeavor's appointment, National Unity had authorized Endeavor to engage in business as its agent.
5. National Unity was responsible for oversight of Endeavor's insurance practices on its behalf.
6. 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.
7. 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.
8. 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. Conversely, a PAP that is not endorsed by form NU.CP.013c or NU.AuthDriv.003 is not a named driver policy, and would provide coverage for household residents not named on the policy. In addition, a PAP that is endorsed with form 515A, but is not endorsed with form NU.CP.013c or NU.AuthDriv.003, is not a named driver policy but would exclude persons specified by name from coverage under the PAP.
9. Forms NU.CP.013c and NU.AuthDriv.003 do not contain the required named driver disclosure.
10. National Unity and Endeavor use their own internal terminology to describe and differentiate the general types of policies within the book of business written by Endeavor on National Unity's behalf. According to them, a "limited" policy is a named driver policy, i.e. the PAP endorsed by form NU.CP.013c and/or NU.AuthDriv.003, whereas a "broad" policy is not so endorsed, and is not a named driver policy.
11. On and after January 1, 2014, Endeavor wrote and renewed named driver policies in Texas on National Unity's policy forms which did not include the required named driver disclosure. National Unity did not update its approved forms or file new named driver policy forms with the department to include the disclosure in the policy.
12. 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.

13. On and after January 28, 2015, Endeavor delivered, issued for delivery, and renewed named driver policies in 6-month terms on behalf of National Unity. National Unity and Endeavor chose to cease writing new named driver business in Texas on June 30, 2016.
14. Between January 1, 2013 – June 30, 2016, National Unity conducted semi-annual examinations of Endeavor.
15. For new business, Endeavor collected premium and fees for its named driver policies by credit card, debit card, check, or cash.
16. For renewals, Endeavor collected premium and fees for its named driver policies by credit card, debit card, check, money order, or cash, and accepted 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.
17. On and after January 28, 2015, Endeavor's policies, procedures, and practices with respect to renewals of National Unity's named driver policies 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.
18. The department contends that based upon these policies, procedures, and practices, Endeavor was, on behalf of National Unity, unilaterally, of its own volition, and without a request from the insured, converting named driver policies to standard PAPs and accepting premium or fees for the named driver policies when neither Endeavor nor National Unity had received the signed confirmation of the provision of written and oral disclosure prior to renewal.
 19. The department contends that National Unity 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.
 20. The department contends that on and after January 28, 2015, Endeavor's practices on behalf of National Unity, 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.
 21. Endeavor maintained a website, for use by its agents and the public. Endeavor's website contained an unapproved form for use by its agents with National Unity's policies. Specifically, it contained an altered version of National Unity's excluded driver endorsement form 515A, which version improperly included the named driver disclosure. In addition, Endeavor's website contained a Consumer Bill of Rights for use by its agents with National Unity's policies 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).
 22. On or about June 10, 2016, Endeavor removed from its website the unapproved version of National Unity's 515A endorsement form and the non-prescribed Consumer Bill of Rights, and subsequently instructed its subagents to cease and desist using those documents.
 23. On October 31, 2016, National Unity terminated its MGA agreement with Endeavor, effective January 1, 2017.
 24. As of December 31, 2016, there were 1,331 named driver policies in force with 6-month terms that had been written by Endeavor for National Unity. On January 4, 2017, Endeavor began non-renewing National Unity's named driver policies on their 12-month anniversary.

25. National Unity sought guidance from the department on the best practices for renewal of named driver policies.
26. National Unity 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. Should National Unity 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.
27. On March 21, 2017, the commissioner entered Consent Order No. 2017-4999 against Endeavor General Agency, LLC, for its practices and conduct regarding its named driver book of business written on behalf of National Unity.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, and 801.051-801.053.
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. National Unity 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), National Unity 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. For named driver policies that were written for terms less than 12 months, and which were renewed on and after January 28, 2015, National Unity violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by failing to properly renew those policies before accepting a premium or fee.
5. For named driver policies that have already accumulated the minimum 12 months of continuous coverage, National Unity 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.
6. For some named driver policies that have already accumulated the minimum 12 months of continuous coverage, National Unity violated TEX. INS. CODE § 525.002.
7. National Unity 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.

8. National Unity violated TEX. INS. CODE § 2301.006 because its managing general agent delivered or issued for delivery and used an unapproved form.
9. National Unity violated 28 TEX. ADMIN. CODE § 5.9970(b)-(c) because its managing general agent used 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 National Unity Insurance Company to comply with the following compliance plan:

1. National Unity must not use any unapproved versions of the 515A endorsement form and must not use any non-prescribed Consumer Bill of Rights.
2. National Unity must file all named driver policy 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).
3. National Unity must not accept premium or fees for a renewal named driver policy unless it receives both a contemporaneous written confirmation of the oral disclosure, and a signed copy of the written disclosure.
4. National Unity 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. National Unity 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 National Unity to pay an administrative penalty of \$30,000. 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.

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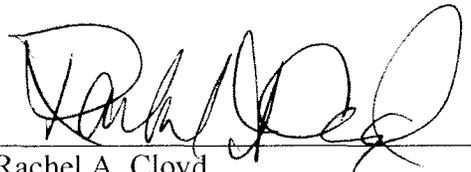
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The commissioner further orders that if it is found after a public hearing that either or both National Unity has failed to comply with any of the terms of this Order, National Unity may be subject to further action by the commissioner under the provisions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



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

APPROVED AS TO FORM AND CONTENT:



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