

No. 2017 - 5254

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

Date: OCT 17 2017

Subject Considered:

PEACHTREE CASUALTY INSURANCE COMPANY
350 10th Avenue, Suite 1400
San Diego, California 92101-8701

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 12476

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Peachtree Casualty Insurance Company (Peachtree).

WAIVER

Peachtree acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Peachtree waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

FINDINGS OF FACT

1. Peachtree is a foreign general casualty company domiciled in Florida and currently holding a certificate of authority to transact business in Texas.
2. Peachtree is only authorized to write automobile liability coverage and automobile physical damage coverage in Texas.

Market Conduct Examination

3. The department conducted a targeted market conduct examination of Peachtree covering the period of September 1, 2014, through August 31, 2015, pursuant to Chapter 751 of the Insurance Code. The exam focused on a review of sales, advertising and marketing, underwriting and rating, claims practices, and consumer complaints and inquiries for its private passenger automobile insurance business. The examination scope included a review for compliance with TEX. INS. CODE §§ 1952.0515 and 1952.0545 regarding named driver private passenger automobile insurance policies.

4. During the exam, the department found violations of the Texas Insurance Code and the Texas Administrative Code.
5. Peachtree's agreement with its managing general agent (MGA), Personable General Insurance Agency, Inc. (Personable), did not include ten mandatory contractual provisions.
6. A review of 50 private passenger automobile insurance policies revealed that:
 - Peachtree issued one policy where the licensed agent was not appointed to act as an agent for Peachtree.
 - Peachtree issued one policy where the producing agent held only a county mutual agent license, and did not hold the required general lines property and casualty license.
 - Peachtree, in one instance, did not provide written notice of nonrenewal to the insured not later than the 30th day before the date on which the policy expired.
 - Peachtree overcharged premium by \$144 in four instances. This error was due to an incorrect rating factor being applied to the driver when the number of covered vehicles exceeded the number of drivers listed on the policy. Peachtree found that the error affected 14,848 policies, and calculated the total amount overcharged at \$391,545 for the period of May 1, 2014 through September 15, 2015. On a policy level basis, the amount of overcharged premiums ranged from \$1 to \$650. Peachtree agreed to issue refunds to former policyholders and to issue account credits to current policyholders affected by this error.
7. The department's review of 50 paid claims and 25 pending claims revealed that in one paid claim and in two pending claims, Peachtree failed to notify the insured in writing of the settlement of a claim against the named insured not later than 30 days after the date it was settled.
8. The department reviewed 25 consumer complaints about Peachtree's private passenger automobile insurance business. Three complaints (or 12 percent) were considered confirmed.
9. The department's review of those 25 complaints revealed that in five instances, Peachtree failed to adopt and implement reasonable standards for the prompt investigation of claims arising under Peachtree's policies.

Named Driver Underwriting Practices

10. 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.

11. The department adopted amendments to 28 TEX. ADMIN. CODE § 5.204, effective May 18, 2014, to partially implement provisions of S.B. 1567. On January 28, 2015, the department adopted 28 TEX. ADMIN. CODE § 5.208 to implement the remaining disclosure requirements in S.B. 1567 for both new and renewal named driver policies.
12. On and after January 28, 2015, Peachtree delivered, issued for delivery, and renewed named driver policies in 1-month, 3-month, and 6-month terms.
13. As part of the market conduct examination, the department reviewed a sample of 50 policies for compliance with TEX. INS. CODE § 1952.0545. The sample included 19 policies renewed on or after January 28, 2015 through August 31, 2015.
14. In all 19 renewal policies, Peachtree's records did not include documentation to confirm that before accepting any premium or fee for the named driver policy Peachtree made the requisite oral disclosure, received a signed copy of the requisite written disclosure, and confirmed contemporaneously in writing the provision of the oral disclosure.

Events Occurring After the Market Conduct Exam

15. Peachtree represented to the department that it ceased offering and writing new named driver policies in Texas on October 14, 2015.
16. On October 28, 2015, Peachtree amended its MGA agreement with Personable to include all mandatory contractual provisions required by the department's rule.
17. On November 30, 2015, Peachtree changed its renewal notice to include the named driver disclosure.
18. On December 12, 2015, Personable removed Peachtree's information from the Personable website, because Peachtree discontinued writing business in Texas.
19. On February 16, 2016, Peachtree completed issuance of refunds totaling \$282,205 to 9,694 former policyholders, and account credits totaling \$109,341 to 5,134 current policyholders, to reimburse all policyholders affected by the use of an incorrect rating factor during the period of May 1, 2014 through September 15, 2015.
20. On January 1, 2017, Peachtree accepted the final market conduct examination report in writing.

Unapproved Withdrawal from Texas

21. As of at least February 2016, Peachtree had informed the department that on December 12, 2015, it discontinued writing new insurance business of any kind in Texas, including non-named driver policies.
22. In May 2017, Peachtree provided further information to the department, contending that it withdrew from Texas in coordination with and under the oral directive of the Florida Office of Insurance Regulation (FLOIR), its domiciliary regulator.
23. In August 2017, Peachtree provided the department with its written explanation as to how it exited the Texas insurance market.
24. Upon proposing to reduce its annual premium volume in personal automobile insurance by 50% or more, Peachtree was required to file, but did not file, a plan for orderly withdrawal from the Texas market for approval by the commissioner. Moreover, Peachtree did not provide the commissioner with any out-of-state commissioner disciplinary or administrative directive or order within 30 days of the issuance of any such directive or order. Thus, Peachtree's departure from the Texas market was entirely on its own initiative.
25. Peachtree informed the department that at the end of October 2015 it had a total of 8,048 policyholders. Peachtree did not send its policyholders notices of non-renewal beginning on the date it proposed to withdraw from Texas, thus it did not properly renew at least 8,048 personal automobile policies.
26. Instead, Peachtree "rolled" or transferred its Texas book of business to Lyndon Southern Insurance Company (Lyndon Southern). Through Personable, Peachtree represents it sent each policyholder a letter upon renewal, notifying the insured that Lyndon Southern would offer a replacement policy "with the same or greater coverage as your Peachtree renewal policy." Policyholders were instructed to remit the enclosed minimum premium amount due, and for policyholders that paid premiums electronically, policyholders were instructed to contact Personable to set up a new electronic funds transfer (EFT) plan for the Lyndon Southern policy.
27. Personable's offers to provide insureds with coverage through Lyndon Southern did not constitute an offer to renew in force Peachtree policies. Lyndon Southern is neither under common ownership with Peachtree, nor is it within the same insurance group or holding company system as Peachtree for purposes of TEX. INS. CODE §§ 551.004, 827.002, and 4051.354(c), and 28 TEX. ADMIN. CODE § 7.1804(b)(1). Thus, Peachtree did not renew its own policies.
28. Peachtree's actions also constitute a failure to renew any personal automobile policies written for a term of less than one year and which at that time had not reached any 12-month anniversary of the original effective date of those policies.

29. Peachtree represents that on October 7, 2015, it notified its "marketing representatives," in writing that it was leaving the Texas market. Peachtree does not have documentation of the alleged notification, and was unable to provide the department with any such notification to its agents.
30. Pursuant to TEX. INS. CODE § 4051.354, Peachtree automatically terminated its agents contracts by leaving the Texas market on its own initiative. As a result, Peachtree was required to renew all its private passenger automobile policies for 24 months, but failed to do so.
31. Peachtree represents it cancelled or non-renewed its last policy on August 22, 2016. As of that date, Peachtree represents it had no policies of any kind remaining in force.

Capital Stock and Surplus Requirements

32. On February 10, 2010, the commissioner issued Bulletin No. B-0006-10 informing all property and casualty carriers of the passage of H.B. 1476 (81st Leg. R.S.), which amended TEX. INS. CODE §§ 822.054 and 822.212. H.B. 1476 increased the minimum solvency requirements to \$2.5 million in capital and \$2.5 million in surplus, but also allowed already authorized insurers to increase capital incrementally over time requiring full compliance with the minimum requirements to be reached by December 31, 2019.
33. Peachtree was already an authorized insurer upon the passage of H.B. 1476, and thus was permitted to increase capital incrementally over time.
34. On May 4, 2010, the department sent Peachtree a letter directly notifying Peachtree of the requirements of H.B. 1476. This letter informed Peachtree that its total capital and surplus as of December 31, 2009 was \$6.18 million, consisting of capital stock in the amount of \$2.2 million and surplus of nearly \$4 million. The department instructed Peachtree to increase its capital \$30,000 annually, for 10 years, beginning with year-end 2010 pursuant to the capital phase-in provisions and to meet the minimum requirements.
35. Peachtree was required to phase in and increase its capital by \$30,000 each year beginning December 31, 2010 through December 31, 2016, for a total increase of \$210,000 over that time period, and having a total of \$2,410,000 in capital stock due by December 31, 2016.
36. The department's records show that Peachtree's capital stock amount has remained at \$2.2 million since 2009 without any annual increases.
37. On June 14, 2017, the department sent Peachtree a letter requesting that Peachtree come into compliance with the minimum capital and surplus requirements.
38. In August 2017, Peachtree increased its surplus to \$3.3 million but made no change to its capital stock amount of \$2.2 million.

39. On October 10, 2017, Peachtree provided the department with a notarized balance sheet dated as of September 30, 2017, demonstrating Peachtree's infusion of capital to \$2.5 million.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 404.051 – 404.053, 751.351, 801.051 – 801.053, 822.211, 827.006 – 827.007, and 861.101 – 861.102.
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 §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Peachtree 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. Peachtree violated 28 TEX. ADMIN. CODE § 19.1204(b) by failing to include ten mandatory contractual provisions in its MGA contract.
5. Peachtree violated TEX. INS. CODE § 542.003(b)(3) by failing to adopt and implement reasonable standards for the prompt investigation of a total of five claims.
6. Peachtree violated TEX. INS. CODE § 542.153(b) by failing to notify the named insured of the settlement of a claim against the named insured in writing, not later than the 30th day after the date three claims were settled.
7. On and after January 28, 2015, Peachtree violated TEX. INS. CODE § 1952.0545(b), (c), and (e), and 28 TEX. ADMIN. CODE § 5.208(c)(1)(A)-(B) and (D), by accepting a premium or fee for renewals of named driver personal automobile insurance policies without making the oral disclosure to insureds, receiving a signed copy of the written disclosure from the insureds, and without requiring the insureds to confirm contemporaneously in writing the provision of oral disclosure.
8. Peachtree violated TEX. INS. CODE § 2251.101(a) because it did not calculate premiums in accordance with the rates on file with the department.
9. Peachtree violated TEX. INS. CODE §§ 4001.201 – 4001.202 by allowing licensed agents to engage in the business of insurance on its behalf when the agents were not appointed by the insurer.

10. Peachtree violated TEX. INS. CODE § 4051.051(a)(1) by allowing a county mutual agent to write insurance for a general casualty company without holding a general lines property and casualty license.
11. Peachtree violated TEX. INS. CODE § 551.105 by failing to provide written notice of nonrenewal to an insured as found in the market conduct exam, and by also failing to send its insureds with written notice of nonrenewal of their Peachtree insurance policies when it withdrew from Texas.
12. Peachtree violated TEX. INS. CODE § 551.106(b) by failing to renew any personal automobile policies written for a term of less than one year and which had not reached any 12-month anniversary of the original effective date of those policies, when it withdrew from Texas.
13. Peachtree violated TEX. INS. CODE § 4051.354(b) by failing to renew each property and casualty insurance contract for 24 months for its agents affected by its withdrawal from Texas.
14. Beginning December 31, 2010, Peachtree annually violated TEX. INS. CODE §§ 404.051(a) and 822.212(a). Specifically, Peachtree each year failed to increase the amount of its capital stock by the required percentage of the difference between the amount of minimum capital required under TEX. INS. CODE § 822.054, and the amount of the company's capital on December 31, 2009.
15. In violation of TEX. INS. CODE § 827.003 and 28 TEX. ADMIN. CODE § 7.1804(a), Peachtree failed to file a withdrawal plan for approval by the commissioner, or failed to provide the commissioner with an out-of-state commissioner directive or order within 30 days of issuance of any such directive or order.

The commissioner orders that due to Peachtree Casualty Insurance Company's total withdrawal from Texas, and as contemplated by TEX. INS. CODE § 827.006, Peachtree is prohibited from writing new insurance business in the state of Texas and may not resume writing insurance in this state before the fifth anniversary of the date of this order without approval of the commissioner.

The commissioner further orders, as contemplated by 28 TEX. ADMIN. CODE § 7.1808, that Peachtree may not resume writing insurance in this state without complying with all applicable statutory and regulatory provisions governing authorization to write insurance in this state and receiving the written approval of the commissioner to resume such writing.

The commissioner further orders, as contemplated by 28 TEX. ADMIN. CODE § 7.1807, that Peachtree is not relieved of its contractual obligations, and must continue to file all annual financial statement data, other required statistical and data filings, other reporting, and any other department-requested information applicable to any withdrawn line until all policyholder

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obligations for such line in this state are fulfilled. Moreover, Peachtree is not exempt from any filings or information requests required by the department.

The commissioner further orders that if Peachtree is later approved to resume writing insurance in Texas, Peachtree must provide evidence acceptable to the department to demonstrate it is in full compliance with TEX. INS. CODE §§ 822.054 and 822.212 on or before the date the company is approved to resume business.

The commissioner further orders that if Peachtree is later approved to resume writing insurance in Texas, and should the company choose to write named driver policies thereafter, Peachtree must operate in full compliance with TEX. INS. CODE §§ 551.105, 551.106(b), 1952.0545, and 28 TEX. ADMIN. CODE § 5.208.

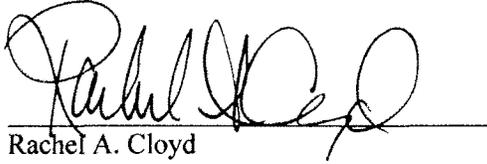
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Kent C. Sullivan
Commissioner of Insurance

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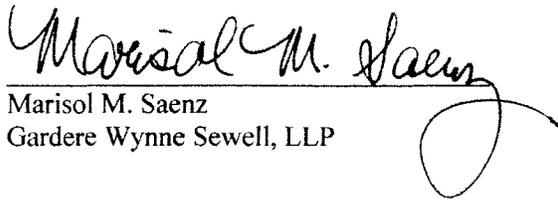
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APPROVED AS TO FORM AND CONTENT:

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

COUNSEL FOR RESPONDENT:

A handwritten signature in black ink, appearing to read "Marisol M. Saenz", written over a horizontal line.

Marisol M. Saenz
Gardere Wynne Sewell, LLP

