

No. 2019- 6119

**Official Order
of the
Texas Commissioner of Insurance**

Date: OCT 3 0 2019

Subject Considered:

Safe Auto Insurance Company
4 Easton Oval
Columbus, Ohio 43219-6010

Consent Order
TDI Enforcement File No. 14277

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Safe Auto Insurance (Safe Auto).

Waiver

Safe Auto acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Safe Auto 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), Safe Auto 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.

Findings of Fact

1. Safe Auto is a foreign casualty insurance company holding a certificate of authority to transact business in Texas.
2. Effective September 1, 2015, Section 1953.051(b) of the Texas Insurance Code prohibits a rating plan regarding personal automobile insurance from (1) assigning a rate consequence solely to: (A) a consumer inquiry made by an

- applicant or insured; or (B) a claim filed by an insured under a personal automobile insurance policy that is not paid or payable under the policy; or (2) otherwise causing premium for personal automobile insurance to be increased solely because of an inquiry or claim not paid or payable under the policy.
3. The department alleges that on and after September 1, 2015, Safe Auto incorporated claims filed by an insured that were not paid or payable under the policy in its rating plans to assign a rate consequence and/or premium consequence, including through calculation of the rating variable for Not at Fault Accidents.
 4. The Safe Auto rating plan filed on November 9, 2014, included various classifications including the use of Not at Fault Accidents. Safe Auto filed a new rating plan on March 16, 2016, under SERFF Filing No. SAFE-130483315.
 5. Department staff filed objections to the March 2016 filing and Safe Auto responded in June and July of 2016. The filing review was closed by department staff on August 3, 2016. The objections and responses primarily related to the use of Not At Fault Accidents and whether this included claims not paid or payable.
 6. Beginning in the fall of 2017, Safe Auto and the department began discussions and negotiations related to Safe Auto's compliance with TEX. INS. CODE § 1953.051(b)(1)(B), and relating to whether claims by an insured that were not paid or payable were part of Safe Auto's rating plan.
 7. Safe Auto filed a new rating plan on December 15, 2018, under SERFF Filing No. SAFE-131749436 removing rate and/or premium consequences for the use of claims not paid or payable, effective December 16, 2018 for new business and January 22, 2019 for renewal business.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 801.052–801.053, and 1953.051.
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. Safe Auto 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. Safe Auto violated TEX. INS. CODE § 1953.051(b)(1)(B) by assigning a rate consequence based solely on the fact that certain claims by an insured that were not paid or payable were included for certain insureds classified in the not at fault accident classification.
5. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct Safe Auto to make complete restitution to each policyholder impacted by the violations.

Safe Auto is ordered to comply with the following:

- a. Safe Auto must identify all personal automobile insurance policies issued or renewed by it in Texas with effective dates from September 1, 2015, through January 22, 2019 (the "Review Period").
- b. For each policy in the Review Period, Safe Auto must calculate the Corrected Premium without using claims filed by an insured not paid or payable in its rating plan.
- c. For each policy in the Review Period, Safe Auto must calculate and determine whether the dollar amount of the premium charged for each policy is less than or more than the Corrected Premium. If the premium charged is more than the Corrected Premium, the difference constitutes the Overcharge.
- d. Safe Auto must pay restitution in the form of a company check or account credit to each policyholder identified in the Review Period as having an Overcharge (the "Qualifying Policyholders"). The restitution check and/or account credit must include both the dollar amount of the overcharge, plus simple interest due on the overcharge. The rate of interest shall be 5 percent per annum.

- e. Safe Auto must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders on or before December 1, 2019.
- f. Any restitution checks that are returned to Safe Auto with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned thereafter for incorrect addresses and from checks that are not negotiated must be reported and delivered to the comptroller pursuant to the procedures and deadlines set forth in TEX. PROP. CODE §§ 72.001 *et. seq.*, 73.001 *et. seq.*, and 74.001 *et. seq.* Safe Auto must copy the department on any correspondence pertaining to presumed abandoned funds that is sent to the comptroller.
- g. On or before January 1, 2020, Safe Auto must report the restitution paid to the Qualifying Policyholders by submitting a complete and sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:
 - i. policy number;
 - ii. policyholder name;
 - iii. policyholder address;
 - iv. effective date of the policy;
 - v. expiration date of the policy;
 - vi. amount of Overcharge;
 - vii. dollar amount of simple interest;
 - viii. amount of Overcharge and interest;
 - ix. date(s) of mailing of restitution check or credits;
 - x. the total sum of all Overcharges;
 - xi. the total sum of all simple interest; and,
 - xii. the total sum of all restitution paid (total Overcharges plus the total of the simple interest).
- h. Safe Auto must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

Safe Auto is further ordered to pay an administrative penalty of \$25,000. The administrative penalty must be paid within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of

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Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104,
Austin, Texas 78714-9104.

Kent C. Sullivan
Commissioner of Insurance

By:

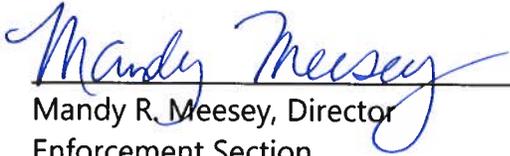


Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended and reviewed by:



Leah Gillum, Associate Commissioner
Enforcement Section



Mandy R. Meesey, Director
Enforcement Section

Affidavit

STATE OF Ohio §

§

COUNTY OF Franklin §

Before me, the undersigned authority, personally appeared Kelly A. Armstrong, who being by me duly sworn, deposed as follows:

"My name is Kelly A. Armstrong. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of General Counsel & Secretary, and am the authorized representative of Safe Auto Insurance Company. I am duly authorized by said organizations to execute this statement.

Safe Auto Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the state of Texas."

Kelly A. Armstrong
Affiant

SWORN TO AND SUBSCRIBED before me on August 16, 2019.

(NOTARY SEAL)



Katelyn Moran
Signature of Notary Public