

No. 2019- 6126

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

Date: OCT 30 2019

Subjects Considered:

Chisum General Agency, Inc. d/b/a Southern General Agency
PO Box 12480
Alexandria, Louisiana 71315-2480

Redpoint County Mutual Insurance Company
13215 Bee Cave Parkway, Suite B150
Austin, Texas 78738-0059

Consent Order
TDI Enforcement File Nos. 12730 and 11729

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Chisum General Agency, Inc. d/b/a Southern General Agency (Chisum d/b/a SGA) and Redpoint County Mutual Insurance Company (Redpoint).

Waiver

Chisum d/b/a SGA and Redpoint acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Chisum d/b/a SGA and Redpoint waive 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), Chisum d/b/a SGA and Redpoint agree to this consent order with the express reservation that they do 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

Licensure and Background

1. Chisum General Agency, Inc. has held a managing general agent (MGA) license with the department under firm identification number 119277 since April 19, 2016. Chisum holds no other licenses.
2. Redpoint is a county mutual insurance company holding a certificate of authority to transact business in Texas.
3. On April 21, 2016, Redpoint appointed Chisum as one of its agents.
4. On April 26, 2016, Redpoint appointed Southern General Agency Inc. (SGA) as one of its agents. SGA holds a general lines property and casualty agent's license and a surplus lines agent's license under firm identification number 16884.
5. Redpoint is not affiliated with either Chisum or SGA.
6. On May 1, 2016, SGA wholly acquired Chisum. Chisum and SGA are affiliates.
7. On May 31, 2016, Chisum and Redpoint entered into a contract, authorizing Chisum to act as Redpoint's MGA. Redpoint is ultimately responsible for the oversight of Chisum's practices and conduct on its behalf.
8. On June 17, 2016, the department approved Chisum's use of the assumed name "Chisum General Agency, Inc. d/b/a Southern General Agency" (Chisum d/b/a SGA).

Laws Applicable to Named Driver Policies

9. 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.

10. On May 18, 2014, the department adopted amendments to 28 TEX. ADMIN. CODE § 5.204, to partially implement provisions of S.B. 1567 requiring liability insurers that write named driver policies to include the named driver disclosure in the standard proof of motor vehicle liability insurance form, i.e., the "Texas Liability Insurance Card."
11. 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, and to clarify the definition of a named driver policy.
12. Sections 1952.351 – 1952.353 of the Insurance Code [H.B. 259 (86th Leg. R.S., Thompson), eff. Sept. 1, 2019], prohibit an insurer from delivering, issuing for delivery, or renewing a named driver policy on or after January 1, 2020, unless the named driver policy is an operator 's policy. H.B. 259 also repeals Section 1952.0545 of the Insurance Code and Section 601.081(a) of the Transportation Code.

Named Driver Practices

13. On August 17, 2016, the department approved Redpoint's stand-alone named driver policy form, which Redpoint represented would be used for a program administered by SGA. The policy form contains the named driver disclosure.
14. On and after September 2, 2016, Redpoint delivered, issued for delivery, and renewed named driver policies with that form through Chisum d/b/a SGA in one, three, and six-month terms.
15. For Redpoint, Chisum d/b/a SGA accepts premium and fees for new named driver policies only online through SGA's policy processing system and customer-facing payment website. For renewals, premium and fees are accepted online, in person, by telephone, and by mail. Renewal payments are not accepted via automatic electronic funds transfer (EFT).
16. Renewal offers consist of an invoice stating the renewal premium and amount due. It also shows the named driver disclosure and instructs the insured to listen to "an important message" and sign an acknowledgement by either appearing in person at the local agent's office, logging onto SGA's payment website, or calling customer service. The invoice also includes a detachable mail-in coupon to accompany a payment by check and the address for mailing that payment.

17. SGA's policy processing system requires an agent to affirmatively tick a checkbox after playing an audio-recording for the insured. The system then requires an e-signature on the acknowledgment confirming receipt of the written disclosure and provision of the oral disclosure. The signed acknowledgment is maintained in the file. The system then proceeds to allow acceptance of payment. SGA's payment website for its customers operates in the same fashion as SGA's policy processing system for insureds seeking to make renewal payments.
18. If an insured makes the renewal payment in person or online, the agent or the website provides an audio recording of the oral disclosure. Before submitting payment, the insured e-signs the acknowledgement of the written and oral disclosures. Chisum d/b/a SGA then accepts on Redpoint's behalf payment of the insured's premium and fees at the named driver rate.
19. If an insured makes the renewal payment by telephone, the agent reads the oral disclosure to the insured, records provision, and seeks oral permission from the insured for the agent to sign the acknowledgement on the insured's behalf. If the insured orally grants permission, the agent signs the acknowledgement for the insured, and Chisum d/b/a SGA accepts on Redpoint's behalf payment of the insured's premium and fees at the named driver rate.
20. If an insured makes the renewal payment by mail, Chisum d/b/a SGA accepts on Redpoint's behalf premium and fees at the named driver rate. The agent then attempts to contact the insured by phone to obtain the signed acknowledgment. A letter is also sent requesting that the insured contact the agent.
21. Chisum d/b/a SGA accepts on Redpoint's behalf premium or fees for renewals of some named driver policies by telephone and mail without making the oral disclosure and without obtaining original or electronic signatures from insureds.

Texas Liability Insurance Cards

22. The Texas Liability Insurance Cards for Redpoint's named driver policies written through Chisum d/b/a SGA include the requisite disclosure, but it is not on the front of the card and is not conspicuous, as that term is defined in TEX. BUS. & COM. CODE § 1.201(b)(10). The disclosure's font is smaller than the surrounding text, it does not contrast with surrounding text, and is not set off by symbols or other marks that call attention to the language.

Mitigating Circumstances

23. In 2018, Redpoint, through Chisum d/b/a SGA, changed its renewal practices to accept premium and fees only in person and by telephone. This change included making monthly policies inaccessible to insureds online, and insureds with three and six-month terms can no longer make renewal payments online. Instead, insureds with three and six-month terms receive online instructions to contact their agent to make renewal payments.
24. The changes also included revisions to the renewal invoice, including adding the statement "Do Not Mail Payment In," removing the instruction to pay online, and removing the mail-in payment coupon.
25. Redpoint and Chisum d/b/a SGA represent:
 - a. they receive an average of five renewal payments by mail each week;
 - b. efforts to contact insureds that remit renewal premium without returning a signed acknowledgement are generally successful; and,
 - c. the vast majority of renewal payments are now made in person and by telephone.
26. On June 21, 2019, Redpoint filed a revised version of its Texas Liability Insurance Card for its named driver policies written through Chisum d/b/a SGA.
27. As of July 1, 2019, Redpoint had 10,689 total named driver policies written through Chisum d/b/a SGA in one, three, and six-month terms.
28. On July 19, 2019, Redpoint submitted a new policy form filing to the department to seek approval of a non-named driver policy form, application, and declarations page for use by Chisum d/b/a SGA. Redpoint intends to file new rates and underwriting guidelines for this form.
29. In an effort to settle all allegations against them, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, Chisum d/b/a SGA and Redpoint propose and voluntarily agree to run off their named driver policies as follows:
 - a. they will not write any new named driver policies after December 31, 2019;

- b. beginning January 1, 2020, they will not renew any named driver policies;
 - c. beginning on or before January 1, 2020, they will run-off all named driver policies in force by timely delivering a written notice to each insured before the named driver policy expires;
 - d. the written notice must include a statement that the named driver policy is not being renewed, but may also discuss or attribute that nonrenewal to the enactment of H.B. 259, (86th Leg. R.S., Thompson), eff. Sept. 1, 2019; and,
 - e. simultaneous with delivery of the aforementioned notice, they may also offer each insured a new, non-named driver policy using forms approved by TDI.
30. Redpoint also writes named driver policies through another MGA. Redpoint agrees to this consent order with the express acknowledgement and understanding that this consent order resolves the department's allegations against Redpoint only with respect to its named driver policies written through Chisum d/b/a SGA.

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, 912.101 – 912.152, 4005.101 – 4005.102, and 4053.151.
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. Chisum and Redpoint have knowingly and voluntarily waived all procedural rights to which they 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. Chisum d/b/a SGA and Redpoint 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 disclosure, without receiving a signed copy of the written disclosure, and failing to confirm contemporaneously in writing the provision of the oral disclosure.

5. Chisum d/b/a SGA and Redpoint violated TEX. INS. CODE § 1952.0545(d) and 28 TEX. ADMIN. CODE §§ 5.204(c)(9) and 5.208(c)(5) by failing to conspicuously identify the required disclosure on the front of Texas Liability Insurance Cards.

Order

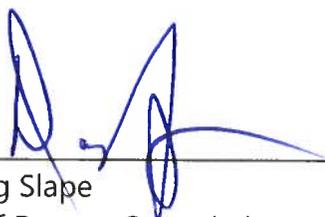
It is ordered that Chisum General Agency, Inc. d/b/a Southern General Agency and Redpoint County Mutual Insurance Company must comply with Finding of Fact No. 29.

It is further ordered that Chisum d/b/a SGA and Redpoint must pay, jointly and severally, an administrative penalty of \$7,500 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" and transmitted to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

This consent order pertains solely to the resolution of the department's allegations regarding the named driver policies written by Chisum d/b/a SGA on behalf of Redpoint. This consent order does not: resolve any allegations or violations with respect to any other pending or anticipated Enforcement investigations; address or impact other department sections' and divisions' actions, proceedings, examinations, investigations, or duties; or, limit the authority of the commissioner or the department to initiate any action with respect to any other pending or anticipated Enforcement investigation.

Kent C. Sullivan
Commissioner of Insurance

By:



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

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Commissioner's Order

Chisum General Agency, Inc. and Redpoint County Mutual Insurance Company

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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Rachel A. Cloyd, Director
Enforcement Division

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Chisum General Agency, Inc. d/b/a Southern General Agency
Affidavit

STATE OF Louisiana §

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COUNTY OF Rapides §

Before me, the undersigned authority, personally appeared Jerry Mitchell
who being by me duly sworn, deposed as follows:

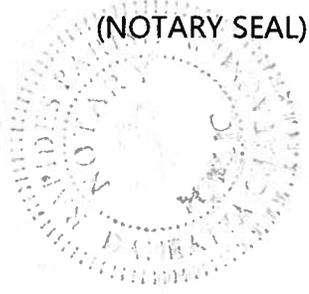
"My name is Jerry Mitchell. I am of sound mind, capable of making
this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Sr Vice President and am the authorized representative
of Chisum General Agency, Inc. d/b/a Southern General Agency. I am duly authorized by
said organization to execute this statement.

Chisum General Agency, Inc. d/b/a Southern General Agency has knowingly and
voluntarily entered into the foregoing consent order and agrees with and consents to the
issuance and service of the same by the commissioner of insurance of the state of Texas."


Affiant

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



Daneatta Chatagnier
Signature of Notary Public #064152

Daneatta Chatagnier
Printed Name of Notary Public

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Redpoint County Mutual Insurance Company
Affidavit

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

"My name is Christopher A. McClellan. 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 President & CEO, and am the authorized representative of Redpoint County Mutual Insurance Company. I am duly authorized by said organization to execute this statement.

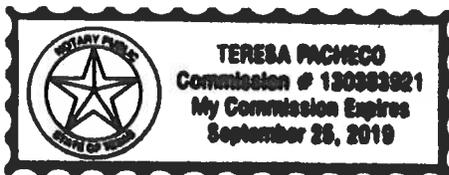
Redpoint County Mutual Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."



Affiant

SWORN TO AND SUBSCRIBED before me on September 17, 2019.

(NOTARY SEAL)





Signature of Notary Public

Teresa Pacheco

Printed Name of Notary Public