

No. 2019- 6127

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

**Date:** OCT 30 2019

**Subjects Considered:**

Pronto General Agency Ltd.  
805 Media Luna, Suite 401  
Brownsville, Texas 78520

CEM Insurance Company  
21805 Field Parkway Suite 320  
Deer Park, Illinois 60010

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

The Woodlands Insurance Company  
1201 Lake Woodlands Drive, Suite 4020  
Spring, Texas 77380-5015

Consent Order  
TDI Enforcement File Nos. 12275, 11611, 11729, and 11728

**General remarks and official action taken:**

The subject of this order is whether disciplinary action should be taken against Pronto General Agency Ltd. (Pronto), CEM Insurance Company (CEM), Redpoint County Mutual Insurance Company (Redpoint), and The Woodlands Insurance Company (TWICO).

**Waiver**

Pronto, CEM, Redpoint, and TWICO acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Pronto, CEM, Redpoint, and TWICO 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), Pronto, CEM, Redpoint, and TWICO 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

1. Under firm identification number 27896, Pronto has held a managing general agency license since 2007, and has also held a general lines property and casualty agency license since 2010.
2. CEM is a fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.
3. Redpoint is a county mutual insurance company holding a certificate of authority to transact business in Texas.
4. TWICO is a fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.
5. Pronto, CEM, Redpoint, and TWICO are not affiliated with each other.

MGA Contracts and Appointments

6. Pronto has separate MGA contracts with CEM, Redpoint, and TWICO (collectively, the insurers). Although these contracts authorize Pronto to act on behalf of the insurers, the insurers are ultimately responsible for the oversight of Pronto's practices and conduct on their behalf.
7. Pronto was appointed to write automobile insurance business on behalf of the insurers on the following effective dates:

<b>Insurer</b>	<b>Effective Date</b>
CEM	April 9, 2013
Redpoint	October 1, 2015
TWICO	May 24, 2016

8. Prior to August 2016, TWICO only wrote homeowners insurance policies. Pronto is not involved in TWICO's homeowners' business.

## Background on Laws Applicable to Named Driver Policies

9. Section 1952.0545 of the Insurance Code [S.B. 1567 (83<sup>rd</sup> 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 that liability insurers writing a named driver policy must 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, implementing disclosure requirements in S.B. 1567 applicable to both new and renewal named driver policies.
12. Sections 1952.351 – 1952.353 of the Insurance Code [H.B. 259 (86<sup>th</sup> 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 and after January 28, 2015, Pronto, delivered, issued for delivery, and renewed named driver policies in six-month terms, on behalf of the insurers beginning on the following dates for each insurer.

<b>Insurer</b>	<b>Date</b>
CEM	January 28, 2015
Redpoint	October 1, 2015
TWICO	August 30, 2016

14. The insurers' named driver policies are written using each insurer's personal automobile policy form and endorsement forms approved by the department. The insurers' policies are named driver policies when endorsed by either a Covered (or Insured) Person or Authorized Driver endorsement. The endorsements contain the requisite, named driver disclosure.
15. On behalf of the insurers, Pronto collects premium and fees for both new and renewal named driver policies in person, by telephone, mail, and online through its website.
16. Pronto's renewal practices for named driver policies written on behalf of the insurers, are:
  - a. Prior to expiration of the named driver policy, Pronto sends the insured a renewal notice which misstates the named driver disclosure. The notice includes three different one-month installment amounts:
    - a "renewal" installment at a rate without a named driver discount;
    - an installment amount for the other five months at a rate without the named driver discount; and,
    - a "renewal amount with endorsements," which is an installment at the named driver rate.
  - b. The renewal notice does not indicate how the oral disclosure is provided to the insured, but includes a telephone number for making payments, instructions to visit Pronto's website to make payment, and mailing addresses.
  - c. Pronto's software system requires the agent to affirmatively tick a checkbox to initiate a renewal at the named driver rate after upload of a signed form acknowledging provision of the oral and written disclosure. Without a ticked checkbox, the system automatically removes the named driver endorsements at the expiration of the current policy term and increases the insured's premium by removing the named driver discount.
  - d. If the insured appears in person to renew at the agent's office or if the insured attempts to renew online, Pronto properly provides the oral

disclosure, receives a signed copy of the written disclosure, and confirms contemporaneously in writing the provision of the oral disclosure.

- e. If the insured makes a payment by telephone, Pronto provides the oral disclosure, accepts premium or fees at a rate without the named driver discount, and then emails the insured the acknowledgment form to sign and return at a later date.
  - f. If the insured mails in payment, Pronto does not provide the oral disclosure, receive a signed copy of the written disclosure, or confirm contemporaneously in writing the provision of the oral disclosure. Instead, Pronto, accepts premium or fees at a rate without the named driver discount.
  - g. For renewal payment methods by phone and mail, if the signed acknowledgment is later uploaded prior to expiration of the current term, then the insured's policy is renewed as a named driver policy and premium is accounted at the named driver rate.
  - h. In any instance where the signed acknowledgment has not been uploaded prior to expiration of the current policy term, Pronto removes both the named driver discount and the named driver endorsements from the policy, regardless of whether or not that policy has reached any 12-month anniversary of its original effective date.
  - i. If the signed acknowledgment is later submitted after that removal, Pronto then re-adjusts the insured's premium to the named driver rate and then endorses the policy with the named driver endorsements.
17. The department alleges Pronto and the insurers improperly refuse to renew named driver policies.
18. Pronto, handles and processes claims for those policies as full coverage policies because they no longer contain named driver endorsements.

## Mitigating Circumstances

19. In 2018, Pronto's system was upgraded to allow for an electronic version of the disclosure acknowledgement form with electronic signatures, rather than uploading a scanned version of the acknowledgment containing wet signatures. This improved the in-person and online renewal methods.
20. As of June 30, 2019, Pronto had the following named driver policies in force on behalf of each insurer:

<b>Insurer</b>	<b>Policy Count</b>
CEM	39,156
Redpoint	15,524
TWICO	14,744

21. In an effort to settle all allegations against them, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, Pronto and the insurers 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, (86<sup>th</sup> 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.
22. 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 Pronto.

### 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, 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 § 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Pronto, CEM, Redpoint, and TWICO 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 intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Pronto, CEM, Redpoint, and TWICO violated TEX. INS. CODE § 551.106(b) by refusing to renew named driver policies written for a term of less than one year, when those policies had not reached any 12-month anniversary of the original effective dates of those policies.

### Order

It is ordered that Pronto General Agency Ltd., CEM Insurance Company, Redpoint County Mutual Insurance Company, and The Woodlands Insurance Company must comply with Finding of Fact No. 21.

It is further ordered that Pronto CEM, Redpoint, and TWICO must pay an administrative penalty totalling \$49,000 within 30 days from the date of this order. The penalty is assessed as follows:

Pronto and CEM must jointly and severally pay \$28,000.

Pronto and Redpoint must jointly and severally pay \$10,500.

Pronto and TWICO must jointly and severally pay \$10,500.

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.

2019- 6127

Commissioner's Order  
Pronto General Agency Ltd., *et al.*  
Page 8 of 13

This consent order pertains solely to the resolution of the department's allegations regarding the named driver policies written by Pronto on behalf of CEM, Redpoint, and TWICO. 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

2019- 6127

Commissioner's Order  
Pronto General Agency Ltd., *et al.*  
Page 9 of 13

Recommended and reviewed by:



Leah Gillum, Associate Commissioner  
Enforcement Section



Rachel A. Cloyd, Director  
Enforcement Section

Approved as to form and content:



Hector De Leon  
De Leon, Washburn & Ward, P.C.

2019- 6127

Commissioner's Order  
Pronto General Agency Ltd., et al.  
Page 10 of 13

Pronto General Agency Ltd.  
**Affidavit**

STATE OF TEXAS §  
§  
COUNTY OF CAMERON §

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

"My name is Jorge Barcena. 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, and am the authorized representative of Pronto General Agency Ltd. I am duly authorized by said organization to execute this statement.

Pronto General Agency Ltd. 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."

Bianca  
Affiant

SWORN TO AND SUBSCRIBED before me on Sept 11, 2019.

(NOTARY SEAL)



Lorie M. Sanders  
Signature of Notary Public

LORIE M. SANDERS  
Printed Name of Notary Public

2019- 6127

Commissioner's Order  
Pronto General Agency Ltd., et al.  
Page 11 of 13

CEM Insurance Company  
**Affidavit**

STATE OF Illinois §  
§  
COUNTY OF Lake §

Before me, the undersigned authority, personally appeared Matthew C. Wagner,  
who being by me duly sworn, deposed as follows:

"My name is Matthew C. Wagner. 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 & General Counsel, and am the authorized representative of  
CEM Insurance Company. I am duly authorized by said organization to execute this  
statement.

CEM 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."

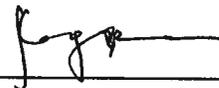


Affiant

SWORN TO AND SUBSCRIBED before me on September 11, 2019.

(NOTARY SEAL)



  
\_\_\_\_\_  
Signature of Notary Public  
Jennifer K. Younger  
\_\_\_\_\_  
Printed Name of Notary Public

*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 & Chief Executive Officer, 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 10, 2019.

(NOTARY SEAL)

  
Signature of Notary Public

Teresa Pacheco

2019- 6127

Commissioner's Order  
Pronto General Agency Ltd., et al  
Page 13 of 13

The Woodlands Insurance Company  
Affidavit

STATE OF Texas §

COUNTY OF Montgomery §

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

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

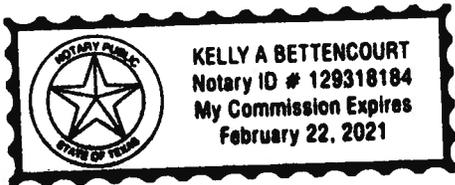
I hold the office of CUO, and am the authorized representative of The Woodlands Insurance Company. I am duly authorized by said organization to execute this statement.

The Woodlands 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."

Jerry Mackey  
Affiant

SWORN TO AND SUBSCRIBED before me on 9/11, 2019.

(NOTARY SEAL)



Kelly A. Bettencourt  
Signature of Notary Public  
Kelly A. Bettencourt  
Printed Name of Notary Public