

No. 2020-6355

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

Date: 06/02/2020

Subject Considered:

Amica Mutual Insurance Company
PO Box 6008
Providence, Rhode Island 02940-6008

Consent Order
TDI Enforcement File No. 24132

General remarks and official action taken:

State law requires a clear, conspicuous notice at least 30 days in advance when an insurer offers a renewal policy that reduces coverage. Although Amica Mutual Insurance Company provided its policyholders notice of a reduction in roof coverage in its Texas homeowners' policies, the notice was not conspicuously placed. Amica also failed to timely update its rating information and underwriting guidelines to notify the Texas Department of Insurance (TDI) of the change and used incorrect dates on roof age to calculate premium discounts for some policyholders. Amica has agreed to pay restitution and a \$120,000 administrative penalty.

Waiver

Amica acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Amica waives all of these rights, and any other applicable procedural rights, as to the matters resolved by this order, in consideration of the entry of this consent order.

Pursuant to TEX. INS. CODE § 82.055(b), Amica 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.

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Findings of Fact

1. Amica is a foreign fire and casualty insurance company that holds a certificate of authority to transact business in Texas.

Notice of Material Change

2. Section 551.1055 of the Texas Insurance Code prohibits an insurer from using an endorsement or policy provision that makes a material change to a covered policy unless the insurer provides the insured timely written notice with an explanation of the material change that is conspicuous, clearly indicates each material change to the policy, and is written in plain language. A material change reduces coverage, changes coverage conditions, or changes the duties of the insured.
3. Before November 1, 2019, most Amica Texas homeowners' policies had replacement cost coverage for damage to roof surfacing caused by windstorm and/or hail.
4. Beginning November 1, 2019, Amica began renewing Texas homeowners' policies with a mandatory endorsement that limited loss settlement to actual cash value (ACV) for roof surfacing when damage was caused by windstorm or hail. Amica also attached the mandatory endorsement to new homeowners' policies written after November 1, 2019.
5. The conversion of roof damage coverage from replacement cost to actual cash value is a material change to a policy.
6. The notices Amica sent to policyholders renewing between November 1, 2019, and March 31, 2020 (Original Notices), explained the change from replacement cost to ACV and included a bold, all-caps heading entitled "IMPORTANT NOTICE REGARDING YOUR HOMEOWNERS POLICY COVERAGE." However, the Original Notices were not conspicuously placed in the renewal packet. In samples reviewed by TDI, the Original Notices were on pages 14, 18, and 23 of the renewal offers.
7. During that timeframe, 18,861 policyholders who previously had replacement cost coverage received the Original Notices at renewal when the mandatory ACV endorsement was added to their policy.

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8. On February 29, 2020, in cooperation with and at the request of TDI, Amica began issuing a revised notice for policyholders renewing on and after April 1, 2020. The revised notice appeared on the first page of the renewal packet. Amica also sent the revised notice to the policyholders who renewed between November 1, 2019, and March 31, 2020, and who had previously received the Original Notices.
9. Amica agrees to review all claims received for roof damage caused by windstorm and/or hail with a date of loss from November 1, 2019, through March 30, 2020 on HO3 and HO5 homeowners' policies it renewed in Texas from November 1, 2019, through March 31, 2020, where the policy previously had replacement cost coverage and renewed with the mandatory ACV endorsement (the Subject Claims). Amica agrees to reimburse policyholders the otherwise non-recoverable depreciation amounts that Amica was permitted to withhold under the mandatory ACV Endorsement (Non-Recoverable Depreciation) for the Subject Claims that are accepted by Amica as otherwise valid payable claims. Reimbursement of any Non-Recoverable Depreciation will be subject to the policyholder's provision to Amica of proof of roof replacement and a cost that exceeded the prior ACV payment.

Roof Age Notices

10. For renewals of homeowners' policies beginning November 1, 2019, Amica began providing a new roof age premium discount to Texas policyholders with roofs that are less than 10 years old. For renewals beginning November 1, 2019, through March 31, 2020, the roof age on record with Amica was identified on the declarations page.
11. Before implementing its new roof age discount, Amica represents it did not possess systematically reliable or readily accessible roof age data for its Texas policyholders. As a result, Amica engaged a third-party vendor to provide data related to the roof age for its policies. Amica updated all policies with the vendor data.
12. Amica included notice of the new roof age discount in the renewal notices beginning November 1, 2019, but due to a programming error, policyholders renewing in December 2019 and January 2020 did not receive the notice in their renewal offers. Amica sent a separate mailing to those policyholders in December

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2019. The notice described the discount and requested policyholders contact Amica if they believed their stated roof age was incorrect.
13. For renewals beginning November 1, 2019, Amica applied the roof age discount to all Texas policyholders who were eligible based on the roof age estimate provided by the vendor. In certain instances, unless corrected by the policyholder, the vendor data may have resulted in some policyholders not receiving a discount based on the actual age of the roof.
 14. At TDI's request, Amica revised the roof age notice to include the roof age on record in the text of the notice. The revised notice will be included in policies renewing on and after July 1, 2020. The revised notice has also been sent to the policyholders who renewed between November 1, 2019, and June 30, 2020.
 15. Amica represents that it has provided the roof age discount to eligible policyholders who contacted Amica and provided the requested documentation to correct their roof age and will continue to do so for all Texas homeowners' policy renewals so long as Amica's roof age discount remains in place. Additionally, Amica represents it will search its Texas homeowners' policy records to identify current Amica policyholders who have had roof losses resulting in a roof replacement from November 1, 2009, to April 1, 2020, and have provided post-claim documentation to Amica indicating their roof was replaced. For those Texas policyholders, Amica will update the roof age information and issue account credits or company checks to policyholders eligible for the roof age discount by September 30, 2020.
 16. Amica represents it recently instituted a manual process to update the roof age when there is a roof loss that results in a roof replacement.

Rating Information

17. Section 2251.101 of the Texas Insurance Code requires an insurer to file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner.
18. On June 26, 2019, Amica made a rate filing (SERFF No. AMMA-131958782) that included rating information related to the ACV endorsement, but did not include certain supplementary rating information, specifically, a rate rule that correctly

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reflected that the ACV endorsement is mandatory in Texas. The complete rate rule filing was required on or before November 1, 2019, when Amica began using the mandatory ACV endorsement in Texas.

19. Amica made a rate rule filing on January 29, 2020, to revise the language in its earlier rate rule filing to reflect that the ACV endorsement was mandatory (SERFF No. AMMA-132240803).

Underwriting Guidelines

20. Section 38.002 of the Texas Insurance Code requires an insurer to file with TDI a copy of the insurer's underwriting guidelines. Updates to the guidelines must be filed no later than 10 days after the change pursuant to 28 TEX. ADMIN. CODE § 5.9342.
21. Amica's updated underwriting guidelines were required to be filed on November 10, 2019. Amica made the updated filing on January 31, 2020.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 38.002, 82.051 – 82.055, 84.021– 84.044, 551.1055, 801.052–801.053, and 2251.101.
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. Amica 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. Amica violated TEX. INS. CODE § 551.1055(c)(1) by failing to provide policyholders with a conspicuously placed notice of a material change in renewal offers.

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5. Amica violated TEX. INS. CODE § 2251.101 by failing to timely file supplementary rating information.
6. Amica violated 28 TEX. ADMIN. CODE § 5.7008 by failing to retain certain underwriting information.
7. Amica violated TEX. INS. CODE § 38.002 and 28 TEX. ADMIN. CODE § 5.9342 by failing to timely file revised underwriting guidelines.
8. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct Amica to make complete restitution to each policyholder affected by the violations.

Order

It is ordered that Amica pay an administrative penalty of \$120,000 within 30 days of 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 Insurance, Attn: Enforcement Division, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

Amica is further ordered to comply with the agreements made in the Findings of Fact above and with the following:

- a. Amica must identify all renewal homeowners' policies that it issued in Texas with effective dates from November 1, 2019, through March 31, 2020, where the policy previously had replacement cost coverage for roof damage caused by windstorm and/or hail and renewed with the mandatory ACV endorsement (the "Review Period").
- b. For each policy identified in the Review Period, Amica must identify all claims received for roof damage caused by windstorm and/or hail with a date of loss from November 1, 2019 through March 30, 2020 ("Relevant Claim Period").
- c. For each policy with a claim during the Relevant Claim Period where the policyholder was paid ACV, Amica must contact the policyholder for evidence of roof replacement unless already provided to Amica. If the policyholder provides acceptable evidence of roof replacement and the replacement cost exceeded the prior ACV payment, Amica must pay to the

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policyholder the Non-Recoverable Depreciation that Amica has withheld or could have withheld under the mandatory ACV endorsement. That amount is the Restitution Amount.

- d. Amica must pay (1) the Restitution Amount together with (2) interest, if the claim is more than 60 days old at the time Amica pays the Restitution Amount. Amica must pay these sums in the form of a company check or account credit to each policyholder identified in the Review Period whose claim fell within the Relevant Claim Period (the "Qualifying Policyholders"). The rate of interest is 5 percent per annum.
- e. For amounts due under paragraph (d) above, Amica must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders on or before the later of (1) August 1, 2020, or (2) within 60 days after a claim is accepted by Amica and the policyholder provides acceptable evidence of roof replacement.
- f. Any restitution checks that are returned to Amica 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.*
- g. On or before September 1, 2020, Amica 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. Restitution Amount;
 - vii. dollar amount of simple interest;
 - viii. total of Restitution Amount and interest;
 - ix. date(s) of mailing of restitution check or credits;

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- x. the total sum of all Restitution Amounts;
 - xi. the total sum of all simple interest; and,
 - xii. the total sum of all restitution paid (total Restitution Amounts plus the total of the simple interest).
- h. Amica must pay restitution in the form of a check or premium credit to those Texas homeowners' policyholders whose roof age was corrected as agreed above in Finding of Fact No. 15 and who have not been provided a roof age discount as of the date of this Order. On or before November 15, 2020, Amica must report the restitution paid to those 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. renewal date of the policy;
 - v. restitution amount;
 - vi. date(s) of mailing of restitution check or credits; and
 - vii. the total sum of all restitution amounts.
- i. Amica must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

This consent order pertains solely to the resolution of the department's allegations against Amica regarding the conduct specifically identified above. This consent order does not: resolve any allegations or violations with respect to any other pending or anticipated Enforcement investigations; address or affect 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.

DocuSigned by:

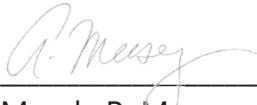
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Kent C. Sullivan
Commissioner of Insurance

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Recommended and reviewed by:



Mandy R. Meesey, Associate Commissioner
Enforcement Division

