

No. **2023-8183**

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

Date: 9/5/2023

Subjects Considered:

Allstate Fire and Casualty Insurance Company
Allstate Texas Lloyd's
Allstate Vehicle and Property Insurance Company
Allstate Indemnity Company
3075 Sanders Road Suite H1A
Northbrook, Illinois 60062-7127

Consent Order
TDI Enforcement File Nos. 29342, 29343, 29344, and 29345

General remarks and official action taken:

This is a consent order with Allstate Fire and Casualty Insurance Company, Allstate Texas Lloyd's, Allstate Vehicle and Property Insurance Company, and Allstate Indemnity Company (collectively, Respondents). The department alleges that Allstate Indemnity Company considered claims not paid or payable in calculations of premium for its mobile home program. Additionally, the Respondents considered claims resulting from losses covered by natural causes in calculations of premium and Allstate Fire and Casualty Insurance Company used non-chargeable violations in calculations of automobile premium and improperly used an applicant's lack of prior insurance to determine personal automobile rates. The Respondents have agreed to pay restitution to the affected policyholders, as applicable, and a \$125,000 administrative penalty.

Waiver

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

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Findings of Fact

1. Allstate Fire and Casualty Insurance Company, Allstate Vehicle and Property Insurance Company, and Allstate Indemnity Company are all foreign fire and casualty companies holding certificates of authority in Texas.
2. Allstate Texas Lloyd's holds a certificate of authority to transact the business of insurance in Texas.

Premium Surcharge for Claims Not Paid or Payable

3. TEX. INS. CODE § 551.107(b)(2) prohibits an insurer from assessing a premium surcharge at renewal for a claim that is filed but not paid or payable under the policy.
4. 28 TEX. ADMIN. CODE § 21.1004(c)(2) prohibits a rating plan regarding residential insurance from assigning any premium consequence through a premium surcharge or claims free program based on claims resulting from claims not paid or payable.
5. During the review of a mobile homeowners rate filing for Allstate Indemnity Company (ALSE-133071572), the department learned that the company had been treating non-paid claims filed with other carriers as chargeable.
6. Allstate Indemnity Company submitted a filing on September 13, 2022, to be effective October 10, 2022, which eliminated the premium consequence for claims that are not paid or payable.
7. Allstate Indemnity Company represents that from February 2014 to October 2022, 181 policies were affected by the rating violation. Allstate Indemnity Company represents it paid restitution, including interest, totaling \$21,040.93 to the affected policyholders.

Premium Surcharge for Claims Resulting from Natural Causes

8. TEX. INS. CODE § 551.107(b)(1) prohibits an insurer from assessing a premium surcharge at renewal for claims resulting from a loss covered by natural causes.

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9. 28 TEX. ADMIN. CODE § 21.1004(c)(1) prohibits a rating plan regarding residential insurance from assigning any premium consequence through a premium surcharge or claims free program based on claims resulting from a loss caused by natural causes.
10. During the review of three separate rate filings to update the claim rating rules for owner occupied (ALSE-133072936), condo (ALSE-133071504), and mobile home programs (ALSE-133071572), the department learned that the Respondents were updating the claim rating rules to add catastrophe claims to the list of non-chargeable claims. The update was prompted when the Respondents learned that winter storm Uri claims had been mis-categorized as chargeable claims.
11. Respondents represent that during winter storm Uri, they saw an increase in the use of their self-service app. The Respondents noted that many policyholders with water damage from the freeze (e.g., burst pipes) were entering "water" instead of "freeze" as the cause of loss when filing their claims through the app. Water claims would be treated as chargeable at renewal when they were in fact non-chargeable weather claims.
12. Respondents represent they implemented a manual process for reviewing claims submitted via the app. If the claim selection made by the policyholder made the claim chargeable when it should have been non-chargeable, the Respondents corrected the mistake, re-rated the policy, and refunded the insured, if appropriate. Respondents also represent they updated the app to include language and additional steps to help guide the insured in making selections.
13. Respondents represent only four policies had a premium difference due to incorrect reporting via the app. Respondents refunded the affected policyholders a total of \$1,479.32.

Use of Non-Chargeable Violations in Calculation of Premium

14. Section 1953.051(a) of the Texas Insurance Code prohibits a rating plan for automobile insurance from assigning a rate consequence to, or otherwise, causing premiums to be increased because of a charge or conviction for a violation of Subtitle C, Title 7, Transportation Code (non-chargeable traffic violations).
15. During the review of a private passenger automobile rate filing for Allstate Fire and Casualty Insurance Company (ALSE-133211358), the department found that the

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company was assigning a rate consequence, or otherwise causing premiums to be increased by using non-chargeable traffic violations.

16. Allstate Fire and Casualty Insurance Company's rating plan included a rating variable called the "certified risk surcharge." The rating variable applied a surcharge for insureds who required a financial responsibility certificate (SR-22) to be filed with the state of Texas.
17. The rating factors for the certified risk surcharge varied by the violation leading to the insured's SR-22 requirement, with some violations receiving a higher rating factor (and larger surcharge) than others. Certain rating factors were associated with violations of Subtitle C, Title 7, Transportation Code.
18. After correspondence with the department, Allstate Fire and Casualty Insurance Company made rate filing ALSE-133398926 effective September 26, 2022, for new business and November 10, 2022, for renewal business to address the violation.
19. Allstate Fire and Casualty Insurance Company represents that it is unable to determine which policies were assigned illegal surcharges during the period of noncompliance.

Rating Error – Lack of Prior Insurance

20. Texas law, under 28 TEX. ADMIN. CODE § 5.401(b), prohibits insurers from using an applicant's lack of prior insurance in determining the appropriate rate for private passenger automobile liability insurance where the applicant has not been operating an uninsured motor vehicle in the state for more than 30 days during the 12 months immediately preceding the date of the application.
21. Allstate Fire and Casualty Insurance Company's personal automobile rate filing considers a policyholder's prior insurance, including any lapse in insurance over 30 days, in the company's tier placement. This affected the final premium a policyholder paid.
22. After objections from department staff in filing ALSE-133354225, Allstate Fire and Casualty Insurance Company represented it will make a new filing that complies with the Texas Insurance Code and Texas Administrative Code.

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23. Allstate Fire and Casualty Insurance Company represents it doesn't have data to identify applicants whose lapse in insurance coverage is not associated with unlawful vehicle operation.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 551.107, 801.051-801.053, 941.001-941.103, 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. Respondents 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. Allstate Indemnity Company violated TEX. INS. CODE § 551.107(b)(2) and 28 TEX. ADMIN. CODE § 21.1004(c)(2) by assigning a premium consequence for claims not paid or payable.
5. Allstate Fire and Casualty Insurance Company, Allstate Texas Lloyd's, Allstate Vehicle and Property Insurance Company, and Allstate Indemnity Company violated TEX. INS. CODE § 551.107(b)(1) and 28 TEX. ADMIN. CODE § 21.1004(c)(1) by assigning a premium consequence for claims resulting from a loss covered by natural causes.
6. Allstate Fire and Casualty Insurance Company violated TEX. INS. CODE § 1953.051(a) by assigning a rate consequence for non-chargeable violations.
7. Allstate Fire and Casualty Insurance Company violated 28 TEX. ADMIN. CODE § 5.401 by assigning a rate consequence to an applicant's lack of prior insurance without having specific evidence that the applicant had been operating an uninsured motor vehicle in the state for more than 30 days.

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8. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct the Respondents to make complete restitution to each policyholder impacted by the violations.

Order

1. It is ordered that Respondents pay an administrative penalty of \$125,000, jointly and severally, within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.
2. It is further ordered that, to the extent it has not already done so, Allstate Indemnity Company must comply with the following:
 - a. Allstate Indemnity Company must identify all mobile home policies issued or renewed in Texas with effective dates from February 10, 2014 (new business) and April 26, 2014 (renewal business), through October 9, 2022 (the Review Period).
 - b. For each policy in the Review Period, Allstate Indemnity Company must calculate the Corrected Premium without assigning a premium consequence for a claim that is filed but not paid or payable under the policy. If the premium charged was more than the Corrected Premium, the difference constitutes the Overcharge.
 - c. Allstate Indemnity Company must pay the 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 or account credit must include both the dollar amount of the Overcharge plus simple interest due on the Overcharge. The rate of interest is 5% per annum.
 - d. Allstate Indemnity Company must mail the restitution checks or issue the account credits to the Qualifying Policyholders by October 15, 2023.
 - e. Any restitution checks that are returned to Allstate Indemnity Company 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

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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.*

- f. On or before January 15, 2024, Allstate Indemnity Company 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).
3. It is further ordered that, to the extent they have not already done so, Respondents must comply with the following:
- a. Respondents must identify all owner occupied, condo, and mobile home policies issued or renewed in Texas with effective dates from February 21, 2021, through December 13, 2021 (the Review Period).
 - b. For each policy in the Review Period, the Respondents must calculate the Corrected Premium without assigning a premium consequence for claims resulting from a loss caused by natural causes. If the premium charged was more than the Corrected Premium, the difference constitutes the Overcharge.
 - c. The Respondents must pay the 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 or account credit must include both the dollar amount of the Overcharge

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plus simple interest due on the Overcharge. The rate of interest is 5% per annum.

- d. The Respondents must mail the restitution checks or issue the account credits to the Qualifying Policyholders by October 15, 2023.
 - e. Any restitution checks that are returned to the Respondents 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.*
 - f. On or before January 15, 2024, the Respondents 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. issuing company;
 - iii. policyholder name;
 - iv. policyholder address;
 - v. effective date of the policy;
 - vi. expiration date of the policy;
 - vii. amount of Overcharge;
 - viii. dollar amount of simple interest;
 - ix. amount of Overcharge and interest;
 - x. date(s) of mailing of restitution check or credits;
 - xi. the total sum of all Overcharges;
 - xii. the total sum of all simple interest; and
 - xiii. the total sum of all restitution paid (total Overcharges plus the total of the simple interest).
4. It is further ordered that Allstate Fire and Casualty Insurance Company make a new filing that complies with 28 TEX. ADMIN. CODE § 5.401, as agreed in Finding of Fact No. 22, on or before October 1, 2023.
 5. Respondents must send all submissions required under the terms of this order by email to EnforcementReports@tdi.texas.gov.

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DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Fraud and Enforcement Division



Mandy Meesey, Associate Commissioner
Enforcement

