

No. **2021-6930**

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

**Date: 07/20/2021**

**Subject Considered:**

MGA Insurance Company, Inc.  
P.O. Box 199023  
Dallas, Texas 75219-9023

Consent Order  
TDI Enforcement File No. 26253

**General remarks and official action taken:**

This is a consent order with MGA Insurance Company, Inc. (MGA). MGA considered non-chargeable violations in calculations of premiums. MGA has agreed to pay restitution to the affected policyholders and a \$20,000 administrative penalty.

**Waiver**

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

**Findings of Fact**

1. MGA is a domestic fire and casualty company that holds a certificate of authority to transact business in Texas.

**Use of Non-chargeable Violations in Calculations of Premiums**

2. 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

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premiums to be increased because of a charge or conviction for a violation of Subtitle C, Title 7, Transportation Code (non-chargeable traffic violations).

3. During the review of a private passenger automobile rate filing, the department found that MGA was assigning a rate consequence, or otherwise causing premiums to be increased by using non-chargeable traffic violations.
4. MGA was assigning premium surcharges according to MGA's table of chargeable violations in the rate filing, but that table also contained non-chargeable violations.
5. MGA determined that it first surcharged a policy for non-chargeable traffic violations in May 2009.
6. MGA represents that from May 2009 to the date of this order, 757 policyholders were affected by a premium consequence based on MGA's use of non-chargeable traffic violations. The estimated overcharges are \$101,176.15.
7. After correspondence with the department, MGA made rate filing S683987 effective on October 2, 2020, for new business and on November 16, 2020, for renewal business, to address the above referenced violations.
8. MGA represents that it has begun the process of issuing refunds, with interest, to the impacted policyholders.
9. MGA was cooperative and responsive to the department during this investigation.

## Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021 – 84.051, 801.052-801.053 and 1953.051, and TEX. GOV'T CODE §§ 2001.051-2001.178.
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. MGA 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

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hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.

4. MGA violated TEX. INS. CODE § 1953.051(a) by assigning a rate consequence for non-chargeable violations.
5. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct MGA to make complete restitution to each policyholder harmed by the rate violations.

### Order

It is ordered that MGA Insurance Company, Inc. must comply with the following:

- a. MGA must identify all automobile insurance policies with effective dates from May 2009 through November 16, 2020 (the "Review Period").
- b. For each policy in the review period, MGA must calculate the Corrected Premium without assigning a rate consequence or premium increase because of a non-chargeable violation.
- c. For each policy in the Review Period, MGA must calculate and determine whether the dollar amount of premium charged for each policy is less than or more than the Corrected Premium. If the premium charged was more than the Corrected Premium, the different constitutes the Overcharge.
- d. MGA 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 company check or account credit must include the dollar amount of Overcharge, plus simple interest in the amount of five percent per annum.
- e. MGA must mail the checks or issue the account credits to the Qualifying Policyholders on or before August 1, 2021.
- f. Any restitution checks that are returned to MGA 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.*

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*seq.*, and 74.001 *et. seq.* MGA must copy the department on any correspondence pertaining to presumed abandoned funds that is sent to the comptroller.

- g. On August 15, 2021, MGA must report the restitution paid to the Qualifying Policyholders by submitting a 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. MGA must send all submissions under the terms of this order by email to: EnforcementReports@tdi.texas.gov

It is further ordered that MGA Insurance Company, Inc. pay an administrative penalty of \$20,000 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, Division 60851, AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.

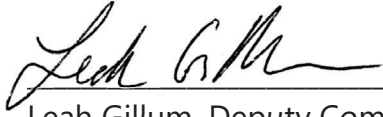
Commissioner of Insurance

By:    
C77A87C8C21B435...  
Doug Slape  
Chief Deputy Commissioner  
TEX. GOV'T CODE § 601.002  
Commissioner's Order No. 2018-5528

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Recommended and reviewed by:



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Leah Gillum, Deputy Commissioner  
Enforcement Division



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Sarah White, Staff Attorney  
Enforcement Division

Affidavit

STATE OF Texas §

COUNTY OF Dallas §

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

"My name is Kevin Williams. 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 Assistant Vice President and am the authorized representative of MGA Insurance Company, Inc. I am duly authorized by said organization to execute this statement.

MGA Insurance Company, Inc. 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."

KW  
Affiant

SWORN TO AND SUBSCRIBED before me on July 8, 2021.

(NOTARY SEAL)



Kara Durden  
Signature of Notary Public

Kara Durden  
Printed Name of Notary Public