

No. 3854

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: MAR 10 2015

Subject Considered:

STATE FARM LLOYDS
P.O. Box 799100
Dallas, Texas 75379-9100

CONSENT ORDER
TDI DOCKET NO. 2562-A

General remarks and official action taken:

The commissioner of insurance considers the initial rates for residential property insurance policies that State Farm Lloyds, which holds a certificate of authority issued by the department, filed under former article 5.26-1 of the Texas Insurance Code and used for policies it issued and renewed with effective dates during the period from September 7, 2003, through July 31, 2008 (not including new policies with effective dates from June 1, 2008, through July 31, 2008).

The department, State Farm Lloyds, and OPIC compromise and settle all issues raised by the department and OPIC with respect to such rates and agree to the entry of this consent order. State Farm Lloyds does not admit that its rates were excessive or unreasonable for any period of time, and enters into this consent order to settle all claims against it and to avoid the expense and uncertainty of continued litigation.

The parties agree that the following issues are still in dispute: 1) the existence and amount of premium overcharges by State Farm Lloyds to its policyholders between September 7, 2003, and July 31, 2008; and 2) the proper rate of interest to apply to the agreed premium refunds. In order to resolve the uncertainty and expense of ongoing litigation, the parties agree to settle these disputes. Because this is an informal disposition based on a mutual settlement of disputed issues, the premium refund amounts and related interest stated in this consent order have no precedential effect and are not binding on the parties in any other future dispute, proceeding, hearing, or court action.

WAIVER

State Farm Lloyds acknowledges that the Texas Insurance Code and other applicable law provide certain rights related to this proceeding. State Farm Lloyds waives all of these rights, including any applicable procedural rights, in consideration of the entry of this consent order.

FINDINGS OF FACT

1. TDI issued a certificate of authority to transact the business of insurance to State Farm Lloyds on April 21, 1983, pursuant to TEX. INS. CODE chs. 801 and 941.
2. This matter has a long procedural history dating back to August 8, 2003, when TDI notified State Farm Lloyds that its initial rates for residential property insurance policies (i.e., homeowners, tenant, and condominium owners policies, referred to collectively as "homeowners") filed under former article 5.26-1 of the Texas Insurance Code were not reasonable for the risks to which they applied and must be modified. The procedural history through November 16, 2009, is set out in detail in Commissioner's Order No. 09-0927 (the 2009 Order), which was issued following the rehearing on remand pursuant to *Geeslin v. State Farm Lloyds*, 255 S.W.3d 786 (Tex. App.—Austin 2008, no pet.) (State Farm Lloyds I).
3. On November 26, 2014, the Third Court of Appeals issued its decision in *State Farm Lloyds' appeal of the district court's judgment affirming the 2009 Order in State Farm Lloyds v. Rathgeber*, No. 03-11-00322-CV, 2014 WL 5845181 (Tex. App.—Austin Nov. 26, 2014, no pet. h.) (State Farm Lloyds IV). The Third Court of Appeals affirmed the 2009 Order in part, with respect to the commissioner's rate determination for homeowners policies issued or renewed from September 7, 2003, through August 31, 2004 (the Initial Period). The decision reversed the 2009 Order in part, with respect to the commissioner's rate determination for homeowners policies issued or renewed from September 1, 2004, through July 31, 2008, excluding new policies with effective dates from June 1, 2008, through July 31, 2008 (the Subsequent Period), and the commissioner's award of post-order interest at the rate specified in TEX. INS. CODE ch. 2254 (former art. 5.144) for the Initial Period. The Third Court of Appeals remanded the issues of the appropriate rate and reductions for the Subsequent Period and the ultimate determination of refunds and interest awards to the commissioner for further proceedings.
4. On February 27, 2015, all parties to *State Farm Lloyds IV*—the commissioner, TDI, State Farm Lloyds, and OPIC—entered into a Settlement Agreement.
5. Pursuant to the parties' Settlement Agreement, the parties filed their Joint Motion to Grant Review, Set Aside Judgments, Vacate Administrative Order, and Remand for Entry of Agreed Order with the Texas Supreme Court, which subsequently granted the motion and remanded the case to the commissioner for entry of this consent order.
6. The entry of this consent order renders moot the disciplinary action TDI filed against State Farm Lloyds at the State Office of Administrative Hearings in SOAH Docket No. 454-05-4923. The SOAH case has been abated since July 28, 2005. The rates at issue in the SOAH case include the same rates that are the subject of this consent order. TDI agrees to file a motion to dismiss the SOAH case with prejudice promptly upon entry of this consent order.
7. This consent order is a final resolution of *State Farm Lloyds I*, *State Farm Lloyds IV*, TDI Docket No. 2562-A, and SOAH Docket No. 454-05-4923.

8. TDI and OPIC maintain the rates filed by State Farm Lloyds on June 26, 2003, were excessive for the risks to which they applied according to the rate standards set out in TEX. INS. CODE former arts. 5.26-1 and 5.142; and TEX. INS. CODE § 2251.051-2251.052.
9. State Farm Lloyds agrees to the entry of this consent order with the express reservation that State Farm Lloyds does not admit that its rates were excessive at any time or that its use of those rates was in violation of any provision of the Texas Insurance Code or any other statute, law, or rule.
10. The department agrees to the entry of this consent order with the express reservation that this order does not constitute approval of the assumptions and methodologies used by State Farm Lloyds in any rate filing and does not limit TDI's authority to review the reasonability of rate indications, rate selections, assumptions, or methodologies contained in any future rate filings or the commissioner's authority to disapprove a rate based on such a review. In addition, the entry of this consent order does not constitute TDI's agreement that the order reflects: 1) the actual amount of premium overcharges by State Farm Lloyds to its policyholders from September 7, 2003, through July 31, 2008; or 2) the proper rate of interest to apply to premium refunds. Numbers listed in this consent order are the result of a mutual compromise and there is no agreement by TDI that these numbers are correct. This order does not limit the commissioner's authority to administer and enforce the Texas Insurance Code and other laws granting jurisdiction or applicable to TDI or the commissioner, including TEX. INS. CODE chs. 2251 and 2254.
11. OPIC agrees to the entry of this consent order with the express reservation that this order does not constitute approval of the assumptions and methodologies used by State Farm Lloyds in any rate filing and does not limit OPIC's authority to review the reasonability of rate indications, rate selections, assumptions, or methodologies contained in any future rate filings, or OPIC's ability to seek disapproval of a rate based on such a review. In addition, the entry of this consent order does not constitute OPIC's agreement that the order reflects: 1) the actual amount of premium overcharges by State Farm Lloyds to its policyholders from September 7, 2003, through July 31, 2008; or 2) the proper rate of interest to apply to premium refunds. Numbers listed in this consent order are the result of a mutual compromise and there is no agreement by OPIC that these numbers are correct. Because this is an informal disposition based on a mutual settlement of disputed issues, the amounts of premium refunds and related interest stated in this consent order have no precedential effect and are not binding on the parties in any other future dispute, proceeding, hearing, or court action.
12. The parties agree that for the purposes of settlement and entry of this consent order, State Farm Lloyds must apply the premium refund percentages in the table below to the total premium on each applicable homeowners policy issued or renewed with effective dates that fall within the time periods described below. For the period of September 1, 2007, through July 31, 2008, new policies with effective dates from June 1, 2008, through July 31, 2008, are excluded. State Farm Lloyds must apply the annual interest rates in the table below to calculate and pay simple interest on the applicable premium refund amount. The parties acknowledge that the refund and interest dollar amounts in the table below are estimates.

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Actual dollar amounts using the specified percentages and interest rates as applied to actual individual-policyholder premiums may vary slightly from the estimated total refund amount shown for each time period and the grand total in the table below.

The intent of the parties is to ensure that the actual total refund amount is as close to the estimated total refund amount of \$352,500,000 as possible. Before making refunds, State Farm Lloyds must calculate the actual total refund amount based on application of the premium refund percentages and interest rates in the table below to the actual premium data for refund-eligible policies. If the actual total refund amount as so calculated is less than \$352,150,000, then State Farm Lloyds must recalculate the premium refund percentage for the Subsequent Period. The recalculation must result in an actual total refund amount of at least \$352,500,000. If the actual total refund amount as so calculated is greater than \$352,850,000, then State Farm Lloyds may recalculate the premium refund percentage for the Subsequent Period. The recalculation must result in an actual total refund amount of at least \$352,500,000.

| Time Period | Premium Refund Percentage | Estimated Premium Refund Amount (in millions) | Annual Interest Rate | Estimated Interest Amount (in millions) | Estimated Total Refund Amount (in millions) |
|---------------------------------------|---------------------------|---|----------------------|---|---|
| Sept. 7, 2003, through Aug. 31, 2004 | 6.200% | \$ 75.7 | 5.25% | \$ 43.6 | \$119.3 |
| Sept. 1, 2004, through Aug. 31, 2005 | 2.609% | \$ 33.2 | 5.25% | \$ 17.4 | \$ 50.6 |
| Sept. 1, 2005, through Aug. 31, 2006 | 2.609% | \$ 34.7 | 9.25% | \$ 28.8 | \$ 63.5 |
| Sept. 1, 2006, through Aug. 31, 2007 | 2.609% | \$ 36.8 | 9.25% | \$ 27.1 | \$ 63.9 |
| Sept. 1, 2007, through Jul. 31, 2008* | 2.609% | \$ 33.5 | 9.25% | \$ 21.7 | \$ 55.2 |
| Grand Total | | \$213.9 | | \$138.6 | \$352.5 |

* excluding new policies with effective dates from June 1, 2008, through July 31, 2008

Note: Certain numbers in the table are rounded down for display purposes.

CONCLUSIONS OF LAW

1. The commissioner of insurance has exclusive jurisdiction over this matter pursuant to TEX. INS. CODE chs. 801, 941, 2251 and 2254; and TEX. INS. CODE former arts. 5.26-1, 5.142, and 5.144.
2. The commissioner of insurance has the authority to dispose of this matter informally, as set out in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104; and 28 TEX. ADMIN. CODE § 1.47.

3. State Farm Lloyds has waived all procedural requirements for the entry of an order in this matter, including but not limited to the issuance and service of a notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Because this Order disposes of all issues in SOAH Docket No. 454-05-4923, that case is moot and should be dismissed with prejudice.
5. This order finally resolves all disputes within the commissioner's jurisdiction that concern the rates State Farm Lloyds used and the premium it charged for residential property insurance in Texas during the period from September 7, 2003, through July 31, 2008.

The commissioner of insurance orders State Farm Lloyds to pay refunds and interest as set out in finding of fact no. 12 in the estimated total refund amount of \$352,500,000 and to use its best efforts to pay this amount as promptly as possible, but no later than September 1, 2016. State Farm Lloyds must submit a report demonstrating how it calculated the actual total refund amount pursuant to finding of fact no. 12. For policies eligible for refunds, the report must include: the actual total premiums charged for policies with effective dates in each month; the actual total premium refund amount for each month; and the actual total interest amount for each month. State Farm Lloyds must submit the report at least 15 calendar days before issuing any refund checks. State Farm Lloyds must submit the report to the Texas Department of Insurance, Attn: Ginger R. Loeffler, or her successor, Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, TX 78714-9104.

State Farm Lloyds must pay each affected policyholder by check. State Farm Lloyds must mail each refund check to the policyholder's last known address or most recently available address via first class mail. State Farm Lloyds must maintain records reflecting the date of mailing, mailing address, and amount of each refund check for a period of five years and must make these records available for inspection and review at the department's request.

The commissioner of insurance further orders that State Farm Lloyds must make additional efforts to ensure that current policyholders who are sent refund checks that are not cashed within six months of issuance, are actually paid. These efforts include State Farm Lloyds using its established procedures for following up on uncashed checks and for sending replacement checks.

The commissioner of insurance further orders that for those recipients who cannot be located, including those whose refund checks are returned as "undeliverable," and for any checks not cashed, State Farm Lloyds shall turn over the total amounts of such refund checks to the comptroller of public accounts of the State of Texas as abandoned property in accordance with the requirements of TEX. PROP. CODE §§ 72.001-75.001, *et seq.* State Farm Lloyds must submit copies of all correspondence and reports provided to the comptroller of public accounts to the Texas Department of Insurance, Attn: Ginger R. Loeffler, or her successor, Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, TX 78714-9104.

The commissioner of insurance further orders that by March 1, 2017, State Farm Lloyds must submit to the department a report demonstrating that State Farm Lloyds paid the total refund

amount by September 1, 2016. The report must include: (1) each policyholder's name, address, and policy number(s), and the total premium refund and interest amount sent to each policyholder; (2) the total number of refund checks unclaimed as of December 31, 2016, and the names of each policyholder associated with the unclaimed checks; (3) the amount and percentage of the total refund for which checks were cashed as of December 31, 2016; and (4) the amount and percentage of the total refund that was unclaimed as of December 31, 2016. State Farm Lloyds must submit this report to the Texas Department of Insurance, Attn: Ginger R. Loeffler, or her successor, Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, TX 78714-9104.

The commissioner of insurance further orders that interest will not accrue on the ordered premium refunds from March 1, 2015, to September 1, 2016 (the refund payment period), subject to any interest accrued under the temporary suspension period described below.

Temporary Suspension of Refund Payments

The commissioner of insurance further orders that to protect the interests of policyholders who may be affected by the occurrence of a catastrophic event during the refund payment period, State Farm Lloyds must comply with the following procedures to elect for the temporary suspension of refund payments:

State Farm Lloyds may elect to suspend refund payments temporarily if State Farm Lloyds' direct incurred losses from a single catastrophic event (the event) are in excess of \$1,500,000,000. For a hurricane event, State Farm Lloyds must verify its estimated direct incurred losses within seven calendar days after modeling vendors release their respective final event set that is the proxy of the actual event footprint. State Farm Lloyds must verify its estimated direct incurred losses by submitting to the department a straight average of the direct incurred losses estimated by running in-house three third-party, loss projection models: Clasic/2 V15 or Touchstone V2 by AIR Worldwide; RiskLink V13 by RMS; and RQE V15 by EQECAT, or their successive versions. All three loss projection models must exclude estimated direct incurred losses resulting from storm surge.

For other events such as severe thunderstorm, tornado, or hail, State Farm Lloyds must verify its estimated direct incurred losses by submitting to the department within 17 calendar days after the date of the event, data substantiating its estimated direct incurred losses from State Farm Financial Operations.

State Farm Lloyds must submit all data and reports required for the temporary suspension period to the Texas Department of Insurance, Attn: Ginger R. Loeffler, or her successor, Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, TX 78714-9104.

The temporary suspension period begins on the date State Farm Lloyds submits its verification for the particular type of event described above to the department.

Within 90 days from the date of the event, State Farm Lloyds must provide updated data on its direct incurred losses to the department that is consistent with the direct incurred losses established for the event in State Farm Lloyds' most recently filed or next scheduled to be filed

quarterly financial statement submitted to the department. If the company's current estimate of the direct incurred losses falls below \$1,500,000,000, the temporary suspension period terminates and the refund payment period must resume within seven calendar days of State Farm Lloyds' submission of the updated data to the department.

During the temporary suspension period, State Farm Lloyds must provide to the department with each filed quarterly financial statement an up-to-date report of losses for the event. The report must include up-to-date direct paid losses for the event and up-to-date direct incurred losses for the event and must include the ratio of direct paid losses to direct incurred losses for the event.

When State Farm Lloyds has paid 80% of its direct incurred losses for the event, the temporary suspension period terminates and the refund payment period must resume within seven calendar days of State Farm Lloyds' submission of the updated loss report to the department. State Farm Lloyds may elect to terminate the temporary suspension period at any time, and at such time the refund payment period must resume immediately.

The deadlines for payment of refunds, turnover of abandoned property, and reporting set out in this order must be extended by an amount of time equal to the temporary suspension period to account for any amount of time tolled during the temporary suspension period, if any, but the refund payment period (not including the temporary suspension period) must not exceed 18 months.

If the temporary suspension period exceeds six months and the total period (temporary suspension period plus refund payment period) exceeds 24 months, State Farm Lloyds must pay, with respect to each refund that remains unpaid after 24 months, in addition to the premium refund and interest amount determined as set out above, simple interest at the rate of 3.25% on the unpaid refund amount, for the amount of time by which the temporary suspension period exceeded six months.

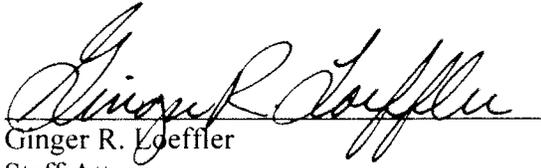


David C. Mattax
Commissioner of Insurance

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FOR THE TEXAS DEPARTMENT OF INSURANCE:



Ginger R. Loeffler
Staff Attorney
Compliance Division, Enforcement Section
Texas Department of Insurance

FOR THE TEXAS OFFICE OF PUBLIC INSURANCE COUNSEL:



Deeia Beck
Public Counsel and Executive Director
Texas Office of Public Insurance Counsel

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AFFIDAVIT

STATE OF TEXAS §

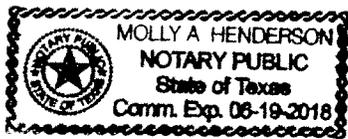
COUNTY OF Travis §

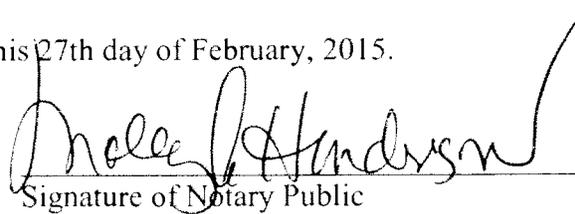
BEFORE ME, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

1. "My name is Phillip Hawkins. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated herein.
2. I hold the office of President of State Farm Lloyds, Inc., attorney-in-fact for State Farm Lloyds. I am the authorized representative of State Farm Lloyds and am duly authorized to execute this affidavit.
3. State Farm Lloyds has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the foregoing consent order by the commissioner of insurance of the State of Texas."


 Affiant

SWORN TO AND SUBSCRIBED before me on this 27th day of February, 2015.




 Signature of Notary Public