

No. 2019-5828

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

Date: JAN 03 2019

Subjects Considered:

Direct General Insurance Company
Direct General Insurance Agency, Inc.
1281 Murfreesboro Road
Nashville, TN 37217

Consent Order
TDI Enforcement File Nos. 11496, 11750 and 15594

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Direct General Insurance Company (DGIC) and Direct General Insurance Agency, Inc. (DGIA).

Waiver

DGIC and DGIA acknowledge that the Texas Insurance Code and other applicable law provide certain rights. DGIC and DGIA 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), DGIC and DGIA 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

1. DGIC is a fire and casualty company holding a certificate of authority to transact business in Texas.
2. DGIA is a general lines, limited lines, and managing general agency holding licenses to transact business in Texas.

3. DGIC and DGIA are affiliated entities wholly owned by the National General Group of companies.
4. The department conducted a market conduct examination of DGIC for the period of January 1, 2015, through December 31, 2015. The examination reviewed the sales, advertising and marketing, underwriting and rating, claims practices, and consumer complaints/inquiries of DGIC's private passenger automobile business.
5. The purpose of the examination was to verify compliance with the Texas Insurance Code, Title 28 of the Texas Administrative Code, and the Texas Automobile Rules and Rating Manual.
6. During the exam, the department found violations of the Texas Insurance Code and Texas Administrative Code in the sample of policies and claims reviewed.

Underwriting and Rating Practices Review

7. The examination reviewed DGIC's issued policies to determine accuracy of rating, use of proper forms and endorsements, timely handling of transactions and policy service requests, adherence to consistent and nondiscriminatory underwriting practices, and compliance with Texas law.
8. DGIC overcharged premiums by a total of \$1,023 due to the use of an incorrect Driver Age X Vehicle factor when calculating policy premiums, thus not correctly using the rate filed with the department.

Claims Practices

9. The examination reviewed DGIC's claim files for compliance with policy provisions, timeliness and accuracy of payments, supporting documentation, general claim handling, and legal compliance. Sampled claims included paid claims, denied or closed without payment claims, pending and litigated claims.
10. A review of claims found that DGIC:
 - failed to timely notify a claimant in writing of the acceptance or rejection of a claim;
 - failed to timely pay a claim;
 - failed to timely notify the insured of a settlement offer and a settlement in writing;

- allowed a person to represent himself as an adjuster in this state without holding the appropriate license;
- failed to adopt and implement reasonable standards for the prompt investigation of claims; and
- failed to send claimants the required Notice of Rights Regarding Repair of Motor Vehicle.

Consumer Complaints/Inquiries

11. The examination reviewed DGIC's complaint files for legal compliance. DGIC received a total of 30 complaints during the timeframe of the examination. All complaints were reviewed, and four (13 percent) were considered confirmed.
12. A review of the complaints revealed DGIC failed to adopt and implement reasonable standards for the prompt investigation of claims and failed to timely respond in writing to the department's inquiry.

Subsequent Remedial Actions

13. DGIC provided refunds for the overcharged premiums to the impacted insureds.
14. Due to becoming a subsidiary of National General Group of companies, DGIC has more resources available to improve efficiency, including:
 - quality control and new processes for the filing of rates and rate related support information;
 - expanded claims and licensing human resources, including use of National General's claims processing computer systems that track real-time claims information; and
 - expansion of complaints response team from one to 15 customer relations specialists and a new response system to manage complaints.

Named Driver Underwriting Practices

15. Section 1952.0545 of the Insurance Code [S.B. 1567 (83rd 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.

16. On May 18, 2014, the department adopted amendments to 28 TEX. ADMIN. CODE § 5.204, to partially implement provisions of S.B. 1567 requiring liability insurers that write named driver policies to include the named driver disclosure in the standard proof of motor vehicle liability insurance form, i.e., the "Texas Liability Insurance Card."
17. On January 28, 2015, the department adopted 28 TEX. ADMIN. CODE § 5.208 to implement the remaining disclosure requirements in S.B. 1567 for both new and renewal named driver policies, and to clarify the definition of a named driver policy.
18. On and after January 28, 2015, DGIC and DGIA wrote named driver policies in one, six and 12 month term lengths.
19. DGIC wrote these named driver policies using its approved personal automobile policy form, in department filing link number 130452. The policy form contains the named driver disclosure.
20. DGIA writes named driver business on behalf of Old American County Mutual Fire Insurance Company (OACM) using OACM's approved policy forms that contain the named driver disclosure.
21. For new business, DGIC and DGIA place named driver policies only in person and by telephone.
 - In person, the agent provides the oral and written disclosures and obtains the signed acknowledgments. Copies of signed documentation are maintained in the file and provided to the insured, along with policy documents, including the declarations page and the Texas Liability Insurance Card, once payment is processed.
 - If by telephone, the agent reads the oral disclosure to the applicant and the transaction is recorded. The agent then sends the acknowledgement and written disclosure forms to the applicant via an internet link requesting signature. The applicant can return the forms via the internet or via the mail.

22. For renewal, DGIC and DGIA allow payment of premium and fees in person, by telephone, online, and by mail. The renewal notice contains an invoice and a written named driver disclosure form, along with Texas Liability Insurance Cards that contain the named driver disclosures. The renewal offer contains a statement that reads, "Submission of payment for the above amount represents your acceptance of the insurance coverage and any optional products as listed in our Renewal Offer as well as terms and conditions of Direct's payment plan provided."
- If in person or by telephone, the same process is followed for renewal as for new business.
 - If renewal is by mail or online, DGIC and DGIA do not require any additional oral or written disclosures or acknowledgement.
23. DGIC and DGIA represent to the department that if they do not have the documentation to demonstrate they made the oral disclosure to the insured, received a signed copy of the written disclosure, and confirmed contemporaneously in writing the provision of the oral disclosure, they handle and process claims on the named driver policy as if it is not a named driver policy, i.e., as if it provides coverage to all household residents not named on the policy.
24. DGIC and DGIA, unilaterally, of their own volition, and without a request from the insured, treat named driver policies as non-named driver policies (i.e., ones with expanded coverage for household residents not named on the policy), and accept premium and fees for named driver policies without receiving signatures to confirm provision of the written and oral disclosures.
25. When this occurs, DGIC and DGIA issue a letter to the insured identifying the changes to the coverage, issue a new Texas Liability Insurance Card not showing the named driver disclosure warning, and charge the insured for the monetary difference. However, DGIC and DGIA do not clearly inform the insured that the terms of the insured's contract have been unilaterally changed to include expanded coverage for all household residents not named on the policy.
26. As of February 1, 2018, DGIC had 9,867 named driver policies in force.
27. As of February 1, 2018, DGIA had 474 active named driver policies issued on behalf of OACM.

Mitigating Factors and New Named Driver Practices and Procedures

28. DGIC and DGIA have implemented the following updated practices and procedures related to their named driver business:
- enhanced training of Named Driver policies and periodic compliance reminders to its sales teams;
 - effective July 17, 2018, DGIC and DGIA modified their online renewal process, and allowed for a new policy to be placed online, for named driver policies by incorporating an audio file containing the verbal named driver disclosure, together with provision of the written disclosure, and an electronic signature and acknowledgment process; and
 - users are no longer able to advance with the application or renewal without listening to the oral disclosure, obtaining the written disclosure, and providing the requisite signatures and acknowledgments before payment can be processed.

Voluntary Compliance Plan

29. On or before November 1, 2018, DGIC and DGIA will cease offering named driver policies with policy terms fewer than 12 months through an agent and by phone.
30. On or before February 1, 2019, DGIC and DGIA will begin to transition any currently in-force named driver policy with a term fewer than 12 months to an annual term.
31. As of September 25, 2018, DGIC and DGIA only had 330 six-month term policies in force and no one-month policies, thus there will be limited policies to covert to 12 months.
32. On or before February 1, 2019, DGIC and DGIA will eliminate the option to renew named driver policies by mail. DGIC and DGIA are revising the Texas Named Driver policy renewal offers to include requirements and instructions on the new procedures.
33. DGIC and DGIA expressly consent to the terms of this order on the condition that they reserve the right to change their business models for named driver policies if the Texas Legislature enacts any changes to TEX. INS. CODE § 1952.0545, and/or if the department adopts any changes to its rules related to named driver policies. Should DGIC and DGIA exercise this right, they also expressly agree and

understand that any such revisions to their named driver business model must conform and comply with all applicable Texas insurance laws.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 751, and 801.051-801.053.
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. DGIC and DGIA 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. DGIC violated TEX. INS. CODE § 2251.101 by failing to calculate premiums in accordance with its rates on file with the department in 11 instances.
5. DGIC violated TEX. INS. CODE § 542.056(a) by failing to notify a claimant in writing of the acceptance or rejection of a claim not later than the 15th business day after the date the insurer received all items, statements, and forms required by the insurer to secure final proof of loss in one instance.
6. DGIC violated TEX. INS. CODE § 542.057(a) by failing to pay the claim not later than the fifth business day after the insurer notified the claimant that the insurer would pay the claim in one instance.
7. DGIC violated TEX. INS. CODE § 542.153(b) by failing to notify the insured of the settlement in writing not later than the 30th day after the date a claim against the named insured under a casualty insurance policy issued to the insured was settled in 26 instances.
8. DGIC violated TEX. INS. CODE § 4101.051 by allowing a person to act or represent that the person was an adjuster in this state without the person holding a license in this state in six instances.

9. DGIC violated TEX. INS. CODE § 542.003(b)(3) by failing to adopt and implement reasonable standards for the prompt investigations of claims arising under the insurer's policies in five instances.
10. DGIC violated TEX. INS. CODE § 1952.305 and 28 TEX. ADMIN. CODE § 5.501 by failing to provide a claimant the required Notice of Rights Regarding Repair of Motor Vehicle in one instance.
11. DGIC violated TEX. INS. CODE § 38.001(c) by failing to respond to an inquiry in writing not later than the 15th day after the inquiry is received in two instances.
12. DGIC and DGIA violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by accepting a premium or fee for certain renewing named driver policies without making the oral disclosure, without receiving a signed copy of the written disclosure, and failing to confirm contemporaneously in writing the provision of the oral disclosure.
13. DGIC and DGIA violated TEX. INS. CODE § 525.002(a)(1)(A) and 28 TEX. ADMIN. CODE § 5.204(b)-(c) on and after September 1, 2015, by unilaterally expanding the insured's coverage without the insured's request or consent, yet failing to timely deliver or issue for delivery a non-named driver policy and a Texas Liability Insurance Card not showing the named driver disclosure to insureds whose named driver policies reached any 12 month anniversary of the original effective date of those policies.
14. DGIC and DGIA violated TEX. INS. CODE §§ 541.003, 541.051(1)(A), and 541.061(1) – (3), by misrepresenting the contractual terms of named driver policies at renewal.
15. DGIC and DGIA violated TEX. INS. CODE §§ 541.003 and 541.061(5) by failing to disclose a matter required by law to be disclosed, including failing to make the requisite disclosures required by TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208.
16. DGIC and DGIA 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.

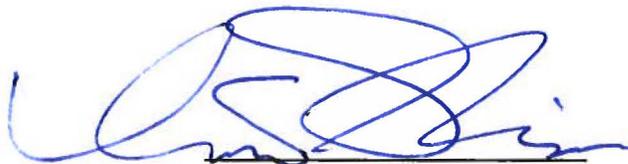
Order

It is ordered that Direct General Insurance Company and Direct General Insurance Agency, Inc. comply with the following:

- a. Direct General Insurance Company and Direct General Insurance Agency, Inc. must comply with their voluntary agreement described in Finding of Fact Nos. 29-32.
- b. Not later than November 1, 2019, Direct General Insurance Company and Direct General Insurance Agency, Inc. must provide the department with: the number of named driver policies in force on November 1, 2019, including a count of those with term lengths other than 12-months, if any. The report must be sent to EnforcementReports@tdi.texas.gov.
- c. On and after November 1, 2019, Direct General Insurance Company and Direct General Insurance Agency, Inc. must operate in full compliance with all insurance laws applicable to new and renewal named driver policies, including but not limited to TEX. INS. CODE §§ 525.002, 551.105, 551.106(b), 1952.0545, and 28 TEX. ADMIN. CODE §§ 5.204, 5.208, 5.7005(c) and 5.7007(a).

It is further ordered that Direct General Insurance Company and Direct General Insurance Agency, Inc. pay, joint and severally, an administrative penalty of \$125,000 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 Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

It is further ordered that if it is found after a public hearing that if Direct General Insurance Company and Direct General Insurance Agency, Inc. have failed to comply with any of the terms of this Order, Direct General Insurance Company and Direct General Insurance Agency, Inc. may be subject to further action by the commissioner under the provisions of TEX. INS. CODE § 82.054.



Kent C. Sullivan
Commissioner of Insurance

2019-5828

Commissioner's Order

Direct General Insurance Company, et al

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Approved as to form and content:

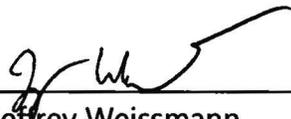


Whitney Fraser

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Texas Department of Insurance

Approved as to form and content:



Jeffrey Weissmann

General Counsel and Secretary

Direct General Insurance Company and

Direct General Insurance Agency, Inc.

