

No. 2017- 5265

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

Date: OCT 26 2017

**Subject Considered:**

AMERICAN ALTERNATIVE INSURANCE CORPORATION  
555 College Road East, Plaza II  
Princeton, New Jersey 08543

**CONSENT ORDER**  
SOAH DOCKET NO. 454-17-5815.C  
TDI ENFORCEMENT FILE NOS. 12209 and 11648

**General remarks and official action taken:**

The commissioner of insurance considers whether disciplinary action should be taken against American Alternative Insurance Corporation (AAIC).

**WAIVER**

AAIC acknowledges that the Texas Insurance Code and other applicable law provide certain rights. AAIC waives 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), AAIC agrees to this consent order with the express reservation that it does not admit to a violation of the code or of a rule and that the existence of a violation is in dispute.

**FINDINGS OF FACT**

1. AAIC is a fire and casualty company currently holding a certificate of authority to transact business in Texas.
2. The department conducted a targeted market conduct examination of AAIC covering the period of January 1, 2014, through December 31, 2014, pursuant to Chapter 751 of the Insurance Code. The exam focused on a review of sales, advertising and marketing, underwriting and rating, claims practices, and consumer complaints and inquiries for both its private passenger and commercial automobile lines of insurance business. The examination scope was expanded to include a review for compliance with TEX. INS. CODE §§ 1952.0515 and 1952.0545, during the period of December 31, 2014 – June 30, 2015.

3. During the exam, the department found violations of the Texas Insurance Code and the Texas Administrative Code in AAIC's handling of its commercial and private passenger automobile insurance business, through its agents and adjusters, as delineated and described below.

Commercial Automobile Insurance: Licensing and Appointments

4. A review of 30 commercial automobile insurance policies revealed that AAIC issued five policies where the licensed agent was not appointed to act as an agent for AAIC.
5. In two instances, AAIC, through its adjusters, failed to register unlicensed adjuster trainees who were under the supervision of licensed adjusters with the department at the beginning of their training period not to exceed 12 months.

Commercial Automobile Insurance: Underwriting and Claims Practices

6. A review of 25 non-renewed commercial automobile insurance policies revealed that in one instance AAIC, through its agent, did not provide written notice of nonrenewal to the insured not later than the 60<sup>th</sup> day before the date on which the commercial automobile insurance policy expired.
7. In one paid claim, and in two pending claims, AAIC, through its adjusters, failed to notify the insured in writing of an initial offer to settle a claim against the named insured not later than the 10<sup>th</sup> day after the initial offer was made.
8. In three paid claims, and in two pending claims, AAIC, through its adjusters, failed to notify the insured in writing of the settlement of a claim against the named insured not later than the 30<sup>th</sup> day after the date the claim against the insured was settled.
9. In four paid claims, in one denied claim, and in two pending claims, AAIC, through its adjusters, did not provide the claimant, in connection with claims for damage repair, the Notice of Rights Regarding Motor Vehicle Repairs.

Private Passenger Automobile Insurance: Licensing and Appointments

10. A review of 50 private passenger automobile insurance policies issued by AAIC through Southern General Agency, Inc. ("SGA"), revealed:
  - four policies where the agent was not licensed by the department, and
  - eight policies where the licensed agent was not appointed to act as an agent for AAIC or as a subagent of a general lines agent appointed by AAIC.
11. AAIC permitted an unlicensed entity, Blackhawk Claims Service, Inc., to handle claims and act as an adjuster on its behalf in this state. Blackhawk received an adjuster license with the department effective July 2, 2015, after the period of the market conduct examination.

12. In 15 instances, AAIC, through Blackhawk, failed to register unlicensed adjuster trainees who were under the supervision of licensed adjusters with the department at the beginning of their training period not to exceed 12 months.

Private Passenger Automobile Insurance: Underwriting Practices

13. In six instances, AAIC, through SGA, cancelled private passenger automobile insurance policies where the cancellation took effect before the 10<sup>th</sup> day after the date the cancellation notice was mailed.
14. In four instances, AAIC, through SGA, did not provide written notice of nonrenewal to the insured not later than the 30<sup>th</sup> day before the date on which the private passenger automobile insurance policy expired.

Private Passenger Automobile Insurance: Named Driver Underwriting Practices

15. Section 1952.0545 of the Insurance Code [S.B. 1567 (83<sup>rd</sup> 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. The department adopted amendments to 28 TEX. ADMIN. CODE § 5.204, effective May 18, 2014, to partially implement provisions of S.B. 1567 requiring that liability insurers writing a named driver policy must include the named driver disclosure in the standard proof of motor vehicle liability insurance form, i.e. the "Texas Liability Insurance Card."
17. The department adopted 28 TEX. ADMIN. CODE § 5.208, effective January 28, 2015, to implement the remaining disclosure requirements in S.B. 1567 for both new and renewal named driver policies.
18. On and after January 28, 2015, AAIC delivered, issued for delivery, and renewed named driver policies in 1-month, 2-month, 3-month, and 6-month terms. AAIC wrote those policies through SGA.
19. During the exam, the department reviewed a sample of 30 named driver policies delivered, issued for delivery, and renewed on and after February 1, 2015 through June 30, 2015.
20. In 16 instances, for one new and 15 renewal named driver policies, AAIC's records revealed that before accepting any premium or fee for the named driver policy, AAIC, through SGA:

- failed to make the requisite oral disclosure;

- failed to receive a signed copy of the requisite written disclosure, and
  - failed to confirm contemporaneously in writing the provision of the oral disclosure.
21. For 15 renewal policies, AAIC, through SGA, failed to specifically include in the policy the requisite named driver disclosure.

### Private Passenger Automobile Insurance: Claims Practices

22. In five paid claims, seven denied claims, and in two pending claims, AAIC, through Blackhawk, failed to apply reasonable standards for the prompt investigation of claims arising under AAIC's policies.
23. In one instance, AAIC, through Blackhawk, did not attempt in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability had become reasonably clear.
24. In one paid claim and two denied claims, AAIC, through Blackhawk, failed to notify a claimant in writing of the acceptance or rejection of a claim not later than the 15<sup>th</sup> business day after the date the insurer received all items, statements, and forms required by the insurer to secure final proof of loss.
25. In 34 paid claims, in two denied claims, and in one pending claim, AAIC, through Blackhawk, failed to notify the insured in writing of an initial offer to settle a claim against the named insured not later than the 10<sup>th</sup> day after the initial offer was made.
26. In 67 paid claims, in two denied claims, and in 13 pending claims, AAIC, through Blackhawk, did not provide the claimant, in connection with claims for damage repair, the Notice of Rights Regarding Motor Vehicle Repairs.

### Private Passenger Automobile Insurance: Consumer Complaints

27. The department reviewed 34 consumer complaints about AAIC's private passenger automobile insurance business, and found 21 (or 62 percent) were confirmed.
28. In one instance, AAIC, through SGA, did not receive written rejections for uninsured and underinsured motorist coverage, and personal injury protection.
29. In 14 instances, AAIC, through Blackhawk, failed to adopt and implement reasonable standards for the prompt investigation of claims arising under AAIC's policies.
30. In one instance, AAIC, through Blackhawk, failed to notify a claimant in writing of the acceptance or rejection of a claim not later than the 15<sup>th</sup> business day after the date the insurer received all items, statements, and forms required by the insurer to secure final proof of loss.

31. In one instance, AAIC did not respond to a reasonable inquiry made by the department, not later than 15 days after the date the inquiry was received.

Events Occurring After the Market Conduct Exam

32. Effective August 20, 2015, AAIC changed its practices with respect to renewals of named driver policies. AAIC began providing a recorded audio disclosure and requiring the insured to acknowledge the provision of the oral disclosure before renewing the policy. AAIC agents were also instructed to read the disclosure to insureds making renewal payments by phone or in person.
33. Effective October 15, 2015, AAIC added the Notice of Rights Regarding Motor Vehicle Repairs as an attachment to its acknowledgment letter, which is automatically sent to both private passenger and commercial claimants when a claim is reported to AAIC.
34. On October 15, 2015, AAIC provided additional training to both its private passenger and commercial adjusters regarding the requirement to notify the insured in writing of an initial offer to settle a claim against the named insured not later than the 10<sup>th</sup> day after an initial offer is made.
35. On or about October 27, 2015, AAIC ceased offering and writing new named driver policies in Texas.
36. On November 6, 2015, the department approved AAIC's plan to withdraw from writing private passenger automobile insurance in Texas effective on or after October 1, 2015. As part of the withdrawal plan, AAIC affirmed that it would non-renew in force named driver policies on the 12-month anniversary of the original effective date of the policy, for all policy terms.
37. As of June 30, 2016, AAIC had 3,523 named driver policies remaining in force, comprising the entirety of its in force private passenger automobile insurance book of business as of that date.
38. In August 2016, the department initiated a separate investigation of AAIC's compliance with the laws applicable to named driver policies. As part of that investigation, the department reviewed the Texas Liability Insurance Card provided to named insureds in connection with named driver policies delivered, issued for delivery, and renewed on and after January 28, 2015.
39. Although the Texas Liability Insurance Cards provided to named insureds of AAIC's named driver policies include the requisite disclosure, the disclosure does not appear on the front side of the card.

40. The department also reviewed the "Program Administration Agreement," as amended, between AAIC and SGA. The agreement was effective beginning in October 2012. Under its terms, AAIC authorized SGA to engage in the acts, duties, and powers of a managing general agent on its behalf and in this state.
41. The department's records show that SGA holds general lines and surplus lines licenses with the department under firm identification number 16884, and that SGA was appointed by AAIC on December 18, 2012. SGA does not hold a managing general agent license and is not exempt from that licensure.
42. Between October 2012 and until at least October 2015, AAIC permitted SGA to act on its behalf in this state without holding a managing general agent license.
43. SGA was involved solely in AAIC's private passenger automobile insurance business.

#### **CONCLUSIONS OF LAW**

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 751.351, 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. AAIC 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. AAIC failed to respond to a department inquiry regarding a private passenger automobile policy not later than 15 days after receiving the inquiry, in violation of TEX. INS. CODE § 38.001(c).
5. AAIC violated TEX. INS. CODE § 542.003(b)(3) by failing to apply reasonable standards for the prompt investigation of a total of 14 private passenger automobile claims and 14 private passenger automobile complaints.
6. AAIC violated TEX. INS. CODE § 542.003(b)(4) by failing to attempt in good faith to effect a prompt, fair, and equitable settlement of one private passenger automobile claim submitted in which liability had become reasonably clear.
7. AAIC violated TEX. INS. CODE § 542.056(a) by failing to accept or reject four private passenger automobile claims within 15 business days after the date the insurer received all items, statements, and forms required by the insurer to secure final proof of loss.

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8. AAIC violated TEX. INS. CODE § 542.153(a) in a total of 40 instances, including 3 commercial automobile claims and in 37 private passenger automobile claims, by failing to notify the insured in writing of an initial offer to settle a claim against the named insured not later than the 10<sup>th</sup> day after the initial offer was made.
9. AAIC violated TEX. INS. CODE § 542.153(b) by failing to the notify named insured on commercial automobile policies of the settlement of a claim against the named insured in writing, not later than the 30<sup>th</sup> day after the date five commercial automobile claims were settled.
10. AAIC violated 551.054(b) by failing to provide written notice of nonrenewal to a commercial automobile insured not later than the 60<sup>th</sup> day before the date on which the commercial automobile insurance policy expired.
11. AAIC violated TEX. INS. CODE § 551.104(e) by cancelling six private passenger automobile insurance policies before the 10<sup>th</sup> day after the date the cancellation notice was mailed.
12. AAIC violated TEX. INS. CODE § 551.105 by failing to provide written notice of nonrenewal to the insured not later than the 30<sup>th</sup> day before the date on which four private passenger automobile insurance policies expired.
13. On and after January 28, 2015, AAIC violated TEX. INS. CODE § 1952.0545(b) and 28 TEX. ADMIN. CODE § 5.208(c)(1)(A) by accepting a premium or fee for named driver policies without making the oral disclosure to applicants and insureds for new and renewal named driver personal automobile insurance policies.
14. On and after January 28, 2015, AAIC violated TEX. INS. CODE § 1952.0545(c) and 28 TEX. ADMIN. CODE § 5.208(c)(1)(D) by accepting a premium or fee for named driver policies without receiving a signed copy of the written disclosure to applicants and insureds for new and renewal named driver personal automobile insurance policies.
15. On and after January 28, 2015, AAIC violated TEX. INS. CODE § 1952.0545(e) and 28 TEX. ADMIN. CODE § 5.208(c)(1)(B) by accepting a premium or fee for named driver policies without requiring applicants and insureds for new and renewal named driver personal automobile insurance policies to confirm contemporaneously in writing the provision of oral disclosure.
16. AAIC violated TEX. INS. CODE § 1952.0545(d) and 28 TEX. ADMIN. CODE §§ 5.204(c)(9) and 5.208(c)(5)(A) by failing to include the requisite disclosure in its named driver personal automobile insurance policies and by failing to conspicuously identify the required disclosure on the front of its Texas Liability Insurance Cards.

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17. AAIC violated TEX. INS. CODE §§ 1952.101(c) and 1952.152(b) by failing to receive written rejections of uninsured and underinsured motorist coverage and personal injury protection related to a private passenger automobile insurance policy.
18. AAIC violated TEX. INS. CODE § 1952.305 and 28 TEX. ADMIN. CODE § 5.501 by failing to provide a total of 89 claimants, including seven commercial claimants and 82 private passenger claimants, in connection with claims for damage repair, the Notice Regarding Motor Vehicle Repairs.
19. AAIC violated TEX. INS. CODE § 4001.101(c)(1) by allowing and assisting unlicensed persons to engage in the business of insurance on its behalf. Specifically, AAIC issued four private passenger automobile policies where the agent was not licensed.
20. AAIC violated TEX. INS. CODE §§ 4001.201 – 4001.202 by allowing licensed agents to engage in the business of insurance on its behalf when the agents were not appointed by the insurer. Specifically, AAIC issued five commercial automobile policies and 8 private passenger policies where the agent was not appointed by AAIC or by a general lines agent of AAIC.
21. AAIC violated TEX. INS. CODE § 4053.051 by allowing and assisting an unlicensed person to act as a managing general agent on its behalf in its private passenger automobile insurance business without holding a license in this state.
22. AAIC violated TEX. INS. CODE § 4101.003 by failing to register a total of 17 unlicensed adjuster trainees, including 2 commercial automobile trainees and 15 private passenger automobile trainees, under the supervision of licensed adjusters, with the department at the beginning of their training period not to exceed 12 months.
23. AAIC violated TEX. INS. CODE § 4101.152 by allowing and assisting an unlicensed person to act as and represent that the person was an adjuster in this state in its private passenger automobile insurance business.

The commissioner orders American Alternative Insurance Corporation to notify the department in writing, not later than ten days after the date its last private passenger automobile insurance policy expires, non-renews, or cancels, that it withdraws from use filing link numbers 123011, 127362, 132513, S19428, S611280, and S620049.

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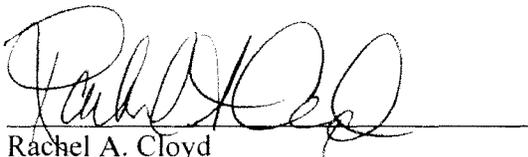
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The commissioner further orders American Alternative Insurance Corporation to pay within 30 days from the date of this order, an administrative penalty totalling \$160,000, with \$50,000 of the penalty allocable to the commercial automobile insurance violations, and \$110,000 of the penalty allocable to the private passenger automobile insurance violations. The payment 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 Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



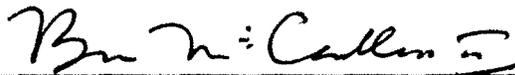
Kent C. Sullivan  
Commissioner of Insurance

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