

No. 2018- 5531

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE

Date: MAY 29 2018

Subjects Considered:

AUTO CLUB COUNTY MUTUAL INSURANCE COMPANY
INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB
AUTO CLUB INDEMNITY COMPANY
1225 Freeport Parkway
Coppell, Texas 75019

CONSENT ORDER
TDI ENFORCEMENT FILE NOS. 11409, 14458, 14459

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Auto Club County Mutual Insurance Company, Interinsurance Exchange of the Automobile Club, and Auto Club Indemnity Company (the "AAA Companies").

WAIVER

The AAA Companies acknowledge that the Texas Insurance Code and other applicable law provide certain rights. The AAA Companies waive these procedural rights in consideration of the entry of this consent order. Pursuant to TEX. INS. CODE § 82.055(b), the AAA Companies agree to this consent order with the express reservation that they do 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

Licensing Information

1. Auto Club County Mutual Insurance Company is a domestic county mutual insurance company holding a certificate of authority to transact business in Texas.
2. Interinsurance Exchange of the Automobile Club is a foreign reciprocal insurance company holding a certificate of authority to transact business in Texas.

3. Auto Club Indemnity Company is a domestic fire and casualty insurance company holding a certificate of authority to transact business in Texas.
4. Auto Club County Mutual Insurance Company, Interinsurance Exchange of the Automobile Club, and Auto Club Indemnity Company are affiliated entities.

Consumer Complaint

5. TDI received a complaint from an Auto Club County Mutual Insurance Company insured. The complainant explained that in March 2015, he rented a U-Haul truck and while driving it over a weekend, he hit a low hanging branch that damaged the roof of the U-Haul. He filed a claim with Auto Club County Mutual Insurance Company over the weekend. After subsequently speaking with U-Haul, he determined that the damage was below his deductible and he called Auto Club County Mutual Insurance Company and requested that the claim be closed. Auto Club County Mutual Insurance Company made no payment on the claim. In October 2015, the complainant received his renewal offer with an increase in premium of \$1,623. Of that increase, \$1,192 was attributed to a claim surcharge for the March 2015 claim. Following discussions with the department, Auto Club County Mutual Insurance Company refunded amounts due to the complainant, including interest.

Rating Issues

6. Effective September 1, 2015, Section 1953.051(b) of the Texas Insurance Code prohibits a rating plan regarding personal automobile insurance from (1) assigning a rate consequence solely to a consumer inquiry made by an applicant or insured or a claim filed by an insured under a personal automobile insurance policy that is not paid or payable under the policy or (2) otherwise causing premium for personal automobile insurance to be increased solely because of an inquiry or claim not paid or payable under the policy.
7. On and after September 1, 2015, in accordance with their rate filings, the AAA Companies incorporated claims that were not paid or payable under the policy in their rating plans to assign a rate consequence and/or premium consequence through application of the longevity discount, driving record surcharge, accident forgiveness, and through tier placement. The AAA Companies represent that they will file revised rating plans that eliminate not paid or payable claims as a factor from all of their rating plans.
8. The AAA Companies were cooperative and responsive to the department during its investigation.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 84.021-84.044, 801.052-801.053, 912.002, 912.101-912.102, 942.001-942.101, 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. The AAA Companies 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. The commissioner concludes that beginning on September 1, 2015, the AAA Companies violated TEX. INS. CODE § 1953.051(b) by assigning a rate consequence to claims that were not paid or payable.
5. This consent order resolves any and all currently pending investigations and complaints by the department against the AAA Companies related to the allegations, findings of fact, and conclusions of law set out in this consent order.
6. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct the AAA Companies to make complete restitution to each policyholder impacted by the violations.

The AAA Companies are ordered to comply with the following:

- a. Not later than April 1, 2018, if they have not done so already, the AAA Companies must make a new rate/rule filing which removes from their rating plans and rules assignment of a rate consequence or other premium increase for claims that were not paid or payable under the policy, with the removal to be effective no later than April 1, 2018. The AAA Companies must also update any applicable underwriting guidelines filed with TDI no later than April 1, 2018.
- b. The AAA Companies must identify all personal automobile insurance policies issued by it in Texas with effective dates from September 1, 2015 through April 1, 2018 (the "Review Period").
- c. For each policy in the Review Period, the AAA Companies must calculate the Corrected Premium without using claims not paid or payable in their rating plans.
- d. For each policy in the Review Period, the AAA Companies must calculate and determine whether the dollar amount of the premium charged for each policy is less than or more than the Corrected Premium. If the premium charged is more than the Corrected Premium, the difference constitutes the Overcharge.
- e. The AAA Companies 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 restitution check and/or account credit must include both the dollar amount of the overcharge, plus simple interest due on the overcharge. The rate of interest shall be 5 percent per annum.

- f. The AAA Companies must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders on or before September 1, 2018.
- g. Due to the method in which the AAA Companies must make the restitution calculations, Qualifying Policyholders may be subject to additional premium overcharges if the policyholder elects to change coverage prior to the first renewal following April 1, 2018 ("Additional Overcharges"). The AAA Companies must monitor all such coverage changes on a regular basis and promptly pay or provide an account credit for Additional Overcharges, plus simple interest calculated at 5 percent per annum.
- h. Any restitution checks that are returned to the AAA Companies 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 delivered to the comptroller pursuant to the procedures set forth in TEX. PROP. CODE §§ 72.001 *et. seq.* The AAA Companies must copy the department on any correspondence pertaining to abandoned funds that is sent to the comptroller.
- i. On or before May 1, 2019, the AAA Companies 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. AAA company issuing the policy;
 - ii. policy number;
 - iii. policyholder name;
 - iv. policyholder address;
 - v. effective date of the policy;
 - vi. expiration date of the policy;
 - vii. amount of Overcharge (including any Additional Overcharge);
 - viii. dollar amount of simple interest;
 - ix. amount of Overcharge (including any Additional Overcharge) and interest;
 - x. date(s) of mailing of restitution check or credits;
 - xi. the total sum of all Overcharges (including any Additional Overcharge);
 - xii. the total sum of all simple interest; and,
 - xiii. the total sum of all restitution paid (total Overcharges and Additional Overcharges plus the total of the simple interest).
- j. The AAA Companies must send all submissions required under the terms of this order by email to: mandy.meese@tdi.texas.gov, and catherine.bell@tdi.texas.gov, or their successors.

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COMMISSIONER'S ORDER

Auto Club County Mutual Insurance Company, et al

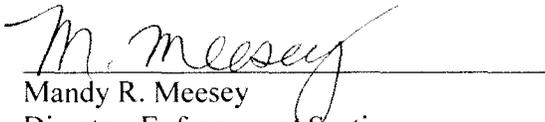
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Auto Club County Mutual Insurance Company, Interinsurance Exchange of the Automobile Club, and Auto Club Indemnity Company are further ordered to pay, jointly and severally, an administrative penalty of \$350,000. The administrative penalty must be paid 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." 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.



Kent C. Sullivan
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



Mandy R. Meesey
Director, Enforcement Section
Texas Department of Insurance

AFFIDAVIT

STATE OF CALIFORNIA §

COUNTY OF ORANGE §

Before me, the undersigned authority, personally appeared Christopher Michael Baggaley, who being by me duly sworn, deposed as follows:

“My name is Christopher Michael Baggaley. 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 Senior Vice President, Insurance Operations, and am the authorized representative of Auto Club County Mutual Insurance Company, Interinsurance Exchange of the Automobile Club, and Auto Club Indemnity Company (collectively, “AAA Companies”). I am duly authorized by said organizations to execute this statement.

The AAA Companies have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the state of Texas.”

Christopher Michael Baggaley
Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2018.

(NOTARY SEAL)

**SEE ATTACHED CALIFORNIA
JURAT WITH AFFIANT STATEMENT**

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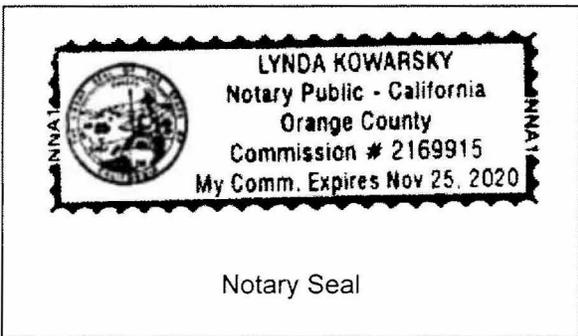
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CALIFORNIA JURAT WITH AFFIANT STATEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Orange } SS

Subscribed and sworn to (or affirmed) before me on this 28th day of February, 2018, by CHRISTOPHER MICHAEL BAGGALEY, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Signature: *Lynda Kowarsky*

Printed Name: Lynda Kowarsky

My commission expires on: 11/25/20

DESCRIPTION OF ATTACHED DOCUMENT:

Title or Type of Document:	Official Order of the Texas Commissioner of Insurance <u>Consent Order</u> TDI Enforcement File Nos. 11409, 14458, 14459
Document Date:	February 28, 2018 Number of Pages: 6
Signers other than named above:	N/A