

No. 2018- 5757

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE

Date: DEC 1 2 2018

Subjects Considered:

GERMANIA INSURANCE COMPANY
GERMANIA SELECT INSURANCE COMPANY
GERMANIA FIRE & CASUALTY COMPANY
PO Box 645
Brenham, Texas 77834-0645

CONSENT ORDER

TDI ENFORCEMENT FILE NOS. 15426, 15427, and 15428

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Germania Insurance Company, Germania Select Insurance Company, and Germania Fire & Casualty Company (collectively, the "Germania Companies").

WAIVER

The Germania Companies acknowledge that the Texas Insurance Code and other applicable law provide certain rights. The Germania Companies waive all 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), the Germania Companies 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. The Germania Companies are all affiliated domestic fire and casualty insurance companies holding certificates of authority to transact business in Texas.

2. During the review of personal automobile rate filing GEIN-131219193 made by the Germania Companies effective December 11, 2017, for new business and January 25, 2018, for renewal business, department staff alleges that the Germania Companies were using claims not paid or payable and lapse of insurance to increase rates.

Use of Claims Not Paid or Payable

3. 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) a consumer inquiry made by an applicant or insured or (B) 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 described by Subdivision (1).
4. The department alleges that on and after December 11, 2017, the Germania 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 by considering \$0 paid claims.
5. The Germania Companies introduced several new rating classes or variables in a rate change effective December 11, 2017, for new business and January 25, 2018, for renewal business in filing GEIN-131219193.
6. After correspondence with department staff, the Germania Companies agreed to revise system rules to ensure that \$0 paid claims were not counted in the rating tables, effective January 15, 2018.
7. Between December 11, 2017, and January 14, 2018, the Germania Companies did not have programming in place that would exclude \$0 paid claims in the rating tables. The Germania Companies represent that 87 policies were impacted and they paid refunds with interest to the affected policyholders.

Lapse in Insurance

8. Pursuant to subsection (b) of 28 TEX. INS. CODE § 5.401, insurers may not use an applicant's lack of prior insurance in determining the appropriate rate for private passenger automobile liability insurance where such applicant has not been

operating an uninsured motor vehicle in the state for more than 30 days during the 12 months immediately preceding the date of the application.

9. In the Germania Companies' personal automobile rate filings effective December 11, 2017, the Germania Companies introduced lapse in insurance coverage as a variable, which caused an increase in premium.
10. The Germania Companies removed the rating impact based on a lapse in insurance effective January 15, 2018, after correspondence with TDI.
11. The Germania Companies used an applicant's lack of prior insurance of not more than 30 days to determine personal automobile rates from December 11, 2017, to January 14, 2018. The Germania Companies represent 56 policies were impacted and they paid refunds with interest to the affected policyholders.

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, 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 Germania 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 Germania Companies violated TEX. INS. CODE § 1953.051(b) by assigning a rate consequence to claims that were not paid or payable.
5. The Germania Companies violated 28 TEX. ADMIN. CODE § 5.401 by assigning a rate consequence to an applicant's lack of prior insurance of not more than 30 days.
6. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct the Germania Companies to make complete restitution to each policyholder impacted by the violations.

The Germania Companies are ordered to pay the restitution to affected policyholders as outlined above in Findings of Fact Nos. 7 and 11 and comply with the following:

- a. Any restitution checks that are returned to the Germania 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 Germania Companies must copy the department on any correspondence pertaining to abandoned funds that is sent to the comptroller.
- b. On or before December 1, 2019, the Germania Companies must report the restitution paid to the affected policyholders by submitting a complete and sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:
 - i. Germania 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;
 - viii. explanation of the overcharge (claims not paid or payable or lapse in insurance);
 - ix. dollar amount of simple interest;
 - x. amount of overcharge and interest;
 - xi. date(s) of mailing of restitution check or credits;
 - xii. the total sum of all overcharges;
 - xiii. the total sum of all simple interest; and,
 - xiv. the total sum of all restitution paid (total overcharges plus the total of the simple interest).
- c. The Germania Companies must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

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COMMISSIONER'S ORDER

Germania Insurance Company, et al

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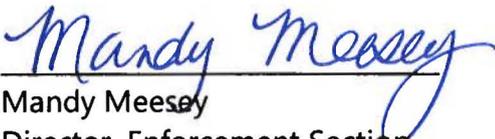
The Germania Companies are further ordered to pay, jointly and severally, an administrative penalty of \$25,000. The administrative penalty must be paid within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of 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.

This consent order pertains solely to the resolution of the department's allegations with respect to the Germania Companies rating violations described above in the Findings of Fact. This consent order does not address or impact any other pending investigations or enforcement cases related to the Germania Companies or affiliated entities.



Kent C. Sullivan
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



Mandy Meese
Director, Enforcement Section
Texas Department of Insurance

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AFFIDAVIT

STATE OF Texas §
§

COUNTY OF Washington §

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

"My name is Paul Ehlert. 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 President CEO, and am the authorized representative of Germania Insurance Company. I am duly authorized by said organization to execute this statement.

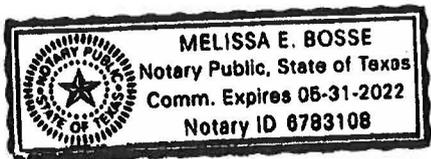
Germania Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."



Affiant

SWORN TO AND SUBSCRIBED before me on October 11, 2018.

(NOTARY SEAL)





Signature of Notary Public

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AFFIDAVIT

STATE OF Texas §

COUNTY OF WASHINGTON §

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

"My name is Paul Zkert. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

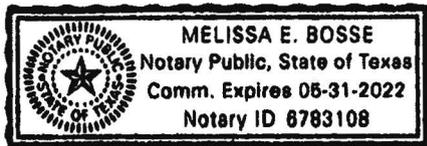
I hold the office of President / CEO, and am the authorized representative of Germania Select Insurance Company. I am duly authorized by said organization to execute this statement.

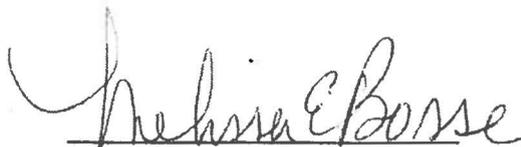
Germania Select Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."


Affiant

SWORN TO AND SUBSCRIBED before me on October 11, 2018.

(NOTARY SEAL)




Signature of Notary Public

2018- 5757

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AFFIDAVIT

STATE OF Texas §

§

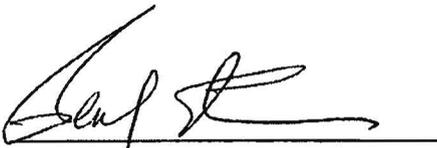
COUNTY OF Washington §

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

"My name is Paul Ehlert. 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 President / CEO, and am the authorized representative of Germania Fire & Casualty Company. I am duly authorized by said organization to execute this statement.

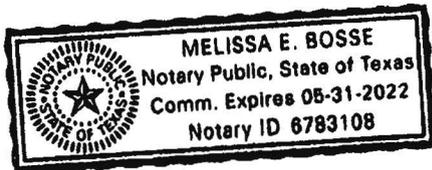
Germania Fire & Casualty Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."



Affiant

SWORN TO AND SUBSCRIBED before me on October 11, 2018.

(NOTARY SEAL)


Signature of Notary Public