

No. 2019- 5847

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

Date: JAN 24 2019

Subjects Considered:

CLEAR BLUE INSURANCE COMPANY
B-7 Tabonuco Street, Suite 912
Guaynabo, Puerto Rico 00968

AMIGO MGA, LLC
P.O. Box 6736
Clearwater, Florida 33758-6736

CONSENT ORDER
TDI ENFORCEMENT FILE NOS. 11968 and 11778

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Clear Blue Insurance Company (Clear Blue) and Amigo MGA, LLC (Amigo).

WAIVER

Clear Blue and Amigo acknowledge that the Texas Insurance Code and other applicable law provide certain rights. Clear Blue and Amigo waive all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

FINDINGS OF FACT

1. Clear Blue is a fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.
2. Amigo holds a managing general agency (MGA) license with the department under firm identification number 11716. Amigo holds no other licenses.

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3. Clear Blue and Amigo are unaffiliated entities.

Laws Applicable to Named Driver Policies

4. 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.
5. 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."
6. 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.

Lack of MGA Appointment

7. On July 22, 2016, Clear Blue entered into a written agreement (MGA contract) with Amigo, authorizing Amigo to quote, bind, and write non-standard private passenger automobile insurance policies, and to perform other acts and duties, on Clear Blue's behalf, in the states of Georgia and Arizona. Schedule 1 of the MGA contract added authority for Amigo to act on Clear Blue's behalf in Texas.
8. On October 11, 2016, the department approved Clear Blue's named driver policy form.
9. In December 2016, Amigo began writing named driver policies on behalf of Clear Blue in Texas.
10. According to department records, Amigo did not have an appointment to engage in the business of insurance on behalf of Clear Blue at that time.

11. Clear Blue failed to timely notify the department of its appointment of Amigo, and allowed Amigo to engage in the business of insurance as its MGA without an appointment.
12. On or about April 6, 2018, Clear Blue notified the department of Amigo's appointment.

Named Driver Underwriting Practices

13. In December 2016, Amigo began writing named driver policies in six-month term lengths on behalf of Clear Blue in Texas.
14. Clear Blue and Amigo accept payment of premium and fees for renewals of named driver policies in person, by telephone, and by mail.
15. Renewal offers made by Clear Blue and Amigo consist of a one-page invoice mailed to the insured approximately 19 days prior to the premium due date. The invoice instructs the insured to make payment by mail and includes a telephone number for customer service, but does not identify any other available payment methods.
16. The renewal offer does not indicate how Clear Blue or Amigo will make the named driver oral disclosure, receive a signed copy of the written disclosure, or confirm contemporaneously in writing the provision of the oral disclosure.
17. The renewal offer does not include a declarations page or Texas Liability Insurance Card for the renewal term. Clear Blue and Amigo only provide those documents to the insured after the insured accepts the renewal offer by paying the premium and fees at the named driver policy rate.
18. If an insured makes the renewal payment in person, Clear Blue and Amigo provide an audio recording of the oral disclosure and the insured e-signs a document confirming receipt of the written disclosure and provision of the oral disclosure.
19. If an insured calls customer service to make the renewal payment, Clear Blue and Amigo provide an audio recording of the oral disclosure and attempt to obtain oral permission from the insured for the agent to sign the confirmation of the provision of the written and oral disclosures on the insured's behalf.

- a. If the insured orally grants permission to the agent, the agent signs the confirmation of the provision of the written and oral disclosures, rather than the insured, and Clear Blue and Amigo accept payment of the insured's premium and fees at the named driver policy rate.
 - b. If the insured does not orally grant permission to the agent, Clear Blue and Amigo email to the insured the document to confirm provision of the oral and written disclosures by electronic signature. If the insured returns the signed confirmation, Clear Blue and Amigo then process the renewal payment. If the insured does not return the signed confirmation, they still accept payment of premium and fees at the named driver policy rate.
20. If an insured makes the renewal payment by mail, Clear Blue and Amigo accept premium and fees at the named driver policy rate and attempt to contact the insured by telephone to provide the oral disclosure.
 - a. If their agent reaches the insured by phone, the agent provides the oral disclosure by audio recording and attempts to obtain oral permission from the insured for the agent to sign the confirmation of the oral and written disclosures on the insured's behalf, as previously described above.
 - b. If their agent is unable to reach the insured by phone, the agent leaves a voicemail message including the oral disclosure, requesting permission to sign the confirmation on the insured's behalf, and notifying insured that the agent will sign the confirmation if the insured does not respond.
 - c. If the insured does not return the agent's call or a signed confirmation of the provision of the oral and written disclosures, the agent signs the confirmation on the insured's behalf.
21. The confirmation document to acknowledge provision of the written and oral named driver disclosures misstates the words mandated by statute for the named driver disclosure.
22. On August 31, 2018, Clear Blue notified the department of its intent to cease writing new named driver policies in Texas effective September 30, 2018.
23. On September 19, 2018, Clear Blue notified Amigo in writing that it was terminating Amigo's authority to quote, bind, and issue new private passenger automobile

insurance policies in Texas effective September 30, 2018. Clear Blue further instructed Amigo to non-renew all in-force policies at the first legally-compliant opportunity in order to effectuate a wind-down.

24. Clear Blue represents it did not believe at that time that it was required to file a withdrawal plan with the department under these circumstances.
25. On September 21, 2018, the department learned that Clear Blue's named driver policies written through Amigo comprised the entirety of Clear Blue's private passenger automobile insurance business in Texas. Clear Blue had approximately 8,897 named driver policies in force written through Amigo in Texas, as of September 1, 2018.
26. On September 25, 2018, the department instructed Clear Blue in writing to immediately file a withdrawal plan and seek approval from the department to exit the Texas private passenger automobile market.
27. Clear Blue did not file a withdrawal plan with the department before September 30, 2018.
28. On October 15, 2018, Clear Blue informed the department in writing that it did not intend to withdraw from the Texas market at that time.
29. To clarify its market status in Texas, on October 23, 2018, Clear Blue represented to the department that notices of nonrenewal have not been sent to policyholders, contrary to Clear Blue's instruction to Amigo.
30. Clear Blue represents it has only limited Amigo's authority to act on its behalf in Texas, has not terminated the MGA contract, and Amigo has continuing authority to write business for Clear Blue in Georgia.
31. Clear Blue and Amigo represent they did not knowingly or intentionally violate a statute or rule with respect to the conduct described in this order.
32. In an effort to settle all allegations against them, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, Clear Blue and Amigo propose and voluntarily agree that:

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- a. Clear Blue and Amigo will wind-down Clear Blue's personal automobile insurance business as described in a withdrawal plan Clear Blue filed with the department on December 7, 2018, to effectuate its orderly withdrawal from the Texas private passenger automobile insurance market;
- b. Clear Blue will not send any notices of nonrenewal to its insureds unless and until the department has approved the proposed withdrawal plan; and,
- c. Amigo will not send any notices of nonrenewal to Clear Blue's insureds unless and until the department has approved Clear Blue's proposed withdrawal plan.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, 801.051-801.053, 4005.101, and 4053.151.
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. Clear Blue and Amigo 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. Clear Blue and Amigo violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by accepting a premium or fee for 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.
5. Clear Blue and Amigo violated TEX. INS. CODE § 1952.0545(c) and (e), and 28 TEX. ADMIN. CODE § 5.208(c)(4), (c)(5)(B), and (c)(6), by failing to require insureds to sign a written copy of the named driver disclosure, failing to require insureds to sign the written confirmation of the provision of oral disclosure, and generally failing to obtain original or electronic signatures from insureds for renewals of named driver policies.

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6. Clear Blue and Amigo 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.
7. Clear Blue and Amigo violated TEX. INS. CODE §§ 4001.201, 4001.202, and 4053.054 by failing to notify the department of the appointment of Amigo not later than 30 days after that appointment on a form prescribed by the department, and allowing Amigo to engage in the business of insurance as an agent on Clear Blue's behalf without an appointment, as contemplated under Title 13, Chapters 4001 and 4053 of the Texas Insurance Code.

It is ordered that Clear Blue Insurance Company and Amigo MGA, LLC must immediately cease and desist from:

- a. the practice of having their agents sign, on behalf of insureds, any confirmations of the provision of the oral and written named driver disclosures; and
- b. misstating the words in the named driver disclosure.

It is further ordered that Clear Blue and Amigo must comply with their voluntary agreement described in Finding of Fact No. 32, and with the proposed withdrawal plan, if approved by the commissioner, as contemplated in TEX. INS. CODE § 827.003 and 28 TEX. ADMIN. CODE §§ 7.1804 – 7.1807.

If Clear Blue or Amigo choose to deliver, issue for delivery, or renew named driver policies after completion of Clear Blue's voluntary, proposed withdrawal from the Texas private passenger insurance market, each must operate in full compliance with all insurance laws applicable to 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).

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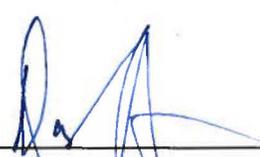
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It is further ordered that Clear Blue and Amigo jointly and severally pay an administrative penalty of \$100,000 within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas" and transmitted 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 Clear Blue or Amigo has failed to comply with any of the terms of this Order, Clear Blue and Amigo may be subject to further action by the commissioner under the provisions of TEX. INS. CODE § 82.054.

Kent C. Sullivan
Commissioner of Insurance

By:



Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended and reviewed by:



Leah Gillum, Associate Commissioner
Enforcement Section



Rachel A. Cloyd, Director
Enforcement Section

