

No. 2019- 5916

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

Date: APR 01 2019

Subjects Considered:

ACCC Insurance Company
ACCC General Agency Inc.
390 Benmar Drive
Houston, Texas 77060

Consent Order
TDI Enforcement File Nos. 9370 and 11158

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against ACCC Insurance Company (ACCC) and ACCC General Agency Inc. (the General Agency).

Waiver

ACCC and the General Agency acknowledge that the Texas Insurance Code and other applicable law provide certain rights. ACCC and the General Agency 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), ACCC and the General Agency 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. ACCC is a fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.
2. The General Agency holds a managing general agency (MGA) license with the department under firm identification number 12595.

3. ACCC and the General Agency are affiliated entities.

Background on 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.
7. ACCC and the General Agency actively participated as interested stakeholders during the rulemaking process related to S.B. 1567.

ACCC's Policy Forms and Surcharge Filing

8. On January 1, 2014, under filing numbers 131361 and 131359, the department approved two stand-alone named driver policy forms for use by ACCC in two of its private passenger automobile insurance programs, referred to as the Elect and Eagle ULD programs. Both policy forms contain the named driver disclosure.
9. On July 8, 2014, ACCC submitted rate filing number 6450 to the department, stating it would apply a 10% premium surcharge in both the Elect and Eagle ULD programs if a Named Driver Policy Acknowledgment is missing or incomplete. The surcharge was made applicable to both new business effective August 1, 2014, and renewal business effective August 15, 2014.

10. On June 15, 2015, ACCC submitted filing numbers 23265 and 23269 to the department seeking approval of revised, stand-alone named driver policies and conditional named driver language removal endorsements for both its Elect and Eagle ULD named driver programs. These revised named driver policies contain the named driver disclosure. In an effort to settle all allegations, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, ACCC voluntarily agreed to withdraw the endorsements and to revise other documents in these filings as detailed in Finding of Fact number 15.
11. On July 19, 2018, ACCC submitted rate filing number 657125 to the department. This rate filing, like the prior rate filing, includes the application of a 10% premium surcharge in both the Elect and Eagle ULD programs if a Named Driver Policy Acknowledgment is missing or incomplete. The use of the 10% surcharge was made applicable to new business effective August 1, 2018, and renewal business effective September 1, 2018.
12. On November 12, 2018, ACCC submitted form filing numbers 660907 and 660908 to the department seeking approval of stand-alone, non-named driver policies to be written by ACCC in terms of 1, 2, 3, and 6 months in two programs it refers to as Drive-Elect and Drive-ULD. Those filings were approved by the department on January 2, 2019.
13. On November 12, 2018, ACCC also submitted rate filing number 660889 to the department for its Elect and Eagle-ULD named driver programs. This new rate filing removes from ACCC's rating plans the 10% surcharge included in rate filing number 657125, with the new rates to be effective no later than February 15, 2019, for new business, and no later than March 15, 2019, for renewal business. The filing also includes underwriting guidelines and information noting ACCC's addition of a 12-month named driver policy term.
14. On December 20, 2018, ACCC submitted both rate filing number 662125 and underwriting guidelines filing number UG-2018-12-018 to the department for its Drive-Elect and Drive-ULD programs.
15. On January 23, 2019, ACCC withdrew, from filing numbers 23265 and 23269, the named driver language removal endorsements for both its Elect and Eagle ULD named driver programs. ACCC also submitted revised versions of its "Summary of Coverage Limitations and Acknowledgment" to comport with the withdrawn

documents, and a new "Notice of Policy Changes" in both filings. On February 6, 2019, the department approved filing numbers 23265 and 23269.

Named Driver Practices

16. On and after January 28, 2015, ACCC, through the General Agency, delivered, issued for delivery, and renewed named driver policies in one, two, three, and six-month terms.
17. ACCC and the General Agency collect premium and fees for new named driver policies in person. For renewals of named driver policies, ACCC and the General Agency collect premium and fees in person, online, by mail, telephone, and by recurring, automatic payment or withdrawal methods.
18. The renewal practices of the General Agency for named driver policies written on behalf of ACCC are as follows:
 - a. A packet is mailed to the insured before the expiration date of the policy. It includes a named driver policy insert (NDPI) and an invoice, both of which instruct the insured to visit his or her agent to acknowledge provision of the named driver disclosure and to keep premium at the lowest rate.
 - b. The invoice requests payment for what it identifies as "renewal premium" that includes a 10% surcharge for coverage of undisclosed household members.¹ The invoice contains multiple offers but does not contain a premium amount for renewal of the insured's named driver policy at the named driver rate.
 - c. ACCC's software system requires the insured to appear in person in the agent's office to renew a named driver policy at the named driver rate.
 - d. If the insured appears in person at the agent's office to renew, the agent either reads the oral disclosure or plays a recorded audio file of the disclosure, and then requires the insured to sign an acknowledgment of the provision of the named driver disclosure.

¹ ACCC and the General Agency consider "undisclosed household members [or residents]" to be drivers not listed in the policy or not specifically excluded by name.

- e. If the insured does not appear in person to renew, but makes a premium payment by any other means, the General Agency accepts premium or fees on behalf of ACCC for the renewal, but accounts it as written premium including the 10% surcharge.
 - f. If the signed acknowledgment is properly uploaded within five days of the acceptance of premium or fees, then the insured's policy is renewed as a named driver policy and the insured's premium is accounted at the named driver rate (without the 10% surcharge). ACCC and the General Agency then issue to the insured a Texas Liability Insurance Card conspicuously identifying the named driver disclosure on the front of the card.
 - g. If the signed acknowledgment is not properly uploaded or received by ACCC within five days of the acceptance of premium or fees, then the 10% surcharge is applied to the insured's account regardless of whether or not the insured signed the acknowledgment or paid premium at the named driver rate.
 - h. In any such instance where ACCC does not have the signed acknowledgment, ACCC and the General Agency seek to collect the 10% surcharge, and issue to the insured a new declarations page showing the named driver disclosure, yet, also issue a new Texas Liability Insurance Card without the named driver disclosure.
 - i. If the signed acknowledgment is later submitted or re-submitted, ACCC adjusts the insured's premium to remove the 10% surcharge. Then, ACCC and the General Agency re-issue to the insured a new declarations page without any surcharge, and a new Texas Liability Insurance Card including the named driver disclosure.
19. ACCC and the General Agency represent they handle claims in the Elect and Eagle ULD programs based upon the presence of or lack of a signed acknowledgement properly uploaded into ACCC's software system for the policy period applicable to the date of loss.
20. ACCC and the General Agency treat named driver policies as "non-named driver" policies, or named driver policies with extended coverage for undisclosed household members or residents, and accept increased premiums and fees for

such coverage when ACCC and the General Agency do not have signed acknowledgments from the named insureds prior to the renewal effective date.

21. The department alleges ACCC and the General Agency do not expressly inform insureds about this claims-handling treatment.
22. The department further alleges that for named driver policies not renewed in person, ACCC and the General Agency accept premium and fees for named driver policies without providing the oral disclosure, receiving a signed copy of the written disclosure, or confirming contemporaneously in writing the provision of the oral disclosure.
23. Beginning in December 2017, ACCC and the General Agency changed their practices with respect to named driver policies. The revised practices included use of a "Named Driver Language Removal Acknowledgement" for new business, and at renewal, use of both a "Named Driver Renewal Insert" and "Named Driver Language Removal Endorsement." The department alleges these documents and the revised practices did not comply with all laws applicable to named driver policies.
24. Premium notices sent to insureds on and after September 1, 2018, notified insureds of the rate change under rate filing number 657125 and that premium included coverage for undisclosed household members. Notices also instructed insureds to visit their agent to reduce the premium. However, the notices still do not contain a premium amount for renewal of the insured's named driver policy at the named driver rate.
25. As of November 30, 2018, ACCC and the General Agency had a total of 175,420 named driver policies in force, consisting of 92,228 policies in the Elect program, and 83,192 policies in the Eagle ULD program.
26. ACCC and the General Agency represent they have acknowledgments signed by the named insureds showing proper provision of the oral and written disclosures for all new named driver policies delivered or issued for delivery between January 28, 2015 and the date of this order.
27. ACCC and the General Agency represent that in a small percentage of all named driver policies renewed between January 28, 2015 and the date of this order, they

do not have acknowledgements signed by the named insureds showing the provision of the oral and written disclosures. Specifically, ACCC and the General Agency represent that the percentage of renewal named driver policies lacking the signed acknowledgements averaged only 13 percent of all named driver policies in force during those four years.

28. In an effort to settle all allegations against them, to avoid the expense and uncertainty of litigation, and to otherwise achieve compliance, ACCC and the General Agency propose and voluntarily agree:
 - a. beginning no later than February 15, 2019, to write new named driver policies only in 12-month terms using department-approved policy forms;
 - b. beginning no later than March 15, 2019, and only upon any 12-month anniversary of the original effective date of any named driver policy then in force, to make renewal offers for named driver policies only in 12-month terms using department-approved policy forms; and
 - c. to withdraw filing numbers 131361 and 131359 after the last policy written using those forms transitions to a 12-month named driver policy under filing numbers 23265 or 23269, or cancels, non-renews, or otherwise expires.

29. ACCC and the General Agency consent to the terms of this order on the express condition that they reserve the right to change their named driver business model, policy forms, and rates, in the event that the Texas Legislature enacts any legislation that changes the current law applicable to named driver policies including TEX. INS. CODE § 1952.0545, and/or if the department adopts any changes to its rules related to named driver policies. Should ACCC and the General Agency exercise this right, they also expressly agree and understand that any such revisions to their named driver business model, policy forms, or rates must conform and comply with all applicable Texas insurance laws. The department confirms this order does not impact ACCC's and the General Agency's right to implement and legally operate any non-named driver business models.

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 § 82.055, and 28 TEX. ADMIN. CODE § 1.47.

3. ACCC and the General Agency 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 intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. ACCC and the General Agency violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by accepting a premium or fee for some of its 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.

Order

It is ordered that ACCC Insurance Company and ACCC General Agency Inc. must pay, jointly and severally, an administrative penalty of \$110,000 within 30 days from the date of this order. The 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 ACCC Insurance Company and ACCC General Agency Inc. must comply with the following compliance plan:

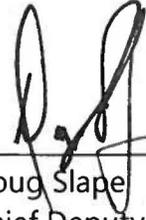
1. ACCC and the General Agency must comply with their voluntary agreement described in Finding of Fact number 28.
2. On or before April 1, 2020, ACCC and the General Agency must send the department:
 - a. the date when the last named driver policy having a term of less than 12 months transitions to a 12-month named driver policy under filing numbers 23265 or 23269, or cancels, non-renews, or otherwise expires; and,
 - b. the number of named driver policies in force on March 15, 2020, including a count of those with 12-month terms, and a count of those named driver policies with term lengths other than 12 months, if any.

3. All information required to be submitted to the department under this order must be sent electronically to EnforcementReports@tdi.texas.gov.
4. On and after March 15, 2020, ACCC and the General Agency 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 if it is found after a public hearing that ACCC Insurance Company or ACCC General Agency Inc. have failed to comply with any of the terms of this Order, ACCC Insurance Company and/or ACCC General 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

By:



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

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Recommended and reviewed by:



Leah Gillum, Associate Commissioner
Enforcement Section



Rachel A. Cloyd, Director
Enforcement Section

Approved as to form and content:



Jay A. Thompson
Thompson, Coe, Cousins & Irons, LLP

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ACCC General Agency Inc.
Affidavit

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, the undersigned authority, personally appeared JACK H. IKENAGA
who being by me duly sworn, deposed as follows:

"My name is JACK H. IKENAGA. 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, and am the authorized representative of
ACCC General Agency Inc. I am duly authorized by said organization to execute this
statement.

ACCC General Agency Inc. 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."

[Signature]
Affiant

SWORN TO AND SUBSCRIBED before me on February 11, 2019.

(NOTARY SEAL)

[Signature]
Signature of Notary Public

CHRIS LEE
Printed Name of Notary Public

