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Depository

# Texas Insurance News

REGULATORY NEWS PUBLISHED BY THE TEXAS DEPARTMENT OF INSURANCE

## Early Warning to Watch Wall Street

By Betty Patterson, Senior Associate Commissioner, Financial

**T**HE INDUSTRYWIDE TREND toward ownership of insurers by publicly traded holding companies means that insurance regulators need to pay a lot more attention to Wall Street.

TDI's Early Warning Division, recently transferred to the Financial Program from Technical Analysis, has assumed the role of monitoring the stock market ups and downs of holding companies that own Texas-licensed insurance companies.

To a great extent, the Insurance Holding Company System Regulatory Act places a "firewall" between holding companies and the insurers they control. TDI approval is required for affiliate transactions, extraordinary dividend payments and changes in control of 10 percent or more of the stock in an insurance company or its holding company. A separate statute requires TDI approval of the movement of books and records to corporate headquarters or other locations out of state.

Despite these safeguards, what happens to holding companies and their stock market performance can affect the insurers they control.

### Holding Company Impact

A holding company that takes on more debt than it can service or whose earnings fall short of expectations may suffer substantial declines on the stock market. At the same time, such financial reverses may trigger a need on the part of the holding company to pull cash out of the underlying insurers.

We're seeing more and more "name brand" association of insurers with their holding companies. This can be good for the insurers when the holding companies are well known and have a positive image. But it can become detrimental if a downturn in the holding company's stock is accompanied by negative news coverage or "street talk" that leads to widespread cancellations of insurance policies by frightened customers.

In a similar vein, a drop in the parent holding company's debt rating can damage the underlying insurer's own financial rating. This in turn can

make the insurer's policies less marketable to consumers who won't buy from anything less than an A-rated company.

### Vigilance Needed

We look hard at the financial condition of the acquiring party when we do our Form A review of insurance company mergers and acquisitions. It stands to reason, therefore, that TDI should continue our vigilance with regard to the holding company's finances on a go-forward basis as well.

Monitoring publicly traded holding companies that own insurers may become even more important if the Financial Services Modernization Act of 1999 becomes law and the present trend toward mergers and acquisitions intensifies.

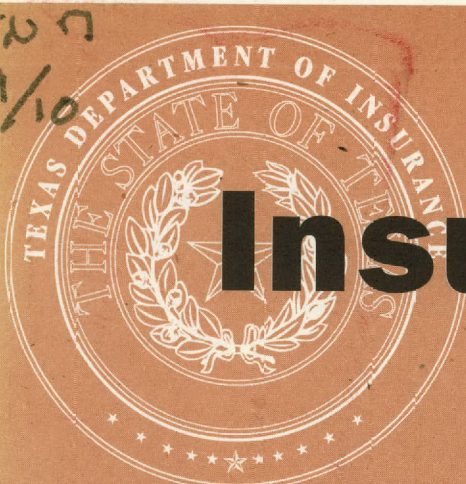
Given the potential impact of holding company activities on the solvency of the regulated insurers they control, TDI does not want to be taken by surprise. That's where Early Warning comes in. Early Warning's job is to alert the Financial Monitoring and Examination Divisions to changes in conditions that might take months to detect from annual or quarterly financial reports.

### Market Signals to Watch

We're fortunate to live in an era when automation provides tools that make tracking holding company stock trading and other activities relatively simple. We're also fortunate to have an experienced and highly qualified Early Warning Division staff.

Early Warning is starting with the identification of insurers that are controlled by publicly traded holding companies. This information is available from Schedule Y of the Annual Statements and also from veteran financial analysts who have processed Form As for many years and subsequently monitored the companies that were merged or acquired. Early Warning then will use the Internet to set up a tracking list of those publicly traded insurance holding companies much like the on-line portfolios that individual investors create to follow their stocks.

Please see **Early Warning...** page 4



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## Texas Insurance News

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The staff that prepares this newsletter has no role in proposing, drafting, editing, or approving TDI rules or policies or interpreting statutes. Texas Insurance News should not be construed to represent the policy, endorsement or opinion of the Commissioner of Insurance or the Texas Department of Insurance.

By necessity, summaries of proposed and adopted rules cannot explain their full complexity. Readers interested in complete information about administrative rules should consult the versions published in the Texas Register.

To the best of the staff's ability, information presented in this newsletter is correct as of the publication date, but scheduled dates and proposed rules and amendments may change as the adoption process goes forward.

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## NewsBriefs

### Compliance Workshops Set for November 1 & 2

**TDI WILL CONDUCT** back-to-back compliance workshops in November on life, health and managed care and on property and casualty insurance. Both workshops will be at the Joe C. Thompson Conference Center, 26th and Red River, Austin.

The life, health and managed care workshop will run from 8:30 a.m. to 4 p.m. on Monday, November 1, 1999.

The P&C workshop will be on Tuesday, November 2, 1999, from 8:30 a.m. to 3 p.m.

At the life, health and managed care workshop, participants may attend up to five 50-minute sessions on subjects that include:

- Accident and health insurance "hot topics," including silent PPOs, small and large employer health plans, etc.
- Advertising requirements.
- Filing requirements.
- Handling A&H insurance complaints.
- Handling HMO complaints.
- HMO hot topics, such as solvency, delegated networks, etc.
- Major health care legislation.
- The Texas life illustration rule.
- Senior issues.
- Point of service plans.

Participants in the P&C workshop will have a choice of four 50-minute sessions on topics that include:

- Recent commercial lines legislation and rules.
- Recent workers' compensation legislation and rules.
- Recent personal lines legislation and rules.
- P&C filing requirements.
- TDI's complaint process.
- Commercial lines filing processes.

Both workshops will include sessions on electronic filing, the pending federal banks and insurance legislation; the open records process and Y2K and the insurance industry.

Registration can be done online at [www.tdi.state.tx.us/consumer/workshop.html](http://www.tdi.state.tx.us/consumer/workshop.html). The deadline for registration is October 11. Questions and requests for printed registration materials should be addressed to Melissa Hield at 512 322-4349. ★

### Windstorm Building Code Advisory Committee Named

**COMMISSIONER JOSE MONTEMAYOR** has appointed eight members of the nine-member Windstorm Building Code Advisory Committee on Specifications and Maintenance. The committee will make recommendations to the Commissioner on building specifications in the Texas Windstorm Insurance Association Plan of Operations.

Insurance industry representatives are Robert C. Huxel of Austin, director of governmental affairs for Farmers Insurance; Craig Peter Nadziejka of Austin, a State Farm vice president and Lisa A. Daigle of Dallas, territorial risk manager for Allstate Insurance.

Building industry members are Jeffrey R. Koellman of Corpus Christi, designer for Al Hogan Builder, Inc.; Chester L. Sherman of Beaumont, consultant for Ritter Lumber Co.; and Ron Rohrbacher of League City, construction training director for Perry Homes.

Public members are Dr. Joseph E. Minor of Rockport, an independent consulting engineer, and Robert Thorne of Port Isabel, a retired IBM engineer. Montemayor will appoint a third public representative later.

The Commissioner or his designee serve as an ex officio, nonvoting member. ★

### Fraud Unit to Handle Intake of Fraud Calls

**STARTING SEPTEMBER 1, 1999**, TDI's Insurance Fraud Unit directly receives all reports of fraud received by TDI. This task formerly was handled for the Fraud Unit by the Compliance Intake Unit of the Legal and Compliance Program.

Suspected insurance fraud can be reported to the Fraud Unit by:

- Calling 512 463-6700.
- E-mailing to [Fraud\\_Report@tdi.state.tx.us](mailto:Fraud_Report@tdi.state.tx.us).
- Writing to:

**Texas Department of Insurance**  
ATTN: **Fraud Unit** (MC 109-3A)  
P.O. Box 149104  
Austin, TX 78714-9104 ★

### TDI Informs Carriers of Service Contract Law

**THE DEPARTMENT** has notified admitted P&C carriers and eligible surplus lines companies of requirements they must meet when they issue reimbursement insurance policies to service contract providers.

Senate Bill 1775 of the 76th Legislature establishes regulation of service contracts by the Texas Department of Licensing and Regulation (TDLR), effective with service contracts made on and after January 1, 2000. Service contract providers have three options for establishing financial security to assure faithful performance of their obligations. One option is to buy a reimbursement insurance policy from an admitted carrier or eligible surplus lines company.

TDI issued a bulletin (B-0047-99) on September 15, 1999, outlining requirements for these policies. The bulletin is available at TDI's Web site, [www.tdi.state.tx.us](http://www.tdi.state.tx.us).

The policies must state that:

- The insurer will reimburse or pay on the service contract provider's behalf any covered amounts the provider is legally obligated to pay or will furnish the service that the provider is legally obligated to perform under a service contract and
- If the service contract holder does not receive the covered service within 60 days of proof of loss, the insurer will pay the contract holder directly or provide the required service.

Policy cancellations must be in compliance with *Texas Insurance Code* Article 21.49-2A.

Admitted carriers must file their policy forms, rules and rates with TDI or amend existing filings to comply with the provisions of Senate Bill 1775. Programs accepted on an individual risk submission basis do not comply with the new law and must be filed with TDI as a new filing. Policies and endorsements are subject to prior approval. Rates and rules are file and use.

Although surplus lines carriers are not required to file their forms for approval, they must comply with the requirements of Senate Bill 1775.

For further information, call or e-mail David Nardecchia, manager of the Commercial Property/Casualty Division. His phone number is 512 305-7544, and his e-mail address is [David\\_Nardecchia@tdi.state.tx.us](mailto:David_Nardecchia@tdi.state.tx.us). ★



## PersonalNotes



### XXX: Will it Kill Level Term Life?

**SENIOR ASSOCIATE COMMISSIONER** Betty Patterson of the Financial Program held a September 7, 1999, public hearing on proposed rules embodying the 1999 version of the NAIC's "XXX" model rule on life insurance reserves.

Commissioner Jose Montemayor is expected to act on the rule, which would replace one based on the 1995 version of XXX, in October.

Meanwhile, TDI receives questions from agents and others about the rule and its potential effects. These include:

#### Q Is TDI outlawing term life insurance?

**A** Absolutely not. Term life is a useful product that must remain in the marketplace. The rule requires companies to establish adequate reserves for "indeterminate premium" life policies, which includes most term products.

#### Q Does the rule apply just to term insurance?

**A** No. It applies to virtually all life policies. Its primary impact, however, will be on term policies if companies have not adequately reserved for them in the past.

#### Q Will the rule price level term policies out of the market?

**A** It shouldn't. The new version of XXX gives actuaries more latitude than the earlier version in calculating reserves. No premium increases should be needed when the initial period is less than 10 or 12 years. Increases in the 20-35 percent range might be needed when the initial period is 20 years or longer and only for certain select issues. Some companies will be able to minimize increases by funding reserves from surplus instead of premium. Level term policies should remain competitive with cash value and annual renewable term products. ★

### Brodersen Named HMO Division Chief

**BLAKE BRODERSEN**, a staff attorney in TDI's Legal and Compliance Program since 1997, has been named Deputy Commissioner for the HMO Division.

Senior Associate Commissioner Kim Stokes of the Life, Health and Licensing Program made the appointment effective September 1, 1999. Brodersen replaces Karen Thrash, who resigned to move out of state.

Brodersen received a bachelor of science degree with honors from the University of South Dakota in 1985. He worked for a small life insurance company and a bank in South Dakota before joining the South Dakota Division of Insurance as its life/health rates and forms analyst. He left the division after two years to attend law school at Gonzaga University in Spokane, Washington, where he graduated magna cum laude in May 1993.

Brodersen joined the Texas Attorney General's Office as a law clerk after passing the Texas Bar Exam and after six months was promoted to assistant attorney general in the General Litigation Division.

He joined TDI as a staff attorney in 1997 and assisted the Life/Health and HMO divisions in implementing and interpreting state and federal legislation. ★

### Ohaechesi Heads Licensing and Registration

**BETTY PATTERSON**, senior associate commissioner of the Financial Program, has designated 11-year TDI veteran Godwin Ohaechesi as director of the new Company Licensing and Registration Division.

Ohaechesi joined TDI's old Liquidation Division in 1988 upon graduation from St. Edwards University, where he earned a bachelor of business administration degree in finance.

Following the privatization of Liquidation duties in 1992, Ohaechesi moved to the Conservation Division and later to Financial Monitoring, where he served as a financial analyst until his appointment as a supervising analyst. Ohaechesi is a certified financial examiner (CFE). ★

### Toscano Arrested for UA Probation Violation

**FORMER AGENT** on probation for unauthorized insurance activities has been arrested for violating the conditions of his probation by again selling automobile liability insurance without a license.

Peace officer/investigators from TDI's Insurance Fraud Unit arrested Genaro B. Toscano Jr., alias Henry Toscano, on September 2, 1999, at his office in San Antonio after a sting operation verified that he was selling bogus car insurance.

Toscano, 53, was freed on \$10,000 bond set by State District Court Judge Jon Wisser of Austin.

TDI revoked Toscano's agent's license in 1991. However, a Fraud Unit sting operation in 1997 caught him selling proof-of-insurance cards indicating the buyers had the auto liability coverage required by Texas law. A Travis County (Austin) grand jury indicted him for unauthorized insurance, and a state district court placed him on six years' deferred adjudication in early 1998. As a condition for probation, the court ordered him to "not work in the insurance business in any capacity."

Meanwhile, Toscano operated out of an office with "Toscano Insurance" on the door and advertised as an insurance agent in a San Antonio "shopper" newspaper. A Texas Department of Public Safety trooper reported to the Fraud Unit in June 1999 that a traffic defendant had presented a proof-of-insurance card listing Toscano as the agent.

A Fraud Unit undercover investigator, wired for sound, subsequently paid Toscano an \$85 "premium" and received a proof-of-insurance card, and TDI obtained a warrant for Toscano's arrest. ★



## Enforcement Actions

### Ali Gets Five Years in Annuity Theft

**A** FORMER INSURANCE AGENT has pleaded no contest to theft charges and agreed to a five-year prison sentence and repayment of \$131,977 that he stole from two retired Houston schoolteachers by cashing their annuities without permission.

Manzoor "Manny" Ali, 59, of League City, entered the plea on August 26, 1999, in the 147th State District Court in Austin in accordance with an agreement made with the Travis County District Attorney. The case was investigated and referred to the DA by TDI's Insurance Fraud Unit.

It was the second plea agreement in two weeks by agents investigated by the Fraud Unit for defrauding senior citizens. Gary Nicholas Ronck of Lubbock agreed on August 12 to a seven-year prison term for stealing money given him by a 91-year-old Austin woman to buy annuities.

"Ripping off senior citizens is a particularly ugly form of criminal behavior," said Insurance Commissioner Jose Montemayor. "The Fraud Unit and the Travis County District Attorney deserve our thanks for bringing Mr. Ali to justice and securing the return of the victims' money."

TDI revoked Ali's license as an insurance agent in October 1998.

Ali pleaded no contest to stealing \$63,382 from Gertrude Spates, 78, and \$68,595 from Blanche M. Douglass, 88, both of Houston.

In Ms. Spates' case, Ali allegedly submitted forged documents that led Keyport Life Insurance Co. to believe that she wanted to cash in a \$63,382 annuity and have the check sent to Ali's "Finance and Investments Concepts" agency. The insurer issued a check that was subsequently deposited into Ali's bank account. Ali tried the same thing with a \$12,289 annuity belonging to Ms. Spates, but the insurance company stopped payment after learning of the possible forgery.

In Ms. Douglass' case, Ali allegedly forged her signature to a form cashing in a \$68,595 annuity with Commercial Union Life Insurance Co. and asking that the check be mailed to Ali's office address in League City. Ali also allegedly forged Ms. Douglass' signature on the check.

Commercial Union reinstated Ms. Douglass' annuity. Under the plea agreement, Ali must repay the insurance company. ★

### Austin Woman Convicted of Claim Fraud

**A** NDRONIKY P. HAZLEWOOD, owner of an Austin travel agency, has been convicted of insurance fraud, a second-degree felony, for filing a \$138,000 homeowners claim based on a burglary that did not happen.

Judge Wilford Flowers of the 147th State District Court entered the guilty verdict on September 1, 1999, at the end of a two-day bench trial. The punishment phase of Ms. Hazlewood's trial is scheduled for October 21, 1999. Second-degree felonies carry a possible sentence of two to 20 years in prison and/or a fine of up to \$10,000.

TDI's Insurance Fraud Unit assisted the Travis County District Attorney's staff in the investigation and prosecution of the case against Ms. Hazlewood.

According to trial testimony, Ms. Hazlewood filed the claim with State Farm Fire and Casualty Insurance Co. in April 1996. She claimed that burglars broke into her home between March 3 and March 8, 1996, and stole antique furniture, Persian rugs, crystal, art works and other household items.

State Farm investigated the claim, denied it as fraudulent and referred the matter to the District Attorney.

Ms. Hazlewood produced witnesses who claimed to have seen the allegedly stolen articles in the house at a "blessing of the house" ceremony on March 4, 1996. However, neighbors and others testified that the house was empty except for a few items left behind by three college students who had rented the house but had moved out two weeks before the purported burglary. ★

### Early Warning... from page 1

Early Warning will be looking for such potential trouble signs as:

- Large and sudden changes in trading volume of a holding company's stock.
- Unusual price fluctuations unrelated to the general movement of the market as a whole.
- Market capitalization (stock price multiplied by shares outstanding) that seems out of line with a holding company's intrinsic value.

### Other Sources to Watch

In addition to tracking shares on the stock market, Early Warning will regularly monitor other sources of information on insurance holding companies. Prominent among these sources are the quarterly and annual filings that publicly traded corporations must make with the U. S. Securities and Exchange Commission (SEC). These filings, available on the Internet, disclose such critical information as the corporation's indebtedness. As regulators, we find it useful to understand what the underlying insurers might be expected to contribute toward servicing a holding company's debt.

Early Warning also will track any changes in the holding companies' debt ratings or in the underlying insurers' claims paying ratings by major rating agencies such as A. M. Best, Moody's and Standard & Poor's and will forward that information to the other divisions of Financial for follow-up.

### The Role of Early Warning

In addition to monitoring market activity and ratings, Early Warning's function is to assemble and analyze non-financial indicators from numerous sources—complaints, rate and form filings, news reports, agent appointment records and the like—that might suggest financial trouble down the road. Financial prioritizes companies for review and schedules companies for examinations. But insurers are dynamic, and their finances can change drastically within a few months.

This is an excellent time for Early Warning to become part of the Financial Program. We are always looking for improvements and efficiencies in our regulatory efforts. This move will enable Early Warning to focus more quickly on trends and developments discerned through our analyses and examinations and to accelerate the sharing of Early Warning information with the examiners, analysts and actuaries who know the most about the companies. ★



# Insurer Services Replaced by Company Licensing and Registration

**B**ETTY PATTERSON, senior associate commissioner of the Financial Program, has created a new Company Licensing and Registration Division to handle functions that previously were the responsibility of the former Insurer Services Division as well as new functions that were transferred to Financial by the realignment of the old Regulation and Safety Program (see September *TIN* for details).

The new division will license admitted companies and HMOs, list and register surplus lines and other non-admitted entities, maintain security deposits and house the Early Warning and Contract Administration Units.

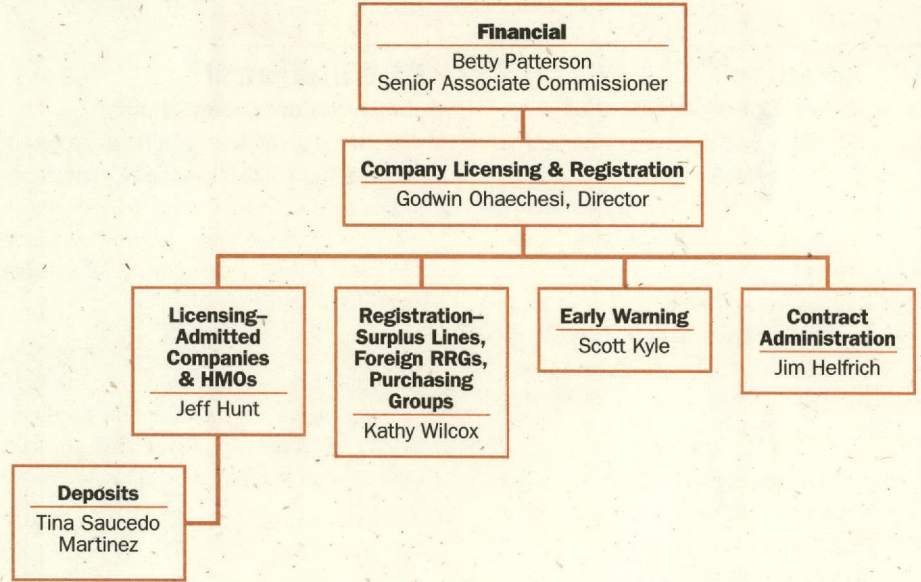
The creation of Company Licensing and Registration and the retirement of Insurer Services took effect September 1, 1999.

Patterson appointed Godwin Ohaechesi as director of Company Licensing and Registration. Ohaechesi has been with TDI since April 1988, serving in Liquidation, Conservation and, most recently, as a supervising analyst in Financial Monitoring. He is a Certified Financial Examiner (CFE) in the Society of Financial Examiners.

Wanda Perez will replace Ohaechesi as one of the three supervising analysts in Financial Monitoring. She will report to Danny Saenz, director of Financial Monitoring. Perez has served in the Examination and Financial Monitoring Divisions over the past 11 years. She also holds the Society of Financial Examiner's CFE designation.

Following are the units of Company Licensing and Registration, their managers and phone numbers (all Area Code 512):

**Licensing—Admitted Companies and HMOs**  
 Jeff Hunt ..... 322-4370



**Registration—Surplus Lines, Foreign Risk Retention Groups, and Purchasing Groups**  
 Kathy Wilcox ..... 322-3535

**Deposits**  
 Tina Saucedo-Martinez ..... 322-4124

**Early Warning**  
 Scott Kyle ..... 322-3467

**Contract Administration**  
 Jim Helfrich ..... 475-1867

Contract Administration formerly was called Special Deputy Receiver (SDR) contracting, but Patterson said the division will have broader responsibilities that include other contracting done by Financial.

"I welcome the staff of Early Warning and SDR Contracting to the Financial Program," Patterson said. "I consider this a valuable addition to our current core processes of Licensing, Monitoring, Examinations, Actuarial, and Conservation/

Liquidation. The incorporation of these functions and the creation of our new Company Licensing and Registration Division is designed to follow our Commissioner's lead of 'a back to basics' approach envisioned in the Department's recent realignment.

"This is a great opportunity to focus some of our expertise on new global developments such as the use of a new NAIC standardized company licensing application, our broader role in international/surplus lines issues and the emergence of early warning indicators such as the stock market activity of public holding companies.

"With these changes we will continue to pursue fully integrated solvency-related functions within the program and to contribute to fully integrated regulatory efforts within the Department." ★

# Montemayor Starts Campaign to Increase MAP Awareness

**C**OMMISSIONER JOSE MONTEMAYOR has launched an expanded effort to help Texas drivers find lower-cost auto insurance through TDI's Market Assistance Program.

"Today I am announcing a new campaign called 'Good Rates for Good Drivers,'" Montemayor said at a September 7 news conference in Austin.

"The objectives are twofold: to gather information to help us better understand the problem of underserved areas and to actively get the word out across the state that the Texas Department of

Insurance wants to help people get good deals on their car insurance. Good drivers should not pay bad driver rates."

The Commissioner announced plans to visit several underserved areas "to help spread the word about the MAP and to help me understand the dynamics that are going on in the marketplace."

He said planning is under way for visits to the Lower Rio Grande Valley, El Paso, Houston, Dallas, Fort Worth, Corpus Christi, San Antonio and possibly other cities or areas.

Montemayor stressed the importance of the news media in telling Texans about both the rate guides and the MAP.

"We've tried advertising (the MAP) in a few movie theaters, in minority publications and even on the sides of buses," he said. "But we've found that nothing works as well as stories in newspapers and on radio and television."

In the week following the news conference, the MAP received and answered 1,401 consumer calls.

Please see **MAP...** page 7



# RuleMaking

## AGENT LICENSING

### APA Adoption

#### License Fee Schedule Changes

- Commissioner Jose Montemayor has amended 28 TAC § 19.802 to
  - 1) update certain agent licensing examination fees to accurately reflect the statutory ceiling and
  - 2) establish fees for the specialty agent licenses established by Senate Bill 957 of the 76th Legislature. The Department expects to receive approximately 10,000 specialty license applications.

The adopted changes include:

- Reduction of the fee for a Group II agent's qualifying examination given by TDI's contractor from \$50 to \$20.
- The addition of a fee schedule for insurance representatives. The fees are \$20 for an original application, \$18 for a renewal, \$20 for a qualifying examination and \$10 for each new appointment.
- Establishment of specialty license fees. The original application fee is \$50, the renewal fee is \$48 and the fee for additional appointments is \$10. Specialty licenses generally will be issued only to firms, not to individuals, that may sell specific types of insurance incidental to their main business. These types of insurance include credit and "gap" coverages, rental car liability insurance, travel insurance and self-service storage insurance.

Publication: 24TexReg6754, August 27, 1999  
 Effective date: September 1, 1999  
 Further information: 512 463-6327

## FINANCIAL

### APA Repeal

#### Workers' Comp CPA Reports

- Commissioner Jose Montemayor has repealed 28 TAC § 7.36, which required insurers to submit separate CPA reports showing their year-end losses, expenses and unearned premium reserves for workers' compensation insurance in Texas.

TDI staff proposed repeal of the rule because the underlying statute, Texas Insurance Code Article 5.61, no longer imposes the requirement of a separate CPA report.

Projected publication date: October 1, 1999  
 Further information: 512 463-6327

## HEALTH CARE

### APA Withdrawal

#### Submission of "Clean Claims"

- The Department has withdrawn proposed new 28 TAC §§ 21.801-21.809, concerning submission of "clean claims" to HMOs and to insurers that issue preferred provider plans. A revised version of the proposal will be submitted at a later date.

Rules defining "clean claim" are necessary to implement House Bill 610 of the 76th Legislature, which requires payment decisions within 45 days after a contracted provider submits a clean claim.

Publication: 24TexReg7396, September 17, 1999  
 Further information: 512 463-6327

## TITLE

### APA Proposal

#### Basic Manual Amendments

- The Department has proposed an amendment to 28 TAC § 9.1, which would adopt by reference several changes in the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (the Basic Manual). The listed items were unopposed at the rulemaking phase of the 1998 Texas title insurance biennial hearing in August. They include the following rule changes:
  - Revision of the current reinsurance agreement form. The form would expressly state that a reinsurer who uses failure of notice as a defense has the burden of establishing that it was prejudiced by the insured's failure to give the reinsurer no-

time of a claim in a reasonable time. The proposal also would add a new paragraph 10, "Action by or on Behalf of Ceder," which would apply when the reinsurer is not licensed or accredited in the state of domicile of the ceder and jurisdiction or service of process is at issue.

- Substitution of a new Tertiary Facultative Reinsurance Agreement for the one now in place. The proposed new form, referred to as a Type I agreement, would provide direct access to the reinsurer in the event of a claim exceeding the ceder's primary loss risk.
- Creation of a new Tertiary Facultative Reinsurance Agreement—Type II. This is a new reinsurance agreement whereby a reinsurer cedes its risk of loss to a third level of reinsurers.
- Adoption of new Procedural Rule P-48 to revise the dates used on title insurance forms promulgated by the Commissioner of Insurance. The rule would provide that any date in any promulgated form adopted as "19XX" must be changed to reflect the correct calendar year.
- Revision of Procedural Rule P-28 to update continuing education requirements to conform to the new staggered license renewal system.

Publication: 24TexReg6630, August 27, 1999  
 Earliest possible adoption: September 26, 1999  
 Further information: 512 463-6327 ★

# HOW APA WORKS

The Administrative Procedure Act (APA) requires agencies to publish both proposed and adopted rules in the Texas Register.

The entire text of a proposed rule will appear in the Texas Register after an agency's governing body or officer approves it for publication. This appearance marks the first day of a mandatory 30-day comment period. Only after that period has elapsed may the agency adopt the proposed rule unless it is an emergency rule.

After adopting a rule, the Agency must publish notice of its action in the Register. Rules become effective 20 days after the date on which they are filed with the Register.



# Types and Totals of Entities Holding a Certificate of Authority in Texas as of August 31, 1999

	AUGUST 31, 1999			JULY 30, 1999			DECEMBER 31, 1998		
	TEXAS	FOREIGN	TOTAL	TEXAS	FOREIGN	TOTAL	TEXAS	FOREIGN	TOTAL
Stock Life Insurance Companies	151	558	709	150	563	713	157	572	729
Mutual Life Insurance Companies	2	61	63	2	61	63	2	62	64
Stipulated Premium Companies	41	0	41	43	0	43	45	0	45
Non-Profit Life Companies	0	1	1	0	1	1	0	1	1
Stock Fire Insurance Companies	1	4	5	1	4	5	1	3	4
Stock Fire & Casualty Companies	107	657	764	107	655	762	104	651	755
Mutual Fire & Casualty Companies	7	60	67	7	60	67	8	58	66
Stock Casualty Companies	10	107	117	11	107	118	12	102	114
Mexican Casualty Companies	0	8	8	0	8	8	0	8	8
Lloyds	65	0	65	64	0	64	63	0	63
Reciprocal Exchanges	11	15	26	11	15	26	11	15	26
Fraternal Benefit Societies	10	26	36	10	26	36	10	26	36
Title Insurance Companies	4	19	23	4	19	23	4	18	22
Non-Profit Legal Services Corps.	2	0	2	2	0	2	2	0	2
Health Maintenance Organizations	70	3	73	70	3	73	69	3	72
Risk Retention Groups	1	0	1	1	0	1	1	0	1
Third Party Administrators	270	385	655	271	383	654	259	375	634
Joint Underwriting Associations	0	7	7	0	7	7	0	7	7
Multiple Employer Welfare Assoc.	5	3	8	5	3	8	5	3	8
Continuing Care Retirement	17	2	19	17	2	19	17	2	19
<b>TOTAL</b>	<b>774</b>	<b>1916</b>	<b>2690</b>	<b>776</b>	<b>1917</b>	<b>2693</b>	<b>770</b>	<b>1906</b>	<b>2676</b>
Statewide Mutual Assessment Life, Accident and Health Companies	1	0	1	1	0	1	1	0	1
Local Mutual Aid Associations	7	0	7	8	0	8	9	0	9
Local Mutual Burials Associations	2	0	2	2	0	2	2	0	2
Exempt Associations	12	0	12	12	0	12	12	0	12
Non-Profit Hospital Service Corps.	2	0	2	2	0	2	2	0	2
County Mutual Fire Companies	24	0	24	24	0	24	24	0	24
Farm Mutual Fire Companies	20	0	20	20	0	20	20	0	20
<b>TOTAL</b>	<b>68</b>	<b>0</b>	<b>68</b>	<b>69</b>	<b>0</b>	<b>69</b>	<b>70</b>	<b>0</b>	<b>70</b>
<b>GRAND TOTAL</b>	<b>842</b>	<b>1916</b>	<b>2758</b>	<b>845</b>	<b>1917</b>	<b>2762</b>	<b>840</b>	<b>1906</b>	<b>2746</b>

## Data Call Reminders

(Failure to comply with TDI's reporting requirements may result in disciplinary action)

### Quarterly Closed Claims Reports

Reports for claims closed during the third quarter of 1999 are due October 10, 1999. TDI contact is Paul Vestal, 512 475-3024. E-mail address: paul\_vestal@tdi.state.tx.us or Nita Rene Smith, 512 475-1999. E-mail address: nita\_rene\_smith@tdi.state.tx.us

### Call for Quarterly Experience

The Call for Third Quarter 1999 Experience was mailed the end of September 1999 and is due November 15, 1999. The bulletin and forms may be downloaded direct from TDI's web page located at www.tdi.state.tx.us. TDI contact is Vicky Knox, 512 475-1879. E-mail address: vicky\_knox@tdi.state.tx.us

### Call for Quarterly Experience, Workers' Compensation Deductible Plans

The Call for Third Quarter 1999 Experience was mailed the end of September 1999 and is due

November 15, 1999. The bulletin and forms may be downloaded direct from TDI's web page located at www.tdi.state.tx.us. TDI contact is Vicky Knox, 512 475-1879. E-mail address: vicky\_knox@tdi.state.tx.us ★

## Fraud Unit Prosecutions

### Convictions

**Ronck, Gary**, convicted in Austin on charges of theft over \$200,000 and sentenced to seven years in prison.

### Indictments

**Oshinowo, Felix Eyato**, indicted in Dallas on six counts of forgery of a commercial instrument.

**Baggett, Curtis**, indicted in Austin on charges of making a false statement in a written instrument.

**Guthrie, Marion Philip**, indicted in Austin on charges of making a false statement in a written instrument.

**Kurz, Richard Michel**, indicted in Austin

on charges of making a false statement in a written instrument.

**Westover, Michael Gene**, indicted in Austin on charges of making a false statement in a written instrument.

**Isom, Everett**, indicted in Austin on charges of making a false statement in a written instrument.

### Arrests

**Island, John Lindsey**, arrested in Plano on charges of securing the execution of a document by deception.

**Cantu, Jose**, arrested in Houston, felony warrants resulting from his conviction in Austin. ★

## MAP... from page 5

The Commissioner said he is asking the participating insurance companies to increase their efforts to contact MAP applicants and sell them policies at standard or preferred rates. Those companies are Allstate, American National, Farmers, GEICO, Nationwide, Progressive, Prudential Property & Casualty, Safeco, Southern Farm Bureau and State Farm. ★



## KEY TELEPHONELIST

	DIVISION	NAME	PHONE	MAIL CODE
	<b>Commissioner of Insurance</b>	Jose Montemayor	463-6468	113-1C
	General Counsel & Chief Clerk	Lynda Nesenholtz	305-7351	113-2A
	Office of Chief Clerk		463-6326	113-2A
	Government Relations	Rhonda Myron	463-6651	113-3A
	Public Information Office	Jim Davis	463-6425	113-1A
	Senior Associate Commissioner & Chief of Staff	Stan Wedel	305-7249	113-1C
	<b>Information Services</b> (Data Processing)—Director	Andy Robinson	463-0819	102-IS
	<b>Legal &amp; Compliance</b> —Senior Associate Commissioner	Sara Shiplet Waitt	463-6119	110-1A
	<b>Insurance Fraud Program</b> —Associate Commissioner	Linda Bayless	305-8159	109-3A
	<b>Life, Health &amp; Licensing</b> —Senior Associate Commissioner	Kim Stokes	305-7342	107-2A
	<b>Licensing</b> —Deputy Commissioner	Matt Ray	463-8917	107-1A
	TPA/Premium Finance	Chuck Waits	322-3412	107-5A
	Agents Licensing		322-3503	107-1A
	<b>Life/Health Division</b> —Deputy Commissioner	Ana Smith-Daley	322-3401	106-1A
	Accident & Health	Cindy Carpenter	322-3409	106-1D
	Life, Annuity & Credit	Beth Hill	322-3406	106-1E
	<b>HMO/URA Division</b> —Deputy Commissioner	Blake Broderson	463-6106	108-6A
	<b>Filings Intake</b> —Deputy Commissioner	Angelia Johnson	322-3575	104-3B
	Life/Health & HMO Intake	Belinda Reveles	322-4245	106-1E
	Property & Casualty Intake	Cindy Grimm	322-3575	104-3B
	<b>Property &amp; Casualty</b> —Senior Associate Commissioner	C. H. Mah	322-3587	105-5G
	Chief Economist	Emilio (Joe) Palermo	305-7194	113-1C
	Data Services	Clare Pramuk	475-1878	105-5D
	Property & Casualty Actuarial	Philip Presley	475-3017	105-5F
	<b>Automobile &amp; Homeowners</b> —Associate Commissioner	David Durden	322-3430	104-5A
	Commercial and Personal Automobile	Grover Corum	322-3471	104-1A
	Homeowners	Larry Dunbar	322-2266	104-1F
	Market Assistance Program	Kathy Graf	322-2290	104-MA
	<b>Commercial Property &amp; Casualty</b> —Deputy Commissioner	Marilyn Hamilton	322-2265	104-2F
	Bond, Crime & Glass	Irwin Thomas	322-3475	104-1B
	General Liability	Dana Schonfeld	322-3460	104-2A
	Commercial Property	David Nardecchia	322-2243	104-2F
	Professional Liability	Kenneth McDaniel	322-3445	104-2B
	<b>Workers' Compensation</b> —Deputy Commissioner	Nancy Moore	322-3486	105-2A
	Classification	Joel Isgrig	322-3493	105-2A
	Oversight Group	Pat Brabham	322-3495	105-2A
	Group Ins./Deductible/Retrospective Rating	Vicki Martinka	322-3459	105-2A
	Employee Leasing	Jerry Schwab	322-3495	105-2A
	<b>Inspections</b> —Deputy Commissioner	Alexis Dick	463-6674	103-1A
	Commercial Property Oversight	Richard Baker	322-2259	103-1D
	Engineering	Billy Ray Guerin	322-2212	103-3A
	Windstorm Inspection	Welch V. Watt	322-2203	103-1E
	Loss Control	Richard Baker	322-3435	103-9A
	<b>Title Division</b> —Deputy Commissioner	Robert Carter	305-7402	106-2T
	Title Examinations	Ethel Benedict	322-5027	106-2T
	Title Section	Paula Robertson	322-4378	106-2T
	<b>Financial</b> —Senior Associate Commissioner	Betty Patterson	322-5040	305-2A
	Deputy Commissioner	Kevin Brady	305-6788	305-2A
	Actuarial	Mike Boerner	322-5067	302-3A
	Company Licensing and Registration	Godwin Ohaechesi	322-3507	305-2C
	Licensing—Admitted Companies & HMOs	Jeff Hunt	322-4370	305-2C
	Registration—Surplus Lines/Foreign RRGs/Purchasing Groups	Kathy Wilcox	322-3535	305-2C
	Statutory Deposits	Tina Martinez-Saucedo	322-4124	305-2C
	Early Warning	Scott Kyle	322-3467	105-5A
	Contract Administration	Jim Helfrich	475-1867	105-5C
	Examinations—Chief Examiner	E. Joy Little	322-5038	305-2E
	Financial Monitoring	Danny Saenz	322-5002	303-1A
	Conservation	Neal Rockhold	322-4162	305-1C
	Liquidation Oversight	Rosalind Conway	322-4352	305-1D
	<b>Consumer Protection</b> —Associate Commissioner	Audrey Selden	322-4309	111-1A
	Complaints Resolution, Life, Accident & Health	Michael Jackson	463-6500	111-1A
	Complaints Resolution, Property & Casualty	Valerie Brown	463-6500	111-1A
	Advertising Unit	Jack Evins	475-1949	111-2A



# Disciplinary Actions

**Editor's Note:** Copies of individual orders may be obtained by calling TDI's Public Information Office, 512 463-6425.

AGENTS & AGENCIES	NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
	Acerra, Stephen Joseph	Dallas	Group I License Revoked	Misappropriation or Conversion	99-1081	7/26/99
	Al-Saffar, Nabil M.	Dallas	Group I, Group II and Local Recording Agent's Licenses Revoked	Felony Conviction; Material Misstatement on License Application	99-1101	7/30/99
	Ashbrook, Joel Neal	Irving	Group I Agent's License Revoked	Fraudulent or Dishonest Practices—"Cleansheeting"	99-1136	8/11/99
	Bailey, Cameron Orville, dba Cornerstone Financial	Dallas	\$1,000 fine	Advertising Violations	99-1177	8/20/99
	Bluebonnet Title Co.	Burleson	\$1,250 Fine and Cease-and-Desist Order	Consent Order; Alleged Failure to Accurately Disclose Disbursements	99-1176	8/20/99
	Cazarez, Adan R.	Houston	Agent's License Denied	Prior License Revocation	99-1135	8/11/99
	Dawson, Joseph Edward	Dallas	Restitution Totaling \$2,516	Allowing Unlicensed Persons to Use License	99-1134	8/11/99
	Hinojosa, Rene Sr.	Corpus Christi	Cease-and-Desist Order	Consent Order; Alleged Unauthorized Insurance	99-1168	8/17/99
	Hlavacek, Bruce	Dallas	Group I License Suspension	Felony Conviction (Probated)	99-1104	8/4/99
	Hinojosa, Carlos	Corpus Christi	Cease-and-Desist Order	Consent Order; Alleged Unauthorized Insurance	99-1198	8/25/99
	Keystone Title Co.	Hempstead	\$3,000 Fine	Consent Order; Alleged Failure to Maintain Current and Complete Abstract Plant; Alleged Violations of Internal Control Requirements	99-1155	8/16/99
	Matlock, Charles R.	Early	\$1,000 Fine; 12-Month Suspension, Probated; Restitution Totaling \$8,236	Unauthorized Insurance	99-1141	8/12/99
	Nowlin, Jeremy D.	Dallas	Group I Agent's License Revoked	Fraudulent or Dishonest Practices—"Cleansheeting"	99-1156	8/16/99
	Poveda, John	Austin	Adjuster's License Revoked	Obtained License Renewal Through Misrepresentation	99-1113	8/6/99
	Principal Title Co. Ltd.	Houston	\$5,000 Fine	Failure to Timely Remit Premiums to Underwriter	99-1106	8/5/99
	The Randolph Abstract Co.	Junction	\$2,000 Fine	Failure to Maintain a Geographically Indexed Abstract Plant to Current Date	99-1142	8/12/99
	Stone, Danny James	Austin	One-Year License Suspension, with Two Years' Subsequent Probation	Unreasonably Failed to Remit Premium to an Insurance Company	99-0895	6/23/99
	Thompson, Curt C.	Beaumont	Group I Agent's License Revoked	Fraudulent or Dishonest Practices; Felony Conviction	99-1137	8/11/99
COMPANIES	NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
	Connecticut Indemnity Co., Security Insurance Company of Hartford and The Fire & Casualty Insurance Company of Connecticut	Hartford, CT	\$40,000 Fine	Failure to Make Workers' Compensation Premium Refunds to Employers as Required by TDI Rules	99-0909	6/25/99
	Connecticut Indemnity Co., Security Insurance Company of Hartford and The Fire & Casualty Insurance Company of Connecticut	Hartford, CT	\$200,000 Fine	Failure to Make Workers' Compensation Premium Refunds to Employers as Required by TDI Rules	99-1145	8/12/99
	Gencon Insurance Company of Vermont	Burlington, VT	Cease-and-Desist Order	Consent Order; Alleged Unauthorized Insurance	99-1143	8/12/99
	The Highlands Companies	Houston, Columbus, OH, Milwaukee, WI, Indianapolis, IN	\$20,000 Fine	Late Filing of Annual Statements	99-1210	8/26/99
	Mega Life and Health Insurance Co.	North Richland Hills	\$25,000 Fine and Cease-and-Desist Order	Advertising Violations	99-1169	8/17/99
	National Accident Insurance Underwriters Inc.	Arlington Heights, IL	\$5,000 Fine	Failure to Inform TDI of a Change in Officers and of an Officer's Prior Felony Conviction	99-1105	8/5/99
	Reliance Lloyds	San Antonio	\$7,000 Fine	Consent Order; Alleged Making of Affiliate Agreements Without Notice to TDI	99-1222	8/31/99

Continued on page 10



# LegalNotes

## Supreme Court Rules on "Innocent Spouse's" HO Claim

By Ann Bright, Section Chief, Agency Counsel Section, Legal and Compliance Division.

**T**HE TEXAS SUPREME COURT recently confronted the public policy issues that arise when a spouse burns down the family home and the innocent spouse seeks to recover the proceeds of an insurance policy on the home.

### Texas Farmers Insurance Company v. Daisy Murphy

Robert Murphy and his wife, Daisy, owned a home as community property. On September 23, 1993, Robert purchased a Homeowners B policy on the house from Texas Farmers Insurance Co. (Farmers). The policy covered fire damage losses to an insured's home and the home's contents. "Insured" was defined to cover both Robert and Daisy.

On September 30, 1993, the Murphys' home burned down. Robert filed a claim on his homeowner's insurance policy. Farmers investigated the claim and determined that Robert had intentionally caused the fire. Farmers filed a lawsuit seeking a declaration that Farmers was not liable under the policy. Robert alleged that Farmers had breached the insurance contract. Daisy alleged that she was also entitled to benefits under the policy. Shortly before the trial in the case, Daisy filed for divorce. Daisy and Robert then entered an agreement dividing their interests in the proceeds of the policy.

At the trial, the jury found that Robert had intentionally burned down the Murphys' home, but that Daisy was not involved in the arson. The trial court ruled that neither Robert, nor Daisy could recover under the policy. The case was appealed to the Houston Court of Appeals (1st District). The Court of Appeals determined that Daisy could recover half of the amount of the Murphys' loss. The Court of Appeals' decision was based on the fact that Daisy was not involved in the arson and the fact that she and Robert had entered a parti-

tion agreement before the trial. Farmers appealed to the Texas Supreme Court.

The Texas Supreme Court (the court) highlighted the difficulty of the issue. The court stated,

Fire insurance proceeds generally take the place of the destroyed property. If the destroyed property is community property, any proceeds will become community property in which the culpable spouse will necessarily have an interest unless there is a divorce or partition agreement.

The court first looked to the terms of the insurance contract. It was undisputed that Daisy was an insured under the insurance policy. However, the insurance policy expressly excluded coverage for any insured under the policy if an insured "intentionally concealed or misrepresented any material fact or circumstance, made false statements or committed fraud relating to this insurance, whether before or after a loss." Farmers alleged that this exclusion applied because Robert had made a claim on the policy after intentionally burning down his home. Farmers therefore argued that no one should be able to recover under the policy. However, the court found that that Farmers did not adequately present this defense to the trial court or to the Court of Appeals. Therefore, Farmers had waived this claim.

The court then turned to public policy issues. Farmers argued that an innocent spouse should

not be entitled to recover if the arsonist spouse would have an interest in the insurance proceeds at the time the claim was made. Daisy argued, on the other hand, that Farmers' position would encourage the innocent spouse to seek partition or divorce immediately after the alleged arson. Furthermore, Daisy argued, the innocent spouse may not be able to obtain such a prompt partition or divorce.

In addressing this issue, the court stated,

In our view, a rule conditioning an innocent spouse's recovery on partition or divorce is neither practical nor satisfactory.... In short, a rule requiring partition may not effectively protect the innocent spouse's share or prevent the culpable spouse from benefiting. Additionally, it may have the unintended consequence of encouraging divorce.... The preferable rule is to allow innocent spouses to recover according to their contracts, regardless of partition or divorce.

The court reaffirmed the "public policy preventing an arsonist from benefiting from fraud." As a result, Robert was not entitled to recover his interest in any insurance proceeds resulting from the fire. However, the court concluded that Daisy, as the innocent spouse, could recover her share (one-half) of the policy benefits. *Texas Farmers Insurance Company v. Daisy Murphy*, No. 98-0661, 1999 WL 450887 (Tex. July 1, 1999). ★



## Disciplinary Actions (continued)

OTHER	NAME	CITY	ACTION TAKEN	VIOLATION	ORDER	DATE
	GAB Robins North America Inc.	Parsippany, NJ	Cease-and-Desist Order and Payment of \$5,000 to Offset TDI Investigative Costs	Consent Order; Alleged Unauthorized Insurance	99-1220	8/31/99
	Pettit III, Robert Lee, President of BOK Services Inc.	Fort Worth	\$2,000 Restitution, Fine and Cease-and-Desist Order	Unauthorized Insurance	99-1221	8/31/99
	Texas Conference Association of Seventh-Day Adventists	Alvarado	\$10,000 Fine and Cease-and-Desist Order	Consent Order; Alleged Unauthorized Insurance	99-1144	8/12/99



# Company Licensing

## Applications Pending

### For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
Administrative Concepts, Inc.	TPA	Wayne, PA
Bankers Lloyds Insurance Co.	Lloyds	St. Petersburg, FL
Companion Property & Casualty Insurance Co.	Fire & Casualty	Columbia, SC
General & Cologne Life Re of America	Life	Stamford, CT
Mills Service Corp.	TPA	Wilmington, DE

### For incorporation

COMPANY	LINE	HOME OFFICE
AmCare Management, Inc.	TPA	Houston, TX
Legacy Health Plan, Inc.	Group Hospital Service Co.	San Angelo, TX
Lifemark Health Plan of Texas, LLC	HMO	Houston, TX
Texas Select Lloyds Insurance Co.	Lloyds	Plano, TX

### For name change in Texas

FROM	TO	LINE	LOCATION
American Credit Indemnity Co.	Euler American Credit Indemnity Co.	Fire & Casualty	New York, NY
Constitution Reinsurance Corp.	Gerling Global Reinsurance Corporation of America	Fire & Casualty	New York, NY
Financial Savings Insurance Co.	Amcorp Insurance Co.	Fire & Casualty	Houston, TX
The First Reinsurance Company of Hartford	Deerfield Insurance Co.	Fire & Casualty	Evanston, IL
Gerling Global Reinsurance Corporation of America	Constitution Insurance Co.	Fire & Casualty	New York, NY
Provident Mutual Life and Annuity Company of America	Provfirst America Life and Annuity Co.	Life	Newark, DE
Provident Mutual Life Insurance Co.	Provfirst America Life Insurance Co.	Life	Berwyn, PA
St. Paul Fire and Marine Insurance Co.	Discovery Property & Casualty Insurance Co.	Fire & Casualty	Chicago, IL
Vesta County Mutual Insurance Co.	Elm County Mutual Insurance Co.	Fire & Casualty	Dallas, TX
White Mountains Insurance Co.	Mountain Valley Casualty Co.	Fire & Casualty	Manchester, NH

## Applications Approved

### For admission to do business in Texas

COMPANY NAME	LINE	HOME OFFICE
Centra Healthplan LLC	TPA	Wilmington, DE
Consolidated Health Plans, Inc.	TPA	Metairie, LA
John Deere Casualty Co.	Fire & Casualty	Moline, IL
Ohio Security Insurance Co.	Fire & Casualty	Hamilton, OH
Transguard Insurance Company of America	Fire & Casualty	Naperville, IL

### For incorporation

COMPANY	LINE	HOME OFFICE
KS Management Services, L.L. P., dba Kelsey-Sebold Clinic	TPA	Houston, TX
Onesource Business Concepts, Inc., dba Flexsource	TPA	Abilene, TX
UTICA Lloyd's of Texas	Lloyds	Dallas, TX

### For name change in Texas

FROM	TO	LINE	LOCATION
Aetna Dental Care of Texas Inc., Dallas, TX	Aetna U.S. Healthcare Dental Plan Inc.	HMO	Houston, TX
American Travellers Life Insurance Co.	Conseco Senior Health Insurance Co.	Life	Bensalem, PA
Commonwealth Mortgage Assurance Co.	Radian Guaranty Inc.	Casualty	Philadelphia, PA
Seaboard Life Insurance Co. (USA)	Centris Life Insurance Co.	Life	Indianapolis, IN
Sun Insurance Office of America, Inc.	Royal & Sunalliance Personal Insurance Co.	Fire & Casualty	New York, NY
Vasa North Atlantic Insurance Co.	Centris Insurance Co.	Fire & Casualty	Indianapolis, IN



## Allstate Agrees to Refund \$4.5 Million

**A**LLSTATE has agreed to refund \$4.5 million to Texans who paid too much for auto liability insurance because two Allstate companies incorrectly computed special discounts for drivers age 50-64 over a four-year period.

The drivers will receive the difference between the correct discounts and the discounts they actually received, plus 10 percent annual interest. Approximately 135,000 policyholders and former policyholders will receive refunds.

The discount reduced liability, medical payments and personal injury protection coverage (PIP) premiums by 15 percent. But most of the eligible policyholders received less than 15 percent because of the way Allstate calculated the discount.

Commissioner Jose Montemayor and Allstate officials signed a consent order on September 3, 1999, in which Allstate denied violating Texas auto insurance rating rules but agreed to make the refunds.

"We require car insurers to apply discounts fairly and uniformly, but that didn't happen in the case of Allstate's 50-64 discount," Montemayor said. "I'm pleased that Allstate has agreed to fix the problem without a prolonged and costly administrative hearing."

Refunds will go to all Texas customers of Allstate Indemnity Co. and Allstate Property and Casualty Co. who received Driver-Age 50-64 discounts on policies with effective dates of September 1, 1995, or later. Allstate may pay the refunds directly by check or by giving current policyholders credits toward their next premiums.

Two other Allstate companies, Allstate Insurance Co. and Allstate County Mutual, did not offer the Driver Age 50-64 discounts and are not affected by the consent order.

A TDI actuary identified the problem with the discounts when he reviewed 1999 auto rates filed by Allstate Indemnity and Allstate Property and Casualty.

Allstate applied the discount as a flat percentage of benchmark rates issued by the Commissioner of Insurance as guidance for companies in setting their own rates. However, TDI rules require that discounts be computed as percentages of a company's actual rates, which may be as much as 30 percent above or below benchmark and which may vary among the state's 52 rating territories. Applying the discount to benchmark rates caused Allstate's practice to violate a TDI rule that discounts must be uniform.

Allstate also capped the Age 50-64 discounts in territories where its rates were below the benchmark. It did this to keep its rates from dropping below 30 percent under benchmark. This was unnecessary, however, because the 30 percent floor applies to filed rates before any discounts are applied.

TDI staff noted that Allstate calculated all other discounts correctly, as a percentage of actual filed rates. ★



**Texas Department of Insurance**

P.O. Box 149104

Austin, Texas 78714-9104

Bulk Rate  
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