

OCT 7 2011

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE  
BY CB

In the Matter of:

**AUSTIN MUTUAL INSURANCE COMPANY,**

NAIC # 13412,

Respondent.

) Docket No. 11A-132-INS

) **CONSENT ORDER**

Examiners for the Department of Insurance (the "Department") conducted a target market conduct examination of Austin Mutual Insurance Company ("AMIC"). In the Report of Target Market Conduct Examination of the Market Conduct Affairs of Austin Mutual Insurance Company, the examiners allege that AMIC violated A.R.S. §§20-157, 20-461, 20-462, 20-469, 20-2104, 20-2106, 20-2110 and A.A.C. R20-6-801.

Austin Mutual Insurance Company wishes to resolve this matter without formal proceedings, neither admits nor denies that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

**FINDINGS OF FACT**

1. Austin Mutual Insurance Company is authorized to transact property and casualty insurance pursuant to a Certificate of Authority issued by the Director.

2. The Director authorized the examiners to conduct a target market conduct examination of Austin Mutual Insurance Company. The examination covered the time period from July 1, 2009 through June 30, 2010 and concluded on February 8, 2011. Based on their findings, the examiners prepared the "Report of Target Market Conduct Examination of Austin Mutual Insurance Company" dated June 30, 2010.

3. The examiners found two underwriting authorization disclosure forms, included in the private passenger automobile and homeowners applications, used during the time frame of the examination that failed to specify the types of persons

1 authorized to disclose information about the individual, to specify the authorization  
2 remains valid for no longer than one year from the date the authorization is signed and  
3 to advise the individual or a person authorized to act on behalf of the individual that  
4 they are entitled to receive a copy of the authorization form.

5 4. The examiners reviewed 100 of 7,345 private passenger automobile new  
6 business and/or renewal policies, 50 of 983 private passenger automobile surcharged  
7 policies and 100 of 6,411 homeowners new business and/or renewal policies issued  
8 during the time frame of the examination and found that AMIC failed to provide 5  
9 homeowner and 8 private passenger automobile applications requested by the  
10 examiners.

11 5. The examiners reviewed 100 of 7,345 private passenger automobile new  
12 business and/or renewal policies, 50 of 983 private passenger automobile surcharged  
13 policies and 100 of 6,411 homeowners new business and/or renewal policies issued  
14 during the time frame of the examination and found that AMIC failed to provide 80  
15 homeowner and 139 private passenger automobile applicants a *Notice of Insurance*  
16 *Information Practices* when personal information was first collected from a source other  
17 than the applicant or public records.

18 6. The examiners reviewed 16 of 16 private passenger automobile and 50 of  
19 286 homeowner policies non-renewed due to an adverse underwriting decision during  
20 the time frame of the examination and found that AMIC failed to provide a compliant  
21 Summary of Rights for 16 private passenger automobile and 6 homeowner non-  
22 renewals.

23 7. The examiners reviewed 50 of 106 homeowner claims closed without  
24 payment and 50 of 270 homeowner claims paid during the time frame of the  
25 examination and found that AMIC failed to provide 9 claimants with notice, at least

1 every 45 days, stating the reasons the investigation remained open.

2 8. The examiners reviewed 50 of 106 homeowner claims closed without  
3 payment and 50 of 270 homeowner claims paid during the time frame of the  
4 examination and found that AMIC failed to provide 19 claimants with notice that their  
5 claims had been accepted or denied, within 15 working days after receipt of proofs of  
6 loss.

7 9. Examiners found that the Austin Mutual Insurance Company's "Glass  
8 Repair Facility Script" in use during the time frame of the examination, failed to  
9 adequately inform glass claimants of their right to select the glass repair facility of their  
10 choice.

11 10. The examiners reviewed 50 of 112 private passenger automobile total  
12 loss claims processed by the Company during the time frame of the examination and  
13 found that AMIC failed to correctly calculate and fully pay sales taxes and fees payable  
14 in the settlement of 9 total losses.

15 11. During review of the Company's private passenger automobile claim  
16 settlement practices, AMIC resettled all 9 claims resulting in sales tax restitution of  
17 \$864.16, including \$90.70 interest and fee restitution of \$31.76, including \$3.76  
18 interest.

### 19 CONCLUSIONS OF LAW

20 1. Austin Mutual Insurance Company violated A.R.S. §20-2106(3), (7)(b)  
21 and (9) by using underwriting authorization forms that failed to contain a compliant  
22 *Authorization for the Release of Information*.

23 2. AMIC violated A.R.S. §20-157 by failing to provide examiners with  
24 requested applications relating to the subject of the examination.

25 3. AMIC violated A.R.S. §20-2104(B)(1)(b) by failing to provide applicants

1 with a *Notice of Insurance Information Practices* at the time personal information was  
2 first collected from a source other than the applicant or public records.

3 4. AMIC violated A.R.S. §20-2110 by failing to send policyholders a  
4 compliant Summary of Rights in the event of an adverse underwriting decision.

5 5. AMIC violated A.R.S §20-461(A)(2) and A.A.C. R20-6-801(G)(1)(b) failing  
6 to send notice, at least every 45 days, to claimants stating the reasons the claim  
7 remained open.

8 6. AMIC violated A.R.S §§20-461(A)(5), 20-462 and A.A.C. R20-6-  
9 801(G)(1)(a) by failing to accept or deny a claim within 15 working days after receipt of  
10 proofs of loss.

11 7. AMIC violated A.R.S §20-469 by failing to adequately inform glass  
12 claimants of their right to select the glass repair of their choice.

13 8. AMIC violated A.R.S §§20-461(A)(6), 20-462 and A.A.C. R20-6-  
14 801(H)(1)(b) by failing to correctly calculate and fully pay sales tax and other fees  
15 payable in the settlement of total losses.

16 9. Grounds exist for the entry of the following Order in accordance with  
17 A.R.S. §§20-220 and 20-456 and 20-2117.

18  
19 **ORDER**

20 **IT IS HEREBY ORDERED THAT:**

21 1. Austin Mutual Insurance Company shall:

22 a. use underwriting authorization disclosure forms that contain a  
23 compliant *Authorization for the Release of Information*.

24 b. maintain records, documents and files in a manner that permits  
25 production to the Department upon request.

1 c. provide applicants a *Notice of Insurance Information Practices* at the  
2 time personal information is first collected from a source other than the applicant  
3 or public records.

4 d. provide insureds a compliant Summary of Rights in the event of an  
5 adverse underwriting decision.

6 e. send notice, at least every 45 days, to claimants stating the reasons  
7 the claim remains open.

8 f. accept or deny a claim within 15 working days after receipt of proofs  
9 of loss.

10 g. inform glass claimants of their right to select the glass repair facility of  
11 their choice.

12 h. correctly calculate and fully pay sales tax and other fees payable in  
13 the settlement of total losses.

14 2. Within 90 days of the filed date of this Order, Austin Mutual Insurance  
15 Company shall submit to the Arizona Department of Insurance, for approval, evidence  
16 that AMIC implemented corrections and communicated these corrections to the  
17 appropriate personnel, regarding the issues outlined in Paragraph 1 of the Order  
18 section of this Consent Order. Evidence of corrective action and communication  
19 thereof includes, but is not limited to, memos, bulletins, E-mails, correspondence,  
20 procedures manuals, print screens, and training materials.

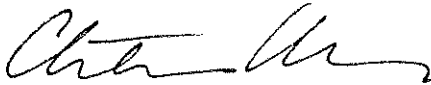
21 3. The Department shall, through authorized representatives, verify that  
22 AMIC has complied with all provisions of this Order.

23 4. Austin Mutual Insurance Company shall pay a civil penalty of \$30,000.00  
24 to the Director for remission to the State Treasurer for deposit in the State General  
25 Fund in accordance with A.R.S. §20-220(B). AMIC shall submit the civil penalty to the

1 Market Oversight Division of the Department prior to the filing of this Order.

2 5. The Report of Target Market Examination of Austin Mutual Insurance  
3 Company of June 30, 2010, including the letter with their objections to the Report of  
4 Examination, shall be filed with the Department upon the filing of this Order.

5 DATED at Arizona this 6<sup>th</sup> day of October, 2011.

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9 Christina Urias  
10 Director of Insurance  
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1 **CONSENT TO ORDER**

2 1. Austin Mutual Insurance Company has reviewed the foregoing Order.

3 2. Austin Mutual Insurance Company admits the jurisdiction of the Director  
4 of Insurance, State of Arizona, neither admits nor denies the foregoing Findings of  
5 Fact, and consents to the entry of the Conclusions of Law and Order.

6 3. Austin Mutual Insurance Company is aware of the right to a hearing, at  
7 which it may be represented by counsel, present evidence and cross-examine  
8 witnesses. Austin Mutual Insurance Company irrevocably waives the right to such  
9 notice and hearing and to any court appeals related to this Order.

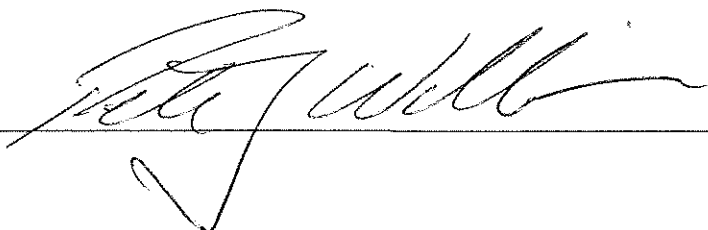
10 4. Austin Mutual Insurance Company states that no promise of any kind or  
11 nature whatsoever was made to it to induce it to enter into this Consent Order and that  
12 it has entered into this Consent Order voluntarily.

13 5. Austin Mutual Insurance Company acknowledges that the acceptance of  
14 this Order by the Director of the Arizona Department of Insurance is solely for the  
15 purpose of settling this matter and does not preclude any other agency or officer of this  
16 state or its subdivisions or any other person from instituting proceedings, whether civil,  
17 criminal, or administrative, as may be appropriate now or in the future.

18 6. PETER J. WILLIAMS, who holds the office of  
19 Vice President / General Counsel of Austin Mutual Insurance Company, is authorized to  
20 enter into this Order for them and on their behalf.

21  
22 **AUSTIN MUTUAL INSURANCE COMPANY**

23  
24 9-27-11  
25 Date

By 

1 COPY of the foregoing mailed/delivered  
2 this 7th day of October, 2011, to:

3 Gerrie Marks

Deputy Director

4 Mary Butterfield

Assistant Director

5 Consumer Affairs Division

6 Helene I. Tomme

Market Examinations Supervisor

7 Market Oversight Division

Dean Ehler

8 Assistant Director

Property and Casualty Division

9 Steve Ferguson

Assistant Director

10 Financial Affairs Division

David Lee

11 Chief Financial Examiner

Alexandra Shafer

12 Assistant Director

13 Life and Health Division

Chuck Gregory

14 Special Agent Supervisor

Investigations Division

15  
16 DEPARTMENT OF INSURANCE

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21 Kutak Rock LLP

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22 Scottsdale, Arizona 85253-2742

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