



**In the Matter of
AUSTIN MUTUAL
INSURANCE COMPANY,
NAIC # 13412**

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Docket No. 95289

CONSENT AGREEMENT AND FINAL ORDER

Pursuant to K.S.A. 40-103, K.S.A. 40-901 *et seq.*, K.S.A. 40-951 *et seq.*, K.S.A. 40-2,125 and in accordance with K.S.A. 77-501 *et seq.*, the Commissioner of Insurance has the general supervision, control and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity or suretyship in this state and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto. If any person has engaged in or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the Commissioner may, in the exercise of discretion order such remedies as payment of monetary penalties, suspension or revocation of licenses or certificates, or issuing cease and desist order or such other affirmative action to carry out the purposes of the violated provision. The company named above is currently licensed as an insurance company in the State of Kansas.

Now, in lieu of further civil administrative proceedings and to resolve this matter, the Commissioner and the agent listed below hereby agree to the following:

1. The company named above has been advised that, pursuant to K.S.A. 77-537 and K.S.A. 77-542, a company has a right to a hearing before the Commissioner may impose any sanctions or penalties; at a hearing, the company would be entitled to appear in person, to be represented by an attorney or other representative who is permitted to practice before the agency, to present its position, arguments or contentions in writing and to present evidence and examine witnesses appearing for and against it. The company hereby waives all such rights.
2. The company hereby waives any and all rights it may have under the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* to seek administrative or judicial review of this Consent Order.
3. The company consents to the jurisdiction of the Commissioner and the Kansas Insurance Department ("Department") to determine the issues set forth herein. The company expressly waives any prerequisites to jurisdiction that may exist.
4. The company neither admits nor denies the following statement of facts, but acknowledges that the Commissioner has sufficient evidence to introduce at an administrative hearing that the following facts occurred or are occurring:

- A. Austin Mutual Insurance Company (“Austin”) is domiciled in Minnesota and has been authorized in Kansas since August 25, 2004.
 - B. On January 28, 2022, Austin submitted a rate and rule filing (AUST-133128691) for approval. As part of this filing, a current and complete manual was included, this manual included a rate for Equipment Breakdown Coverage (“EBC”) that did not reflect the same amount as was approved by the Department in 2018.
 - C. On February 28, 2022, the Department submitted objections to the filing. Among other unrelated objections, the Department requested additional information regarding when the rate included in the filing was approved by the Department.
 - D. On March 10, 2022, Austin submitted a response; informing the Department that the rate had been changed after internal discussions; however, Austin claims the change was implemented in error.
 - E. Initially, Austin communicated to the Department that 8 policyholders had been charged \$316, resulting in \$2,528 in collected premium, and that only \$2,024 (\$253 per policyholder) would have been collected under the approved rate. This resulted in Austin collecting \$504 in unauthorized premiums.
 - F. The Department, noticing a discrepancy in an April 28, 2022, correspondence, sought further clarification. Through additional rounds of correspondence, the Department was made aware of the actual scope and impact of the oversight. Austin informed the Department that while only 8 policyholders were involved, most of the policyholders’ policies covered multiple properties. The updated refund amount would be \$3,692.
 - G. On March 15, 2022, Austin informed the Department that they would be refunding the difference in charged premiums of their own accord.
 - H. On June 7, 2022, the refund was credited to the effected policyholders. The Department required one additional document before the filing could be approved.
 - I. On July 20, 2022, the Department received the required document and approved the filing the same day.
 - J. Throughout the resolution of this matter, Austin provided incomplete, delayed, and inaccurate responses multiple times.
5. The company neither admits nor denies the following statutes were violated, but acknowledges the applicability of the same:
- K.S.A. 40-938 – providing for up to \$500.00 per occurrence of person or organization providing false or misleading information to the Commissioner.
 - K.S.A. 40-955 – requiring insurers to file with the Commissioner every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the

coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. K.S.A. 40-955 also requires any loss cost rate filing for workers compensation to be approved by the Commissioner prior to its use by the insurer in this state.

- K.S.A. 40-963 – providing up to \$500.00 per violation of Kansas property insurance statutes (\$2,000.00 for willful violations).
 - K.S.A. 40-2,125 – providing for, among other things, up to \$1,000.00 per occurrence of the company failing to respond to an inquiry of the Commissioner.
6. The company agrees to pay the monetary penalty listed below. Payment is due within thirty (30) days after the effective date of this Consent Order.
 - Monetary Penalty: \$7,000.00
 7. In addition, the company agrees to take such other affirmative action as specified below:
 - Not Applicable
 8. The company has read and understands this Consent Order. The company further understands that it has the right to retain counsel of its choice and have counsel review this Consent Order.
 9. The company agrees that if it fails to comply with the terms of this Consent Order, the Commissioner may take action to gain compliance with the Consent Order including, but not limited to issuing such ancillary orders and suspending the company's license until it has complied.
 10. The company waives any and all causes of action, claims or rights, known and unknown, which it may have against the Department, and any employees, agents, consultants, contractors, or officials of the Department, in their individual and official capacities, as a result of any acts or omissions on the part of such persons or firms.
 11. The company agrees to be served a copy of this fully executed Consent Order electronically or by regular U.S. Mail.
 12. The company acknowledges that this Consent Order may be published on the website of Kansas Insurance Department. The company understands and acknowledges that this Consent Order is a public document pursuant to the Kansas Open Records Act, K.S.A. 45-215 *et seq.*

The undersigned stipulates and agrees to the above findings, facts, and conclusions of law and waives their rights to an administrative hearing and judicial review of the Commissioner's Order.

Nancy Palmisano
Company Representative Name (Print)

4601 Touchton Road East, Suite 3400
Street Address

13412
NAIC Number

Nancy Palmisano
Company Representative Name Signature

9/8/22
Date

ORDER


IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. Company shall pay a monetary penalty of \$7,000.00.
2. The monetary penalty of \$7,000.00 shall be paid in full within 30 days of the effective date of this Order. Failure to pay will result in the issuance of such further action or orders as the Commissioner deems necessary.
3. This Order shall take effect when signed by all parties and the Commissioner or the Commissioner's designee and filed of record with the Kansas Insurance Department.

IT IS SO ORDERED THIS 16 DAY OF September 2022, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT
COMMISSIONER OF INSURANCE

BY: 

Charles Thomas
Attorney
Kansas Insurance Department

RECEIVED
SEP 14 2022
KANSAS INSURANCE DEPT.

Certificate of Service

The undersigned hereby certifies that she served the above and foregoing Consent Agreement and Final Order on this 14th day of September 2022, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Austin Mutual Insurance Company
Attn: Christopher Listau
55 West St.
Keene, NH 03431

And was provided via electronic mail to: PalmsaN@MSAGROUP.com



Toni Garrard
Senior Administrative Specialist

RECEIVED
SEP 14 2022
KANSAS INSURANCE DEPT.