

**In the Matter of**

**UTICA NATIONAL INSURANCE COMPANY OF TEXAS  
and UTICA MUTUAL INSURANCE COMPANY**

**Respondents.**

---

**CONSENT ORDER UNDER  
ARTICLES 23 AND 34 OF THE INSURANCE LAW**

WHEREAS, the New York State Department of Financial Services (the “Department”) investigated whether Utica National Insurance Company of Texas (UNICT) and Utica Mutual Insurance Company (UMIC), (together, “Respondents”), complied with the requirements of the New York Insurance Law (“Insurance Law”) related to the termination and rating of automobile insurance (the “Investigation”);

WHEREAS, Respondents are domestic insurance companies authorized to transact accident, health, collision, property damage liability, motor vehicle and aircraft physical damage insurance in New York pursuant to Section 1113(a) of the New York Insurance Law;

WHEREAS, Insurance Law § 3425(f), with respect to automobile insurance policies, requires the total number of notices of intention not to renew a covered policy to be limited for each calendar year to two percent of the total number of covered policies in each such insurer's rating territory in use in this State;

WHEREAS, Insurance Law § 2352 requires companies using more than one rating program to underwrite property/casualty insurance policies to report the metrics to the Department by territory and program, including non-renewals pursuant to § 3425(f);

WHEREAS, Respondents failed to properly report their non-renewals by territory and program as required by Insurance Law § 2352(a) since, at least, December 2013 and through January 2019;

WHEREAS, Respondents self-reported and cooperated with the Department's investigation;

WHEREAS, Insurance Law § 2336 requires any schedule of rates or rating plan for motor vehicle liability and collision insurance to provide for an appropriate reduction in premium charges for any insured for a three year period after successfully completing a motor vehicle accident prevention course ("APC");

WHEREAS, Respondents failed to discount the cost of automobile insurance for insureds that took the appropriate APC as required by Insurance Law § 2336(a) since, at least, November 2017 and through April 2019;

NOW, THEREFORE, the Department and Respondents are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

### **FINDINGS**

The findings of the Department are as follows:

#### **Relevant Entities**

1. UMIC is the lead company in an inter-company reinsurance pooling agreement with five other property and casualty affiliates that cede 100% of their written premiums to UMIC. UMIC utilizes independent agents to produce and distribute most of its business. Brokers produced less than 10% of total business.

2. UNICT is a property and casualty insurance provider, offering a number products including commercial multiple peril, workers' compensation, commercial auto liability, auto physical damage, and homeowners multiple peril. UNICT is a wholly owned subsidiary of its parent UMIC.

3. UMIC and UNICT are property/casualty licensed insurance providers pursuant to

Insurance Law § 1113(a) of the NY Insurance Law.

## **Background**

### *Respondents Improperly Reported their Non-Renewals*

4. Insurance Law § 3425(f) requires, with respect to automobile insurance policies, the total number of notices of intention not to renew a covered policy to be limited for each calendar year to two percent of the total number of covered policies of the insurer in force at last year-end in each such insurer's rating territory in use in New York which have completed their required policy period under this section.

5. Under Insurance Law § 2352, an insurer may establish more than one rating program within the same company for policies of insurance provided that the provisions of Insurance Law § 3425(f) are applied to each rating program separately.

6. Taken together, Insurance Law §§ 2352 and 3425(f) require insurers that establish more than one rating program to report non-renewal metrics by territory and by rating program.

7. Respondents changed their rating system in December 2013 from using one rating program to using multiple rating programs. However, Respondents did not report the percentage of non-renewals by program, after switching to a multi-program rating system, instead only reporting by territory and company.

8. In 2019, Respondents notified the Department that they had not reported by territory or program.

9. The Department conducted an investigation and concluded that Respondents were incorrectly reporting in violation of Insurance Law §§ 2352 and 3425 since December 2013.

10. Respondents have worked with the Department to remediate any past improper reporting, including conducting a lookback, refile, and submitting the requisite historical data.

*Respondents Failed to Provide Proper APC Discounts*

11. Insurance Law § 2336(a) requires any schedule of rates or rating plan for motor vehicle liability and collision insurance submitted to the Superintendent to provide for an appropriate reduction in premium charges for any insured for a three-year period after successfully completing a motor vehicle APC, or any other driver improvement course approved by the Department of Motor Vehicles.

12. In January 2019, the Department was alerted to Respondents' failure to apply the mandatory reduction in premium charges for insureds for a three-year period after successfully completing an APC.

13. Respondents indicated that they were using the rates and rule pages approved by the Department in January 2018. The DFS has determined that filing, which inappropriately eliminated the APC discount for collision coverage on Personal Lines automobile policies, did not clearly state that Respondents were eliminating the APC discount, which caused the Department to approve the filing in error.

14. The Department directed Respondents to submit an amended filing to apply the mandatory discount to collision coverage premiums, retroactively apply the discount to all applicable policies, going back to the effective date of the prior rule change, and refund the insureds accordingly.

15. Respondents submitted amended filings on February 11, 2019. The filings were approved on April 4, 2019, effective as of April 22, 2019 for new policies and June 21, 2019 for renewal policies.

16. A total of 4,280 policies were impacted from the effective date of the November 2017 filing up to the approved filings' effective dates in 2019. Respondents issued refund checks and/or credits to all affected insureds.

17. Refund checks were sent in the amount of \$9,235 to 304 insureds with cancelled policies and credits were provided in the amount of \$245,572 to 3,976 insureds with active policies.

### **Violations**

18. The Department finds that Respondents violated Sections 3425(f), 2352(a)(2), and 2336(a) of the Insurance Law.

### **AGREEMENT**

IT IS HEREBY UNDERSTOOD AND AGREED, by Respondents and the Department, that:

#### **Injunctive Relief**

19. Respondents have represented that they have corrected the deficiencies identified in this consent order and shall comply with the New York Insurance Law provisions specified in paragraph 18, as well as all other applicable laws and regulations.

#### **Monetary Penalty**

20. No later than twenty (20) business days after the Effective Date of this Consent Order, Respondents shall pay a penalty of four hundred fifteen thousand dollars (\$415,000) to the Department. The payment shall be made by wire transfer in accordance with the Department's instructions.

21. Respondents shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to payment made pursuant to any insurance policy, of the amounts payable pursuant to this Consent Order. Nothing contained herein should be construed to prohibit the Respondents from pooling the amounts payable pursuant to the terms of their in-place Pooling Agreement which was approved by the Department and where all members of the pool are subsidiaries or affiliates of Utica Mutual Insurance Company.

22. Respondents shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil

monetary penalty paid pursuant to this Consent Order.

### **Other Provisions**

23. Respondents submit to the authority of the Superintendent of Financial Services of the State of New York (the “Superintendent”) to effectuate this Consent Order.

24. Respondents shall submit to the Department an affidavit of compliance with the terms of this Consent Order one (1) year from the Effective Date of this Consent Order.

25. If the Department believes Respondents to be in material breach of this Consent Order, the Department will provide written notice to Respondents and Respondents must, within ten business days of receiving such notice, or on a later date if so determined in the Department’s sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is immaterial or has been cured.

26. Respondents’ failure to make the required showing within the designated time period as set forth in paragraph 25 of this Consent Order shall be presumptive evidence of Respondents’ material breach. Upon a finding by the Department that Respondents have breached this Consent Order, the Department has all the remedies available to it under all applicable laws and may use any evidence available to it in connection with any ensuing hearings, notices, orders or other remedies that are available.

27. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondents and the Department’s own factual investigation. To the extent that representations made by Respondents are later found to be materially incomplete or materially inaccurate, this Consent Order is voidable by the Superintendent in her sole discretion.

28. Upon the Department’s request, Respondents shall provide all documentation and

information reasonably necessary for the Department to verify compliance with this Consent Order.

29. Respondents represent and warrant, through the signature below, that the terms and conditions of this Consent Order are duly approved, and the execution of this Consent Order is duly authorized.

**Notices**

30. All written communications to any party pursuant to this consent order shall be directed as follows:

**For the Department:**

Matthew Tyler Quinones, Esq.  
Assistant Deputy Superintendent,  
Consumer Protection and Financial  
Enforcement Division  
New York State Department of Financial Services  
One State Street  
New York, NY 10004-1511

**For the Respondents:**

Louisa S. Ruffine, Esq.  
Associate General Counsel,  
Compliance Officer and Secretary  
Utica National Insurance Group  
P.O. Box 530  
Utica, New York 13503

31. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

32. Respondents waive their right to further notice and hearing in this matter as to any allegations of past violations by the Department's Consumer Protection and Financial Enforcement Division up to and including the Effective Date of this Consent Order and agree that no provision of this Consent Order is subject to review in any court or tribunal outside of the Department.

33. This Consent Order is binding on the parties, as well as any successors and assigns.

This Consent Order does not bind any federal or other state agency or any law enforcement authority.

34. The Consent Order may not be altered, modified, or changed unless in writing signed by the parties hereto.

35. The Consent Order shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or her designee.

36. This Consent Order constitutes the entire agreement between the Department and Respondents and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

37. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

38. In the event that one or more provisions contained in this Consent Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

39. Upon the parties' execution of this Consent Order, the Department will discontinue the Investigation as to and against Respondents solely with respect to the practices set forth herein during the Relevant Period. No further action will be taken by the Department's Consumer Protection and Financial Enforcement Division against Respondents for the conduct set forth in this Consent Order provided they comply with the terms of the Consent Order.

40. Nothing in this Consent Order shall be construed to prevent any consumer from pursuing any right or remedy at law. Except with regard to the enforcement of this Consent Order, Respondents' consent to the provisions of this Consent Order does not bar, estop, waive, or otherwise prevent Respondents from raising any defenses to any action taken by any federal or state agency or

department, or any private action against Respondents.

41. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent or her designee (the “Effective Date”).

*[remainder of this page intentionally left blank]*

**WHEREFORE**, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

**NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES**

By: \_\_\_\_\_  
Matthew Tyler Quinones  
Assistant Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

October \_\_, 2021

**UTICA NATIONAL INSURANCE COMPANY  
OF TEXAS**

By: \_\_\_\_\_  
Louisa S. Ruffine, Esq.  
Associate General Counsel  
Compliance Officer and Secretary  
P.O. Box 530  
Utica, New York 13503

October \_\_, 2021

**UTICA MUTUAL INSURANCE COMPANY**

By: \_\_\_\_\_  
Christopher B. Mulvihill  
Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

October \_\_, 2021

By: \_\_\_\_\_  
Louisa S. Ruffine, Esq.  
Associate General Counsel  
Compliance Officer and Secretary  
P.O. Box 530  
Utica, New York, 13503

October \_\_, 2021

By: \_\_\_\_\_  
Katherine A. Lemire  
Executive Deputy Superintendent  
Consumer Protection & Financial  
Enforcement Division

October \_\_, 2021

**THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.**

\_\_\_\_\_  
ADRIENNE A. HARRIS  
Acting Superintendent of Financial Services

October \_\_, 2021