STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

Paul R. LePage
GOVERNOR

Mila Kofman
SUPERINTENDENT

***In re* UNION MUTUAL FIRE INSURANCE CO.**
Maine License No. PCF95
NAIC Code 25860

and

NEW ENGLAND GUARANTY INSURANCE CO.
Maine License No. PCF87
NAIC Code 25852

DOCKET NOS. INS-10-233 & -234 (consolidated)

DECISION AND ORDER

The Respondents, Union Mutual Fire Insurance Company and New England Guaranty Insurance Company, are two Vermont insurance companies that operate under common ownership and management. Since they began issuing automobile insurance in Maine, they issued liability insurance identification cards for all vehicles they insured, whether or not those vehicles actually had liability coverage. The Respondents acknowledge that this practice was improper, and the Bureau of Insurance Staff acknowledges that the practice was inadvertent and has been corrected. For the reasons discussed more fully below, I find that the Respondents have engaged in a pattern and practice of misrepresenting the terms of insurance policies, and they are ordered to pay a civil penalty of $30,000.

Procedural History

The Bureau of Insurance filed Petitions for Enforcement against each Respondent on July 27, 2010. The proceedings were consolidated by order issued December 9, 2010, and the Petitions were revised by order issued January 11, 2011 to remove allegations that the Respondents had committed fraudulent insurance acts. The Superintendent held a public adjudicatory hearing on January 21, 2011, with Bureau Staff appearing as a party pursuant to 5 M.R.S.A. § 9054(5).[1] The record closed with the filing of the hearing transcript on February 11, 2011.

[1] By Order issued November 19, 2010, the Superintendent, acting pursuant to 24 M.R.S.A. § 210, appointed Bureau of Insurance General Counsel Robert Alan Wake to serve as hearing officer in this proceeding, with full authority to take final agency action on her behalf.

OFFICES LOCATED AT: 76 NORTHERN AVE., GARDINER, MAINE 04345
PHONE: (207) 624-8475 TTY: 1-888-577-6690 CUSTOMER COMPLAINT: 1-800-300-5000 FAX: (207) 624-8599

Findings of Fact

Pursuant to 29-A M.R.S.A. § 1601, owners and drivers of motor vehicles are required to maintain liability insurance coverage or other evidence of financial responsibility in order to register a vehicle in Maine or drive a vehicle on public roads. Issuers of motor vehicle liability insurance policies provide insurance identification cards to their policyholders, which constitute evidence of insurance within the meaning of 29-A M.R.S.A. § 1551(3)(A). This is required by Section 2412 of the Insurance Code, which provides in relevant part:

> Pursuant to this section, the superintendent, with the advice of the Secretary of State, shall prescribe a uniform motor vehicle insurance identification card form. The superintendent shall require all insurance companies transacting business within this State to provide with each motor vehicle liability insurance policy an insurance identification card for each vehicle, describing the vehicle covered. 24-A M.R.S.A. § 2412(7).

Unless the policy covers five or more vehicles, each card must specifically describe the vehicle by year, make, model, and vehicle identification number. Bureau of Insurance Rule 390, § 2(B)(2)(h).

An automobile insurance policy typically provides a range of coverages in addition to liability, including coverage for damage to the vehicle, theft, and injuries caused by uninsured motorists. The range of coverages is not necessarily limited to automobile insurance – many companies, including the Respondents, issue package policies that combine automobile insurance and homeowners insurance in a single policy. *(Tr. 130)*

Sometimes, the owner of a car chooses to buy insurance for theft and physical damage (known as "comprehensive" insurance) without buying liability insurance for the car, which is considerably more expensive. One of the most common situations in which this practice is appropriate is when the driver owns both a "summer" car and a "winter" car, and only has one car on the road at any given time, keeping the other one in storage. When the seasons change, the driver buys liability coverage on the car that is taken out of storage, and cancels it on the car that is put into storage. *(Tr. 91–93)*

Both Respondents have been licensed in Maine at all relevant times. Their CEO testified that until about 2000, they participated in Maine's automobile insurance market through a third affiliate, Champlain Casualty, which was a joint venture with Vienna Mutual. At that time, they "dissolved that entity and each of the companies took back its own automobile insurance." *(Tr. 360)*[2] According to the records of the Bureau of Insurance, Vermont Mutual was granted authority to write automobile liability and physical damage insurance in 1999, and New England Guaranty was granted that authority in 2005.

The Respondents' practice until late June of 2010, as described in a letter to the Bureau from the Respondents' personal lines underwriting manager, was that "an insurance liability ID card is issued

---

[2] Citations to the record, abbreviated as follows, are to the hearing transcript *(Tr.)*; to the exhibits offered by the parties and admitted at the hearing *(Staff and Resp. Exh.)*; and to the briefs submitted as closing argument by the parties *(Staff, and Resp. Br.)*.

for every vehicle on the policy, regardless of whether there is liability on that vehicle." *(Staff Exh. 16)* This practice was in place as long as the Respondents had written automobile insurance in Maine, and the CEO believes that it was simply inherited from Champlain Casualty. *(Tr. 332, 360)* It was based on a mistaken belief that this was what the law required, and that the focus of the company's compliance efforts should be to ensure that the "cards carry all mandatory verbiage" and comply with all other legal requirements relating to the form of the card, "even going as far as font size." *(Staff Exh. 16; Tr. 334–35)*

The Respondents' personnel were well aware that the purpose of the cards is to serve as evidence of liability insurance. *(Tr. 335, 374–76)* They are presented in order to allow the owner to register a vehicle, and it is illegal to register a vehicle without liability insurance. They must be presented on request to police officers in order to demonstrate that the driver is not violating the financial responsibility requirements of 29-A M.R.S.A. § 1601. After a collision, the card is presented to the other driver so that he or she has the information needed in order to file a third-party claim. Thus, it should be obvious with a moment's thought that it is improper to issue proof of liability insurance for vehicles that are not covered by liability insurance. Unfortunately, the practice was so ingrained that until 2010, nobody working for the Respondents gave it a moment's thought. *(Tr. 332–34)*

The problem first came to the Bureau's attention after one of the Respondents' policyholders, PA, filed a consumer complaint on January 26, 2010. He attached a copy of his insurance card and complained that he went into his insurance agent's office properly insured and "they let me drive off" without valid insurance, and that he had also registered his SUV in reliance on that insurance card "witch is also not leagel." *(Staff Exh. 6)*

The events that precipitated PA's complaint and the Staff's Petitions for Enforcement began on May 20, 2009, when PA applied for a Union Mutual auto/homeowners package policy. He had a summer car, a Chevrolet Camaro, and a winter car, a Dodge Dakota. He specifically requested liability coverage on the Camaro and "comp only" on the Dakota. Because he was insuring two cars with no other named driver, he filed the certification required by the Respondents that there was no other driver using the second car. The Respondents issued liability insurance ID cards for both cars. *(Resp. Exh. 23; Tr. 128–34)* When the cold weather came, he put the Dakota back on the road, without changing the liability insurance over, and on December 14, 2009, he crashed the Dakota into a fence. A few days later, he bought a new winter car, an Isuzu Trooper. He went back to the agency, bought liability coverage on the Trooper, and cancelled the liability coverage on the Camaro, explaining that "he was garaging it for the winter." *(Tr. 133–35)*

Travelers, which insured the property PA had damaged, filed a third-party claim for $4400 against Union Mutual, the company that issued the evidence of liability insurance that PA presented to the property owner. Union Mutual denied coverage because PA did not have liability insurance on the car that had caused the damage. PA then filed his complaint. At first, PA asserted that he had asked for liability coverage on both cars and did not realize that Union Mutual had only issued coverage on one car. When confronted with his application materials, he remembered that he had called in late September or early October to change the liability coverage over to the Dakota, and subsequently he remembered that it was his girlfriend who had made the call. Union Mutual had no record of such a call. *(Resp. Exh. 24; Tr. 148–52; 242–43)* Nevertheless, at the Bureau's request, Union Mutual ultimately paid the third-party claim. *(Resp. Exh. 28)*

On February 22, 2010, Bureau of Insurance complaint investigator Frank Niles wrote Union Mutual asking for an explanation why identification cards were issued for PA's Dakota *(Staff Exh. 12),* and in a followup letter on March 11, he advised Union Mutual that issuing such cards "misrepresents the available coverage." *(Staff Exh. 14)* On April 7, 2010, the Respondents' Underwriting Manager wrote to assure the Bureau that the Respondents were "aware of the problem and are treating this as a high priority project." He stated that "We are in the process of changing our procedure" and "As soon as we can facilitate the change to our system, we will only issue cards on vehicles that carry liability coverage." *(Staff Exh. 16)*

However, for a variety of reasons, including cost, inertia, and internal communication problems, the Respondents still had not implemented the corrective action in late June. Finally, after being advised on June 28, 2010, that further delay would be unacceptable, they immediately launched a high-level emergency implementation project for Maine and all other states where they wrote auto insurance. After realizing that the same problem affected snowmobiles covered by Massachusetts homeowners policies, they added Massachusetts to the list. They issued an underwriting bulletin to all their agents on July 7, 2010. Until the new automated systems were running successfully, they monitored all vehicles without liability insurance, manually pulled any insurance cards that were printed before they could be issued, and sent corrective notices to their existing "comp only" customers. On July 14, 2010 they announced that the new automated system had been tested and they were now fully in compliance. *(Staff Exh. 20–28; Resp. Exh. 5–19; Tr. 254–68, 296–314, 347–57)*

The Respondents' Liability

Count I of the Petitions alleges that the Respondents misrepresented the terms of their policies, in violation of 24-A M.R.S.A. § 2153, when they issued cards falsely stating that "This Policy Provides The Minimum Insurance Prescribed By Law" for cars that did not in fact have the minimum insurance prescribed by law. Counts II and III allege that the same practice violates the unfair claims practice law, 24-A M.R.S.A. § 2164-D and the general prohibition against unfair and deceptive acts or practices, 24-A M.R.S.A. § 2152. The misconduct alleged in counts II and III is exactly the same as that alleged in Count I, and there is no actual or potential impact or significance of that misconduct that is not already fully addressed by Count I. I therefore find in the circumstances of this proceeding that the allegations in Counts II and III are duplicative, need not be separately addressed, and do not warrant additional or enhanced penalties.

Although they "nevertheless agree that the cards were not completely accurate" *(Resp. Br. 6),* the Respondents argue that they were in "technical compliance with the actual terms of the statute." *(Resp. Br. 7)* They cannot have it both ways.[3] The reason the cards were inaccurate was because they misrepresented the coverage they purported to describe.

The Respondents emphasize that Section 2153 only prohibits "misrepresenting the terms of any <u>policy</u>" *(Resp. Br. 5, emphasis as provided by Respondents),* and assert that their reliance on the word "policy" "is not a matter of semantics." *(Id.)* Even as a matter of semantics, this argument

---

[3] Indeed, if the Respondents really believed issuing identification cards on cars without liability coverage were in compliance with the law, it would not only be permissible but would be mandatory, so their corrective action would be in defiance of the law.

fails. The statute prohibits "misrepresenting the terms of the policy," 24-A M.R.S.A. § 2153 *(emphasis added),* and the terms of the policies in question do not provide liability insurance for the vehicles named in the cards in question.

According to the Respondents, however, the statement on the card that the policy "provides the minimum coverage prescribed by law" is truthful because the policy did in fact provide the minimum coverage prescribed by law for some vehicle, even if it was not the vehicle identified on the card. *(Resp. Br. 6)* In other words, the Respondents did not violate the law because this case is controlled by the Fingers Crossed Doctrine. By that logic, it would be perfectly legal to issue such a card even if the policy did not cover the identified vehicle at all. It would not even have to be a motor vehicle insurance policy – if a workers' compensation insurer, whose policy provides the minimum coverage prescribed by the workers' compensation law, had a customer that did not want to buy commercial auto coverage for its trucks, the insurer could oblige by issuing insurance cards and would not have to share in the responsibility for the consequences. The Respondents' argument flies in the face of both the purpose and the plain language of 24-A M.R.S.A. § 2412(7), which requires "insurance companies transacting business within this State to provide with each motor vehicle liability insurance policy an insurance identification card for each vehicle, describing the vehicle covered." *(Emphasis added)* A vehicle is not covered under a liability insurance policy unless that policy provides liability insurance for the vehicle. If this litigation tactic reflected the Respondents' actual behavior, it would be an aggravating factor in evaluating the severity of the violation.[4] However, to their credit, the Respondents themselves were consistently forthright that they had made an error, that issuing these cards was not legal, and that it would not be moral if done willfully. *(Tr. 333–34)*

I therefore conclude that when they issued of evidence of liability insurance for vehicles that were not covered by liability insurance, the Respondents misrepresented the terms of coverage in violation of 24-A M.R.S.A. § 2153. The clear and unambiguous meaning of a card that reads "This Policy Provides The Minimum Insurance Prescribed By Law ... PPP5090882 ... 1998 DODG/DAKOTA 1B7GG22Y2WS62 1665" is that Policy PPP5090882 provides the minimum insurance prescribed by law for the 1998 Dodge Dakota with VIN 1B7GG22Y2WS62 1665. It can be a misrepresentation without being a syntactically complete English sentence, just as it can be a misrepresentation without spelling "Dodge" correctly.

Remedies

In some states, where auto insurance is more expensive than it is in Maine, there is a thriving black market in bogus insurance cards. Several witnesses testified that even in Maine, there are significant problems with drivers continuing to use cards that were valid at the time of issuance after they have dropped the coverage referenced in the cards. If the Respondents had deliberately or knowingly provided these cards to drivers seeking to evade Maine's mandatory insurance laws, their violations would have been every bit as "grave" as the Staff charges. *(Staff Br. 5)*

However, the Staff acknowledges that the violations were not committed with intent to defraud. *(Tr. 25)* Although the Staff argues that the Respondents committed "knowing" violations, because

[4] This should not be taken as criticism of the overall quality of the defense, which was otherwise outstanding.

the Respondents knew from the outset that they were issuing the cards in question *(Staff Br. 5, 16),* I find that the Respondents acted negligently rather than knowingly or recklessly, and that as soon as they realized they were violating the law and misrepresenting the terms of coverage, they immediately undertook a good faith commitment to complying with the law and issuing accurate ID cards. That commitment was flawed, as discussed below, but I cannot find that the flaws were so egregious as to transform the Respondents' negligence into bad faith or knowing misconduct.

Ironically, as discussed earlier, the violations arose out of a misguided effort to comply meticulously with the letter of the law. The Respondents investigated whether there was any sign that some of their agents might have been marketing "comp only" policies as a cheap way to get insurance cards, or that car owners were buying them for that purpose. They found no patterns of suspicious agent activity, and they looked at a sampling of their "comp only" cars and verified that each car they reviewed was a genuine stored vehicle. *(Tr. 351–53)* They found only two liability claims that were ever filed against their "comp only" policies in Maine. One was PA's claim. The other involved a stored vehicle whose owner's niece had found the keys and did not realize it was uninsured. She got into an accident that caused "minor property damage." The liability claim was filed by the vehicle's owner, not by the other driver or insurer, and there was no indication that the insurance card played any role in the claim being filed. The Respondents denied the claim because there was no liability coverage, and the owner did not contest the denial. *(Staff Exh. 17; Resp. Exh. 28; Tr. 242–44)*

I am therefore in agreement with the Respondents' conclusion that to the extent that can be determined from the record, the policyholders "did not rely on the language of the ID cards." *(Resp. Br. 14)* The only policyholder known to have claimed such reliance, PA, is not credible. There is likewise no evidence that any third-party claimant was harmed by the policyholder's presentation of an inaccurate liability insurance ID card. When PA ran into the fence, Travelers was in no worse position than if an uninsured driver with an expired ID card had done the same thing. In either case, the only harm to the claimant is the minor annoyance of a phone call to the driver's insurer to discover that the driver did not have liability coverage after all, and in this case the Respondents more than mitigated that harm by paying the claim in full.

On the other hand, the violations are not as inconsequential as the Respondents portray them. Even if there was no direct financial harm to any consumer or claimant, there was a risk of harm throughout the ten-year period during which the cards were issued, and there was harm to the integrity of the proof-of-insurance system. Furthermore, the Respondents are not quite accurate when they assert that "There is no evidence of even one instance in which an ID card on a vehicle covered by an applicable policy was used to register that vehicle." *(Resp. Br. 14–15)* The evidence was not highlighted by either party, so it was easily overlooked, but PA stated in his consumer complaint that he used his card to register the Dakota. *(Staff Exh. 6)* Although I agree with the Respondents that PA's word is "highly suspect" *(Resp. Br. 4 n.3),* in this case it is corroborated by the uncontested fact that the Dakota was out on the road when it should not have been. I therefore find that the Respondents did not mislead PA, but they did enable him.

Furthermore, although it is possible that PA simply forgot to change his coverage when it was time, it is also possible that he decided to take advantage of the opportunity to have both cars on the road at the same time. That would be speculation, but it is fact that the Respondents gave PA that opportunity and gave the same opportunity over a ten-year period to hundreds of other owners of stored vehicles. Although there is no evidence that any policyholder other than PA registered a

vehicle using an improperly issued ID card, there is also no evidence that PA was the only policyholder who did so, and no evidence that this very real risk was one of the risks the Respondents investigated when they looked into the impact of issuing the cards.

As a mitigating factor, the Respondents point to their full acceptance of responsibility and the "extraordinary effort" they undertook to set things right. *(Resp. Br. 15)* They deserve full credit for these actions. It was not an exaggeration to describe the Respondent's "all hands on deck" corrective action program as "Herculean" *(Tr. 311, 357, 368)*

However, although the Respondents undeniably hit a grand slam once they "stepped up to the plate" *(Resp. Br. 15)*, that was in the ninth inning of the final game. Consideration must also be given to the period of time during which they consistently missed the ball, and the Respondents "have never denied their responsibility to have moved more quickly." *(Resp. Br. 15)* They do, however, seek to minimize that responsibility. They argue that the Bureau was not sufficiently insistent until June 28 *(Resp. Br. 2, 14)*, but the Respondents had already assured the Bureau on April 7 that it was a "high priority project" that would be implemented as soon as possible. The Bureau did not have the duty to keep telling the Respondents what they already knew.

I therefore find that a substantial civil penalty is warranted for the Respondents' longstanding pattern and practice of misrepresentations and unnecessary delay in taking corrective action. While that delay is not an independent violation of the law *(Resp. Br. 14)*, it is appropriately considered in determining the size of the civil penalty that is in order.

Because of the unique circumstances of each case make a point-to-point comparison impossible, past decisions cannot be relied on as precedent in determining the appropriate penalty, but they can provide some guidance.

Although serious, the violations are not on the same order of magnitude as the types of willful or reckless misconduct, usually causing significant harm, that have been grounds for the imposition of six- and seven-figure civil penalties in cases such as those cited by the Respondents on pages 16 and 17 of their briefs. I agree with the Respondents that a more comparable case is the enforcement proceeding against Cambridge Mutual Fire Insurance Company and Merrimack Mutual Fire Insurance Company. Those two insurers entered into a Consent Agreement, No. INS-06-211, in which they agreed to pay a total civil penalty of $25,000 for improper nonrenewals of homeowners policies and the use of unlicensed producers.

The *Cambridge Mutual* consent agreement involved insurance agency contracts in which the insurer agrees that the accounts are the "property" of the agent servicing the account. If the agent leaves the insurer, the policies are "renewed" by the agent with a different company, and are not renewed by the original insurer. This is a longstanding industry practice. It is still legal in many states, and in Maine it is still legal for commercial lines, but for personal lines coverage in Maine, it has been illegal for many years. "Agent no longer represents company" is not a permissible ground for nonrenewal under the personal lines cancellation control acts, so if the insurer is still in the market, the customer must also be given the choice of staying with the same insurer and a new agent (or if the company prefers, servicing the policy directly).

The persistency of this practice has resulted in the issuance of Bureau of Insurance Bulletins 204 and 316, and occasionally, as in *Cambridge Mutual,* in disciplinary action. Although the

Respondents assert that the harm in that case was more severe because policyholders "lost coverage" *Resp. Br. 16),* there is no actual loss of coverage in an agency rollover. If consumers are satisfied with their new coverage, there is no harm at all. If some consumers would prefer to stay with their current insurer and know their rights, the harm is immaterial, because they can contest the nonrenewal, and if the insurer did not renew voluntarily, the Bureau would hold a hearing and order it. Thus, the harm is not the loss of coverage, but the loss of the consumer's preferred choice of coverage if the consumer does not know his or her rights. There were also some violations involving unlicensed sales as a result of the companies' failure to have procedures within its sales force to ensure that agents who were not licensed in Maine did not write policies that covered Maine property. However, nothing in the Consent Agreement would suggest that any nonrenewed policyholder had trouble finding satisfactory replacement coverage,[5] or that there was any other significant risk of serious harm.

In this matter, after considering all the mitigating and aggravating circumstances discussed earlier, the clear illegality of the practice, and the pervasiveness and duration of the practice, I am ordering that the Respondents pay a civil penalty of $30,000 for the multiple violations of Maine law that they have committed.

Order and Notice of Appeal Rights

It is therefore *ORDERED* that the Petition for Enforcement is *GRANTED.* For the violations found, the Respondents are jointly and severally liable for the payment of an aggregate civil penalty of $30,000, by check payable to the Treasurer of State.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before April 19, 2011. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

MARCH 8, 2011

ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER

[5] There was no order to reinstate any policyholder's coverage, and no recital that the companies had done so as part of their prior corrective actions.