

In the Matter of

**TRI-STATE CONSUMER INSURANCE COMPANY and
TRI-STATE CONSUMER INC.**

Respondents.

**CONSENT ORDER UNDER
ARTICLES 3 AND 23 OF THE INSURANCE LAW**

WHEREAS, the New York State Department of Financial Services (the “Department”) investigated whether Tri-State Consumer Insurance Company and Tri-State Consumer Inc. (together, “Tri-State” or “Respondents”), together with its subsidiaries, affiliates, agents, officers, directors, representatives, employees, complied with the requirements of the New York Insurance Law (“Insurance Law”) and other applicable laws and regulations related to the sale of private passenger automobile insurance (“auto insurance”) (the “Investigation”);

WHEREAS, the Investigation concluded that Tri-State failed to comply with the Insurance Law in amending, without receiving the Department’s approval, its multi-tier program in an attempt to comply with the Department’s Second Amendment to 11 NYCRR 154.6 (“Regulation 150”);

WHEREAS, the Investigation further concluded that Tri-State failed to timely report new business and other vehicle registration information to the New York State Department of Motor Vehicles (“DMV”) as required by Insurance Law § 317;

WHEREAS, this Consent Order contains the Department’s findings, and the relief agreed to by the Department and Respondents;

NOW, THEREFORE, the Department and Tri-State are willing to resolve all matters involving Tri-State's auto insurance business in lieu of proceeding by notice and a hearing.

FINDINGS

The findings of the Department are as follows:

Relevant Entities

1. Tri-State is a property insurance company domiciled and licensed to do an insurance business in the State of New York. Tri-State underwrites, among other things, auto insurance.

Regulation 150

2. 11 NYCRR 154, promulgated by the Department pursuant to Insurance Law § 2349, regulates multi-tier programs for private passenger motor vehicle insurance in the voluntary market. A multi-tier program allows an auto insurer to employ multiple rate levels within the same company, offering consumers effectively different rates at underwriting by placing them in different tiers based on perceived risk of loss.

3. In 2017, the Department amended 11 NYCRR 154 following a multi-year investigation that revealed that certain New York auto insurers had been relying on individuals' attained education levels and/or occupational statuses as factors in establishing initial tier placement (the "E&O Investigation").

4. The Department's E&O Investigation found that said auto insurers failed to show a necessary relationship between an insured's risk of loss and the insured's attained education level and/or occupational status, thereby failing to establish that auto insurers' use of these factors was not unfairly discriminatory in violation of Insurance Law § 2303.

5. The amendment to 11 NYCRR 154, “Insurance Regulation 150” or “Regulation 150,” went into effect on March 13, 2018. Regulation 150 generally prohibits the use of attained education level and/or occupational status as a factor in initial tier placement, as well as requiring insurers that had previously used those factors in initial tier placement to amend their multi-tier rating programs and tier movement rules to the satisfaction of the superintendent for policies going forward. For policy renewals, Regulation 150 requires that insurers remedy any continuing impact of their prior use of education level attained and/or occupational status in initial tier placement on an insured’s premium rate.

6. Tri-State had substantial notice of Regulation 150’s new requirements. The proposed amendment to 11 NYCRR 154 was published on May 17, 2017 in the New York State Register. The amendment was subject to an extensive notice and comment period and the final regulation was published in the State Register on November 28, 2017, and effective March 13, 2018—more than three months later. The amendment gave insurers an additional 90 days after its effective date, June 11, 2018 (the “Deadline”), to comply.

7. On May 14, 2018, less than a month before the Deadline and almost a year after the publication of the proposed amendment to 11 NYCRR 154, Tri-State submitted a filing to the Department attempting to bring its multi-tier program into compliance with Regulation 150 by placing all individuals into the most favorable rating tier for education level and/or occupational status.

8. The Department would soon determine that the filing was insufficient, and because Tri-State’s attempt to come into compliance with Regulation 150 was not made until a month before the Deadline, the filing could not be timely approved. Nevertheless, Tri-State

proceeded to implement its new program without the Department's approval. In doing so, Tri-State knowingly departed from the rules and standards then in effect on behalf of the company, in violation of Insurance Law § 2314.

9. The Department subsequently determined that the new program did not satisfactorily remedy the continuing impact of Tri-State's prior use of education and/or occupation in initial tier placement on insureds' premium rates. The Department soon after informed the company of its determination. Nevertheless, Tri-State continued to implement the new program, resulting in new business and renewals being underwritten with insufficient rates on an ongoing basis, in violation of Insurance Law § 2303.

10. Despite being on notice that its program was not compliant, Tri-State did not make the necessary changes to amend the program, insisting that it needed confidential competitor information to correct the program's flaws. Tri-State was ultimately able to fix the program to the Department's satisfaction in November 2018 for new business and December 2018 for renewals.

11. During the course of the Investigation, the Department repeatedly expressed its concerns to Tri-State regarding the cavalier approach to compliance demonstrated by Tri-State and Penny Hart, Tri-State's then President and Chief Executive Officer. In November 2020, the company informed the Department that Ms. Hart was no longer employed by Tri-State.

Tri-State's Failure to Timely Report IIEC Data

12. The DMV's Insurance Information & Enforcement System ("IIES") was developed and implemented in January of 2000 as a result of enactment of Chapter 678 of the

laws of 1997 as amended by Chapter 509 of the laws of 1998. IIES employs an insurance information database to monitor the insurance status of New York State-registered vehicles.

13. Article 6 of the New York Vehicle and Traffic Law requires insurers to notify the DMV of certain transactions in accordance with regulations promulgated by the DMV commissioner. 15 NYCRR Part 34 implements the particular requirements of Article 6, with section 34.4 providing specific time frames. Under the regulation, insurers must report new business no later than seven days after the effective date of the policy issuance. For all terminations and suspensions, insurers must report within 30 days of the termination effective date except for hire vehicles which must be reported no less than 45 days prior to the termination effective date.

14. In the latter part of 2017, the DMV notified the Department that the insurance industry as a whole was not timely reporting to DMV in IIES as required. DMV advised that it started sending detailed quarterly performance reports to all motor vehicle insurers in May 2017, displaying the totals of each company's reporting data and the totals and percentages of those reported late to DMV.

15. Tri-State was among the companies that failed to timely report to DMV in IIES over the course of multiple years. As a result, Tri-State violated 15 NYCRR 34.4, as well as 15 NYCRR 34.2(m), which defines "Late Filing" as a notice not submitted within the required timeframes, and requires insurers to take immediate corrective action when late filings exceed 10% of total matched notices.

Violations

16. By reason of the foregoing, the Department finds that Tri-State violated Insurance Law §§ 2303 and 2314 and, by failing to comply with the reporting requirements of Article 6 of the New York Vehicle and Traffic Law, violated Insurance Law § 317.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Respondents and all of their respective subsidiaries, affiliates, successors, assigns, agents, representatives and employees, that:

Injunctive Relief

17. Tri-State and/or its successors and assigns shall employ, a competent general counsel and/or Chief Compliance Officer going forward.

18. Tri-State has begun to take and will continue the corrective actions outlined in 15 NYCRR 34.2(m) to ensure timely reporting to the DMV going forward.

19. Tri-State shall comply with New York Insurance Law §§ 2303 and 2314, the reporting requirements of Article 6 of the New York Vehicle and Traffic Law, and all applicable New York laws and regulations.

Monetary Penalty

20. No later than ten (10) business days after the Effective Date (as defined below) of this Consent Order, Respondents shall pay a civil monetary penalty of five hundred thousand dollars (\$500,000) 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 referenced in this Consent Order, or from any of Respondents' parents, subsidiaries, or affiliates, with regard to any or all of the amounts payable pursuant to this Consent Order. However, nothing in this paragraph shall prevent Respondents from prosecuting malpractice claims against third parties or seeking recovery from individual actors through civil litigation.

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. Tri-State and/or its successors and assigns 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 and/or its successors and assigns 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 any Respondent or its successor and assignee has 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, and 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 Tri-State and its successors and assigns, either directly or through counsel, and the Department's own factual Investigation. To the extent that representations made by Tri-State and its successors and assigns 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 and/or its successors and assigns 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 signatures below, that the terms and conditions of this Consent Order are duly approved, and the execution of this Consent Order is duly authorized.

30. All written communications to any party pursuant to this Consent Order shall be in writing and shall be directed as follows:

For the Department:

Hadas Jacobi
Senior Assistant Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

For Respondents:

Tri-State Consumer Insurance Company
100 Jericho Quadrangle, Suite 124
Jericho, NY 11753
Attn: Mark Davey

with a copy to
Locke Lord LLP
200 Vesey St.
Brookfield Place New York, New York 10281-2101
Attn: Gregory T. Casamento
John N. Emmanuel

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 all rights 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. This Consent Order may not be altered, modified, or changed unless in writing signed by all 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 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 through the Effective Date of this Consent Order. No further action will be taken by the Department 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.

41. 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.

42. 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 the Consent Order is So Ordered by the Superintendent of Financial Services or her designee (the "Effective Date").

(The remainder of this page is intentionally 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**

**TRI-STATE CONSUMER
INSURANCE COMPANY**

By
R. Bruce Wells
Senior Assistant Deputy Superintendent
Consumer Protection & Financial
Enforcement Division

By:
Name
Title:

June , 2021

June , 2021

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

June , 2021

THE FOREGOING IS HEREBY APPROVED IT IS SO ORDERED

LINDA A. LACEWELL
Superintendent of Financial Services

June , 2021