

FILED

MAR 24 2020

INSURANCE REGULATION
Docketed by: 



OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 257893-20-CO

EVEREST NATIONAL INSURANCE COMPANY

CONSENT ORDER AMENDING CONSENT ORDER NO. 214202-17-CO

THIS CAUSE came on for consideration upon the determination by the FLORIDA OFFICE OF INSURANCE REGULATION ("OFFICE") that EVEREST NATIONAL INSURANCE COMPANY ("EVEREST"), has complied with the requirements of paragraph 8.e. of Consent Order No. 214202-17-CO, which was filed on March 8, 2018 ("2018 Consent Order") and should be released from the continued reporting of the findings from the periodic audits at the end of the audit quarter and of the continued reporting of the monthly pre-issuance inspection reporting requirement. A copy of EVEREST's December 5, 2019, e-mail to the OFFICE requesting such release is attached hereto as Exhibit A and is hereby incorporated by reference. Following a complete review of the entire record, and upon consideration thereof, and being otherwise fully advised in the premises, the OFFICE hereby finds as follows:

1. The OFFICE has jurisdiction over the subject matter and the parties herein.
2. EVEREST has been licensed as a foreign insurer in Florida since November 30, 2005, in accordance with the Florida Insurance Code.
3. In 2016 and 2017, the OFFICE conducted a market conduct investigation of EVEREST pursuant to Sections 624.307, 624.318, and 626.9561, Florida Statutes. During the

investigation the OFFICE examined EVEREST's operations and compliance with the applicable provisions of the Florida Insurance Code relating to the usage of forms, rules, rating plans, and rates for primary and excess workers' compensation coverage.

4. The investigation revealed that EVEREST filed its rates and forms to comply with Sections 627.091 and 627.410, Florida Statutes, and Rule 69O-189.016, Florida Administrative Code, in relation to policies to be delivered or issued for delivery in Florida, and to assist employers purchasing insurance from EVEREST to comply with Chapter 440, Florida Statutes, in particular Section 440.38(7), Florida Statutes, which provides that employers choosing to use policies issued outside of Florida must maintain the required coverage with respect to all employees working in Florida under a Florida endorsement using Florida rates and rules. The OFFICE reviewed and disapproved EVEREST's filings in accordance with Sections 627.101 and 627.411, Florida Statutes.

5. Pursuant to Sections 627.101(2) and 627.111(2), Florida Statutes, a rate filing is ineffective until the OFFICE specifically approves the filing. Pursuant to Section 627.410(1), Florida Statutes, EVEREST was not permitted to utilize the forms submitted in its form filing for delivery or issuance for delivery in Florida until those forms had been approved by the OFFICE. In addition, if issued to employers outside of Florida with respect to employees working in Florida, these forms would not satisfy the requirements of Chapter 440, Florida Statutes, and in particular Section 440.38(7) thereof. Thereafter, on December 10, 2015, EVEREST represented to the Office by letter that it had not yet implemented and would not implement any of the above-referenced filings without the OFFICE's approval. Subsequently, EVEREST used the disapproved rates and forms in connection with at least three excess workers' compensation policies, including two issued outside Florida and one delivered in Florida.

6. The OFFICE determined that EVEREST engaged in conduct that violated the Florida Insurance Code in the following manner:

a. EVEREST used rules, rating plans, and rates/rating guidelines that had been filed with, but not approved by, the OFFICE, in violation of Section 627.091(1), Florida Statutes, and Rule 690-189.016(2), Florida Administrative Code; and

b. EVEREST used forms that has been filed with, but not approved by, the OFFICE in violation of Sections 627.410(1) and (2), Florida Statutes, and Rule 690-189.016(3), Florida Administrative Code.

7. Pursuant to Section 624.418(2)(a), Florida Statutes, the OFFICE may, in its discretion, suspend or revoke the Certificate of Authority of an insurer if the OFFICE finds that the insurer has violated any provision of the Florida Insurance Code. Section 624.4211, Florida Statutes, allows for an administrative fine in lieu of suspension if the OFFICE finds that grounds exist for the discretionary revocation or suspension of a Certificate of Authority issued under Chapter 624, Florida Statutes.

8. On March 8, 2018, the OFFICE and EVEREST entered into the 2018 Consent Order, which contained certain requirements and limitations, including but not limited to requiring EVEREST to submit quarterly audit reports and monthly pre-inspection reports to the OFFICE.

9. EVEREST has complied with the reporting requirements of the 2018 Consent Order and has requested that EVEREST be relieved of its quarterly and monthly reporting requirement.

10. The OFFICE assents to strike Paragraph 8.e. of the 2018 Consent Order in its entirety and release EVEREST from that specific requirement.

11. The OFFICE and EVEREST agree that the only modifications to the 2018 Consent Order are as set forth in Paragraph 10 immediately above. All other terms and conditions of the 2018 Consent Order remain unchanged and in full force and effect.

12. Any prior orders, consent orders, or corrective action plans that EVEREST has entered into with the OFFICE prior to the issuance of this Consent Order shall apply and remain in full force and effect for EVEREST, except where provisions of such orders, consent orders, or corrective action plans have expired; have been superseded by subsequent orders, consent orders, or corrective action plans; or are inconsistent with this Consent Order.

13. EVEREST affirms that all representations made herein are true and that all requirements set forth herein are material to the issuance of this Consent Order.

14. Any deadlines, additional reporting requirements, other provisions, or requirements set forth in this Consent Order may be altered or terminated by written approval of the OFFICE. Such written approval by the OFFICE is subject to statutory or administrative regulation limitations.

15. EVEREST affirms that all requirements set forth herein are material to the issuance of this Consent Order.

16. EVEREST agrees that, upon execution of this Consent Order, failure to adhere to one or more of the terms and conditions contained herein may result, without further proceedings, in the OFFICE suspending, revoking, or taking other administrative action as it deems appropriate upon EVEREST's Certificate of Authority in this state in accordance with Sections 120.569(2)(n) and 120.60(6), Florida Statutes.

17. EVEREST expressly waives a hearing in this matter, the making of findings of fact and conclusions of law by the OFFICE, and all further and other proceedings herein to which it

may be entitled by law or by rules of the OFFICE. EVEREST hereby knowingly and voluntarily waives all rights to challenge or to contest this Consent Order in any forum available to it, now or in the future, including the right to any administrative proceeding, state or federal court action, or any appeal.

18. Each party to this action shall bear its own costs and fees.

19. The parties agree that this Consent Order shall be deemed to be executed when the OFFICE has signed and docketed a copy of this Consent Order bearing the signature of the authorized representative of EVEREST, notwithstanding the fact that the copy may have been transmitted to the OFFICE electronically. Further, EVEREST agrees that the signature of its authorized representative as affixed to this Consent Order shall be under the seal of a Notary Public.

WHEREFORE, the agreement between EVEREST NATIONAL INSURANCE COMPANY and the FLORIDA OFFICE OF INSURANCE REGULATION, the terms and conditions which are set forth above, is APPROVED.

FURTHER, all terms and conditions contained herein are hereby ORDERED.

DONE and ORDERED this 24 day of March, 2020.



David Altmaier
David Altmaier, Commissioner
Office of Insurance Regulation

By execution hereof, EVEREST NATIONAL INSURANCE COMPANY consents to entry of this Consent Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that he or she has the authority to bind EVEREST NATIONAL INSURANCE COMPANY, to all the terms and conditions of this Consent Order.

EVEREST NATIONAL INSURANCE COMPANY

(Corporate Seal)

By: [Signature]

Print Name: JONATHAN ZAFFINO

Title: President

Date: MARCH 4, 2020

STATE OF New Jersey

COUNTY OF Somerset

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 4th day of March 2020, by Jonathan Zaffino (name of person) as President for Everest National Insurance Company. (company name)
(type of authority; e.g., officer, trustee, attorney in fact)

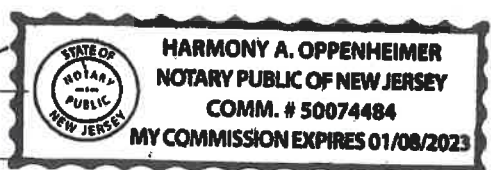
[Signature]
(Signature of the Notary)

(Print, Type or Stamp Commissioned Name of Notary)

Personally Known OR Produced Identification

Type of Identification Produced /

My Commission Expires: January 1, 2023



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