Cuomo Administration Settles WITH Country's Largest Force-Placed Insurer, Leading Nationwide Reform Effort and Saving Homeowners, Taxpayers, and Investors Millions of Dollars

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Cuomo Administration Settlement with Assurant Includes Restitution for Homeowners, a $14 Million Penalty, and Industry-leading Reforms

Cuomo Administration Says Other Force-placed Insurers, Including QBE, Need to "Step Up to the Plate Now" and Put in Place These Reforms

NEW YORK, NY – Governor Andrew M. Cuomo today announced that a New York State Department of Financial Services (DFS) investigation has produced a major settlement with the country's largest "force-placed" insurer, Assurant, Inc., which will help lead a nationwide reform effort for this industry. The settlement includes restitution for homeowners who were harmed, a $14 million penalty paid to the State of New York, and industry-leading reforms that will save homeowners, taxpayers, and investors millions of dollars going forward through lower rates.

"The force placed insurance industry has for too long been plagued by an intricate web of relationships between insurers and banks that pushed distressed families over the foreclosure cliff," said Governor Andrew M. Cuomo. "Today's agreement starts us on the road to reform, which will clean up this industry and truly protect working people."

Benjamin M. Lawsky, Superintendent of Financial Services said: "Our investigation found that insurers and banks built a network of troubling relationships and payoffs that helped drive premiums sky high. Those improper practices created significant conflicts of interest and saddled homeowners, taxpayers, and investors with millions of dollars in unfair and unnecessary costs. This settlement includes major reforms that will put a stop to those practices at Assurant, provide restitution to homeowners who were harmed, and save millions of dollars for homeowners, taxpayers, and investors going forward through lower rates."

The Findings of DFS's Investigation of Assurant

In October 2011, DFS launched an investigation into the force-placed insurance industry, including Assurant and its subsidiaries. Force-placed insurance is insurance taken out by a bank, lender, or mortgage servicer when a borrower does not maintain the insurance required by the terms of the mortgage. This can occur if the homeowner allows their policy to lapse (often due to financial hardship), if the bank or mortgage servicer determines that the borrower does not have a sufficient amount of coverage, or if the homeowner is force-placed erroneously.

The DFS investigation revealed that the premiums charged to homeowners for force-placed insurance can be two to ten times higher than premiums for voluntary insurance -- despite the fact that force-placed insurance provides far less protection for homeowners than voluntary insurance.

Indeed, even though banks and servicers are the ones who choose which force-placed insurance policy to purchase, the high premiums are ultimately charged to homeowners, and, in the event of foreclosure, the costs are passed onto investors. And when the mortgage is owned or backed by a government-sponsored enterprise, such as Fannie Mae or Freddie Mac, those costs are ultimately borne by taxpayers.

DFS's investigation found that Assurant competed for business from the banks and mortgage servicers through what is known as "reverse competition." That is, rather than competing by offering lower prices, the insurers competed by offering what is effectively a share in the profits. This profit sharing pushed up the price of force-placed insurance by creating incentives for banks and mortgage servicers to buy force-placed insurance with high premiums. That's because the higher the premiums, the more that the insurers paid to the banks. This was done by:

- Paying commissions to insurance agents and brokers affiliated with the banks even though the agents and brokers did not perform the customary tasks that would justify a commission.
- Paying banks "expenses" related to force-placed insurance. These expenses were typically a percentage of premium and were paid to banks that did not have agents or brokers that would collect a premium.
- Paying lump sum amounts, such as one bank's $1 million termination fee for switching its business to Assurant from another insurer.
- Allowing a reinsurance company owned by a bank to take as much as 75 percent of the premium and therefore 75 percent of the profit. A reinsurance company provides insurance to insurance companies by sharing risk. But since there was little risk in force-placed insurance relative to the high premiums, this was effectively a way to transfer profits. Thus, the bank put itself on both sides of the transaction, paying an inflated premium that hurt the homeowner and then reaping 75 percent of those gains back from Assurant through a reinsurance agreement. For example, JPMorgan Chase has made approximately $600 million since 2006 by taking 75 percent of the profits from the force-placed business it gave Assurant.

One measure of how profitable force-placed insurance has been for Assurant is how little it has paid in claims—what is known as the loss ratio. In its 1994 rate filing with DFS, one of Assurant's subsidiaries based its rate on the expectation that it would pay 58 percent of premium on claims. In fact, from 2006 through 2011, that subsidiary actually paid only 24.7 percent, 19.4 percent, 17.3 percent, 22.8 percent, 24.3 percent, and 24.7 percent, respectively. Despite years when it paid out claims less than half of what it projected, Assurant did not file for lower rates. For voluntary homeowners insurance the loss ratio has historically been around 63 percent nationally.

Key Terms of the Settlement

The settlement that Assurant and the New York State Department of Financial Services signed today include restitution for homeowners who were harmed, a $14 million penalty, and a set of major reforms for force-placed insurance at Assurant.

Superintendent Lawsky said: “By agreeing to implement these critical reforms, Assurant is serving as an industry leader. These reforms will make Assurant a stronger and better company focused on its customers. Other force-placed insurers, including QBE, need to step up to the plate now and put in place these reforms. Our work on this issue is far from done and we expect that this settlement will help lead a nationwide reform effort for this industry.”

The key terms of the settlement include:

To lower the cost of force-placed insurance going forward for all non-flood business:

- Assurant shall file with DFS a premium rate with a permissible loss ratio of 62 percent, supported by the required data and actuarial analysis that is acceptable both professionally and to DFS. This will substantially reduce homeowners’ premiums.
- Every three years, Assurant will be required to re-file its rates with DFS for review.
- If Assurant’s actual rates in any year result in an actual loss ratio of less than 40 percent for the immediately preceding calendar year, Assurant will be required to re-file its rates for the next year for DFS review in order to bring the loss ratio back up.
- Assurant must report annually to DFS on its actual loss ratio, earned premiums, itemized expenses, losses, and reserves.

To put a stop to the improper and unfair practices found in DFS’s investigation, many of which helped Assurant support inflated premiums:

- Assurant shall not issue force-placed insurance on mortgaged property serviced by a bank or servicer affiliated with Assurant.
- Assurant shall not pay commissions to a bank or servicer or a person or entity affiliated with a bank or servicer on force-placed insurance policies obtained by the servicer.
- Assurant shall not reinsure force-placed insurance policies with a person or entity affiliated with the servicer that obtained the policies.
- Assurant shall not pay contingent commissions based on underwriting profitability or loss ratios.
- Assurant shall not provide free or below-cost, outsourced services to servicers or their affiliates.
- Assurant shall not make any payments, including but not limited to the payment of expenses, to servicers, lenders, or their affiliates in connection with securing business.

To provide restitution to those who were harmed by Assurant's practices:

- Refunds will be provided to consumers through a claims process and a third-party administrator selected by DFS and paid for by Assurant for homeowners who have been force-placed at any time after January 1, 2008 and meet the eligibility criteria for one of the following three categories of claimants:
- Homeowners who defaulted on their mortgage or were foreclosed because of force placement.
- Homeowners who were charged for force placement at a coverage limit higher than permitted by their mortgage.
- Homeowner's who were erroneously charged for force-placed insurance: either because they had voluntary insurance in effect, or they were charged commercial rates for a residence.

Additionally, under the terms of the settlement, Assurant will pay a civil penalty of $14 million to the State of New York; provide improved disclosures and notices to homeowners; improve its email retention policy; and ensure that the amount of coverage force placed on any homeowner shall not exceed the last known amount of coverage, provided that if the last known amount of coverage did not comply with the mortgage, then the amount of coverage shall not exceed the replacement cost of improvements on the property.

To read a full copy of the Department of Financial Services' settlement with Assurant, please visit, link.

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