

**IN THE DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION
STATE OF MISSOURI**

In Re:)
)
INDEMNITY INSURANCE COMPANY) Market Conduct Exam No. 1107-24-TGT
OF NORTH AMERICA (NAIC # 43575))

ORDER OF THE DIRECTOR

NOW, on this 29th day of January, 2016, Director John M. Huff, after consideration and review of the market conduct examination of Indemnity Insurance Company of North America (NAIC #20699) (hereinafter "Indemnity") conducted by the Division of Insurance Market Regulation (hereinafter the "Division") pursuant to §374.205 RSMo and the Stipulation of Settlement and Voluntary Forfeiture ("Stipulation"), does hereby issue the following orders.

This order, issued pursuant to §374.205.2(5) RSMo 2000, and §§374.280 and §374.046.15. RSMo (Cum. Supp. 2013), is in the public interest.

IT IS THEREFORE ORDERED that Indemnity and the Division having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that Indemnity shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Ace American in full compliance with the requirements of the Stipulation and the statutes and regulations of the State of Missouri and to maintain those corrective actions at all times.

IT IS FURTHER ORDERED that Indemnity shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$47,500 payable to the Missouri State School Fund.

IT IS SO ORDERED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 29th day of January, 2016.



John M. Huff
Director



**IN THE DEPARTMENT OF INSURANCE, FINANCIAL
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STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter “the Division”) and Indemnity Insurance Company of North America (NAIC #43575) (hereinafter “Indemnity”), as follows:

WHEREAS, the Division is a unit of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter, “the Department”), an agency of the State of Missouri, created and established for administering and enforcing all laws in relation to insurance companies doing business in the State in Missouri; and

WHEREAS, Indemnity has been granted a certificate of authority to transact the business of insurance in the State of Missouri; and

WHEREAS, the Division conducted a Market Conduct Examination of Indemnity;

WHEREAS, the Market Conduct Examination of Indemnity revealed that:

1. Indemnity failed to file individual rating plans for one hundred sixteen (116) large deductible workers compensation insurance policies in violation of §287.947.1¹.
2. Indemnity attached an unapproved form to one hundred (100) policies containing an incorrect limit amount for medical-only claims in violation of §287.310.1, §287.957 and 20 CSR

500-6.100(1).

3. Indemnity failed to apply its filed based rates for twenty-five (25) policies in violation of §287.947.1 and 20 CSR 500-6.950.

4. Indemnity failed to apply its filed terrorism factor for ten (10) policies in violation of §287.947.1 and 20 CSR 500-6.950.

5. Indemnity failed to complete, bill and return premium to the insured within 120 days of policy expiration or cancellation for thirty-two (32) policies in violation of §287.955.3 and 20 CSR 500-6.500(2)(A).

6. Indemnity erred in calculating the Second Injury Fund Surcharge for twenty-six (26) policies resulting in an overcharge in violation of §287.310.9 and §287.715.

7. Indemnity erred in calculating the Administrative Surcharge rate for twenty-four (24) policies resulting in overcharges to seven insureds in violation of §287.310.9, §287.716, and §287.717.

8. Indemnity failed to collect the Administrative Surcharge from three (3) policyholders at the same time and in the same manner that the premium was collected in violation of §287.717.1.

9. In one (1) instance, Indemnity failed to apply the correct premium rate for the waiver subrogation endorsement in violation of §287.947.1, §287.955.

10. Indemnity failed to provide timely responses to some information requests in violation of §374.205.2(2) and 20 CSR 100-8.040(6).

WHEREAS, the Division and Indemnity have agreed to resolve the issues raised in the Market Conduct Examination as follows:

1. All references, unless otherwise noted, are the Missouri Revised Statutes 2000, as amended.

A. Scope of Agreement. This Stipulation of Settlement and Voluntary Forfeiture embodies the entire agreement and understanding of the signatories with respect to the subject matter contained herein. The signatories hereby declare and represent that no promise, inducement or agreement not herein expressed has been made, and acknowledge that the terms and conditions of this agreement are contractual and not a mere recital.

B. Remedial Action. Indemnity agrees to take remedial action bringing it into compliance with the statutes and regulations of Missouri and agrees to maintain those remedial actions at all times. Specifically, Indemnity shall take the following actions:

1. Indemnity agrees that on and after the date of the Order closing this examination, it will make individual risk filings with the Director for all large deductible workers compensation insurance policies with Missouri premium or exposure. Such filings shall be made within 30 days after the effective date of the policy. Indemnity represents that it has already submitted a proposed form of such filings to the Department.

2. Indemnity represents it has refiled a revised and corrected version of the NCCI Form WC240406C. Indemnity agrees to review all medical-only claims between \$500 and \$1,000 for policyholders with workers compensation exposures in Missouri that were covered under a policy issued by Indemnity who have left the Company within the last three years to determine if the policyholders experience modifications were negatively affected by the error in the form, and as such, if the insured is entitled to any adjustment of premium as a result of the affected experience modification. If any policyholder is entitled to a refund of premium Indemnity shall issue any refund due to the insured, bearing in mind that an additional payment of nine per cent (9%) interest per annum is also required pursuant to §408.020. A letter shall be included with the payment indicating

that "as a result of a Missouri Market Conduct Examination," it was found that a refund was due to the insured.

3. Indemnity agrees that audits on workers compensation insurance policies with Missouri premium or exposure will be completed, billed and premiums returned within 120 days of policy expiration or cancellation unless a) a delay is caused by the policyholder's failure to respond to reasonable audit requests provided that the requests are timely and adequately documented or b) a delay is caused by the mutual agreement of the policyholder and the Company, provided that the mutual agreement is adequately documented by the Company.

4. Indemnity agrees to review all workers compensation insurance policies with Missouri premium or exposure issued from January 1, 2010 to the date of the Order closing this examination to determine if the insured is entitled to any refund of premium as a result of errors in calculating the Second Injury Fund Surcharge or the Administrative Surcharge. If the policyholder is entitled to a refund of premium, the Company must issue any refund due to the insured, including interest of nine per cent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment, indicating that "as a result of a Missouri Market Conduct Examination," it was found that a refund was due to the insured. If the Second Injury Fund Surcharge was underpaid, such payments that are owed will be paid to the Division of Workers Compensation together with any applicable interest or penalties, and any amended return that may be required by the Division. If the Administrative Surcharge was underpaid, such payments that are owed shall be paid to the Department of Revenue together with any applicable interest or penalties, and any amended returns that may be required by the Premium Tax Section of the Department.

5. Indemnity agrees not to issue a waiver of subrogation endorsement on policies with

Missouri premium or exposure that include only construction class codes and further agrees to include Missouri on the schedule of excluded states on its approved form when there are only construction codes on the policy and there is Missouri premium or exposure.

C. Compliance. Indemnity agrees to file documentation with the Division within 180 days of the entry of a final order of all remedial action taken to implement compliance with the terms of this stipulation and to document the payment of restitution required by this Stipulation.

D. Voluntary Forfeiture. Indemnity agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$47,500, such sum payable to the Missouri State School Fund in accordance with §374.280.

E. Other Penalties. The Division agrees that it will not seek penalties against Indemnity, other than those agreed to in this Stipulation, for the conduct found in Market Conduct Exam 1107-24-TGT.

F. Waivers. Indemnity, after being advised by legal counsel, does hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, and review or appeal by any trial or appellate court, which may have otherwise applied to the above referenced Market Conduct Examination.

G. Non-Admission. The parties hereto agree that neither this document nor the agreements, settlements or compromises contemplated herein are to be deemed as an admission of any violation, fault, improper conduct or negligence on the part of Indemnity, and further, the parties agree that the Stipulation of Settlement and Voluntary Forfeiture is a compromise of disputed fact and legal allegations and that the payment of the voluntary forfeiture is merely to resolve disputes and avoid further action in this matter, without conceding that the agreements, settlements and

compromise contemplated herein settle any question of law by either party.

H. **Changes.** No changes to this stipulation shall be effective unless made in writing and agreed to by all signatories to the stipulation.

I. **Governing Law.** This Stipulation of Settlement and Voluntary Forfeiture shall be governed and construed in accordance with the laws of the State of Missouri.

J. **Authority.** The signatories below represent, acknowledge and warrant that they are authorized to sign this Stipulation of Settlement and Voluntary Forfeiture.

K. **Effect of Stipulation.** This Stipulation of Settlement and Voluntary Forfeiture shall not become effective until entry of a Final Order by the Director of the Department of Insurance, Financial Institutions and Professional Registration (hereinafter the "Director") approving this Stipulation.

L. **Request for an Order.** The signatories below request that the Director issue an Order approving this Stipulation of Settlement and Voluntary Forfeiture and ordering the relief agreed to in the Stipulation, and consent to the issuance of such Order.

DATED: 1/26/2016



Angela L. Nelson
Director, Division of Insurance
Market Regulation

DATED: 1/26/16



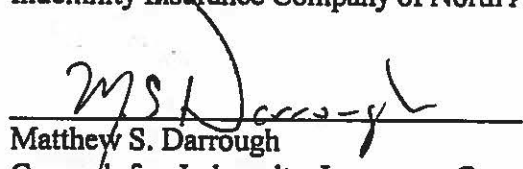
Stewart Freilich
Senior Regulatory Affairs Counsel
Division of Insurance Market Regulation

DATED: 1/19/16



Kevin Rampe
General Counsel
Indemnity Insurance Company of North America

DATED: 1/20/16



Matthew S. Darrough
Counsel for Indemnity Insurance Company of
North America