

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

<i>In Re:</i>)	
)	
ESURANCE INSURANCE COMPANY)	Market Conduct Exam No. 1503-58-TGT
(NAIC # 25712))	
)	
ESURANCE PROPERTY AND)	Market Conduct Exam No. 1503-59-TGT
CASUALTY INSURANCE COMPANY)	
(NAIC # 30210))	

ORDER OF THE DIRECTOR

NOW, on this 10th day of December, 2015, Director John M. Huff, after consideration and review of the market conduct examination of Esurance Insurance Company (NAIC #25712) (hereafter referred to as "Esurance Insurance"), examination number 1503-58-TGT, Esurance Property and Casualty Insurance Company (NAIC # 30210) (hereinafter referred to as "Esurance Property"), examination number 1503-59-TGT, 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, §374.280, and §374.046.15. RSMo (Cum. Supp. 2013), is in the public interest.

IT IS THEREFORE ORDERED that Esurance Insurance, Esurance Property, and the Division of Insurance Market Regulation having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that Esurance Insurance and Esurance Property shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Esurance Insurance and Esurance Property in full compliance with the requirements in 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 Esurance Insurance shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$2,000 payable to the Missouri State School Fund.

IT IS FURTHER ORDERED that Esurance Property shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$2,000 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 10th day of DECEMBER, 2015.


John M. Huff
Director



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

In Re:)	
)	
ESURANCE INSURANCE COMPANY (NAIC #25712))	Market Conduct Examination No. 1503-58-TGT
)	
ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY (NAIC #30210))	Market Conduct Examination No. 1503-59-TGT
)	

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter, the "Division"), Esurance Insurance Company (NAIC #25712) (hereinafter, "Esurance Insurance"), and Esurance Property and Casualty Insurance Company (NAIC #30210) (hereinafter, "Esurance Property") 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, Esurance-Insurance and Esurance Property have been granted certificates of authority to transact the business of insurance in the State of Missouri; and

WHEREAS, the Division called Market Conduct Examinations of Esurance Insurance and Esurance Property based upon findings contained in Market Conduct Investigations initiated on May 30, 2013; and

WHEREAS, based on the Market Conduct Investigations the Division alleges that:

1. Esurance Insurance failed to include a payment for applicable sales tax in two private passenger automobile policy first party total loss settlements, even though Esurance Insurance's policy provided for payment of the sales tax, in violation of §§ 375.445,¹ 375.936(13), 375.1007(1), and 375.1007(4), RSMo, and 20 CSR 100-1.020(1)(A);
2. Esurance Property failed to include a payment for applicable sales tax in two private

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

passenger automobile policy first party total loss settlements, even though Esurance Property's policy provided for payment of the sales tax, in violation of §§ 375.445,² 375.936(13), 375.1007(1), and 375.1007(4), RSMo, and 20 CSR 100-1.020(1)(A); and

WHEREAS, Esurance Insurance and Esurance Property are agreeing to a compromise of disputed facts and legal allegations solely for the purpose of fully resolving this matter. Esurance Insurance and Esurance Property agree to fully resolve this matter by of the execution of this Stipulation of Settlement and Voluntary Forfeiture and assert that the signing of this Stipulation of Settlement and the consent to take the remedial actions required by it and to pay the voluntary forfeiture set forth in it does not constitute an admission of wrongdoing or liability on its part and is done only to fully and completely resolve the Market Conduct Examination and Market Conduct Investigation and avoid further proceedings related to this matter; and

WHEREAS, the Division, Esurance Insurance and Esurance Property have agreed to fully resolve the issues raised in the Market Conduct Examination and Market Conduct Investigation as follows:

A. **Scope of Agreement.** This Stipulation of Settlement and Voluntary Forfeiture (hereinafter, "Stipulation") 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 Stipulation are contractual and not a mere recital.

B. **Remedial Action.** Esurance Insurance and Esurance Property agree to take the following remedial actions and agree to maintain those remedial actions at all times.

1. Esurance Insurance and Esurance Property agree that they will pay all automobile total loss claims, including payment for all sales taxes relating to such claims, according to the terms of their policy provisions.
2. Esurance Insurance agrees that it will review all first party automobile total loss claims paid or processed at any time from December 1, 2010, based on the Notice of Market Conduct Examination dated May 26, 2015, to the date of the Final Order closing this Market Conduct Examination to determine if Esurance Insurance paid all applicable sales tax to the claimant for the damaged vehicle using the contractual value payable under the terms of the policy at the time

² All references, unless otherwise noted, are to Revised Statutes of Missouri 2000, as amended.

of loss.³ If all applicable sales tax was not paid by Esurance Insurance to the claimant, Esurance Insurance shall pay restitution to the claimant in the amount of the applicable sales tax payable under its policy on the date of loss, including all applicable state, city, county and other taxes. Such restitution shall be paid with no reduction in the amount payable to the claimant if the owner of the total loss vehicle retains the vehicle as salvage, unless there is a clear and specific provision in the policy supporting the reduction.

3. Esurance Property agrees that it will review all first party automobile total loss claims paid or processed at any time from December 1, 2010, based on the Notice of Market Conduct Examination dated May 26, 2015, to the date of the Final Order closing this Market Conduct Examination to determine if Esurance Property paid all applicable sales tax to the claimant for the damaged vehicle using the contractual value payable under the terms of the policy at the time of loss.⁴ If all applicable sales tax was not paid by Esurance Property to the claimant, Esurance Property shall pay restitution to the claimant in the amount of the applicable sales tax payable under its policy on the date of loss, including all applicable state, city, county and other taxes. Such restitution shall be paid with no reduction in the amount payable to the claimant if the owner of the total loss vehicle retains the vehicle as salvage, unless there is a clear and specific provision in the policy supporting the reduction.

C. **Compliance.** Esurance Insurance and Esurance Property agree to file documentation with the Division, in a format acceptable to the Division, within 120 days of the entry of a final order of any remedial action taken to implement compliance with the terms of this Stipulation. The Companies may request an extension for good cause shown which the Division will consider in good faith.

D. **Examination Fees.** Esurance Insurance and Esurance Property agree to pay any reasonable examination fees relating to the review of documentation provided by the Companies pursuant to Paragraph C of this Stipulation, in conformity with the examination warrant's authorization to review information necessary to determine the Companies' conduct during the closing of the examination.

E. **Voluntary Forfeiture.** Esurance Insurance agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$2,000 such sum payable to the Missouri State School Fund, in

³ This could be Actual Cash Value, Stated Value or some other valuation method listed in the policy.

accordance with § 374.280. Esurance Property agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$2,000 such sum payable to the Missouri State School Fund, in accordance with § 374.280.

F. **Other Penalties.** The Division agrees that it will not seek penalties against Esurance Insurance or Esurance Property, other than those agreed to in this Stipulation, in connection with Market Conduct Examinations #1503-58-TGT and 1503-59-TGT.

G. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by Esurance Insurance or Esurance Property, this Stipulation being part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above referenced market conduct examinations.

H. **Waivers.** Esurance Insurance and Esurance Property, after being advised by legal counsel, do 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 Market Conduct Examinations #1503-58-TGT and 1503-59-TGT.

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

J. **Governing Law.** This Stipulation shall be governed and construed in accordance with the laws of the State of Missouri.

K. **Authority.** The signatories below represent, acknowledge and warrant that they are authorized to sign this Stipulation.

L. **Effect of Stipulation.** This Stipulation 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.

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

⁴ This could be Actual Cash Value, Stated Value or some other valuation method listed in the policy.

DATED:

12/9/15



Angela L. Nelson
Director
Division of Insurance Market Regulation

DATED:

12/9/15



Stewart Freilich
Senior Regulatory Affairs Counsel
Division of Insurance Market Regulation

DATED:


12/7/15



Jonathan D. Adkisson
President
Esurance Insurance Company

DATED:

12/7/15



Jonathan D. Adkisson
President
Esurance Property and Casualty Insurance Company