

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

| | | |
|----------------------------------------------------------------------------------|---|-------------------------------------------------------|
| In Re: |) | |
| |) | |
| EMPIRE FIRE AND MARINE INSURANCE COMPANY (NAIC # 21326) |) | Market Conduct Examination No. 1503-65-TGT |
| |) | |
| AMERICAN ZURICH INSURANCE COMPANY (NAIC # 40142) |) | Market Conduct Examination No. 1503-89-TGT |
| |) | |
| AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY (NAIC # 26247) |) | Market Conduct Examination No. 1503-90-TGT |
| |) | |
| ZURICH AMERICAN INSURANCE COMPANY (NAIC # 16535) |) | Market Conduct Examination No. 1503-91-TGT |
| |) | |

ORDER OF THE DIRECTOR

NOW, on this 22nd day of September, 2016, Director John M. Huff, after consideration and review of the market conduct examinations of Empire Fire and Marine Insurance Company (NAIC #21326) (hereafter referred to as “Empire Fire”), examination number 1503-65-TGT, American Zurich Insurance Company (NAIC #40142) (hereafter referred to as “American Zurich”), examination number 1503-89-TGT, American Guarantee and Liability Insurance Company (NAIC #26247) (hereafter referred to as “American Guarantee”), examination number 1503-90-TGT, and Zurich American Insurance Company (NAIC #16535) (hereafter referred to as “Zurich American”), examination number 1503-91-TGT, and the Stipulation of Settlement and Voluntary Forfeiture (“Stipulation”), does hereby issue the following orders:

This order, issued pursuant to §§ 374.046.15,¹ 374.205.2(5), and 374.280, is in the public interest.

IT IS THEREFORE ORDERED that Empire Fire, American Zurich, American Guarantee,

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

Zurich American, 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 Empire Fire, American Zurich, American Guarantee, and Zurich American shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Empire Fire, American Zurich, American Guarantee, and Zurich American 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 American Guarantee shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$1,000 payable to the Missouri State School Fund.

IT IS FURTHER ORDERED that Zurich American 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 22nd day of September, 2016.



John M. Huff
Director

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

| | | |
|----------------------------------------------------------------------------------|---|-------------------------------------------------------|
| In Re: |) | |
| |) | |
| EMPIRE FIRE AND MARINE INSURANCE COMPANY (NAIC # 21326) |) | Market Conduct Examination No. 1503-65-TGT |
| |) | |
| AMERICAN ZURICH INSURANCE COMPANY (NAIC # 40142) |) | Market Conduct Examination No. 1503-89-TGT |
| |) | |
| AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY (NAIC # 26247) |) | Market Conduct Examination No. 1503-90-TGT |
| |) | |
| ZURICH AMERICAN INSURANCE COMPANY (NAIC # 16535) |) | Market Conduct Examination No. 1503-91-TGT |
| |) | |

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter, the "Division"), Empire Fire and Marine Insurance Company (NAIC #21326) (hereinafter, "Empire Fire"), American Zurich Insurance Company (NAIC #40142) (hereinafter, "American Zurich"), American Guarantee and Liability Insurance Company (NAIC #26247) (hereinafter, "American Guarantee"), and Zurich American Insurance Company (NAIC #16535) (hereinafter, "Zurich American"), 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, Empire Fire, American Zurich, American Guarantee, and Zurich American 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 Empire Fire, American

Zurich, American Guarantee, and Zurich American based upon findings contained in Market Conduct Investigations; and

WHEREAS, the Market Conduct Investigations revealed that:

1. American Guarantee failed to include a payment for sales tax in one commercial automobile policy first party total loss settlement even though American Guarantee's policy provided for payment of the applicable 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. Zurich American failed to include a payment for sales tax in two commercial automobile policy first party total loss settlements even though Zurich American's policy provided for payment of the applicable 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);

WHEREAS, the Division, Empire Fire, American Zurich, American Guarantee, and Zurich American have agreed to resolve the issues raised in the Market Conduct Examinations and Market Conduct Investigations 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 agreement are contractual and not a mere recital.

B. **Remedial Action.** Empire Fire, American Zurich, American Guarantee, and Zurich American agree to take remedial action bringing each into compliance with the statutes and regulations of Missouri and agree to maintain those remedial actions at all times. Such remedial actions shall include, but are not limited to, the following:

1. Empire Fire, American Zurich, American Guarantee, and Zurich American agree that they will pay all automobile total loss claims, including payment for all applicable sales taxes relating to such claims, according to the terms of their policy provisions;

2. Empire Fire agrees that it will review all first party automobile total loss claims paid or processed at any time from July 1, 2011 to the date of the Final Order closing this Market Conduct

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

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

Examination to determine if Empire Fire 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.³ If all applicable sales tax was not paid by Empire Fire to the claimant, Empire Fire shall pay restitution to the claimant in the amount of the sales tax payable under its policy on the date of loss, including all 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. In the event that Empire Fire chooses to submit documentation to the Division establishing that a claimant received a sales tax credit from the State of Missouri in an amount at least equal to the contractual value payable for sales tax under the terms of the policy at the time of loss, the payment of restitution as outlined in this paragraph, may be made either to the claimant or to the State of Missouri.

3. American Zurich agrees that it will review all first party automobile total loss claims paid or processed at any time from July 1, 2011 to the date of the Final Order closing this Market Conduct Examination to determine if American Zurich 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 American Zurich to the claimant, American Zurich shall pay restitution to the claimant in the amount of the sales tax payable under its policy on the date of loss, including all 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. In the event that American Zurich chooses to submit documentation to the Division establishing that a claimant received a sales tax credit from the State of Missouri in an amount at least equal to the contractual value payable for sales tax under the terms of the policy at the time of loss, the payment of restitution as outlined in this paragraph, may be made either to the claimant or to the State of Missouri.

4. American Guarantee agrees that it will review all first party automobile total loss claims paid or processed at any time from July 1, 2011 to the date of the Final Order closing this Market Conduct Examination to determine if American Guarantee paid all applicable sales tax to the

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

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

claimant for the damaged vehicle using the contractual value payable under the terms of the policy at the time of loss.⁵ If all applicable sales tax was not paid by American Guarantee to the claimant, American Guarantee shall pay restitution to the claimant in the amount of the sales tax payable under its policy on the date of loss, including all 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. In the event that American Guarantee chooses to submit documentation to the Division establishing that a claimant received a sales tax credit from the State of Missouri in an amount at least equal to the contractual value payable for sales tax under the terms of the policy at the time of loss, the payment of restitution as outlined in this paragraph, may be made either to the claimant or to the State of Missouri.

5. Zurich American agrees that it will review all first party automobile total loss claims paid or processed at any time from July 1, 2011 to the date of the Final Order closing this Market Conduct Examination to determine if Zurich American 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.⁶ If all applicable sales tax was not paid by Zurich American to the claimant, Zurich American shall pay restitution to the claimant in the amount of the sales tax payable under its policy on the date of loss, including all 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. In the event that Zurich American chooses to submit documentation to the Division establishing that a claimant received a sales tax credit from the State of Missouri in an amount at least equal to the contractual value payable for sales tax under the terms of the policy at the time of loss, the payment of restitution as outlined in this paragraph, may be made either to the claimant or to the State of Missouri.

C. **Compliance.** Empire Fire, American Zurich, American Guarantee, and Zurich American 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

⁵ This could be Actual Cash Value, Stated Value or some other valuation method listed in the policy.

⁶ This could be Actual Cash Value, Stated Value or some other valuation method listed in the policy.

with the terms of this Stipulation and to document payment of restitution required under the terms of this Stipulation.

D. **Voluntary Forfeiture.** American Guarantee agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$1,000 such sum payable to the Missouri State School Fund, in accordance with § 374.280, RSMo. Zurich American 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, RSMo.

E. **Other Penalties.** The Division agrees that it will not seek penalties against Empire Fire, American Zurich, American Guarantee, and Zurich American, other than those agreed to in this Stipulation, in connection with Market Conduct Examinations Nos. 1503-65-TGT, 1503-89-TGT, 1503-90-TGT, and 1503-91-TGT.

F. **Non-Admission.** Nothing in this Stipulation shall be construed as an admission by Empire Fire, American Zurich, American Guarantee, and Zurich American, this Stipulation being a part of a compromise settlement to resolve disputed factual and legal allegations arising out of the above referenced market conduct examinations.

G. **Waivers.** Empire Fire, American Zurich, American Guarantee, and Zurich American, 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 Nos. 1503-65-TGT, 1503-89-TGT, 1503-90-TGT, and 1503-91-TGT.

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 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.


K. **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.


L. **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.

DATED: 9/8/2016 
Angela L. Nelson
Director
Division of Insurance Market Regulation

DATED: 9/7/2016 
Kelly Hopper
Legal Counsel
Division of Insurance Market Regulation

DATED: 8.24.16 
Kristen Shalda
Senior Vice President, Claims, Chief Operations Officer
Empire Fire and Marine Insurance Company

DATED: 8.24.16 
Kristen Shalda
Senior Vice President, Claims, Chief Operations Officer
American Zurich Insurance Company

DATED: 8.24.16 
Kristen Shalda
Senior Vice President, Claims, Chief Operations Officer
American Guarantee and Liability Insurance Company

DATED: 8.24.16 
Kristen Shalda
Senior Vice President, Claims, Chief Operations Officer
Zurich American Insurance Company