

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

In Re:)
)
ACUITY, A MUTUAL INSURANCE) **Market Conduct Exam No. 1503-74-TGT**
COMPANY (NAIC # 14184))

ORDER OF THE DIRECTOR

NOW, on this 30th day of December, 2015, Director, John M. Huff, after consideration and review of the market conduct examination of Acuity, A Mutual Insurance Company (NAIC #14184) (hereafter referred to as "Acuity"), examination number 1503-74-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 Acuity 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 Acuity shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Acuity 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 Acuity 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 30th day of December, 2015.





John M. Huff
Director

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

In Re:)	
)	
ACUITY, A MUTUAL INSURANCE COMPANY (NAIC #14184))	Market Conduct Examination No. 1503-74-TGT
)	

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter, the "Division"), and Acuity, A Mutual Insurance Company (NAIC #14184) (hereinafter, "Acuity"), 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, Acuity has been granted a certificate of authority to transact the business of insurance in the State of Missouri; and

WHEREAS, the Division called a Market Conduct Examination of Acuity based upon findings contained in a Market Conduct Investigation; and

WHEREAS, based on the Market Conduct Investigation, the Division alleges:

1. Acuity failed to include a payment for sales tax in two commercial automobile policy first party total loss settlements even though Acuity'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);

WHEREAS, Acuity does not agree with certain findings in the Market Conduct Investigation and denies that it has violated any Missouri law or regulation, and Acuity is of the position that this Stipulation of Settlement and Voluntary Forfeiture is a compromise of disputed facts and legal allegations and that the signing of this Stipulation of Settlement and Acuity's 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 merely to fully and completely resolve the Market Conduct Examination and Market Conduct Investigation and avoid litigation.

WHEREAS, the Division and Acuity have agreed to 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 agreement are contractual and not a mere recital.

B. **Remedial Action.** Acuity 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. Such remedial actions shall include the following:

1. Acuity agrees that it will pay all automobile total loss claims, including payment for all sales taxes relating to such claims, according to the terms of its policy provisions;

2. Acuity agrees that it will review all first party commercial automobile total loss claims paid or processed at any time from October 1, 2010 to the date of the Final Order closing this Market Conduct Examination to determine if Acuity 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.² If all applicable sales tax was not paid by Acuity to the claimant, Acuity 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.

C. **Compliance.** Acuity agrees 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 and to document payment of restitution required under the terms of this Stipulation.

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

² This could be Actual Cash Value, Stated Value or some other valuation method listed in the policy.

D. **Voluntary Forfeiture.** Acuity 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.

E. **Other Penalties.** The Division agrees that it will not seek penalties against Acuity, other than those agreed to in this Stipulation, in connection with Market Conduct Examination #1503-74-TGT. The Division further agrees that it will not seek any additional regulatory penalties against Acuity for remedial actions taken consistent with this Stipulation..

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

G. **Waivers.** Acuity, 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 Market Conduct Examination #1503-74-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: 12/22/2015




Angela L. Nelson
Director
Division of Insurance Market Regulation

DATED: 12-22-15



Stewart Freilich
Senior Regulatory Affairs Counsel
Division of Insurance Market Regulation

DATED: 12-17-15



Ben Salzmann
President
Acuity, A Mutual Insurance Company