

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

<i>In Re:</i>	)	
	)	
AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY (NAIC #26247)	)	Market Conduct Exam No. 1301-03-TGT
	)	
ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS (NAIC #27855)	)	Market Conduct Exam No. 1301-04-TGT
	)	
ZURICH AMERICAN INSURANCE COMPANY (NAIC #16535)	)	Market Conduct Exam No. 1301-05-TGT
	)	
AMERICAN ZURICH INSURANCE COMPANY (NAIC #40142)	)	Market Conduct Exam No. 1301-06-TGT
	)	

**ORDER OF THE DIRECTOR**

NOW, on this 15 day of December 2016, Director John M. Huff, after consideration and review of the Stipulation of Settlement and Voluntary Forfeiture (hereinafter "Stipulation") entered into by the Division of Insurance Market Regulation (hereinafter "Division") and American Guarantee and Liability Insurance Company (NAIC #26247), Zurich American Insurance Company of Illinois (NAIC #27855), Zurich American Insurance Company (NAIC #16535) and American Zurich Insurance Company (NAIC #40142) (hereinafter collectively "Zurich"), relating to the market conduct examinations set out in the caption above, does hereby issue the following orders:

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

**IT IS THEREFORE ORDERED** that Zurich 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 Zurich shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place each company in full compliance with the requirements in the Stipulation and to maintain those corrective actions at all times.

**IT IS FURTHER ORDERED** that Zurich shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$250,000 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 15<sup>th</sup> day of December 2016.

  
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John M. Huff  
Director



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

<b>In Re:</b>	)	
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<b>AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY (NAIC #26247)</b>	)	<b>Market Conduct Exam No. 1301-03-TGT</b>
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	)	
<b>ZURICH AMERICAN INSURANCE COMPANY (NAIC #16535)</b>	)	<b>Market Conduct Exam No. 1301-05-TGT</b>
	)	
<b>AMERICAN ZURICH INSURANCE COMPANY (NAIC #40142)</b>	)	<b>Market Conduct Exam No. 1301-06-TGT</b>
	)	

**STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter "the Division"), American Guarantee and Liability Insurance Company (NAIC #26247) (hereinafter "American Guarantee"), Zurich American Insurance Company of Illinois (NAIC #27855) (hereinafter "Zurich Illinois"), Zurich American Insurance Company (NAIC #16535) (hereinafter "Zurich American"), and American Zurich Insurance Company (NAIC #40142) (hereinafter "American Zurich"), 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;

**WHEREAS**, American Guarantee, Zurich Illinois, Zurich American, and American Zurich (collectively referred to as "Zurich") have been granted certificates of authority to transact the business of insurance in the State of Missouri;

**WHEREAS**, the Division conducted a Market Conduct Examination of American Guarantee and prepared report number 1301-03-TGT;

**WHEREAS**, the Division conducted a Market Conduct Examination of Zurich Illinois

and prepared report number 1301-04-TGT;

**WHEREAS**, the Division conducted a Market Conduct Examination of Zurich American and American Zurich, but preparation of market conduct examination reports was suspended pending the negotiation of this settlement;

**WHEREAS**, based on the Market Conduct Examination of American Guarantee, the Division alleges:

1. In five instances, American Guarantee failed to apply the Second Injury Fund Surcharge rate to the correct premium in violation of §287.310.9<sup>1</sup> and §287.715.2.
2. In nine instances, American Guarantee failed to apply the Administrative Surcharge rate to the correct premium in violation of §287.310.9 and §287.716.2.
3. In nine instances, American Guarantee failed to apply the deductible credit rate to Total Manual Premium in violation of §287.955.3.
4. In one instance, American Guarantee failed to attach a required endorsement to a policy in violation of §287.955.3.
5. In two instances, American Guarantee utilized an incorrect Deductible Hazard Group Code and an incorrect Deductible Credit rate in violation of §287.955.3.
6. In two instances, American Guarantee failed to verify that the information reported to the NCCI on the MOCCPAP credit application was accurate in violation of §287.955.3.
7. In two instances, American Guarantee failed to include its telephone number in policies in violation of §375.924.1.
8. In five instances, American Guarantee failed to file an individual rating plan for large deductible individually rated policies in violation of §287.947 and 20 CSR 500-6.950.
9. In one instance, American Guarantee failed to complete and bill the audit within 120 days of policy expiration in violation of §287.955.3 and 20 CSR 500-6.500 (2) (A).
10. In one instance, American Guarantee utilized an incorrect Increased Limits factor in violation of §287.955.1.
11. In one instance, American Guarantee failed to file rates applied to estimated payroll for uncooperative insureds in violation of §287.947.1.

**WHEREAS**, based on the Market Conduct Examination of Zurich Illinois, the Division

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

alleges:

1. In five instances, Zurich Illinois failed to apply the Second Injury Fund Surcharge rate to the correct premium in violation of §287.310.9 and 287.715.
2. In four instances, Zurich Illinois failed to apply the Administrative Surcharge rate to correct premium in violation of §287.310.9 and 287.716.2.
3. In five instances, Zurich Illinois applied the Increased Limits Factor to Total Subject Premium rather than to Total Manual Premium in violation of §287.955.3.
4. In two instances, Zurich Illinois utilized unfiled base rates in violation of §287.947.1 and 20 CSR 500-6.950 (3) (B) 3, (5) (B) & (7)
5. In three instances, Zurich Illinois failed to properly allocate payroll for certain officers, members, partners and sole proprietors in violation of §287.955.1.
6. In sixteen instances, Zurich Illinois failed to verify that the information reported to the NCCI on the MOCCPAP credit application was accurate in violation of §287.955.3.
7. In eight instances, Zurich Illinois failed to file an individual rating plan for large deductible individually rated policies in violation of §287.947 and 20 CSR 500-6.950.
8. In five instances, Zurich Illinois failed to apply the Second Injury Fund Surcharge rate to the total premium amount of the policy in violation of §287.715.
9. In one instance, Zurich Illinois utilized unfiled premium discount rates in violation of §287.947.1.
10. In one instance, Zurich Illinois utilized an unfiled Schedule Rating Plan in violation of §287.950.2.
11. In three instances, Zurich Illinois utilized incorrect premium discount rates in violation of §287.955.3.
12. In one instance, Zurich Illinois failed to attach a required endorsement to a policy in violation of §287.955.3.
13. In one instance, Zurich Illinois applied an incorrect total payroll amount to the filed terrorism rate in violation of §287.955.3.
14. In one instance, Zurich Illinois used an unfiled schedule rating plan category in violation of §287.955.3.
15. In one instance, Zurich Illinois applied an incorrect schedule modification rating credit in violation of §287.955.3.

16. In three instances, Zurich Illinois failed to complete and bill the audit within 120 days of policy expiration in violation of §287.955.3 and 20 CSR 500-6.500 (2) (A).

17. In one instance, Zurich Illinois failed to respond to a formal request within 10 calendar days in violation of §374.205.2 (2).

**WHEREAS**, during the course of the market conduct examinations it was discovered by Zurich that an employee of Zurich American manufactured one missing schedule rating document during the course of the examinations.

**WHEREAS**, Zurich asserts that the discovery by Zurich of the incident referenced above was self-reported by Zurich, and Zurich followed up with a complete internal investigation by an unrelated third party. But for the self-report, this one error likely would not have been discovered. The effect of the manufactured document caused no harm to the consumer. After Zurich's due diligence, including an unrelated third party's investigation, there were no other similar errors discovered by Zurich or by the third party independent investigation.

**WHEREAS**, Zurich does not agree with certain findings in the Market Conduct Examinations and it is the position of Zurich that this Stipulation of Settlement and Voluntary Forfeiture is a compromise of disputed facts and legal allegations. The signing of this Stipulation of Settlement and Voluntary Forfeiture and Zurich's consent to take the remedial actions required by them and to pay the voluntary forfeiture set forth in it does not constitute an admission of wrongdoing or liability on their part and is done to fully and completely resolve the Market Conduct Examinations.

**WHEREAS**, the Division and Zurich have agreed to resolve the issues raised in the Market Conduct Examinations through a voluntary settlement as follows:

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.** Zurich agrees to take remedial action bringing each into compliance with the statutes and regulations of Missouri and agrees to maintain those remedial actions at all times. Such remedial actions shall include, but not be limited to, the following:

1. Zurich agrees that 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.

2. Zurich 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.

3. Zurich agrees to ensure that its procedure for determining final premium complies with NCCI Rule 02-MO-2013.

4. American Guarantee and Zurich Illinois agree to remediate policyholders for any premium overcharges noted in Market Conduct Examination Reports 1301-03-TGT and 1301-04-TGT together with interest at the rate of 9% per annum as required by §408.020.

5. Zurich agrees to review all deductible workers compensation insurance policies with Missouri premium or exposure issued from November 1, 2011 to the date of the order issued by the Director closing these exams to determine if the insured is entitled to any refund of premium or if the Second Injury Fund or Administrative Surcharge was incorrectly paid. If the policyholder is entitled to a refund of premium, the Company must issue refunds due to the insured for amounts greater than \$5.00, bearing in mind that an additional payment of nine per cent (9%) interest per annum is also required, 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 is owed additional payments, such payments shall be made to the fund with any applicable interest and penalties together with any amended filings required by the Division of Workers Compensation. If the Administrative surcharge was underpaid, such payments that are owed, with any applicable interest and penalties, shall be paid to the Department of Revenue. In addition, if underpayments are discovered, the Company must file an amended return on its Administrative Surcharge calculation in a manner satisfactory to the Premium Tax Section of the Department.

6. Zurich agrees to maintain documents and records in its policy and claim files in accordance with the requirements contained in 20 CSR 100-8.040.

7. Zurich agrees that it will maintain policy and claim records in an archival manner

documenting activity in each file at or near the time of the fact or event being recorded and shall not create, alter or amend records after the fact or the event being recorded.

8. Zurich agrees that it will provide training to all employees who handle, maintain or record information in policy or claim files and to all managers and supervisors who review the handling, maintenance and recording of information in policy or claim files regarding the requirement of maintaining policy and claim records in an archival manner and not creating, altering or amending records after the fact or after the event being recorded. Training for existing employees will be provided in conjunction with our annual training cycle with a training completion date of October 31, 2017. Training for new employees with a new hire date after October 31, 2017 will occur within six months of the date of their employment.

C. **Compliance.** Zurich 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 of Settlement and Voluntary Forfeiture and to document the payment of any restitution required by this Stipulation of Settlement and Voluntary Forfeiture, including payments made to the Second Injury Fund or to the Department of Revenue.

D. **Voluntary Forfeiture.** Zurich agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$250,000, such sum payable to the Missouri State School Fund in accordance with §374.280.

E. **Other Penalties.** This Stipulation of Settlement and Voluntary Forfeiture constitutes full and final resolution of the issues raised in the Market Conduct Examinations listed above and the Division agrees that it will not seek further penalties against Zurich, other than those agreed to in this Stipulation, and will not take further enforcement action against Zurich in connection with Market Conduct Examination Numbers 1301-03-TGT, 1301-04-TGT, 1301-05-TGT and 1301-06-TGT, other than to seek enforcement of the Stipulation of Settlement and Voluntary Forfeiture.

F. **Waivers.** Zurich, 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 Examinations.

H. **Changes.** No changes to this Stipulation of Settlement and Voluntary Forfeiture shall be effective unless made in writing and agreed to by all signatories to the Stipulation of



Settlement and Voluntary Forfeiture.

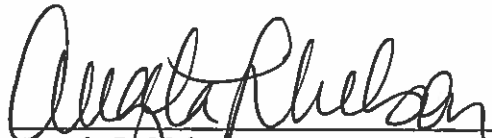
I. **Governing Law.** This Stipulation of Settlement and Voluntary Forfeiture shall be governed and construed in accordance with the laws of the State of Missouri.

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 of Settlement and Voluntary Forfeiture.

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 of Settlement and Voluntary Forfeiture, and consent to the issuance of such Order.

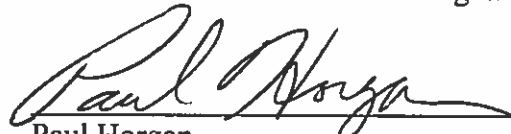
DATED: 12/14/2016

  
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Angela L. Nelson  
Director, Division of Insurance  
Market Regulation

DATED: 12/14/2016

  
\_\_\_\_\_  
Stewart Freilich  
Senior Regulatory Affairs Counsel  
Division of Insurance Market Regulation

DATED: 12/7/16

  
\_\_\_\_\_  
Paul Horgan  
Executive Vice President  
American Guarantee and Liability  
Insurance Company

DATED: 12/7/16



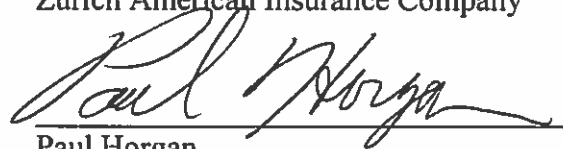
Paul Horgan  
Executive Vice President  
Zurich American Insurance Company  
Of Illinois

DATED: 12/7/16



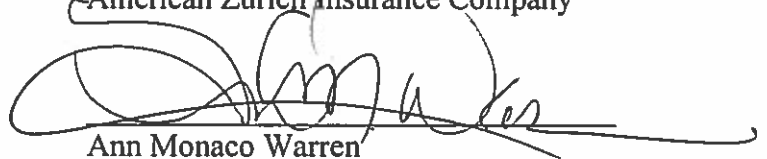
Paul Horgan  
Executive Vice President  
Zurich American Insurance Company

DATED: 12/7/16



Paul Horgan  
Executive Vice President  
American Zurich Insurance Company

DATED: 12/13/16



Ann Monaco Warren  
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Liability Insurance Company, Zurich  
American Insurance Company of  
Illinois, Zurich American Insurance  
Company and American Zurich  
Insurance Company