

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

In Re:)
)
GREAT AMERICAN ASSURANCE) **Market Conduct Examination #1503-37-TGT**
COMPANY (NAIC # 26344))
)
GREAT AMERICAN ALLIANCE) **Market Conduct Examination #1503-36-TGT**
INSURANCE COMPANY)
(NAIC #26832))
)
GREAT AMERICAN INSURANCE) **Market Conduct Examination #1503-38-TGT**
COMPANY OF NEW YORK)
(NAIC # 22136))
)

ORDER OF THE DIRECTOR

NOW, on this 28th day of August, 2015, Director John M. Huff, after consideration and review of the market conduct examination of Great American Assurance Company (NAIC #26344) (hereafter referred to as “GAAS”), examination number 1503-37-TGT, Great American Alliance Insurance Company (NAIC #26832) (hereinafter referred to as “GAAL”), examination number 1503-36-TGT, Great American Insurance Company of New York (NAIC #22136) (hereinafter referred to as “GANY”), examination number 1503-38-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, and §§374.280 and §374.046.15. RSMo (Cum. Supp. 2013), is in the public interest.

IT IS THEREFORE ORDERED that GAAS, GAAL, GANY 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 GAAS, GAAL and GANY shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures

to place GAAS, GAAL and GANY 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 GAAS 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 GAAL 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 GANY 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 SO ORDERED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 28th day of August, 2015.





John M. Huff
Director

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COMPANY OF NEW YORK)
(NAIC # 22136))
)

**STIPULATION OF SETTLEMENT
AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter “the Division”), Great American Assurance Company (NAIC #26344) (hereinafter “GAAS”), Great American Alliance Insurance Company (NAIC #26832) (hereinafter “GAAL”), and Great American Insurance Company of New York (NAIC #22136) (hereinafter “GANY”), 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, GAAS, GAAL and GANY 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 GAAS, GAAL and GANY based upon findings contained in Market Conduct Investigations and

WHEREAS, the Division alleged in the Investigations that:

1. GAAS failed to include a payment for sales tax in two commercial automobile

policy first party total loss settlements even though GAAS's policy language for that product provided for payment of the sales tax in violation of §§375.445¹, 375.936 (13), 375.1007 (1), 375.1007 (4) and 20 CSR 100-1.020 (1) (A);

2. GAAL failed to include a payment for sales tax in one commercial automobile policy first party total loss settlement even though GAAL's policy language for that product provided for payment of the sales tax in violation of §§375.445, 375.936 (13), 375.1007 (1), 375.1007 (4) and 20 CSR 100-1.020 (1) (A);

3. GANY failed to include a payment for sales tax in one commercial automobile policy first party total loss settlement even though GANY's policy language for that product provided for payment of the sales tax in violation of §§375.445, 375.936 (13), 375.1007 (1), 375.1007 (4) and 20 CSR 100-1.020 (1) (A);

WHEREAS, GAAS, GAAL and GANY do not agree with certain findings in the Market Conduct Investigations and it is the position of GAAS, GAAL and GANY that this Stipulation of Settlement is a compromise of disputed facts and legal allegations and that the signing of this Stipulation of Settlement and GAAS's, GAAL's and GANY'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 to fully and completely resolve and settle the allegations found in the Market Conduct Examinations and Market Conduct Investigations.

WHEREAS, the Division, GAAS, GAAL and GANY have agreed to resolve the issues raised in the Market Conduct Examinations and Investigations 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.** GAAS, GAAL and GANY agree to take remedial action bringing each into compliance with the statutes and regulations of Missouri and agree to maintain those

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

remedial actions at all times. Such remedial actions shall include, but are not limited to, the following:

1. GAAS, GAAL and GANY 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. GAAS agrees that it will review all first party automobile total loss claims paid or processed at any time from August 15, 2010 to the date of the order closing this examination to determine if GAAS 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 GAAS to the claimant, GAAS shall pay restitution to the claimant in the amount of the 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. GAAL agrees that it will review all first party automobile total loss claims paid or processed at any time from August 15, 2010 to the date of the order closing this examination to determine if GAAL 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 GAAL to the claimant, GAAL shall pay restitution to the claimant in the amount of the 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.

4. GANY agrees that it will review all first party automobile total loss claims paid or processed at any time from August 15, 2010 to the date of the order closing this examination to determine if GANY paid all applicable sales tax to the claimant for the damaged vehicle using the

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

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

contractual value payable under the terms of the policy at the time of loss.⁴ If all applicable sales tax was not paid by GANY to the claimant, GANY shall pay restitution to the claimant in the amount of the 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.** GAAS, GAAL and GANY 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 and to document payment of restitution required under the terms of this stipulation.

D. **Voluntary Forfeiture.** GAAS 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. GAAL 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. GANY 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.

E. **Other Penalties.** The Division agrees that it will not seek penalties against GAAS, GAAL or GANY, other than those agreed to in this Stipulation, in connection with Market Conduct Examinations #1503-37-TGT, 1503-36-TGT, and 1503-38-TGT and the Market Conduct Investigations underlying these examinations.

F. **Waivers.** GAAS, GAAL and GANY, 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 #1503-37-TGT, 1503-36-TGT, and 1503-38-TGT.

G. **Changes.** No changes to this stipulation shall be effective unless made in writing

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

and agreed to by all signatories to the stipulation.

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

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

J. **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.

K. **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: 8/28/2015




Angela L. Nelson
Director, Division of Insurance
Market Regulation

DATED: 8/28/2015



Stewart Freilich
Senior Regulatory Affairs Counsel
Division of Insurance Market Regulation

DATED: 8/25/2015



Lisa A. Pennekamp
Associate General Counsel
Great American Assurance Company

DATED: 8/25/2015



Lisa A. Pennekamp
Associate General Counsel
Great American Alliance Insurance Company

DATED: 8/25/2015



Lisa A. Pennekamp
Associate General Counsel
Great American Insurance Company of New York