

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

In Re:)
) **Market Conduct Investigation**
EMCASCO INSURANCE COMPANY) **Number 13146-21415-PC**
(NAIC #21407))

ORDER OF THE DIRECTOR

NOW, on this 19TH day of FEBRUARY, 2014, Director John M. Huff, after consideration and review of the market conduct investigation of EMCASCO Insurance Company (NAIC #21407) (hereafter referred to as "EMCASCO") investigation number 13146-21415-PC, conducted by the Division of Insurance Market Regulation pursuant to §374.190¹ and the Stipulation of Settlement ("Stipulation"), does hereby issue the following orders:

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

IT IS THEREFORE ORDERED that EMCASCO 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 EMCASCO shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place EMCASCO 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.

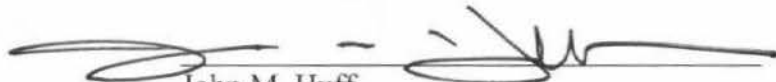
IT IS FURTHER ORDERED that EMCASCO shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept,

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

the Voluntary Forfeiture of \$4,000, 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 19th day of FEBRUARY, 2014.


John M. Huff
Director



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

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MO. DEPT. OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

In Re:)
)
EMCASCO INSURANCE COMPANY) Market Conduct Investigation #13146-21415-PC
(NAIC # 21407))
)

**STIPULATION OF SETTLEMENT
AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter "the Division"), and EMCASCO Insurance Company (NAIC #21407) (hereinafter referred to as "EMCASCO"), 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, EMCASCO has been granted a certificate of authority to transact the business of insurance in the State of Missouri; and

WHEREAS, the Division conducted a Market Conduct Investigation of EMCASCO; and

WHEREAS, the Market Conduct Investigation revealed that:

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

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

WHEREAS, EMCASCO is of the position that this Stipulation of Settlement and Voluntary Forfeiture is a compromise of disputed legal allegations, and that payment of a forfeiture is merely to resolve the disputes and avoid litigation; and

WHEREAS, the Division and EMCASCO have agreed to resolve the issues raised in the Market Conduct Investigation 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.** EMCASCO 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, to reasonably assure that the errors noted in the above-referenced market conduct investigation do not recur. Such remedial actions shall include, but are not limited to, the following:

1. EMCASCO agrees that it will pay all Missouri automobile total loss claims, including payment for all sales taxes relating to such claims, according to the terms of its policy provisions;
2. EMCASCO agrees that it will review all first party automobile total loss claims paid or processed at any time from January 1, 2009 to the date of the order closing this investigation to determine if EMCASCO paid 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 sales tax was not paid by EMCASCO to the claimant, EMCASCO 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 EMCASCO can document 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, shall be made to the State of Missouri.

C. **Compliance.** EMCASCO agrees to file documentation with the Division within 90 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.** EMCASCO agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$4,000 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 EMCASCO, other than those agreed to in this Stipulation, for the conduct found in Market Conduct Investigations 13146-21415-PC.

F. **Waivers.** EMCASCO, 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 Investigations.

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

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

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: 2/14/14



Stewart Freilich
Senior Regulatory Affairs Counsel
Division of Insurance Market Regulation

DATED: 1/30/2014



President
EMCASCO Insurance Company