

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

In Re:)
)
 TOKIO MARINE AMERICA INSURANCE) **Market Conduct Examination**
 COMPANY (NAIC #10945)) **No. 1610-40-TGT**

ORDER OF THE DIRECTOR

NOW, on this 12th day of January, 2017, 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 Tokio Marine America Insurance Company (NAIC #10945) (hereinafter "Tokio Marine"), relating to the market conduct examination 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 Tokio Marine 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 Tokio Marine shall not engage in any of the violations of law and regulations set forth in the Stipulation, shall implement procedures to place Tokio Marine in full compliance with the requirements in the Stipulation, to maintain those corrective actions at all times, and shall fully comply with all terms of the Stipulation.

IT IS FURTHER ORDERED that Tokio Marine 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 12th day of January, 2017.





John M. Huff
Director

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 TOKIO MARINE AMERICA INSURANCE) **Market Conduct Examination**
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STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter, the “Division”), and Tokio Marine America Insurance Company (NAIC #10945) (hereinafter “Tokio Marine”), 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, Tokio Marine 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 Tokio Marine based upon findings contained in a Market Conduct Investigation; and

WHEREAS, the Market Conduct Investigation revealed that:

1. Tokio Marine failed to include a payment for sales tax in two commercial automobile policy first party total loss settlements even though the company’s policies 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).

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

WHEREAS, the Division and Tokio Marine 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.** Tokio Marine 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, but are not limited to, the following:

1. Tokio Marine agrees that it will pay all first party automobile total loss claims, including payment for all sales taxes relating to such claims, according to the terms of its policy provisions and agrees to maintain this remedial action at all times.

2. Tokio Marine agrees that it will review all first party automobile total loss claims paid or processed at any time from April 1, 2011 to April 1, 2016 to determine if Tokio Marine paid all applicable sales taxes to total loss claimants for their damaged vehicles using the contractual value payable under the terms of each policy at the time of loss.² If all applicable sales taxes were not paid by Tokio Marine to a claimant, Tokio Marine 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

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

provision in the policy supporting the reduction. For purposes of this Stipulation, providing a claimant with a sales tax affidavit pursuant to the provisions of §144.027 does not constitute payment of all applicable sales taxes to the claimant.

C. **Compliance.** Tokio Marine 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.

D. **Examination Fees.** Tokio Marine agrees to pay any reasonable examination fees expended by the Division in conducting its review of the documentation provided by the Company pursuant to Paragraph C of this Stipulation.

E. **Voluntary Forfeiture.** Tokio Marine 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.

F. **Other Penalties.** The Division agrees that it will not seek penalties against Tokio Marine, other than those agreed to in this Stipulation, in connection with Market Conduct Examination #1610-40-TGT.

G. **Waivers.** Tokio Marine, 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 Market Conduct Examination #1610-40-TGT.

H. **Changes.** No changes to this Stipulation shall be effective unless made in writing and agreed to by representatives of the Division and Tokio Marine.

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, on behalf of the Division and Tokio Marine respectively.

K. **Effect of Stipulation.** This Stipulation shall not become effective until entry of a Final Order by the Director of the Department (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: 1/11/2017



Angela L. Nelson, Director
Division of Insurance Market Regulation

DATED: 1/10/2017



Stewart Freilich
Senior Regulatory Affairs Counsel

DATED: 12/29/16



[NAME and TITLE] EVP - B. Steven Goldstein
Tokio Marine America Insurance Company