

# STATE OF MISSOURI



## DEPARTMENT OF COMMERCE & INSURANCE

P.O. Box 690, Jefferson City, Mo. 65102-0690

*In Re:*

THE GRAY INSURANCE COMPANY  
(NAIC #36307)

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Market Conduct Investigation No. 355892

### ORDER OF THE DIRECTOR

NOW, on this 12<sup>th</sup> day of July, 2021, Director, Chlora Lindley-Myers, 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 The Gray Insurance Company (NAIC #36307) (hereinafter "Gray"), relating to the market conduct investigation no. 355892, does hereby issue the following orders:

This order, issued pursuant to §374.046.15<sup>1</sup> and §374.280 is in the public interest.

**IT IS THEREFORE ORDERED** that Gray and the Division having agreed to the Stipulation, the Director does hereby approve and agree to the Stipulation.

**IT IS FURTHER ORDERED** that Gray shall not engage in any of the violations of law and regulations set forth in the Stipulation, shall implement procedures to place it 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, and shall fully comply with all terms of the Stipulation.

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<sup>1</sup> All references, unless otherwise noted, are to Revised Statutes of Missouri 2016, as amended, or to the Code of State Regulations, 2020, as amended.

**IT IS FURTHER ORDERED** that Gray shall pay, and the Department of Commerce and Insurance, State of Missouri, shall accept, the Voluntary Forfeiture of \$17,750.00, 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 12<sup>th</sup> day of July, 2021.



*Chlora Lindley-Myers*  
Chlora Lindley-Myers  
Director

**IN THE DEPARTMENT OF COMMERCE AND INSURANCE  
STATE OF MISSOURI**

*In Re:* )  
 )  
THE GRAY INSURANCE COMPANY ) **Market Conduct Investigation**  
(NAIC #36307) ) **No. 355892**

**STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter “the Division”) and The Gray Insurance Company (NAIC #36307) (hereinafter “Gray”), as follows:

**WHEREAS**, the Division is a unit of the Missouri Department of Commerce and Insurance (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 of Missouri;

**WHEREAS**, Gray has been granted a certificate of authority to transact the business of insurance in the State of Missouri;

**WHEREAS**, the Division conducted a market conduct investigation of Gray, investigation #355892; and

**WHEREAS**, based on the market conduct investigation of Gray, the Division alleges that:

1. Gray did not file financial annual statements that accurately reported the condition of its affairs from 2010 to 2018 in violation of §374.210.1 (2)<sup>1</sup>.
2. Gray did not report workers’ compensation premium data pursuant to the uniform statistical plan put forth by the NCCI and approved by the Department in violation of §287.955.3

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<sup>1</sup> All references, unless otherwise noted, are to Missouri Revised Statutes 2016, as amended or to the Code of State Regulations, 2020, as amended.

and §287.955.5.

3. Gray did not accurately report premium amounts on annual tax returns filed with the Department from 2010 to 2019 affecting its payment of premium tax and retaliatory tax in violation of §287.710.1 and §§375.916.2 & .3.

4. Gray did not accurately report premium amounts on annual tax returns filed with the Department from 2016 to 2018 affecting its payment of the administrative tax in violation of §287.690.1.

5. Gray did not accurately report premium amounts on tax returns filed with the Department in 2017 affecting its payment of the administrative surcharge in violation of §§287.716.1 & .2.

6. Gray did not accurately report premium amounts on annual tax returns filed with the Department from 2016 to 2019 affecting its payments to the second injury fund in violation of §287.715.2.

7. In 33 instances, Gray did not collect the second injury fund surcharge or the administrative surcharge at the same time and in the same manner that premium was collected in violation of §287.715.2 and §287.717.1.

8. In 20 instances, Gray did not collect the supplemental second injury fund surcharge or the administrative surcharge at the same time and in the same manner that premium was collected in violation of §287.715.6.

9. In seven instances, Gray did not timely submit individual risk filings for large deductible workers' compensation insurance policies with Missouri premium or exposure in violation of §287.947.1.

10. In four instances, Gray did not retain a completed application for each policy in violation of §287.350, 20 CSR 100-8.040 (2) and 20 CSR 100-8.040 (3) (A) 1.

11. In three instances, Gray's application included a question about prior cancellations, non-renewals or declinations in violation of 20 CSR 500-6.100 (1) (E) and implicating the provisions of §375.936 (11).

**WHEREAS**, the Division and Gray 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 (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.** Gray 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 ensure that the errors noted in the market conduct investigation and in this Stipulation do not occur in the future. Such remedial actions shall consist of the following:

1. Gray agrees that from the date of the Order approving this Stipulation it will file complete and accurate annual statement filings with the Department and complete and accurate reports with the NCCI.

2. Gray agrees to report to the Department any amended premium previously carried forward on tax returns or that will be carried forward on the 2020 tax return, for purposes of determining the amount of premium tax and retaliatory tax owed for 2010 to 2019, and the amount of administrative tax and the administrative surcharge owed for 2016 to 2018.

3. Gray agrees to review all small or large deductible workers compensation insurance with Missouri premium or exposure from January 1, 2016 to the date of the Order approving this Stipulation to determine if Gray owes any additional payments to the Second Injury Fund, and to reimburse the Second Injury Fund for any underpayments that are discovered. 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 as may be required by the Division of Workers Compensation.

4. Gray agrees to collect the second injury fund surcharge, the supplemental second injury fund surcharge, and the administrative surcharge for all workers' compensation policies with Missouri premium or exposure at the same time, and in the same manner, that premium is collected.

5. Gray agrees to maintain its books and records for workers' compensation insurance policies with Missouri premium or exposure in accordance with §287.350, 20 CSR 100-8.040 (2) and 20 CSR 100-8.040 (3) (A) 1.

6. Gray agrees not to require any applicant or policyholder to disclose whether the applicant or policyholder was declined, cancelled or non-renewed by any insurer in connection with workers' compensation insurance policies with Missouri premium or exposure.

C. **Compliance.** Gray agrees to file documentation with the Division, in a format acceptable to the Division, within 90 days of the entry of a final order of any remedial action taken pursuant to Paragraph B to implement compliance with the terms of this Stipulation or to document the payment of restitution required by this Stipulation. Such documentation is provided pursuant to §374.190.

D. **Ongoing Investigation.** Gray agrees to pay any reasonable investigation fees expended by the Division in conducting its review of the documentation provided by Gray pursuant to Paragraph C of this Stipulation.

E. **Voluntary Forfeiture.** Gray agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$17,750 such sum payable to the Missouri State School Fund, in accordance with §374.049.11 and §374.280.2.

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

G. **Waivers.** Gray, 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 investigation.

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

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 Gray respectively.

K. **Counterparts.** This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document. Execution and delivery of this Stipulation by facsimile or by an electronically transmitted signature shall be fully and legally effective and binding.

L. **Effect of Stipulation.** This Stipulation shall become effective only upon entry of a Final Order by the Director of the Department (hereinafter “Director”) approving this Stipulation.

M. **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: 6-22-2021



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Stewart Freilich  
Chief Market Conduct Examiner and  
Senior Counsel  
Division of Insurance Market Regulation

DATED: 6/17/2021



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B. Paul Boudreaux, III  
Chief Operating Officer  
The Gray Insurance Company