

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

In Re:)
) **Market Conduct Investigation**
MASSACHUSETTS BAY INSURANCE COMPANY) **Number 10135-22306-PC**
(NAIC #22306))

ORDER OF THE DIRECTOR

NOW, on this 19th day of may, 2014, Director John M. Huff, after consideration and review of the market conduct investigation of Massachusetts Bay Insurance Company (NAIC #22306) (hereafter referred to as "Massachusetts Bay") investigation number 10135-22306-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 Massachusetts Bay 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 Massachusetts Bay shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Massachusetts Bay 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.

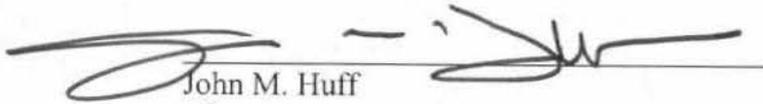
IT IS FURTHER ORDERED that Massachusetts Bay shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept,

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

the Voluntary Forfeiture of \$2,750, 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 MAY, 2014.



John M. Huff
Director



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

In Re:)
)
MASSACHUSETTS BAY) Market Conduct Investigation #10135-22306-PC
INSURANCE CO. (NAIC # 22306))
)

**STIPULATION OF SETTLEMENT
AND VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by the Division of Insurance Market Regulation (hereinafter "the Division"), and Massachusetts Bay Insurance Company (NAIC #22306) (hereinafter referred to as "Massachusetts Bay"), 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, Massachusetts Bay 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 Massachusetts Bay; and

WHEREAS, the Market Conduct Investigation revealed that:

1. In 4 instances, Massachusetts Bay failed to file individual rate plans for large deductible policies in violation of §287.310¹ and §287.947;
2. In 8 instances, Massachusetts Bay used NCCI forms subsequent to the withdrawal effective date in violation of §287.310;
3. Massachusetts Bay did not follow the filed NCCI algorithm to rate policies because the experience modification factor was calculated before the deductible credit was applied in violation of §287.955;

4. Discrepancies were found in the calculation of the Second Injury Fund Surcharge in violation of §287.310;

5. Discrepancies were found in the calculation of the Administrative Surcharge in violation of §287.310;

6. Losses reimbursed by the employer were reported to the NCCI on a gross basis even though there was no evidence that the insureds elected the gross reporting option in violation of §287.310.4, §287.350 and 20 CSR 100-8.040.

WHEREAS, the Division and Massachusetts Bay 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.** Massachusetts Bay 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. Massachusetts Bay agrees to file individual rating plans for all individually rated large deductible workers compensation insurance policies with Missouri premium or exposure within 30 days of the effective date of the policy;

2. Massachusetts Bay agrees to review all policies where NCCI forms were used subsequent to their withdrawal effective date to determine if the use of the withdrawn form impacted premium. If a policyholder was overcharged as a result of the use of the withdrawn form, the premium overcharge must be refunded to the policyholder along with nine percent (9%) interest per annum pursuant to §408.020. A letter must be included with the payment indicating that "as a

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

result of a Missouri Market Conduct Investigation," it was found that a refund was due to the insured.

3. Massachusetts Bay agrees to review all large deductible workers compensation insurance policies with Missouri premium or exposure issued from January 1, 2006 to the date of the order finalizing this investigation to determine if there were errors in the calculation of premium, Second Injury Fund Surcharge or Administrative Surcharge. If the policyholder is entitled to a refund of premium, the Company must issue any refund due to the insured, 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 within 90 days of the date of the Order finalizing this investigation. 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 within 90 days of the date of the order finalizing this investigation.

4. Massachusetts Bay agrees to report all large deductible workers compensation insurance policies with Missouri premium or exposure on a net basis unless the employer exercises the right to purchase a gross reportable deductible plan.

5. Massachusetts Bay agrees to review all individually rated large deductible workers compensation insurance policies with Missouri premium or exposure issued from January 1, 2006 to the date of the Order closing this investigation to determine if losses were improperly reported on a gross basis. If losses were improperly reported on a gross basis, Massachusetts Bay shall determine if the incorrect use of gross reporting negatively affected the e-mod. Since a negative impact on an emod can impact the employer for a period of three years, Massachusetts Bay shall take reasonable steps to evaluate the impact on the employer for a period of three years after the employer's emod

was negatively impacted and refund any amount of premium that was overpaid due to the negatively impacted emod. If any policyholder is entitled to a refund of premium as a result of incorrectly reporting losses on a gross basis, Massachusetts Bay must issue any refund due to the insured, 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 Investigation," it was found that a refund was due to the insured.

C. **Compliance.** Massachusetts Bay 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.** Massachusetts Bay agrees, voluntarily and knowingly, to surrender and forfeit the sum of \$2,750 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 Massachusetts Bay, other than those agreed to in this Stipulation, for the conduct found in Market Conduct Investigations 10135-22306-PC.

F. **Waivers.** Massachusetts Bay, 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.

G. **Changes.** No changes to this stipulation shall be effective unless made in writing and agreed to by all signatories to the stipulation.

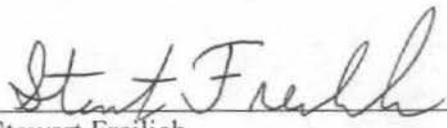
H. **Governing Law.** This Stipulation of Settlement and Voluntary Forfeiture shall be governed and construed in accordance with the laws of the State of Missouri.

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.

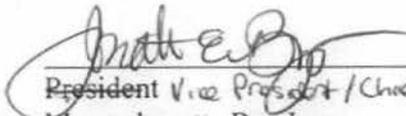
K. **Request for an Order.** The signatories below request that the Director issue an Order approving this Stipulation of Settlement and Voluntary Forfeiture and ordering the relief agreed to in the Stipulation, and consent to the issuance of such Order.

DATED: May 14, 2014



Stewart Freilich
Senior Regulatory Affairs Counsel
Division of Insurance Market Regulation

DATED: April 16, 2014



President Vice President / Chief Compliance Officer
Massachusetts Bay Insurance Company