

BEFORE THE INSURANCE COMMISSIONER

FOR THE STATE OF DELAWARE

IN THE MATTER OF: )  
)  
ENCOMPASS INSURANCE ) DOCKET NO. 1370-2010  
COMPANY OF AMERICA )  
AND ENCOMPASS INDEMNITY )  
COMPANY )

STIPULATION AND CONSENT ORDER

**THIS AGREEMENT** (“Agreement”) is made this 22<sup>nd</sup> day of September 2010 between Encompass Insurance Company of America and Encompass Indemnity Company (hereinafter collectively “Respondents”) and the Delaware Department of Insurance (“Department”);

**WHEREAS**, Respondents are authorized to conduct the business of insurance in the State of Delaware with NAIC numbers 10071 and 15130; and

**WHEREAS**, the Department asserts that Respondents’ conduct violated 18 Del. C. § 2303 and Insurance Regulation 609 (5.1.1) by improperly applying automobile insurance policy surcharges for insureds’ not-at-fault accidents between January 1, 1999 and January 1, 2010; and

**WHEREAS**, Respondents’ conduct was a first time occurrence of this conduct, was an inadvertent act and Respondents cooperated fully with the Department’s investigation; and

**WHEREAS**, Respondents instituted appropriate action to prevent further violation of 18 Del. C. s 2303 and Regulation 609 (5.1.1) and made appropriate restitution to its affected insureds; and

**WHEREAS**, Respondents have been informed that they are entitled to an administrative hearing and to be represented by counsel and that the decisions to waive the hearing and not to be represented by counsel are free and voluntary; and

**WHEREAS**, after communications with the Department, Respondents desire to resolve the matter without recourse to a formal administrative hearing or any court action (such as an appeal) and enter into this Agreement under the terms and conditions set forth herein.

**NOW, THEREFORE, IT IS ORDERED AND AGREED**, by and between the Respondents and the Department, as follows:

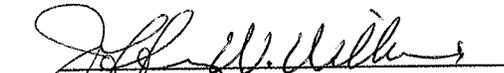
- 1.) Respondents waive their right to notice and to an administrative hearing on this matter;
- 2.) Respondents state that they fully understand all of the allegations and facts relating to the above referenced asserted violations as well as to all consequences of their agreement to enter into this Agreement;
- 3.) Respondents admit to all the facts set forth in this Agreement relating to the above-referenced asserted violations, but deny liability to any of their insureds or any third party as a result of the violations asserted by the Department herein;
- 4.) Respondents neither admit nor deny any violation of 18 Del. C. s 2303 and Regulation 609 (5.1.1);
- 5.) Respondents agree to pay in full within 30 days of the execution of this Agreement \$25,000 with \$75,000 to be paid pursuant to paragraph 6 of this Agreement;
- 6.) Respondents will not engage in the conduct giving rise to the above referenced asserted violations and agree that engaging in such conduct in violation of 18 *Del C.* §2303 and Regulation 609 (5.1.1) within the next three (3) years shall be considered a breach of this Agreement. . If the Department becomes aware of any future pattern or practice in violation of 18 Del. C. s 2303 and Regulation 609(5.1.1), inadvertent or otherwise, the Department shall be entitled to receive up to an additional \$75,000. The Department shall consider the nature and extent of any such future violations when determining whether to enforce any portion of the additional \$75,000;
- 7.) Respondents agree to report to the Department any additional violations of 18 *Del. C* §2303 and Regulation 609(5.1.1) and any adverse governmental actions taken against Respondents which relate to the conduct set forth here and in the recitals;
- 8.) This agreement is the free and voluntary act of Respondents, and its terms are binding upon the Respondents and may be admitted into evidence in any judicial or administrative proceedings that may be required against Respondents to enforce the terms of this Agreement;
- 9.) The imposition of any fines contained in this Agreement shall not preclude prosecution for any violation of a criminal law of this, or any other state;
- 10.) This Agreement contains all the terms and conditions agreed to by the parties and constitutes conditions agreed to by Respondents and the Department, and shall conclude this matter with prejudice;
- 11.) No change, amendment, or modification hereto shall be effective or binding unless it is in writing, dated and signed by all parties;
- 12.) If the Department fails to act on any future pattern or practice in violation of 18 Del. C. s 2303 and Regulation 609(5.1.1) by Respondents, such failure shall not be a waiver of any rights hereunder on the part of the Department to

declare Respondents in default and to take such action as may be permitted by this Agreement or be applicable by law.

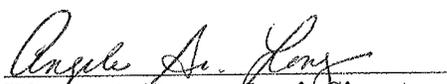
- 13.) This Agreement may be signed in duplicate and both documents shall be considered originals. Respondents agree that an uncertified copy shall be valid as evidence in any proceeding that may be required for purposes of enforcement.
- 14.) This Agreement shall survive Respondents and shall be enforceable against their successors, transferors, or assigns.

**RESPONDENT:**

**DELAWARE INSURANCE DEPARTMENT**

  
**Respondent Signature**  
Name, Title, Dated  
*Jeffrey W. Williams Regional Counsel* 9/29/11

  
**KAREN WELDIN STEWART, CIR-ML**  
Insurance Commissioner

  
**Witness to Respondent's Signature**  
Name, Title, Dated  
*Angela G. Long Executive Admin. Asst.* 9/29/11

9/22/2011  
Date of Insurance Commissioner's Signature