

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)
TOKIO MARINE AMERICA)
INSURANCE COMPANY)
NAIC # 10945)
)
TRANS PACIFIC)
INSURANCE COMPANY)
NAIC # 41238)

Docket No.: 86424

CONSENT AGREEMENT AND FINAL ORDER
(Pursuant to K.S.A. 40-103, 40-955 and K.S.A. 40-2,125)

The Kansas Insurance Department (“the Department”), Tokio Marine America Insurance Company (“Tokio”) and Trans Pacific Insurance Company (“Trans Pacific”) submit this Consent Agreement and Final Order. Tokio and Trans Pacific hereby waive any and all rights to further administrative adjudication or review of this matter, including any and all rights conferred upon them under K.S.A. 77-501, *et seq.* and K.S.A. 77-601, *et seq.* Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-103, 40-955, and 40-2,125, Vicki Schmidt, the duly elected, qualified and serving Commissioner of Insurance, hereby adopts the Department’s agreement made with Tokio and Trans Pacific and makes the following findings and Orders:

Allegations

The parties stipulate that if a hearing were conducted in this matter, the following evidence could be offered by the Commissioner, and although neither admitted nor denied by Tokio and Trans Pacific, would be recognized as admissible to show the following:

1. Tokio is domiciled in New York and has been authorized in Kansas since 2012.
2. Trans Pacific is domiciled in New York and has been authorized in Kansas since 1982.
3. Tokio and Trans Pacific are sister companies under the umbrella of Tokio Marine America.

4. On or about November 12, 2020, Tokio and Trans Pacific self-reported to the Department that they failed to submit workers compensation loss cost adoption filings from 2015 to 2019. The companies reported that they did not submit a loss cost filing since their filing effective January 1, 2014.
5. Tokio and Trans Pacific reported that the companies utilized the NCCI Manual Filing Guide for Rates and Forms 2011 edition (“NCCI manual”).
6. The NCCI manual Company Action Table stated, in part, if the “[c]ompany decides to use NCCI’s rates, rules and other supplementary information”, then the “[c]ompany does not file anything; the company’s rates, rules and other supplementary information are those submitted by NCCI.”
7. Tokio and Trans Pacific stated that they incorrectly believed that no filing was required if they utilized the loss costs submitted by NCCI. The companies reported that although they did not submit filings, they adopted the NCCI loss costs every year since 2014.
8. Tokio and Trans Pacific indicated that they requested that NCCI revise the manual. The companies reported that the revised language states, in part, “[c]ompany should file for approval using the NAIC Reference Filing Adoption Form and Summary of Supporting Information Form”.
9. The companies reported that 161 policies were impacted from 2015 to 2019. Out of the 161 policies, two policies were issued at higher rates than the filing effective January 1, 2014. The return premium for those policies totals \$3,171. The companies reported that they will waive collection of any addition premium for the 159 policies that were issued lower rates.
10. The companies reported that they implemented increased oversight and approval of filing

transactions and require regulatory compliance training for all filing staff to increase understanding of regulatory issues and filing requirements.

Applicable Law

1. K.S.A. 40-955 provides, in part:

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to public inspection after it is filed with the commissioner, except that disclosure shall not be required for any information contained in a filing or in any supporting documentation for the filing when such information is either a trade secret or copyrighted. For the purposes of this section, the term "trade secret" shall have the meaning ascribed to it in K.S.A. 60-3320, and amendments thereto. An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

(c) Any rate filing for the basic coverage required by K.S.A. 40-3401 et seq., and amendments thereto, loss costs filings for workers compensation, and rates for assigned risk plans established by article 21 of chapter 40 of the Kansas Statutes

Annotated or rules and regulations established by the commissioner shall require approval by the commissioner before its use by the insurer in this state. As soon as reasonably possible after such filing has been made, the commissioner shall in writing approve or disapprove the same, except that any filing shall be deemed approved unless disapproved within 30 days of receipt of the filing.

2. K.S.A. 40-2,125 provides, in part:

(a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation;

(2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder; or

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

Conclusions of Law and Orders

Based on the information enumerated in Paragraphs #1 through #10 and the applicable law cited above, **THE COMMISSIONER OF INSURANCE MAKES THE FOLLOWING ORDERS:**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-103, 40-955, and 40-2,125, and shall retain jurisdiction to issue any further orders deemed necessary.
2. Tokio and Trans Pacific neither admit nor deny stated violations, as enumerated above.
3. Tokio and Trans Pacific have agreed to a total combined payment of \$3,500 in response to the companies' failure to submit annual loss cost adoption filings from 2015 to 2019. Such payment should be made within 30 days of the effective date of this Order.
4. Tokio and Trans Pacific shall comply with recommendations of examiners and contact the Property/Casualty Division with any further questions.

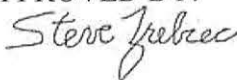
IT IS SO ORDERED THIS 29th DAY OF DECEMBER 2020, IN THE CITY OF TOPEKA, STATE OF KANSAS.



BY:


Justin L. McFarland
General Counsel

APPROVED BY:



Steve Zrebiec, Assistant Vice President
Tokio Marine Management, Inc.
499 Washington Boulevard, Suite 1500

Jersey City, NJ 07310

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FROM: [Illegible]

SUBJECT: [Illegible]

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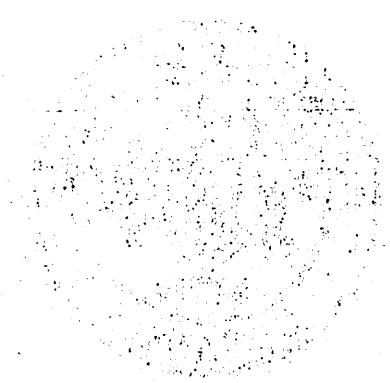
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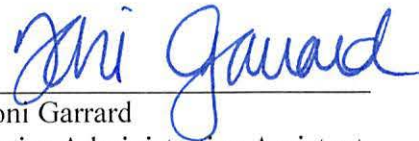
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Certificate of Service

The undersigned hereby certifies that she served the above and foregoing Consent Agreement and Final Order on this 29th day of December 2020, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Steve Zrebiec, Assistant Vice President
Tokio Marine Management, Inc.
499 Washington Boulevard, Suite 1500
Jersey City, NJ 07310



Toni Garrard
Senior Administrative Assistant