

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
AND HEALTH CARE ADMINISTRATION**

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IN RE: ACADIA INSURANCE)	
COMPANY)	DOCKET NO. 10-027-I
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STIPULATION AND CONSENT ORDER

NOW COME the Department of Banking, Insurance, Securities and Health Care Administration of the State of Vermont (“Department”) and Acadia Insurance Company (“Respondent”) and hereby stipulate and agree as follows:

WHEREAS, pursuant to the authority contained in 8 V.S.A. §§ 11, 12, 13, 15, 4723 and 4726 the Commissioner of the Department (“Commissioner”) is charged with enforcing the insurance laws of the State of Vermont; and

WHEREAS, pursuant to the authority contained in 8 V.S.A. §4726, the Commissioner may investigate any person engaged in the business of insurance in Vermont in order to determine whether that person has been engaged in any unfair method of competition or in any unfair or deceptive act or practice and may suspend, or revoke the license of any insurer and or may impose an administrative penalty for any violation of Title 8, chapter 129; and

WHEREAS, Acadia Insurance Company, domiciled in the state of New Hampshire, is authorized to conduct insurance business in Vermont pursuant to the laws of the State of Vermont; and

WHEREAS, the Department has conducted an investigation of the method of adjusting third party property damage claims and first party property damage claims performed by Respondent in Vermont; and

WHEREAS, 8 V.S.A. § 4724 (9)(F) provides that “not attempting in good faith to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear” when committed or performed with such frequency as to indicate a business practice is an unfair claim settlement practice and an unfair or deceptive act or practice in the business of insurance and a violation of 8 V.S.A. § 4723 (Vermont Insurance Trade Practices Act); and

WHEREAS, the Department concluded, after investigation, that Respondent’s method of adjusting certain third party property damage claims, in which Respondent had been accepted liability, included the netting of depreciation where it was improper to do so. The Department further concluded that this method of adjusting constituted an unfair claim settlement practice in that Respondent settled these third-party claims reviewed by the Department by offering and/or paying a settlement amount net of depreciation when the settlement amount should have been the cost of repair or replacement; and

WHEREAS, the Department concluded, after investigation, that Respondent’s method of adjusting certain first party actual cash value property damage claims constituted an unfair claim settlement practice in that Respondent settled these first party claims reviewed by the Department by offering and/or paying a settlement amount net of depreciation of labor, profit and overhead costs when it was improper to do so;

WHEREAS, Respondent has been made aware that the Department may proceed with an administrative action against it for violating 8 V.S.A. § 4723 of the Vermont Insurance Trade Practices Act; and

WHEREAS, Respondent has represented to the Department that it has instructed all of its adjusters who use a specific software to adjust claims to set the default setting for depreciation to “materials only”; and

WHEREAS, Respondent disagrees with and does not admit to the allegations and conclusions of the Department, but wishes to resolve this matter administratively, being aware of the expense, consumption of time and uncertainty inherent in litigation, by entering into a stipulation and consent order with the Department on the terms and conditions hereinafter set forth in lieu of proceeding with a hearing.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Department and Respondent stipulate and agree as follows:

1. Respondent shall pay an administrative penalty of Ten Thousand Dollars (\$10,000.00) payable within ten (10) days of the date of the execution of this Consent Order.
2. Respondent shall pay the Department’s reasonable costs and expenses associated with this order and the investigation pursuant to 8 V.S.A. § 18 in the amount of Four Thousand Four Hundred Seventy Dollars and Sixty-one Cents (\$4,470.61). Payment shall be made no later than 10 days after the execution of this Consent Order.
3. Respondent shall cease and desist from offering and/or paying third party settlement amounts net of depreciation in instances in which the repair or

replacement of the damaged real property does not result in an increase in the value of the real property.

4. Respondent shall, within 30 days of the signing of this order, make payment to the third part claimants and first party insureds of the amount netted from the cost of repair or replacement or actual cash value payments that Respondent identified as representing depreciation in each of the claims that the Department reviewed and concluded were adjusted in violation of the above cited Vermont Insurance Trade Practices Act. Respondent shall pay interest at the rate of 12% on the amounts paid. An explanatory letter from Respondent that has been approved by the Department shall accompany the payments. Respondent shall submit the explanatory letter to the Department for approval within 15 days of the signing of this Order. Respondent shall submit, in the form of a spreadsheet provided by the Department, the calculations used to compute the amount of interest owed each third party claimant and documentation to verify how the interest was calculated to the Department within 30 days of the execution of this Order.
5. The Department may conduct a follow up investigation/examination within 12-24 months of the signing of this Order. The investigation/examination will focus on whether Respondent is complying with this order, and on whether Respondent is engaging in unfair claim settlement practices as described in 8 V.S.A. §4724 (9)(F) as well as any other issue deemed appropriate at that time by the Department. The Department may seek reimbursement for all costs and expenses associated with the follow up investigation/examination pursuant to

8 V.S.A. §§18. Nothing in this paragraph or Order shall be construed to limit the Department's ability to investigate/examine Respondent prior to 12 months or subsequent to 24 months from the date of the signing of this Order.

6. Respondent hereby waives its statutory right to notice and a hearing before the Commissioner of the Department, or his designated appointee.
7. Respondent acknowledges and agrees that this stipulation is entered into freely and voluntarily and that except as set forth herein, no promise was made to induce the Respondent to enter into it. Respondent acknowledges that it has consulted with its attorney in this matter and it has reviewed this Stipulation and Consent Order and it understands all terms and obligations contained herein.
8. Respondent consents to the entry of this Order and agrees to be fully bound by its terms and conditions. Respondent acknowledges that noncompliance with any of the terms of this Order shall constitute a violation of a lawful order of the Commissioner and shall be a separate violation of the laws of the State of Vermont and shall subject Respondent to administrative action or sanctions as the Commissioner deems appropriate. Respondent further acknowledges that the Commissioner retains jurisdiction over this matter for the purpose of enforcing this order.
9. The undersigned representative of Respondent affirms that he or she has taken all necessary steps to obtain the authority to bind Respondent to the obligations stated herein and has the authority to bind Respondent to the obligations stated herein.

STATE OF MAINE
COUNTY OF CUMBERLAND


Acacia Insurance
Company

Sworn to and subscribed before this
The 29th day of SEPTEMBER, 2010.


NOTARY PUBLIC

My Commission Expires: 11/1/2015

Accepted by: 
Kenneth McGuckin, Acting
Deputy Commissioner,
Insurance Division
Vermont Department
of Banking, Insurance, Securities
and Health Care Administration

Date: 10/4/10

ORDER

IT IS HEREBY ORDERED:

- A. Respondent, Acacia Insurance Company shall comply with all agreements, stipulations, and undertakings as recited above.
- B. Nothing contained in this Order shall restrain or limit the Department in responding and addressing any consumer complaint about Respondent filed with the Department or shall preclude the Department from pursuing any other violation of law.

Dated at Montpelier, Vermont this 4th day of OCTOBER 2010.


MICHAEL S. BERTRAND, Commissioner
Vermont Department of Banking, Insurance, Securities
and Health Care Administration