**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE**
**FOR THE STATE OF TENNESSEE**

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| **TENNESSEE INSURANCE DIVISION,** | ) |
| **Petitioner,** | ) |
| | ) |
| **vs.** | )**No.: 04-013** |
| | )**12.01-54279A** |
| **AIU INSURANCE COMPANY,** | ) |
| **AMERICAN HOME ASSURANCE COMPANY,** | ) |
| **AMERICAN INTERNATIONAL SOUTH INSURANCE COMPANY,** | ) |
| **BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA,** | ) |
| **COMMERCE AND INDUSTRY INSURANCE COMPANY,** | ) |
| **GRANITE STATE INSURANCE COMPANY,** | ) |
| **ILLINOIS NATIONAL INSURANCE CO.,** | ) |
| **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,** | ) |
| **NATIONAL UNION FIRE INSURANCE COMPANY OF LOUISIANA,** | ) |
| **NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.** | ) |
| **NEW HAMPSHIRE INSURANCE COMPANY,** | ) |
| **Respondents.** | ) |

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## AGREED ORDER

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**WHEREAS**, Petitioner, the Tennessee Insurance Division (hereinafter referred to as the "Division"), and the Respondent insurance companies (hereinafter collectively referred to as the "Respondents") hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (hereinafter referred to as the "Commissioner") as follows:

## GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. The Commissioner has determined that the resolution set forth in this Agreed Order is fair and reasonable, and in the best public interest.

3. This Agreed Order is executed by the parties for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. Respondents fully understand that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondents for acts or omissions that do not arise from the facts or transactions herein addressed.

5. Respondents expressly waive all further procedural steps, and expressly waive all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreed Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Agreed Order by the Commissioner.

## FINDINGS OF FACT

6. The Respondents are all insurance companies that offer insurance in the State of Tennessee. The Respondents currently hold certificates of authority to sell, among other types of insurance, workers' compensation insurance.

7. On or about November 26, 2002, Congress passed the Terrorism Risk Insurance Act (hereinafter referred to as "TRIA") that mandated that all insurers providing commercial lines coverage to make an offer of coverage for foreign acts of terrorism.

8. On December 20, 2002, the National Council on Compensation Insurance (hereinafter referred to as "NCCI"), the designated rate service organization for the State of Tennessee, made a rate filing on behalf of its members which proposed to charge a "loss cost" of two cents ($0.02) per one hundred dollars ($100.00) of payroll for terrorism liabilities. The two cent ($0.02) "loss cost" is applied to the loss cost multiplier filed with the Division to get the rate.

9. On January 23, 2003, the Respondents made a rate filing with the Division which proposed to charge a "rate" of one percent (1%) to four percent (4%) of Total Manual Premium to provide for terrorism risks under workers' compensation and employers' liability insurance policies.

10. On July 19, 2004, the Respondents made a rate filing with the Division whereby the Respondents proposed to adopt the NCCI's TRIA charge. The rate filing also proposed to increase the loss cost multipliers of the Respondents so that the Respondents are able to charge enough on business written in this state to recoup their actual and potential costs as well as receive a reasonable profit.

## CONCLUSIONS OF LAW

11. Tenn. Code Ann. § 56-5-308(a) provides, in pertinent part, that the commissioner shall disapprove a rate if the commissioner finds that the rate is excessive, inadequate or unfairly discriminatory, or, in the case of an advisory prospective loss cost filing, the commissioner finds such filing does not reasonably reflect projected losses, including loss adjustment expenses.

12. It is the conclusion of the Commissioner that the rate filings made by the Respondents on July 19, 2004, are just and fair and are not excessive, inadequate or unfairly discriminatory.

13. Respondents admit to the Findings of Fact, above, and further admit that the Conclusions of Law, above, are fair and reasonable. In order to avoid any further expenses or costs associated with litigating this matter, Respondents hereby desire to enter into this Agreed Order.

## ORDER

**NOW THEREFORE**, on the basis of the foregoing, and the wavier of the Respondents of their right to a hearing and appeal under Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and the admission by Respondents of the jurisdiction of the Commissioner, the Commissioner finds that the Respondents have agreed to the entry of this Order and that this Order is appropriate, and in the public interest.

**IT IS ORDERED**, pursuant to Tenn. Code Ann. § 56-5-308 of the Tennessee Insurance Law, that:

1. The rate filing made by the Respondent on July 19, 2004, and attached hereto as Exhibit 1 is hereby deemed to be approved for use in this State. Should the Commissioner determine that these rates should no longer be used in this State, she shall disapprove such rates only through the process outlined in Tenn. Code Ann. § 56-5-308(b)(2).

2. Respondents shall withdraw the rate filings filed on January 23, 2003, and shall immediately cease the use of such rates in this State.

3. This Agreed Order is intended to resolve all matters raised by the Division in connection with the captioned docket, and the Petition initiating this proceeding is hereby dismissed.

This Agreed Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, the Respondents affirmatively state that they have freely agreed to the entry of this Agreed Order, that they have been advised that they may consult legal counsel in this matter, and have had the opportunity to consult with legal counsel should they have desired to do so, that they waive their right to a hearing on the matters underlying this Agreed Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Agreed Order, affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Agreed Order, are binding upon them.

**SO ORDERED.**

**ENTERED** this the 7th day of October, 2004.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

Larry C. Knight, Jr.
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AIU Insurance Company

By: Kenneth V. Harkins
Title: Sr. Vice President

American Home Assurance Company

By: Kenneth V. Harkins
Title: Sr. Vice President

American International South Insurance Company

By: Kenneth V. Harkins
Title: Sr. Vice President

Birmingham Fire Insurance Company of Pennsylvania

By: Kenneth V. Harkins
Title: Sr. Vice President

Commerce and Industry Insurance Company

By: Kenneth V. Harkins
Title: Sr. Vice President

Granite State Insurance

By: Kenneth V. Harkins
Title: Sr. Vice PResident

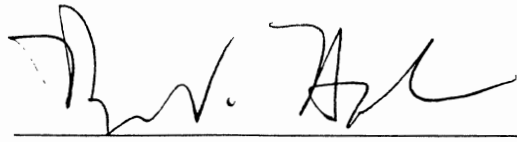
Illinois National Insurance

By: Kenneth V. Harkins
Title: Sr. Vice President

The Insurance Company of the State of Pennsylvania

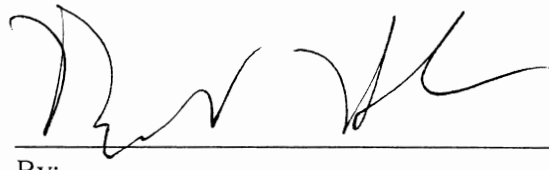
By: Kenneth V. Harkins
Title: Sr. Vice President

National Union Fire Insurance of Louisiana



By: Kenneth V. Harkins
Title: Sr. Vice President

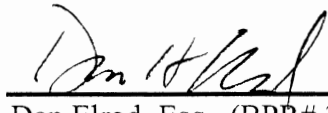
National Union Fire Insurance of Pittsburgh



By: Kenneth V. Harkins
Title: Sr. Vice President

New Hampshire Insurance

By: Kenneth V. Harkins
Title: Sr. Vice President



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