

2019 JUL 26 PM 1:16 BEFORE THE INSURANCE COMMISSIONER
OF THE
ADMIN HEARINGS OFFICE COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
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	:	
BRICKSTREET MUTUAL	:	77 P.S. §§ 1035.4 and 1035.7
INSURANCE COMPANY	:	
400 Quarrier Street	:	
Charleston, WV 25301	:	
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	:	
Respondent,	:	<i>CO19-03-007</i> Docket No. 19-03-007

CONSENT ORDER

AND NOW, this 26 day of July, 2019, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa. C.S. §§ 101, et. seq., and regulations promulgated thereunder.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter and agrees that this Consent Order shall have the full force and effect of an order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency

Law, *supra*, and regulations promulgated thereunder, subject to the limitations noted in Paragraph 10 below. Respondent makes no waiver or admission as to any action or proceeding other than this matter, and reserves all rights and defenses as to any such action or proceeding.

FINDINGS OF FACT

3. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is BrickStreet Mutual Insurance Company, and maintains its address at 400 Quarrier Street, Charleston, WV 25301.
- (b) AlleghenyPoint Insurance Company, f/k/a/ HM Casualty Insurance Company (“AlleghenyPoint”), is a subsidiary of Respondent. Respondent manages AlleghenyPoint pursuant to a management agreement.
- (c) Respondent is, and at all times relevant hereto has been, a licensed insurer in the Commonwealth of Pennsylvania and is authorized to write workers’ compensation insurance.
- (d) Respondent as an insurer, must comply with any and all provisions of Pennsylvania law regarding filing of its rates and forms with the Department.

- (e) Under transactions entered into with the HM Insurance Group (“HMIG”) on July 1, 2016, Respondent purchased HMIG’s workers’ compensation books of business consisting of a stock purchase of HM Casualty Insurance Company (“HM Casualty”) and an assumption reinsurance agreement with Highmark Casualty Insurance Company (“Highmark Casualty”). Respondent’s acquisition of HM Casualty, approved by the Department in November 2016, closed January 1, 2017. Respondent’s right to assume and novate Highmark Casualty contracts became effective February 1, 2017, for policies issued in Pennsylvania.
- (f) Respondent, in connection with these transactions, entered into a July 1, 2016 Transition Services Agreement (“The TSA”) with HMIG that required HMIG to provide specified services and information for the transition and conversion of the HM Casualty and Highmark Casualty workers’ compensation business to Respondent.
- (g) The TSA required HMIG to provide the specified services and information during a contract term running July 1, 2016 through December 31, 2017. The contract term continued after the other HMIG transactions closed in 2016 and early 2017.
- (h) Respondent, like other Pennsylvania workers’ compensation insurers, is required by Pennsylvania Statutes to timely file an annual loss cost data for each calendar year to the Pennsylvania Compensation Rating Bureau (“PCRB”) by April 15 the

following year. Each year, PCRB uses the insurers' loss cost data to prepare a cumulative loss cost report to the Department.

2017 Financial Calls

- (j) In connection with the 2016 calendar year end financial calls for HM Casualty and Highmark Casualty, pursuant to the TSA, HMIG provided Respondent with 2016 loss cost and other financial call data to be filed with PCRB for both entities. Also pursuant to the TSA, HMIG prepared and delivered to Respondent for filing with the PCRB HM Casualty's and Highmark Casualty's Annual Statements for calendar year 2016, both of which reported losses on Pennsylvania Statutory Page 14.

- (k) PCRB reporting instructions require loss data supplied to PCRB to be reconciled with the loss data reported on Statutory Page 14. Respondent, while assembling the financial call data from HMIG to upload to the PCRB website, discovered that the data did not reconcile to the losses reported on Statutory Page 14 in the 2016 Annual Statements prepared by HMIG for HM Casualty and Highmark Casualty. Instead, the data supplied by HMIG showed losses that were substantially less than the reported losses in the Statutory Page 14 for 2016. Respondent inquired with HMIG of the discrepancy and sought guidance on how to populate the financial calls on the PCRB website.

- (l) In response to Respondent's inquiry, HMIG supplied Respondent with revised loss data that reconciled to the Statutory Page 14 prepared by HMIG for 2016. Respondent, acting on behalf of its subsidiary AlleghenyPoint as to the HM Casualty data and on behalf of HMIG subsidiary Highmark Casualty as to the Highmark Casualty data, uploaded the revised 2016 data to PCRB on April 13, 2017 with inaccurate data resulting in the inflation of loss cost by approximately \$120,000,000 as determined by the PCRB.
- (m) Respondent failed to establish sufficient internal actuarial department checks and balances to limit 2016 loss cost data to actual losses incurred by HM Casualty and Highmark Casualty.
- (n) Respondent's 2016 financial call was then used by the PCRB in computing industry over-all loss cost experience. As a result of the overstatement of actual losses in the HM Casualty and Highmark Casualty 2016 loss cost data, PCRB's annual loss report submitted to the Department contained an inflated loss cost report impacting workers' compensation rates as of April 1, 2018.
- (o) On or around October 5, 2018, PCRB asked Respondent about the unusually high amount of losses reported for 2016. Through communications with HMIG, Respondent discovered the reporting issues described above, and discussed them with PCRB the next business day, October 8, 2018. According to HMIG's statements at the time, the excess reported losses resulted from its inclusion in the

revised 2016 loss cost data of amounts in addition to actual direct losses that HMIG attributed to the HMIG transaction.

- (p) Respondent filed corrected 2016 loss cost data for HM Casualty and Highmark Casualty on October 10, 2018. This corrected data reflected the removal of the additional amounts referenced in paragraph 3(o).

2018 Financial Calls

- (q) Respondent, due to technical difficulties regarding data transfer and integration from HMIG to Respondent, failed to timely file with PCRB its calendar year 2017 financial call data for HM Casualty and for the workers' compensation business novated from Highmark Casualty to Respondent ("Highmark Novation").
- (r) Because of the lateness of the financial call data identified in finding 3(q) PCRB excluded that data for HM Casualty and Highmark Casualty from its annual loss cost data to the Department.
- (s) In February 2019, Respondent determined and informed the Department and PCRB that it had underreported the 2017 loss cost data for Highmark Novation in the amount of approximately \$20,000,000 to the PCRB.
- (t) Respondent determined that the underreporting was caused by Respondent's actuarial reconciliation of the 2017 loss cost data for Highmark Novation to

Statutory Page 14 in Highmark Casualty's 2017 Annual Statement. The annual statement prepared by HMIG only reported one month of loss cost due to the fact that the transaction involving Highmark Casualty had closed on February 1, 2017, Respondent thus reported only one month of Highmark Novation loss cost data for 2017.

- (u) Respondent failed to establish sufficient internal actuarial department checks and balances to cumulate the losses on Highmark Novation business after February 1, 2017 with the pre-February 1, 2017 loss data reflected in Highmark Casualty's 2017 Annual Statement.
- (v) Respondent timely and fully cooperated with the Department's investigation into the above matters. Respondent voluntarily agreed to reimburse its policyholders impacted by the April 1, 2018 rate increase for excess rates they were charged through December 31, 2018.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner makes the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department, which also has jurisdiction over the subject matter of this proceeding.
- (b) Pursuant to 77 P.S. § 1035.4(a)(1) workers' compensation insurance rates may not be excessive or inadequate; or unfairly discriminatory.
- (c) Respondent's activities described in paragraph 3(a) through 3(v) constitute the charging of excessive rates in violation of 77 P.S. § 1035.4(a)(1) as to the above-described operations of AlleghenyPoint (the "AlleghenyPoint Rate-Setting Operations").
- (d) Pursuant to 77 P.S. § 1035.7(c), every workers' compensation insurer is required to record and report its workers' compensation experience to a rating organization as set forth in the rating organization's uniform statistical plan.
- (e) Respondent's activities described in paragraph 3(a) through 3(v) constitute, as to the above-described operation of AlleghenyPoint and Highmark Novation (the

“AlleghenyPoint and Highmark Novation Reporting Operations”), respectively, a failure to record and report Respondent’s workers’ compensation experience to a rating organization as set forth in the rating organizations’ uniform statistical plan.

- (f) Violations of 77 P.S. §§ 1035.4 and 1035.7 are punishable by the following under 77 P.S. § 1035.20: \$500 fine per violation; and suspension or revocation of an insurers license.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact.
- (b) Respondent shall conduct a review of its internal controls, operations and business practices with respect to the AlleghenyPoint Rate-Setting Operations and the AlleghenyPoint and Highmark Novation Reporting Operations to determine necessary changes to Respondent’s operations to comply with Pennsylvania law.

- (c) The review referenced in paragraph 5(b) above shall be conducted by a third-party approved by the Department and shall culminate in a written report by said third-party.
- (d) The cost and expenses of the review referenced in paragraph 5(b) above shall be paid by Respondent, and the Department shall have no responsibility to pay or reimburse Respondent for any such costs and expenses.
- (e) The written report referenced in paragraph 5(c) above shall be shared with the Department and Respondent's Board of Directors within ten (10) days of receipt of such report. The confidentiality provisions of section 905 of the Insurance Department Act of 1921 (Act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§ 323.5)) shall apply to such report.
- (f) Respondent shall adopt the recommendations contained in the written report referenced in paragraph 5(c), unless it demonstrates to the Department, in the Department's sole discretion, that any recommendations are unduly burdensome or contrary to law or Department policy.
- (g) Within twenty-four (24) months of the date of this Order, or within an earlier time determined at the sole discretion of the Deputy Insurance Commissioner, the Department shall initiate an examination of Respondent pursuant to Article IX of the Act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§ 323.1, et. seq.).

of Law contained herein may pursue any and all legal remedies available, including but not limited to the following: The Deputy Insurance Commissioner may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Deputy Insurance Commissioner may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, *supra*, or other relevant provision of law.

7. Alternatively, in the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Insurance Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, *supra*, or other relevant provision of law.

8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order by the Insurance Department.

- (h) The scope of the examination referenced in paragraph 5(g) above shall be inclusive of all of the operations transferred to Respondent by HMIG, and may consider any such matters that the Deputy Insurance Commissioner, in his sole discretion, determines relevant to such operations.
- (i) The cost of the examination referenced in paragraph 5(g) above shall be paid by Respondent, and the Department shall have no obligation to pay or reimburse Respondent for any such costs and expenses.
- (j) Respondent shall implement any recommendations produced by an examination report or order pursuant to Article IX of the Act of May 17, 1921, P.L. 789, No. 285 (40 P.S. §§ 323.1, et. seq.) as a result of the examination referenced in paragraph (g) above.
- (k) Respondent shall pay a civil penalty of Eighty Thousand Dollars (\$80,000) to the Commonwealth of Pennsylvania. Payment shall be made by check payable to the Commonwealth of Pennsylvania and directed to Christopher Monahan, Deputy Insurance Commissioner, Office of Market Regulation, 1227 Strawberry Square, Harrisburg, PA 17120. Payment must be made no later than thirty (30) days from the date of this Order.

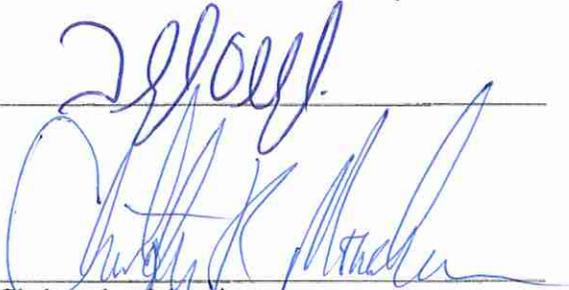
6. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner.

12. The signatory hereto on behalf of Respondent is duly authorized to execute this Consent Order and, by so doing, to bind Respondent to the terms hereof.

BY: BRICKSTREET MUTUAL
INSURANCE COMPANY, Respondent

A handwritten signature in blue ink, appearing to read "Christopher Monahan", is written over a horizontal line. The signature is fluid and cursive.

Christopher Monahan
Deputy Insurance Commissioner