

BEFORE THE DIVISION OF INSURANCE  
DEPARTMENT OF LABOR AND REGULATION  
STATE OF SOUTH DAKOTA

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IN THE MATTER OF ACA INSURANCE	)	
COMPANY, DBA AAA FIRE AND	)	CONSENT ORDER
CASUALTY INSURANCE COMPANY	)	

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In resolution of the above matter and in lieu of issuance of a Notice of Hearing and a formal hearing, the undersigned parties do hereby agree to the following:

ACA INSURANCE COMPANY, DBA AAA FIRE AND CASUALTY INSURANCE COMPANY ("AAA FIRE AND CASUALTY"), whose address of record is 3055 Oak Road - MS W280, Walnut Creek, CA 94597, is an insurance company holding a Certificate of Authority to transact business in the State of South Dakota;

AAA FIRE AND CASUALTY is aware that the South Dakota Division of Insurance ("Division") has conducted an examination of its insurance-related activities in South Dakota:

The Division has alleged the following with regards to AAA FIRE AND CASUALTY:

1. AAA FIRE AND CASUALTY has retained claims adjusters to assist in the settling of losses who are not employees of AAA FIRE AND CASUALTY. Such adjusters are commonly referred to in the insurance industry as "independent adjusters". During the period January 1, 2011 to January 14, 2013, the independent adjusters retained by AAA FIRE AND CASUALTY prepared repair estimates on forms that showed the name of the independent adjuster. During that same period, on 79 occasions, AAA FIRE AND CASUALTY altered the claim estimates of independent claim adjusters. In 31 instances, the effect of the alteration was to reduce the estimate and, in the remaining 48 instances, the effect was to leave the amount of the estimate unchanged or to increase the estimate. The independent claim adjusters as well as the insureds may have been unaware that AAA FIRE AND CASUALTY had altered the estimates. The altered estimates were sent to insureds on the independent claim adjusters' letterhead, making it appear that the revised estimate was the work product of the independent adjuster. These are violations of SDCL § 58-33-6;
2. AAA FIRE AND CASUALTY sent written claim estimates to insureds without specifically notifying insureds that estimates were based on a contractor performing the repairs. In some instances, insureds completed the repairs themselves instead of hiring a contractor. Once the repairs were completed by the insured, AAA FIRE AND CASUALTY reduced the original estimate to remove contractors' overhead from the total to be paid to insureds. In some instances, this practice resulted in insureds being compensated at a lower per hour rate than a contractor. These practices are violations of SDCL § 58-33-67.

3. The above violations are grounds to revoke or suspend AAA FIRE AND CASUALTY's certificate of authority pursuant to SDCL §§ 58-6-46, 58-33-6, and 58-33-67;

AAA FIRE AND CASUALTY represents that it has heretofore changed its written estimates to include the verbiage required by Exhibit A to this Consent Order. AAA FIRE AND CASUALTY further represents that it has heretofore changed its practices such that the estimates prepared initially by independent adjusters now show the name of AAA FIRE AND CASUALTY and not the name of the independent adjuster. The Division agrees that these changes by AAA FIRE AND CASUALTY resolve the issues raised in numbered paragraphs 1-3, above, on a going-forward basis.

AAA FIRE AND CASUALTY is aware of and understands the nature of the allegations and has been informed that it has the right to notice, hearing, and appeal;

By completing this Consent Order, AAA FIRE AND CASUALTY neither admits nor denies the allegations contained herein;

AAA FIRE AND CASUALTY hereby agrees to informal disposition of this matter without a hearing pursuant to SDCL § 1-26-20 and to a monetary penalty of \$45,000 pursuant to SDCL § 58-4-28.1 in lieu of contesting this matter formally;

AAA FIRE AND CASUALTY further agrees to conduct itself in accordance with the insurance laws and regulations of the State of South Dakota;

AAA FIRE AND CASUALTY further agrees to conduct itself in accordance with Exhibit A to this Consent Order;

AAA FIRE AND CASUALTY further agrees to pay recoverable depreciation listed in the company's original estimates regarding AAA FIRE AND CASUALTY claims 744353 (date of loss May 5, 2012) and 745288 (date of loss May 5, 2012);

AAA FIRE AND CASUALTY further agrees that this Consent Order may be considered for the purpose of determining the appropriate sanction in any future actions with the Division for any violations of the laws or regulations of the State of South Dakota or for failing to abide by any order of the Director;

Wherefore, good cause appearing from the foregoing, it is hereby ORDERED that AAA FIRE AND CASUALTY pay a monetary penalty in the amount of \$45,000 payable to "South Dakota Division of Insurance" for deposit in the general fund of the State of South Dakota to be remitted at the time of the remittance of this Consent Order to the Division; and it is further

ORDERED that AAA FIRE AND CASUALTY maintain compliance with Exhibit A from the date of this Consent Order; and it is further

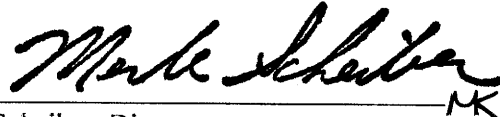
ORDERED that AAA FIRE AND CASUALTY pay recoverable depreciation listed on the company's original estimates regarding AAA FIRE AND CASUALTY claims 744353 (date of loss May 5, 2012) and 745288 (date of loss May 5, 2012); and it is further

ORDERED that if AAA FIRE AND CASUALTY fails to comply with the provisions of this Order and its Exhibit A, the Director of the Division may seek the suspension or revocation of AAA FIRE AND CASUALTY's Certificate of Authority at hearing pursuant to SDCL § 58-6-46, or seek other remedies available at law; and it is further

ORDERED that the use of this Consent Order for competitive purposes by an insurance agent or third-party administrator holding a license in the State of South Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority; and it is further

ORDERED that the provisions of this Consent Order shall be effective from the date the Director signs this Order.

Dated this 27<sup>th</sup> day of June, 2014.



Merle Scheiber, Director  
South Dakota Division of Insurance

The undersigned, on behalf of AAA FIRE AND CASUALTY, represents it understands the terms of this Consent Order and the waiver of its due process rights and voluntarily enters into this Consent Order.

Dated this 10<sup>th</sup> day of JUNE, 2014.



Signature of Authorized Representative

C. ROBERT STURM

Name of Authorized Representative

VP & Associate General Counsel

Title of Authorized Representative

## **Exhibit A**

### Disclosures to Consumers

1. **Compliance.** AAA FIRE AND CASUALTY shall comply with all parts of this Exhibit A.
2. **Disclosure to Consumers.** AAA FIRE AND CASUALTY must provide the following disclosure language to consumers with every claim estimate:

This estimate assumes that repairs associated with your claim will be undertaken by a professional tradesperson or licensed contractor. This estimate includes their costs of conducting business over the above labor time and material costs, including overhead and taxes. If you choose to complete the repairs yourself, the costs of conducting business will be deducted from this estimate, resulting in a lower estimate than the one provided here. Any labor you perform to complete repairs yourself will be based on the number of hours that our system estimates it would have taken a tradesperson or licensed contractor to perform the repairs.

3. **Claim Estimate.** For the purposes of this Exhibit A, "claim estimate" means any valuation of a loss covered under the policy which is supplied to insureds in any written format, including electronic.