IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2010-CC-00076

MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION — APPELLANT

VERSUS

UNITED STATES FIRE INSURANCE COMPANY, ET AL. — APPELLEES

ON APPEAL FROM THE CHANCERY COURT OF HINDS COUNTY
FIRST JUDICIAL DISTRICT

BRIEF FOR APPELLANT
MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION

ORAL ARGUMENT REQUESTED

SUBMITTED BY:

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Mike Chaney, Commissioner of Insurance, State of Mississippi;
2. Honorable George Dale, former Commissioner of Insurance, State of Mississippi;
3. Hon. J. Dewayne Thomas, Chancellor;
4. Department of Insurance, State of Mississippi;
5. Stephanie Ganucheau, Special Assistant Attorney General, Counsel for the Mississippi Department of Insurance;
6. Mississippi Windstorm Underwriting Association, Appellant;
7. Charles G. Copeland, Rebecca Blunden, Janet G. Arnold, and Copeland, Cook, Taylor & Bush, P.A., attorneys for Respondent;
8. Union National Fire Insurance Company, an Appellee;

9. Arthur F. Jernigan, Samuel L. Anderson, and Harris Jernigan & Geno, PLLC, attorneys for Union National Fire Insurance Company;

10. United States Fire Insurance Company, a subsidiary of Crum & Forster Holding, Inc., an Appellee;

11. Robert B. House, Janet D. McMurtray, and Watkins Ludlan Winter & Stennis, P.A., attorneys for United States Fire Insurance Company and for OneBeacon Insurance Company;

12. Aegis Security Insurance Company, an Appellee;

13. David A.Norris and McGlinchey Stafford, PLLC, attorney for Aegis Security Insurance Company;

14. James Golden and Hamburg & Golden, P.C., attorney for Aegis Security Insurance Company;

15. Farmers Insurance Group of Companies, an Appellee;

16. Jennifer R. Warden and Middleberg Riddle & Gianna, attorney for Farmers Insurance Group;

17. Homesite Insurance Company, an Appellee;

18. Marshall S. Ney, Anton Janik, Jr., and Mitchell, Williams, Selig, Gates & Woodyard, PLLC, attorneys for Homesite Insurance Company;

19. James W. Shelson and Phelps Dunbar, LLP, attorney for Homesite Insurance Company;

20. OneBeacon Insurance Group, an Appellee;

21. RLI Insurance Company, an Appellee;

22. Eric F. Hatten, Forrest Latta, and Burr & Forman, LLP, attorneys for RLI Insurance

Company;

23. Zurich American Insurance Company, an Appellee;

24. Ross F. Bass, Jr., Luther T. Munford, and Phelps Dunbar LLP, attorneys for Zurich American Insurance Company;

25. Hartford Accident & Indemnity Company, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and Hartford Insurance Company of the Midwest, Appellants;

26. Jeffrey S. Dilley and Henke-Bufkin, attorney for the Hartford Appellants;

27. Allstate Insurance Company, an Appellee;

28. Michael B. Wallace and Wise, Carter, Child & Carraway, attorney for Allstate Insurance Company;

29. Acadia Insurance Company, an Interested Party in these consolidated appeals;

30. Ace USA Companies, an Interested Party in these consolidated appeals;

31. Affiliated FM Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

32. Alfa General Insurance Corporation, 2005 Member of Mississippi Windstorm Underwriting Association;

33. Alfa Insurance Corporation, 2005 Member of Mississippi Windstorm Underwriting Association;

34. Allianz Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

35. Allstate Insurance Group, an Interested Party in these consolidated appeals;

36. American Alternative Insurance Company, an Interested Party in these consolidated

appeals;

37. American Bankers Insurance Co. of Florida, an Interested Party in these consolidated appeals;

38. American Central Insurance Company, an Interested Party in these consolidated appeals;

39. American Employers' Insurance Company, an Interested Party in these consolidated appeals;

40. American Equity Specialty Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

41. American Family Home Insurance Company, an Interested Party in these consolidated appeals;

42. American General Property Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

43. American Guarantee & Liability Insurance Company, an Interested Party in these consolidated appeals;

44. American International Group, 2005 Member of Mississippi Windstorm Underwriting Association;

45. American International Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

46. American Modern Home Insurance Company, an Interested Party in these consolidated appeals;

47. American National General Insurance Co., 2005 Member of Mississippi Windstorm Underwriting Association;

48. American National Property & Casualty Co., 2005 Member of Mississippi Windstorm Underwriting Association;

49. American Reliable Insurance Company, an Interested Party in these consolidated appeals;

50. American Resources Insurance Co. Inc., 2005 Member of Mississippi Windstorm Underwriting Association;

51. American Safety Casualty Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

52. American Security Insurance Company, an Interested Party in these consolidated appeals;

53. American States Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

54. American Summit Insurance Co., 2005 Member of Mississippi Windstorm Underwriting Association;

55. American Zurich Insurance Company

56. Amerisure Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

57. Amerisure Mutual Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

58. Amex Assurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

59. Amica Mutual Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

60. Argonaut Great Central Insurance Co., 2005 Member of Mississippi Windstorm Underwriting Association;

61. Armed Forces Insurance Exchange, 2005 Member of Mississippi Windstorm Underwriting Association;

62. Associates Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

63. Association Casualty Insurance Company, an Interested Party in these consolidated appeals;

64. Assurance Company of America, an Interested Party in these consolidated appeals;

65. Atlantic Mutual Insurance Companies, an Interested Party in these consolidated appeals;

66. Atlantic Specialty Insurance Companies, an Interested Party in these consolidated appeals;

67. Audubon Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

68. Auto Club Family Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

69. AXA Insurance Company, an Interested Party in these consolidated appeals;

70. AXA Re America Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

71. AXA Re Property & Casualty Insurance Co, an Interested Party in these consolidated appeals;

72. AXA Corporate Solutions Insurance Company, 2005 Member of Mississippi

Windstorm Underwriting Association;

73. Balboa Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

74. BancInsure, Incorporated, an Interested Party in these consolidated appeals;

75. Benchmark Insurance Company, an Interested Party in these consolidated appeals;

76. Bituminous Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

77. Brierfield Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

78. Brotherhood Mutual Insurance Company, an Interested Party in these consolidated appeals;

79. Centennial Insurance Company, an Interested Party in these consolidated appeals;

80. Centre Insurance Company, an Interested Party in these consolidated appeals;

81. Chubb Group of Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

82. Church Mutual Insurance Company, an Interested Party in these consolidated appeals;

83. Cincinnati Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

84. Clarendon National Insurance Company, an Interested Party in these consolidated appeals;

85. CNA Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

86. Colonial American Casualty & Surety Company, an Interested Party in these consolidated appeals;

87. Commonwealth Insurance Company of America, 2005 Member of Mississippi Windstorm Underwriting Association;

88. Companion Property and Casualty Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

89. Continental Western Insurance Company, an Interested Party in these consolidated appeals;

90. Coregis Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

91. Crum & Forster Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

92. Cumis Insurance Society, Inc., 2005 Member of Mississippi Windstorm Underwriting Association;

93. Diamond State Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

94. Economy Premier Assurance Company, an Interested Party in these consolidated appeals;

95. Electric Insurance Company, an Interested Party in these consolidated appeals;

96. Empire Fire and Marine Insurance Company, an Interested Party in these consolidated appeals;

97. Employers Mutual Casualty Company, an Interested Party in these consolidated appeals;

98. Equity Mutual Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

99. Everest National Insurance Company, an Interested Party in these consolidated appeals;

100. Factory Mutual Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

101. Farmers and Merchants Insurance Company, an Interested Party in these consolidated appeals;

102. Farmland Mutual Insurance Company, an Interested Party in these consolidated appeals;

103. Federated Mutual Insurance Company, an Interested Party in these consolidated appeals;

104. Federated Service Insurance Company, an Interested Party in these consolidated appeals;

105. Fidelity & Deposit Company of Maryland, an Interested Party in these consolidated appeals;

106. Fidelity National Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

107. Fireman's Fund Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

108. First Financial Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

109. First American Property & Casualty Insurance Company, 2005 Member of

Mississippi Windstorm Underwriting Association;

110. Florists' Mutual Insurance Company, an Interested Party in these consolidated appeals;

111. Foremost Insurance Company of Grand Rapids, Michigan, an Interested Party in these consolidated appeals;

112. Foremost Property and Casualty Insurance Company, an Interested Party in these consolidated appeals;

113. Foremost Signature Insurance Company, an Interested Party in these consolidated appeals;

114. Frontier Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

115. GAN North American Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

116. General Casualty Company of Wisconsin, an Interested Party in these consolidated appeals;

117. General Star National Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

118. Georgia Casualty & Surety Company, an Interested Party in these consolidated appeals;

119. Government Employees Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

120. Grain Dealers Mutual Insurance Company, an Interested Party in these consolidated appeals;

121. Great American Alliance Insurance Company, an Interested Party in these consolidated appeals;

122. Great American Assurance Company, an Interested Party in these consolidated appeals;

123. Great American Insurance Company, an Interested Party in these consolidated appeals;

124. Great American Insurance Company of New York, an Interested Party in these consolidated appeals;

125. Great American Protection Insurance Company, an Interested Party in these consolidated appeals;

126. Great American Security Insurance Company, an Interested Party in these consolidated appeals;

127. Great American Spirit Insurance Company, an Interested Party in these consolidated appeals;

128. Great River Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

129. Greenwich Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

130. Grocers Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

131. Guaranty National Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

132. GuideOne Specialty Mutual Insurance Company, an Interested Party in these

consolidated appeals;

133. GuideOne American Insurance Company, an Interested Party in these consolidated appeals;

134. GuideOne Elite Insurance Company, an Interested Party in these consolidated appeals;

135. GuideOne Mutual Insurance Company, an Interested Party in these consolidated appeals;

136. Gulf Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

137. Hanover Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

138. Harco National Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

139. Hartford Steam Boiler Inspection & Insurance Co., 2005 Member of Mississippi Windstorm Underwriting Association;

140. Horace Mann Insurance Company, an Interested Party in these consolidated appeals;

141. Houston General Insurance Company, an Interested Party in these consolidated appeals;

142. Indiana Lumbermens Mutual Insurance Co., 2005 Member of Mississippi Windstorm Underwriting Association;

143. Insurance Corporation of Hannover, 2005 Member of Mississippi Windstorm Underwriting Association;

144. Jefferson Insurance Company , 2005 Member of Mississippi Windstorm Underwriting Association;

145. Jewelers Mutual Insurance Company, an Interested Party in these consolidated appeals;

146. Kemper Auto and Home Group, 2005 Member of Mississippi Windstorm Underwriting Association;

147. Kemper Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

148. Lafayette Insurance Company, an Interested Party in these consolidated appeals;

149. Legion Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

150. Liberty Mutual Insurance Group, an Interested Party in these consolidated appeals;

151. Liberty Insurance Underwriters, Inc. (Albany), an Interested Party in these consolidated appeals;

152. Lincoln General Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

153. LM Insurance Companies, an Interested Party in these consolidated appeals;

154. Lumber Mutual Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

155. Lumbermen's Underwriting Alliance, an Interested Party in these consolidated appeals;

156. Markel Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

157. Markel American Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

158. Maryland Casualty Company, an Interested Party in these consolidated appeals;

159. Merastar Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

160. Metropolitan Casualty Insurance Company, an Interested Party in these consolidated appeals;

161. Metropolitan Direct Property and Casualty Insurance Company, an Interested Party in these consolidated appeals;

162. Metropolitan General Insurance Company, an Interested Party in these consolidated appeals;

163. Metropolitan Group Property and Casualty Insurance Company, an Interested Party in these consolidated appeals;

164. Metropolitan Property and Casualty Insurance Company, an Interested Party in these consolidated appeals;

165. MGA Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

166. Mid-continent Casualty Company, 2005 Member of Mississippi Windstorm Underwriting Association;

167. Midwestern Insurance Company, an Interested Party in these consolidated appeals;

168. Millers Mutual Insurance Association, 2005 Member of Mississippi Windstorm Underwriting Association;

169. Millers Mutual Insurance Company, 2005 Member of Mississippi Windstorm

Underwriting Association;

170. Millers Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

171. Minnesota Fire & Casualty Company, 2005 Member of Mississippi Windstorm Underwriting Association;

172. Mississippi Farm Bureau Mutual Ins. Company, an Interested Party in these consolidated appeals;

173. Mitsui Sumitomo Insurance Co. of America, an Interested Party in these consolidated appeals;

174. Motors Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

175. Mutual Service Casualty Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

176. Mutual Savings Fire Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

177. NAC Reinsurance Corporation, 2005 Member of Mississippi Windstorm Underwriting Association;

178. National Casualty Company, an Interested Party in these consolidated appeals;

179. National American Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

180. National Farmers Union Standard Insurance Co., 2005 Member of Mississippi Windstorm Underwriting Association;

181. National General Insurance Company, 2005 Member of Mississippi Windstorm

Underwriting Association;

182. National Security Fire & Casualty Company, an Interested Party in these consolidated appeals;

183. National Farmers Union Property & Casualty Co., 2005 Member of Mississippi Windstorm Underwriting Association;

184. Nationwide Affinity Insurance Company, an Interested Party in these consolidated appeals;

185. Nationwide Agribusiness Insurance Company, an Interested Party in these consolidated appeals;

186. Nationwide Assurance Company, an Interested Party in these consolidated appeals;

187. Nationwide Insurance Company of America, an Interested Party in these consolidated appeals;

188. Nationwide General Insurance Company, an Interested Party in these consolidated appeals;

189. Nationwide Mutual Fire Insurance Company, an Interested Party in these consolidated appeals;

190. Nationwide Mutual Insurance Company, an Interested Party in these consolidated appeals;

191. Nationwide Property and Casualty Company, an Interested Party in these consolidated appeals;

192. Northern Insurance Company of New York, an Interested Party in these consolidated appeals;

193. North American Specialty Insurance Company, 2005 Member of Mississippi

Windstorm Underwriting Association;

194. Northland Casualty Company, 2005 Member of Mississippi Windstorm Underwriting Association;

195. Northland Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

196. Ohio Casualty Group, an Interested Party in these consolidated appeals;

197. Old Republic Minnehoma Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

198. Old Republic Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

199. Omaha Property and Casualty Insurance Co., 2005 Member of Mississippi Windstorm Underwriting Association;

200. Omega Insurance Company, an Interested Party in these consolidated appeals;

201. OneBeacon American Insurance Company, an Interested Party in these consolidated appeals;

202. OneBeacon Insurance Group, an Interested Party in these consolidated appeals;

203. Peak Property and Casualty Insurance Company, an Interested Party in these consolidated appeals;

204. Penn Millers Insurance Co., 2005 Member of Mississippi Windstorm Underwriting Association;

205. Penn-America Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

206. Pennsylvania General Insurance Company, an Interested Party in these consolidated

appeals;

207. Pennsylvania Lumbermens Mutual Ins. Co., 2005 Member of Mississippi Windstorm Underwriting Association;

208. Pennsylvania National Mutual Casualty Ins. Co., 2005 Member of Mississippi Windstorm Underwriting Association;

209. Pharmacists Mutual Insurance Company, an Interested Party in these consolidated appeals;

210. Philadelphia Indemnity Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

211. Praetorian Insurance Company, an Interested Party in these consolidated appeals;

212. Protection Mutual Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

213. Providence Washington Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

214. Prudential Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

215. QBE Insurance Corporation, an Interested Party in these consolidated appeals;

216. Ranger Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

217. Redland Insurance Company, an Interested Party in these consolidated appeals;

218. Regency Insurance Company, an Interested Party in these consolidated appeals;

219. Reliance Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

220. Republic Western Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

221. Royal & Sun Alliance Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

222. RSUI Indemnity Company, 2005 Member of Mississippi Windstorm Underwriting Association;

223. Safeco Insurance Companies, 2005 Member of Mississippi Windstorm Underwriting Association;

224. Sentry Select Insurance Company, an Interested Party in these consolidated appeals;

225. Sentry Insurance a Mutual Company, an Interested Party in these consolidated appeals;

226. Shelter Mutual Insurance Company, an Interested Party in these consolidated appeals;

227. Shelter General Insurance Company, an Interested Party in these consolidated appeals;

228. Sompo Japan Insurance Co. Of America (Yasuda), 2005 Member of Mississippi Windstorm Underwriting Association;

229. Southern Fire and Casualty Company, an Interested Party in these consolidated appeals;

230. Southern Guaranty Insurance Company, an Interested Party in these consolidated appeals;

231. Southern Pilot Insurance Company, an Interested Party in these consolidated appeals;

232. St. Paul Companies, 2005 Member of Mississippi Windstorm Underwriting

Association;

233. Star Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

234. StarNet Insurance Company, an Interested Party in these consolidated appeals;

235. State Automobile Mutual Insurance Company, an Interested Party in these consolidated appeals;

236. State Auto Property & Casualty Insurance Company, an Interested Party in these consolidated appeals;

237. State Farm Fire and Casualty Company, an Interested Party in these consolidated appeals;

238. State National Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

239. Stonington Insurance Company, an Interested Party in these consolidated appeals;

300. T.H.E. Insurance Company, an Interested Party in these consolidated appeals;

301. Teachers Insurance Company, an Interested Party in these consolidated appeals;

302. TIG Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

303. The Camden Fire Insurance Association, an Interested Party in these consolidated appeals;

304. The Employers' Fire Insurance Company, an Interested Party in these consolidated appeals;

305. The Northern Assurance Company of America, an Interested Party in these consolidated appeals;

306. Travelers Property Casualty Corp. Group, 2005 Member of Mississippi Windstorm Underwriting Association;

307. Triangle Insurance Company, Inc., 2005 Member of Mississippi Windstorm Underwriting Association;

308. Ulico/Ulico Casualty Insurance Company, an Interested Party in these consolidated appeals;

309. Union Standard Insurance Company, an Interested Party in these consolidated appeals;

310. Union Insurance Company, an Interested Party in these consolidated appeals;

311. United Fire & Casualty Company, 2005 Member of Mississippi Windstorm Underwriting Association;

312. United Fire Insurance Company, an Interested Party in these consolidated appeals;

313. Universal Underwriters Insurance Company, an Interested Party in these consolidated appeals;

314. Unitrin Property and Casualty Group, 2005 Member of Mississippi Windstorm Underwriting Association;

315. Universal Underwriters Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

316. USAA Group, 2005 Member of Mississippi Windstorm Underwriting Association;

317. USAuto Insurance Company, 2005 Member of Mississippi Windstorm Underwriting Association;

318. Utica Mutual Insurance Company, an Interested Party in these consolidated appeals;

319. Valiant Insurance Company, an Interested Party in these consolidated appeals;

320. Vesta Insurance Group, 2005 Member of Mississippi Windstorm Underwriting Association;

321. Wausau Insurance Companies, an Interested Party in these consolidated appeals;

322. Westfield Group, 2005 Member of Mississippi Windstorm Underwriting Association;

323. Westport Insurance Corporation, an Interested Party in these consolidated appeals;

324. XL Insurance America, Inc, 2005 Member of Mississippi Windstorm Underwriting Association;

325. Zurich American Insurance Company of Illinois, an Interested Party in these consolidated appeals.

This 9th day of August, 2010.

Respectfully submitted,

BY: _____

REBECCA BLUNDEN (MSB #99611)
Counsel of Record for the Mississippi Windstorm Underwriting Association

TABLE OF CONTENTS

STATUTES:

STATEMENT OF ISSUES

1. Did the Chancery Court apply the wrong standard of review by abandoning its limited role as an intermediate appellate court and incorrectly substituting its own fact-finding and judgment for that of the Commissioner of Insurance?

2. Was it arbitrary and capricious for the Commissioner of Insurance ("Commissioner") to determine that the Mississippi Windstorm Underwriting Association's Board of Directors ("Board") had the authority to set deadlines for member companies' submission of premium data, as well as the authority to enforce those deadlines?

3. Was it arbitrary and capricious for the Commissioner to determine that the Mississippi Windstorm Underwriting Association ("MWUA") is permitted to adhere to its own historical method of accounting and reinsurance allocation?

4. Was it arbitrary and capricious for the Commissioner to determine that MWUA assessments are not privilege taxes and are not subject to Mississippi's statutes governing demands for tax refunds?

5. Was it arbitrary and capricious for the Commissioner to (a) determine that the issue of incorrect mobile home premium reporting to the Insurance Department by some insurance companies was an Insurance Department issue and not an issue for the MWUA; and (b) to approve the MWUA's method of distribution to its members of any monies received following Insurance Department resolution of the mobile home premium reporting issue?

6. Did the Chancellor err in overturning the Commissioner on each of the above issues?

7. Did the Chancellor err in ordering the MWUA to adopt new rules (*e.g.*, statutes of limitation), regulations, and definitions concerning the appeal of assessments when it had already adopted rules and definitions that are consistent with its statutory mandate?

8. Alternatively, if the Chancellor is held to have correctly ordered another re-submission of 2004 premium data, it should be clarified that all MWUA members may participate.

INTRODUCTION

The Mississippi Windstorm Underwriting Association is a state-created residual insurance market that operates as the wind and hail insurer of last resort for Mississippi's six coastal counties. The Mississippi Legislature created the MWUA because there was not an adequate private market for wind and hail insurance coverage on Mississippi's Gulf Coast. Other coastal states have created similar residual insurance market plans and adopted similar model legislation. The MWUA writes wind and hail insurance coverage for policyholders in Mississippi's six coastal counties.

As constituted in 1987 (and as it existed in 2005 when Hurricane Katrina occurred), the MWUA was a state-created, private, unincorporated association. By statute, each insurance company writing property insurance coverage in Mississippi in any given calendar year was a member of the MWUA. Member companies were required to participate in the MWUA's expenses, losses, and profits based on their percentages of wind and hail insurance premium writings in Mississippi during the preceding calendar year. In other words, their level of participation was based on the amount of premiums for wind and hail insurance coverage issued by the particular company, relative to all premiums for wind and hail insurance coverage issued in the state the previous year. (*See* Appendix A, statutes governing the MWUA in 2005.) Each member company was responsible for accurately and timely reporting to the MWUA its preceding calendar year's premium writings so percentages of participation could be calculated. (RE Tab 12 at 238; RV3 at 238.) In the event of a loss by the MWUA that exceeded its available assets during any particular policy year,[1] member

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[1] A "policy year" is distinct from a calendar year. A policy year is an insurance accounting

companies were assessed dollar amounts based on their percentages of participation in order to cover the payment of losses incurred by the MWUA's policyholders. Miss. Code Ann. §83-34-9. (*See also* RE Tab 11 at 100.) Prompt payment of assessments was necessary so that insurance claims of MWUA policyholders could be paid.

In 2005, Hurricane Katrina caused the largest loss ever experienced by the MWUA's policyholders. As a result – and despite the fact that the MWUA had purchased $175 million in reinsurance – the MWUA's loss assessments to its members were the largest in the MWUA's history – $545 million.

These consolidated appeals stem from the attempts of eight MWUA member companies to reduce their percentages of participation in the MWUA policyholder losses incurred in 2005 from Hurricane Katrina. Because all percentages of participation, taken together, must equal 100% in order to pay policyholder claims, the reductions these companies seek automatically increase the percentages of other MWUA members. Six of the complaining member insurance companies claim they themselves submitted inaccurate premium data to the MWUA for determination of their percentages of participation. They contend they should be allowed to late-submit additional or corrected data after the deadline established by the MWUA. However, none of these six insurance companies took advantage of the opportunity actually offered by the MWUA to do just that – submit any premium data corrections before the final determination of percentages of participation for Katrina losses.

These eight, of the over 300 MWUA member insurance companies, also raise complaints

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term. A policy year consists of the premium income, expenses and losses flowing from policies issued in a given calendar year, without regard to when the premiums are actually received or any losses actually incurred.

about various other aspects of the MWUA Katrina assessments and accounting, but the central theme is an attempt to reduce their assessments and shift them to other member companies. The MWUA Board determined that the apportionment of policyholder losses among the MWUA members was fair, and it rejected these Appellees' requests to late-file data. On direct appeal, so did the Commissioner of Insurance. (RE Tabs 7-10.) The Commissioner found that the MWUA's assessment process, longstanding reinsurance allocation method, and other actions concerning Katrina assessments were proper and within the MWUA's authority under the statutes that created it, and under the MWUA's own Plan of Operation ("Plan"), Manual of Rules and Procedures ("Rules"), and notices sent by the MWUA to its members. The decision of the Commissioner properly allowed for finality to the MWUA's 2004 and 2005 percentages of participation and held the MWUA member companies (which are sophisticated businesses) responsible to accurately and timely report premium data to the MWUA. Further, it allowed policy year 2004 to be closed, and it put the MWUA in a better position to close policy year 2005. (RE Tabs 7-10.)

When the eight complaining companies appealed to the Chancery Court for the First Judicial District of Hinds County, they urged the Chancellor to abandon his limited role as an intermediate appellate court and to give *de novo* review to the Commissioner's rulings. Although the Commissioner is well-versed in the specialized area of insurance and operation of a residual insurance market, the Chancellor accepted this argument. The Chancellor substituted his own judgment for that of the Commissioner. The Chancellor made new fact findings largely based on the complaining companies' undocumented and unsworn briefs and rendered new conclusions of law based on those fact findings. (RE Tab 6.) The decision of the Chancellor removed finality. It did so based on an incorrect standard of review and a misunderstanding of the Chancery Court's limited role as an intermediate appellate court. The Chancellor also misunderstood the role and function of

the MWUA. The Chancellor's decision did not hold the MWUA member companies responsible to timely meet their reporting duties. Instead, it relieved them of any meaningful incentive to accurately and timely report the premium data necessary to the MWUA's operation, necessary to the timely payment of policyholder claims. The Chancellor's decision also uproots the MWUA's long-standing, historical method of reinsurance allocation. Moreover, it subjects the MWUA to operation under Mississippi's privilege tax statutes, which have absolutely nothing to do with the MWUA or its member assessments.

On behalf of its membership as a whole, the MWUA appeals. Respectfully, the Chancellor's decision should be vacated and the Commissioner's decisions reinstated. Member insurance companies should bear the ultimate responsibility for their own reporting errors, and they should not be allowed to push the consequences of their errors onto other member companies. Most of all, the MWUA seeks finality to its policy years 2004 and 2005.

STATEMENT OF THE CASE

I. Nature of the Case, Course of Proceedings, and Disposition Below

Hurricane Katrina struck on August 29, 2005. The MWUA's policyholders suffered approximately $700 million in losses. (RE Tab 8 at 49; RV1 at 49.)[2] The MWUA $175 million in reinsurance (insurance for an insurer's losses). (RE Tab 8 at 49; RV1 at 49.) It had a $10 million self-insured retention (similar to a deductible) for its reinsurance. The MWUA therefore had policyholder losses and expenses of at least $545 million that were not covered by reinsurance and that would have to be covered by its member insurance companies. (RE Tab 8 at 49; RV1 at 49.)

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2 Many facts such as those concerning the amount of the MWUA's policyholder losses, the dates of MWUA assessments, and the amounts of those assessments are not in dispute and can be found in detail in the Commissioner's findings and conclusions.

The MWUA statutes allow this loss deficit to be collected from the MWUA members by way of assessments so that the MWUA will have funds on hand to pay claims.

On August 31, 2005, the MWUA issued its first post-Hurricane Katrina assessment to the member companies for 2005 ($10 million for the MWUA's self-insured retention. That assessment was based on the members' 2005 percentages of participation in the MWUA. (RE Tab 9 at 2733; RV19 at 2733.)[3] No MWUA member appealed from or challenged the August 31, 2005 assessment. (RV39 at 1646.) On December 2, 2005, after determining that the $175,000,000 in reinsurance would be insufficient to pay claims, the MWUA issued its second post-Katrina assessment to its 2005 members ($285 million), again based on 2005 percentages of participation determined from 2004 calendar year premium data. (RE Tab 7 at 21; RV1 at 21.)

Following this second assessment, several member companies reported to the MWUA that they had, for various reasons, incorrectly reported their 2004 net direct premiums and/or optional voluntary writing credits[4] to the MWUA (used to determine their percentages of participation for the 2005 policy year). (RE Tab 14; RV36 at 821-22.) Because of the number of members reporting such errors, on January 11, 2006, the Board decided to allow all MWUA members a single

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As detailed more fully in the Statement of Facts, the MWUA member companies' percentages of participation in a given policy year are calculated based on data from the prior calendar year figures presented to the MWUA by its members. That data details the members' windstorm and hail premiums written statewide during the previous year (excluding farm property), less any (optionally) claimed credit for voluntary premiums written for windstorm and hail loss in Mississippi's six coastal counties during the previous year. Miss. Code Ann. §83-34-9. (RE Tab 12 at 238; RV3 at 238.) Thus, the member companies' percentages of participation in the MWUA for policy year 2005 are determined based on the companies' statewide premium data for 2004. *Id.*

4

For every dollar of wind and hail insurance a member insurance company wrote voluntarily in the Coast Area, it received $1.40 credit against participation in 90% of the MWUA's profits or losses. (RE Tab 13 at 819; RV36 at 819.) This was to encourage private companies to write private market wind and hail insurance in the Coast Area.

opportunity to resubmit their 2004 calendar year premium data and credits to the MWUA. All members' policy year 2005 percentages of participation were to be recalculated after this data was received. (RE Tab 14; RV36 at 821-22.) This correction period is commonly referred to as the "true-up."

On January 17, 2006, the MWUA sent a letter to all member companies, advising of this one-time opportunity to resubmit corrected net direct premium figures[5] and any corrected credits for voluntary wind and hail insurance written in Mississippi's six coastal counties. The letter enclosed a copy of the Board's January 11, 2006 resolution. (RE Tab 14; RV36 at 821-22.) The materials advised the MWUA member companies that any corrected data must be submitted by March 1, 2006. (RE Tab 14 at 821and 822; RV36 at 821 and 822.)

While the MWUA's Plan and its Rules allow for an appeal from the MWUA's decisions (RE Tab 11 at 100; RE Tab 12 at 238), no member company appealed from the Board's decision to undertake this true-up. No member company appealed from the establishment of March 1, 2006 as the deadline for the submission of any corrected data. (RV34 at 47-56, 57-60; RV37 at 1215-24; RV38 at 1272-80; RV39 at 1642-51; RV41 at 2287-97; RV42 at 2737-41; RV44 at 69-70; RV50 at 211-13.)[6]

On February 1, 2006, the MWUA sent a second letter to all of its members, again advising

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Net direct premiums are the total premiums for wind and hail property insurance policies a member company writes (issues) statewide in a calendar year, minus any premiums for farm property insurance reported to the MWUA. Miss. Code Ann. §83-34-1(g).

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The stipulations and fact statements submitted by the Appellees demonstrate that none claims to have appealed from the MWUA's decision to hold a true-up or from the data submission deadline issued as of January 17, 2006.

of the true-up period and enclosing a sample bordereau[7] for reporting of voluntary 2004 premiums written in the coastal counties. This second true-up letter again advised in no uncertain terms that any corrected data submitted after March 1, 2006 would not be considered. (RE Tab 15; RV36 at 823-28.) Again, no member company appealed from the decision to hold a single true-up period for all members. No member company appealed from the setting of an absolute March 1, 2006 deadline for submission of corrected 2004 data to the MWUA.

Some member companies submitted revised 2004 data during the true-up period. Others did not. On April 1, 2006, the MWUA recalculated its members' policy year 2005 percentages of participation. Based on these corrected percentages of participation, the MWUA then issued the third Katrina assessment on April 17, 2006 ($250 million). (RE Tab 10 at 1907; RV14 at 1907.) This assessment was based on the 2005 percentages of participation revised from the true-up data ("post true-up 2005 percentages of participation). It allowed the two previous Hurricane Katrina assessments and used credits and debits to correct the pre-true-up policy year 2005 percentages of participation.

Eleven of the over 300 MWUA member companies (Aegis, Ameriprise, Benchmark, Farmers, Homesite, OneBeacon, RLI, Triangle, Union National, U.S. Fire, and Zurich) then appealed to the Board, challenging the third Hurricane Katrina assessment.[8] (RE Tab 7 at 19; RE Tab 8 at 46; RE Tab 9 at 2734; RE Tab 10 at 1902. All but Benchmark, Ameriprise, and Zurich sought yet

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7 A bordereau is a detailed memo, especially one that enumerates or lists documents – in this case, insurance policies. *See* www.merriam-webster.com. A copy of the sample bordereau distributed by the MWUA is found at RE Tab 15 at 825-28; RV36 at 825-28.

8 Union National filed two appeals, raising different arguments but seeking the same relief – a reduction in its share of the MWUA policyholders' Katrina losses.

another true-up in an attempt to reduce their MWUA assessment percentages and, consequently, increase the percentages of other members. Seven of these companies – Union National, U.S. Fire, Farmers, Homesite, OneBeacon, Triangle and RLI – sought to late-submit 2004 data, alleging they did not participate (or adequately participate) in the first true-up, based on excuses that ultimately amounted to internal company failures. Their excuses ranged from lack of knowledge about farm property exclusions to an employee's failure to correctly report credits. (RE Tabs 7-10.) In contrast, Zurich took the position that no true-up should ever have occurred in the first place. (RE Tab 10 at 1939-42.) All but Zurich also pointed to other issues that they contended required corrections. Benchmark sought information regarding the MWUA Board's reinsurance decisions. Ameriprise never presented any reasons for its appeal.

The Board considered these appeals at varying times. The appeals were considered based on written submissions by each member insurance company. Some member companies also attended the Board meetings and made oral presentations. Each of the appeals was ultimately denied by the Board. (RV14 at 1901; RV20 at 2820-23; RV25 at 3537-39; RV37 at 1208-13; RV38 at 1296-98; RV40 at 1957-61; RV41 at 2379-2383; RV43 at 3372-73; RV44 at 16-17.) The Board determined that it had the authority to allow the one-time true-up and to create and enforce the March 1, 2006 deadline for submission of corrected figures by member companies. The Board determined that this process was equally fair to all members and was appropriate. *Id.* Eight of the eleven complaining insurance companies appealed to the Commissioner pursuant to Miss. Code Ann. §83-34-19.

The Commissioner denied the relief sought by each of these companies, agreeing with the

Board. (RE Tabs 7-10; RV1 at 17-41; RV1 at 44-60; RV19 at 2732-45; RV14 at 1901-50.)[9] All eight companies then appealed from the decisions of the Commissioner, lodging their appeals in the Chancery Court of Hinds County, First Judicial District. The nine appeals by these eight companies were then consolidated for hearing. (RV3 at 347-53.) The Chancellor also entered an order allowing for joinder of other MWUA member companies, all of which could be affected by the court's decision. (RV3 at 347-53.) Over 130 member companies entered an appearance. (RV5 at 518-57, 571-72, 575-626, 628-34; RV7 at 875-900, 907-24; RV8 at 1069-70, 1083-84; RV13 at 1307-09, 1388-93; RV19 at 2687-88, 2690-91; Exhibit A to supplemental and amended certification.)

On December 15, 2009, the Chancery Court granted the majority of the relief sought by these complaining MWUA member companies. (RE Tab 6; RV29 at 4159-99.) Despite that it was sitting as an intermediate appellate court,[10] the Chancery Court essentially substituted itself for the Commissioner, rendering new fact findings and giving the decision of the Commissioner little, if any, deference. The Chancellor, among other things, held that the MWUA had no authority to set and enforce premium data reporting deadlines, uprooted the MWUA's historical method of allocating reinsurance recoveries, found that MWUA assessments are privilege taxes subject to Mississippi's tax refund statutes, ordered yet another true-up, and reopened assessments for policy

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9 Each of the companies alleged due process violations because the MWUA did not meet its own Plan deadline to rule on the appeals within 15 days during the time the staff and Board were dealing with the aftermath of Hurricane Katrina. Each of the companies also alleged due process violations because the MWUA handled the appeals without formal hearings – as is allowed under the Plan of Operation. These due process arguments were rejected by the Commissioner and were also rejected by the Chancery Court.

10 Based on the MWUA's unique appeal and review process set forth by statute, an aggrieved party must first appeal a decision made by the Board to the Commissioner. The Commissioner's decision can, in turn, be appealed, as here, to the Chancery Court of Hinds County. Miss. Code Ann. §83-34-19.

years 2004 and 2005. (RE Tab 6; RV29 at 4159-99.)

The Chancellor did, however, affirm the Commissioner's decision to uphold group reporting by the MWUA member companies. Like the Commissioner, he concluded that group reporting, which allows affiliated companies to report together and share credits, was not prohibited by statute. The Chancellor also declined to adopt the primary position advanced by Zurich that the one-time true-up period should not have been allowed. (RE Tab 6; RV29 at 4159-99.)

On January 14, 2010, the MWUA timely appealed in each of these consolidated cases. (RV18 at 2583; RV19 at 2706; RV26 at 3770; RV27 at 3805, 3867; RV28 at 4024, 4070; RV29 at 4118, 4200.) The Hartford group of companies also filed notices of direct appeal from the Chancellor's decision. (RV19 at 2600, 2722.) Several companies (Union National, Homesite, Aegis, and Zurich) filed notices of cross-appeal. (RV19 at 2597, 2719; RV28 at 4083, 4037; RV29 at 4131.) Allstate, an interested party (RV10 at 1388-89), has entered an appearance as an Appellee/Cross-Appellee.

II. Statement of Facts

A. The Origin, Composition, and Purpose of the MWUA

An understanding of the MWUA's origin, composition, and purpose is necessary to an understanding of the issues presented by this appeal.

Shortly after 1969's Hurricane Camille, the Mississippi Gulf Coast faced an insurance crisis. It became increasingly difficult for residents and businesses located on the Mississippi Gulf Coast to obtain property insurance. *Mississippi Ins. Underwriting Ass'n v. Maenza*, 413 So. 2d 1384, 1385 (Miss. 1982). In response to the crisis, the Mississippi Legislature created the Mississippi Insurance Underwriting Association (the "MIUA"), an unincorporated association consisting of all insurance companies admitted to do business in Mississippi and actually writing property insurance in this

state. *Id.* The MIUA made certain property insurance – including coverage for wind damage – available to the residents and businesses located in Hancock, Harrison, and Jackson Counties. *Id.*

By 1987, the insurance market for Hancock, Harrison, and Jackson Counties had recovered with one exception: wind and hail coverage was still not always available. Miss. Code. Ann. § 83-34-3. Many private insurance companies offered property insurance to residents and businesses in Hancock, Harrison, and Jackson Counties but excluded coverage for wind and hail. (These private policies that exclude wind and hail coverage are often called "X-wind" policies.) The shortage of wind and hail coverage had also extended north to George, Pearl River, and Stone counties. In 1987, the Mississippi Legislature changed the MIUA to the MWUA. Miss. Code. Ann. § 83-34-7 (1987).[11]

Like the MIUA, the MWUA was a state-created, private unincorporated association consisting of all insurance companies admitted to do business in Mississippi and actually writing property insurance in this state. Miss. Code. Ann. § 83-34-3.[12] The primary new feature of the 1987 legislation was the scope of coverage available from the MWUA and the addition of three counties to make up the "Coast Area" covered by the MWUA. A policy purchased from the MWUA provided coverage only for losses caused by wind or hail. This wind and hail coverage could be paired with a private market homeowner's policy that excluded coverage for wind and hail (an "X-wind" policy). MWUA, like MIUA, was governed by a Board of Directors. Miss. Code. Ann. § 83-

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On March 22, 2007, House Bill 1500 was signed into law, changing most of the statutes that governed the MWUA. House Bill 1500 created a different MWUA without company members and not dependent upon assessments to members. The events that are the basis for this appeal arose out of the statutes in place in 2005. Appendix A to this Brief contains §§ 83-34-1 *et seq.* as in effect in 2005. House Bill 1500 changed the MWUA into a new entity without member companies. Most of the issues raised in this appeal are incapable of occurring under the new MWUA.

12

The pre-House Bill 1500 MWUA was, by default, treated as a partnership for purposes of filing tax returns. (RV43 at 3094-3107, under seal Volume B.)

34-7.

B. Nuts and Bolts Operation of the MWUA and Member Companies' Obligations to the MWUA

1. The Enabling Legislation

The statutes establishing the MWUA (as it existed in 2005) provided general parameters for the MWUA's existence, member assessments, and operation. The Legislature left the particulars of MWUA operation and member participation to the Board, subject to approval of the Commissioner. Per Miss. Code Ann. §83-34-13, the MWUA was to establish its own Plan of Operation, which was required by the Legislature to contain provisions concerning certain matters. Other matters could be covered – or not – by the Plan at the discretion of the MWUA and the Commissioner. In pertinent part, §83-34-13 provided:

> Within 45 days after the passage of this chapter, the directors of the association shall submit to the commissioner for review and approval a proposed plan of operation. Such proposed plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors; **shall grant proper credit annually to each member** of the association for essential property insurance voluntarily written in the coast area; **and shall provide for the efficient, economical, fair and nondiscriminatory administration of the association.** Such proposed plan may include a preliminary assessment of all members for initial expenses necessary to the commencement of operation, the establishment of necessary facilities, management of the association, plans for the assessment of members to defray losses and expenses, underwriting standards, procedures for the acceptance and cession of reinsurance, procedures for determining the amounts of insurance to be provided to specific risks, time limits and procedures for processing applications for insurance, and for such other provisions as may be deemed necessary by the commissioner to carry out the purposes of this chapter.

Miss. Code Ann. §83-34-13 (emphasis added). *See* Appendix A. Additionally, the Legislature expressly empowered the MWUA to establish rules, stating:

> The association is authorized to promulgate rules for the implementation of this chapter, subject to the approval of the commissioner.

Miss Code Ann. §83-34-29. *See* Appendix A.

The Legislature generally defined member companies' obligations to the MWUA but left the specifics of defining and implementing those obligations to the MWUA. In Miss. Code Ann. §83-34-9, the Legislature gave its general description of member company obligations, as follows:

> All members of the association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premiums of each such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association, as certified to the association by the commissioner after review of annual statements, other reports and any other statistics the commissioner shall deem necessary to provide the information herein required and which the commissioner is hereby authorized and empowered to obtain from any member of the association. . . . .

Miss. Code Ann. §83-34-9 (in part). *See* Appendix A.

The Mississippi Legislature also determined that member insurance companies that voluntarily wrote wind and hail insurance for properties in the Coast Area could receive some credit against possible MWUA assessments.

> A member shall, **in accordance with the plan of operation,** annually receive credit for essential property insurance voluntarily written in a coast area, and its participation in the writings of the association shall be reduced **in accordance with the provisions of the plan of operation.** Each member's participation in the association shall be determined annually **in the manner provided in the plan of operation.** . . .

Miss. Code Ann. §83-34-9 (in part, emphasis added). The Legislature wanted to encourage private

market wind insurance coverage.[13] Companies that wrote private wind and hail insurance in the Coast area would be assessed less for the MWUA's policyholder losses than companies that did not voluntarily write wind and hail coverage in the Coast Area. However, the Legislature expressly left it up to the MWUA to determine how the credit system would work. Miss. Code Ann. §83-34-9. *See* Appendix A.[14]

A member company's net direct premiums, as used to determine the company's percentage of participation in the MWUA, were defined by the Legislature as:

> gross direct premiums, excluding reinsurance assumed and ceded, written on property in this state for the windstorm and hail causes of loss or equivalent causes of loss components of property insurance policies, including the windstorm and hail causes of loss or equivalent causes of loss components of approved residential package policies and commercial multiple peril policies, less return premiums upon

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The credit system both encourages private companies to write wind and hail insurance in the Coast Area and equitably divides the responsibility to write and hail insurance in the Coast Area. The MWUA statutes start with the premise that, if insurance companies want to sell wind and hail insurance in Mississippi, they must accept a proportional responsibility for wind and hail insurance coverage in the riskiest portion of the state. They cannot just write policies in the least exposed areas and leave the high exposure coverage to other companies or, worse yet, unavailable. The concept is that each company should be responsible for its share of wind coverage in the Coast Area. A company can meet that obligation by actually writing its own wind and hail policies in the Coast Area, equal to its state-wide market share; or it can meet its obligation by paying assessments for losses in the MWUA equal to its state-wide market share percentage of wind and hail premiums; or, it can employ a combination of those two options. In other words, a company can take the losses from a hurricane via its own voluntarily-written wind coverage in the Coastal area or it can take the losses from a hurricane by assessment from the MWUA.

14

As of 2005, to increase incentive to companies to write their own wind coverage (and thus reduce demand for wind coverage through the MWUA), the MWUA provided $1.40 credit for every premium dollar of wind and hail coverage sold by a private company. Without the credit system, a company meeting its obligation to provide wind coverage in the Coast Area by writing coverage on its own policies would take two portions of the wind exposure. It would pay its own policyholder losses and then pay its state-wide percentage of the losses in the MWUA. Without the credit system, companies would avoid two portions by simply not voluntarily writing wind coverage in the Coast Area.

> cancelled contracts, dividends credited or paid to policyholders or the unused or unabsorbed portion of premium deposits and **excluding premiums on farm property.**

Miss. Code Ann. §83-34-1 (emphasis added). *See* Appendix A. While the Legislature excluded premiums on farm property from the definition of net direct premiums, the Legislature did not define farm property. It left establishment of that definition up to the MWUA. *Id.* The MWUA defined "farm property" as:

> barns, granaries, outbuildings and other structures used in connection therewith, and their contents; also, livestock, poultry, hay and grain in stacks, farm implements and machinery; situated on land used for truck, fruit, livestock, dairy or other farm purposes.
>
> This "Farm Property" definition does not include dwellings and auxiliary outbuildings in connection therewith.

(RE Tab 13 at 816-17, 818; RV 36 at 816-17, 818.)

By statute, any member insurer "aggrieved by an act, ruling or decision of the association" was provided with a right of appeal to the Commissioner "within thirty (30) days after such ruling . . . ," and decisions of the Commissioner were made appealable "as provided by the insurance laws of the State of Mississippi." Miss. Code Ann. §83-34-19.

2. The MWUA Plan of Operation and Rules

Pursuant to this legislation, the MWUA adopted a Plan of Operation that, as of October 1, 1987, was approved by the Commissioner. (RE Tab 11; RV2 at 97-103.) The Plan set forth the following purposes for the MWUA:

> 1. To provide an adequate market for windstorm and hail coverage which is necessary to the economic welfare of the Coast area in order to insure its orderly growth and development.
>
> 2. To provide adequate insurance upon property in the Coast area which is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property.

> **3. To provide an *equitable method* whereby every licensed insurer writing Windstorm and Hail coverage in Mississippi is required to meet its public responsibility.**
>
> 4. To provide a mandatory Plan to assure an adequate market for Windstorm and Hail Coverage in the Coast area of Mississippi and to fulfill the Purposes provided by the Mississippi legislature.

(RE Tab 11 at 98; RV2 at 98) (emphasis added).

The Plan at Section XI.1 provided it would be administered by the Board of Directors, subject to review by the Commissioner. (RE Tab 11 at 101; RV2 at 101.) The Board was to meet as often as needed to perform the general duties of the Plan. (RE Tab 11 at 101; RV2 at 101; Plan at Section XIII.1.) Assessments were to be made by the Board as deemed necessary. (RE Tab 11 at 100; RV2 at 100; Plan at Section IX.4).

Section IX.2 of the Plan provided that each member insurance company would participate in the MWUA's profits and losses as follows:

> Each member of the Association shall participate in the writings, expenses, profits and losses in the proportion that the net direct premiums of such member written in the State during the preceding calendar year bear to the aggregate net direct premiums written in the State by all members of the Association. The Commissioner shall certify to the Association, after review of annual statements, other reports, and any other statistics he shall deem necessary, the aggregate net direct premiums written by all members. **However, a member shall annually receive credit for Essential Property Insurance voluntarily written and its participation in the writings of the Association shall be reduced accordingly, except all members shall participate in the first 10% of losses. Its participation in the expenses of the Association shall not be reduced thereby. Each member's participation in the Association shall be determined annually in the manner provided in the Plan of Operation.**

(RE Tab 11 at 100; RV2 at 100.) (emphasis added).

Therefore, the MWUA determined that the member companies' percentage of participation in the MWUA's expenses and first 10% of losses incurred by the MWUA's policyholders would not

be reduced by credits for voluntary writing of wind and hail insurance in the six coastal counties. Every member company participated in operating expenses and in the first 10% of loss based upon their state-wide market share. However, for the other 90% of the MWUA's policyholder losses, a system was set up by which a member company could reduce its percentage of participation by voluntarily writing its own wind and hail coverage in the six coastal counties and reporting these policies and premiums to the MWUA. Any member company that wrote and properly reported its own writings of sufficient wind and hail insurance in the Coast Area could have enough credits to actually write itself completely out of having to participate in 90% of the MWUA's losses. (RE Tab 11 at 100; RV2 at 100.)[15] This system provided fairness and an incentive to encourage member companies to voluntarily offer and write wind and hail coverage in the Coast area.[16] If other companies wrote themselves out of 90% of the losses, the percentages of participation of companies not writing wind insurance in the Coast Area would increase to cover the removal or reduction of the percentages of participation of the "written out" companies. (RE Tab 11 at 100; RV2 at 100.) As one company's percentage of participation goes down, the other companies' percentages must go up to cover 100% of policyholder losses.

Any member company affected by a final ruling, action, or decision of the MWUA could appeal to the Board within fifteen days of that ruling, action, or decision. The Plan provided that the Board shall "hear and determine such appeal within fifteen days after the same is filed." (RE Tab

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15

While the common phrase is that "a company wrote itself out of 90% of the MWUA losses," such a company actually wrote this coverage on its own policies and paid the losses directly rather than through assessment by the MWUA.

16

As a residual insurance market of last resort (not an insurance company) it was part of the MWUA's goal to encourage private insurance companies to participate as much as possible in providing an adequate insurance market for the Coast area.

11 at 100; RV2 at 100; Plan at Section VIII.1.) Further appeals to the Commissioner and beyond were to be as provided by statute. *Id.*

As of October 1, 1987, the MWUA also adopted a Manual of Rules and Procedures. (RE Tab 12; RV3 at 232-38.) Relevant to this appeal, the MWUA's Rules provided the following regarding receipt of credits by member companies for voluntarily writing windstorm and hail insurance in the six coastal counties:

> VII. CREDIT FOR BUSINESS WRITTEN ON A VOLUNTARY BASIS
>
> > Member companies shall receive annually credit for Essential Property Insurance voluntarily written and their participation in the "Pool" shall be reduced accordingly. Member companies participation in the expenses of the Association shall not be reduced thereby. **The method of determination of such credit shall be as authorized by the Plan of Operation as implemented by the Board of Directors.**

(RE Tab 12 at 237; RV3 at 237; Manual of Rules and Procedures, Section VII) (emphasis added).

Participating member companies were expressly advised of the following under the section of the Rules entitled "VIII. ACCOUNTING PROCEDURES":

> 2. Participating Companies.
>
> > A. A company shall participate in writings, expenses, profits and losses in proportion that its net direct premiums written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state. Such calculations shall be carried to five decimals.
> >
> > B. A participating company shall annually receive credit toward participation in the Association for Essential Property Insurance voluntarily written in the "Pool." **Each participating company in order to receive such credit, shall set up the necessary statistical procedure whereby they can accurately determine and furnish to the Association their voluntary**

> **writings.** Such information shall be verified to the satisfaction of the Association and shall be submitted in a form mutually agreed on by the Company and the Association.

(RE Tab 12 at 238; RV3 at 238.) (emphasis added). Member companies were aware by virtue of this Rule that they were responsible to set up the appropriate procedures within their own companies to accurately determine and report to the MWUA any voluntary essential property insurance writings for which they wished to receive credit. *Id.*

Absent accurate and timely member reporting to the MWUA of premiums written for wind and hail coverage in the Coast Area, the MWUA had absolutely no way to know whether a member company wrote wind and hail property insurance in the Coast Area or, if so, how much. (RE Tab 7 at 26; RV1 at 26.) Member responsibility to accurately and timely report is essential to applying any claimed credits, and then determining each member's percentage of participation in the 90% portion of profits or losses. This was particularly true since, in some years, members who evidently could have reported voluntary wind and hail coverage insurance premiums for credit did not do so. (RE Tab 10 at 1918; RV14 at 1918.) When a particular year was not a loss year, omission of possible credits increased a company's percentage of participation and thus allowed the member company to participate in a larger percentage of the MWUA's profits. *Id.* Taking the time to accurately report and claim voluntary credits only became a matter of concern to some member companies in a major loss year like 2005. (Re Tab 10 at 1918-19; RV14 at 1918-19.)

3. Yearly Procedures for Submitting Net Direct Premiums and Obtaining Voluntary Credits for Essential Property Insurance

The MWUA was operated on a day-to-day basis by personnel of the Mississippi State Rating Bureau. (RE Tab 12 at 238; RV3 at 238; Manual of Rules and Procedures at Section X, Operations.) Upon entry into the MWUA, each member company was sent a letter describing the MWUA and

enclosing a copy of the MWUA Plan, Articles of Agreement, and Rules. (RE Tab 13; RV36 at 814-20.)

This "Welcome Packet" letter included the definition of farm property as well as information on how to claim exclusion of farm property premiums from the calculation of net direct premiums. (RE Tab 13 at 816-17, 818; RV36 at 816-17, 818.) The letter provided the following procedure and deadlines for submitting information to obtain exclusion of farm property premiums:

> The procedure for tabulation of Statewide "Farm Property" writings in Mississippi will require COPIES OF POLICIES on all "Farm Property" writings which cover the perils of Windstorm and Hail for the entire State of Mississippi, in order for such writings to be credited as "Farm Property" writings.
>
> It should be noted that these copies will not be returned. If there are no cancellations or return premiums applicable, please so advise by written statement. Any "Farm Property" policies which do not cover the perils of Windstorm and Hail should not be submitted.
>
> Copies of "Farm Property" writings shall be submitted on a quarterly basis and such submissions are to be in the offices of the MWUA within 60 days of the end of each quarter.

(RE Tab 13 at 817; RV36 at 817.) Final reports concerning farm property premiums for a given year were therefore due by March 1 of the next year – *i.e.*, within 60 days of the end of the last quarter of the previous year. *Id.*

The Welcome Packet letter also described the system for obtaining voluntary credits for wind and hail coverage writing in the Coast Area. (Re Tab 13 at 815; RV36 at 815.) It attached a memorandum titled "Allocation System – Credit for Voluntary Writings," which describes how the credit system worked. The letter also enclosed a sample form (bordereau) for reporting of voluntary Coast Area wind and hail coverage premiums. (RE Tab 13 at 819-20; RV36 at 819-20.) Member companies were advised that reporting of such voluntary credits was to be done either by submission

of a bordereau or submission of copies of the relevant policies within 60 days of the end of each quarter. Final reports concerning voluntary wind and hail writings in the Coast Area for a given year were therefore due by March 1 of the next year – *i.e.*, within 60 days of the end of the last quarter of the previous year. (RE Tab 13 at 815; RV36 at 815.) For every $1.00 in wind and hail premium that a member company voluntarily wrote in the Coast Area, that company would receive $1.40 credit against its percentage share in 90% of the MWUA's losses. (RE Tab 13 at 819; RV36 at 819.)

Member companies were advised, consistent with Miss. Code Ann. §83-34-9, that their percentages of participation for any given policy year would be based on their preceding calendar year's writings. (RE Tab 13 at 815; RV36 at 815.) Each year, member companies were sent a blank report form entitled "Insurer's Report to Mississippi Windstorm Underwriting Association" on which they were to report information from which the MWUA could determine the company's total wind and hail premium writings statewide during the preceding calendar year. This report was due to be submitted to the MWUA by April 1 of each year. (RV36 at 824, example report form; RV43 at 3442-48.) Any reported and excluded farm property premiums could then be applied by the MWUA to reach the company's net direct premium figure. Any reported credits for voluntary writings could also then be applied by the MWUA in calculating the member company's 90% share in the MWUA policyholder losses. All of these figures, which it was each member company's responsibility to report timely and accurately, would be used by the MWUA to calculate a member company's percentage share in the MWUA's expenses, the first 10% of profit or loss, and the remaining 90% of profit or loss.

By March 1, 2005, all MWUA member companies were to have submitted to the MWUA their 2004 data for farm property exclusions and for voluntary writing credits. (RE Tab 13.) By April 1, 2005, all of the MWUA member companies were to have submitted to the MWUA their

Insurer's Report to Mississippi Windstorm Underwriting Association, disclosing their 2004 wind and hail premiums statewide. (RE Tab 15 at 824; RV36 at 824; RV43 at 3443-48.) In June 2005, the MWUA published to its members their policy year 2005 participation percentages, based on the preceding year (2004) data submitted by the MWUA member companies. No member company appealed from the percentages of participation provided in June 2005. (RV39 at 1646.)

C. Assessments by the MWUA in 2005 Following Hurricane Katrina

On August 29, 2005, Hurricane Katrina caused approximately $700 million in losses to the MWUA's policyholders. According to Mississippi law, the MWUA's member companies are responsible for this loss. Miss. Code Ann. 83-34-9. The MWUA had purchased $175 million of reinsurance. Therefore, of the first $185 million in losses, the MWUA's members were only required to pay their proportional share of the MWUA's $10 million self-insured retention (deductible).[17] (RV37 at 1124-25.) Two days after the storm, on August 31, 2005, the MWUA issued an assessment for that $10 million. (RE Tab 9 at 2733; RV19 at 2733.) The appealing companies, like all the other member companies, paid their pre-true-up percentage of participation shares of the $10 million without complaint. None appealed their percentage shares. RV39 at 1646.

By late November 2005, the MWUA was able to estimate that its Katrina losses would exceed the $10 million self-insured retention plus the $175 million in reinsurance by at least $285 million. On December 2, 2005, the MWUA sent its member companies a second assessment, totaling $285 million, based on the pre-true-up percentages of participation. (RE Tab 7 at 21; RV1 at 21.)

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17 The MWUA would pay $10 million toward Katrina claims before the $175 million policy was triggered.

D. Member Companies Begin Reporting Errors in Their Submissions to the MWUA

Upon receipt of the December 2, 2005 assessment, a number of member companies advised the MWUA that the 2004 premium data they had previously submitted was incorrect or incomplete. (RE Tab 14; RV36 at 821-22.) Among these companies, Argonaut Group, BancInsure, Lumberman's Underwriting Alliance, and State National Insurance Company presented their concerns about their reporting mistakes via correspondence. (RV38 at 1522-46, under seal Vol. A.) A number of other companies communicated their concerns regarding reporting mistakes via telephone. Several other companies contacted the Department of Insurance to communicate to the Commissioner their concerns that the premium data they had submitted to the MWUA was incorrect or incomplete. (RV39 at 1689, under seal Vol. A.)

During this same time, it was brought to the MWUA's attention that its own servicing insurer, Audubon Insurance Company (a subsidiary of AIG) had mistakenly reported the premiums for the MWUA's policies as Audubon's own premiums.[18] RE Tab 10 at 1916-17, 1941; RV14 at 1916-17, 1941.) This was a significant mistake. It vastly skewed Audubon's participation by including MWUA 2004 net direct premiums for which Audubon was not the insurer.

E. The MWUA Board Decides to Grant Member Companies a One-Time Opportunity to Correct, or "True-up," Their 2004 Premium Writing Submissions the MWUA

On January 11, 2006, the Board met to consider a number of issues, including the issues

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[18] At the time of Hurricane Katrina, Audubon undertook four tasks for the MWUA as its servicing insurer: (1) statistical record-keeping; (2) paying premium taxes and related fees out of funds provided to Audubon by MWUA; (3) counter-signing MWUA policies, if necessary; and (4) providing claim supervision. When Audubon reported its own premiums for Mississippi, it mistakenly included the premiums for MWUA policies which it was only the servicing insurer – not the insurer.

raised by the member companies that claimed to have incorrect or incomplete premium data submissions for 2004, which affected their percentages of participation in the MWUA's 2005 policy year losses. (RE Tab 14 at 821; RV36 at 821.) After hearing from the companies in attendance, reviewing the letters submitted, reviewing information regarding Audubon's mistaken data submission, hearing from the MWUA staff on the issue, and hearing from Deputy Commissioner of Insurance Lee Harrell, who commented that there were "several companies other than those represented at this meeting that have reported incorrectly, and if given the opportunity would submit corrected premiums," (RV37 at 1089, under seal Vol. A), the Board decided to allow **all MWUA member companies** "a single opportunity to submit corrected and/or supplemental information" regarding 2004 net direct premiums and proof of voluntary writings for credit. (RE Tab 14 at 822; RV36 at 822.) The MWUA has regularly referred to this one-time opportunity as "the true-up." Following submission of any corrected data, the MWUA would then recalculate its members' percentages of participation for policy year 2005 and recalculate its 2005 assessments to all members based on the revised percentages of participation. (RE Tab 14 at 822; RV36 at 822.)

Facing rapidly growing policyholder claims for damages resulting from Hurricane Katrina and the need for money to pay these claims, the Board decided that the absolute deadline for submission of corrected data would be March 1, 2006. No submissions made after that date would be considered. (RE Tab 14; RE Tab 15.) The true-up granted all companies a chance to correct data that should have been properly submitted one year earlier. It also allowed the MWUA to timely collect the funds it needed to meet the rapidly growing policyholder losses.

Contrary to some of the allegations that have been made in this matter, the Board's decision was made in an effort to correct all mistakes in reporting, including the Audubon mistake. A deadline for all companies had to be made and enforced in order for the MWUA to make the next

2005 assessment and pay policyholders' Katrina damage claims. Each member company was afforded exactly the same opportunity to correct any errors in submissions to the MWUA. (RE Tab 10 at 1915-17; RV14 at 1915-17.) This was the most – and, in fact, the only – fair and nondiscriminatory way to address the number of reporting errors brought to the MWUA's attention. All member companies were treated in an identical fashion.

F. All MWUA Member Companies Were Notified of the True-Up Opportunity and of the Deadline for Submitting Corrected Data.

By statute, membership in the MWUA can change on an annual basis. Percentage of participation is determined for each policy year for those companies that were actually writing property insurance in Mississippi in the previous year. Miss. Code Ann. §83-34-9. The MWUA receives address information for insurance companies from the Mississippi Department of Insurance and sends data, reports, and notices to all companies[19] – even those that, due to internal company decisions not to write property insurance coverage, were not actually members of the MWUA that year.

On January 17, 2006, the MWUA sent each of the companies a letter, informing them of the Board's January 11, 2006 decision to hold the true-up and outlining the method for re-submission of premium information. (RE Tab 14; RV36 at 821-22.) This first "true-up" letter enclosed a copy of the Board's "Motion Concerning Hurricane Katrina Assessments." (RE Tab 14; RV36 at 821-22.) No member company contacted the MWUA to contest or appeal this decision to hold a true-up. No

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19 Many companies reported their aggregate premium data in insurance company groups consisting of subsidiaries and affiliates. Of the 196 companies and groups that had percentages of participation for 2005, 58 companies and groups had 0.00% for their percentages of participation. (RV43 at 3109-3111, under seal Vol. B). While there were 196 reporting companies and groups for 2005, there were actually many more than 196 companies involved, as some reporting groups included numerous individual company members.

member company contacted the MWUA to contest or appeal the establishment of the March 1, 2006 deadline. The MWUA followed this first true-up letter with a second true-up letter on February 1, 2006, again explaining this single opportunity to provide corrected or supplemental data and including a sample bordereau for reporting of voluntary credits. (RE Tab 15; RV36 at 823.)

The January 17, 2006 true-up letter, the enclosed copy of the "Motion Concerning Hurricane Katrina Assessments," and the February 1, 2006 true-up letter all clearly stated that for any corrected or supplemental data to be considered, it had to be received by the MWUA by March 1, 2006. In the February 1 true-up letter, this requirement was **underlined and in bold print**. (RE at Tabs 14 & 15; RV36 at 821-22, 823.) Once again, no member company contacted the MWUA to contest or appeal this decision to hold a true-up. No member company contacted the MWUA to contest or appeal the establishment of the March 1, 2006 deadline.

Dozens of member companies took advantage of the true-up to correct premium data, submit additional previously unreported voluntary writings, and submit farm property premiums for exclusion from net direct premiums. These member companies that availed themselves of the true-up opportunity included those companies that had contacted the MWUA about errors in their premium data after the December 2, 2005 assessment.

G. The MWUA Recalculates 2005 Participation Percentages, Issues Its Third Katrina Assessment, and Hears from the Appellee Companies

Just as it had notified all member companies that it would do, the MWUA recalculated its members' 2005 percentages of participation based on the corrected 2004 data submitted by all member companies as of March 1, 2006. (RV37 at 1124-25.) This was eleven months after net direct premiums were originally due and one year after premium figures for voluntary writings and farm property exclusions were originally due. The recalculated percentages were both for

participation in the first 10% of losses and participation in the other 90% of losses. On April 17, 2006, the MWUA sent its member companies notice of the revised post-true-up participation percentages. (RV37 at 1126, example notice.) A third assessment for an additional $250 million was necessary to pay for the MWUA policyholders' losses. This was issued on April 17, 2006, based on the revised post-true-up percentages.[20] Credits and debits were allocated as appropriate for prior assessment amounts paid. (RV37 at 1126, example notice.)

Upon receipt of this third assessment, the Appellees appealed to the Board. One company – Zurich – alleged that the true-up should never have occurred at all. (RV40 at 1957.) Another company – Aegis – alleged that affiliated MWUA member companies should not be allowed to report in groups for purposes of sharing voluntary credits and that issues with reporting of wind and hail coverage for mobile homes made yet another true-up necessary. (RV43 at 3372-73.)[21] Some of the companies – Union National, U.S. Fire, Homesite, OneBeacon, and Farmers – had not bothered to participate in the true-up afforded by the Board. These companies complained that their 2004 premium data submissions (made in March 2005) were incorrect and that they should be excused from failing to comply with the original March 1, 2005 deadline, as well as the March 1, 2006 true-up deadline for various reasons that amounted to internal company failures. (RV20 at

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In total, the MWUA assessed based on a "Katrina need" of $720 million. The actual assessment to companies totaled $545 million after reinsurance provided $175 million. After subtracting for deferments of assessments order by the Commissioner due to some company insolvency issues, it now appears that the $720 million, plus recoveries from a mobile home insurer (*see infra* sections regarding mobile home premiums) will cover all policyholder claims.

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The Chancellor rejected Aegis's argument that group reporting was not permissible (RE Tab 6 at 4192-93), and Aegis has cross-appealed regarding that issue. The issue of mobile home reporting is dealt with separately, *infra*. The Chancellor also rejected Zurich's position that there should never have been a true-up. (RE Tab 6 at 4198-99.) Zurich has cross-appealed.

correspondence from the MWUA, including the January 17, 2006 first true-up letter and enclosure notifying it of the true-up period and deadline and of the chance to submit corrected data. U.S. Fire simply did not submit any. (RE Tab 9 at 2736-38.)

3. Homesite's Failure to Submit Voluntary Credit Data

Homesite did not submit any 2004 voluntary writing data for credit against its portion of assessments – either at the regular March 1, 2005 reporting deadline or by the March 1, 2006 true-up deadline. Homesite alleges it did not participate in the true-up because it has no record of receiving either the January 17, 2006 true-up letter and enclosures or the February 1, 2006 true-up letter and enclosures. Homesite admits that it received all other correspondence, including the December 2, 2005 and April 17, 2006 assessments from the MWUA at exactly the same address to which the January 17 and February 1 true-up letters were sent. (Re Tab 10 at 1906-09; RV34 at 49-51.)

Homesite also claimed it never received the MWUA Welcome Packet describing how to receive voluntary credits. However, Homesite became a member of the MWUA when it purchased Royal Special Risks from Royal Sun Alliance in 2000 – a company that was already an MWUA member. Homesite admittedly never checked Royal Special Risks' records to determine if it had these MWUA materials. (RE Tab 10 at 1908-09; RV53 at 37.) Had Homesite – licensed to do business in Mississippi since 2000 – bothered to read the MWUA's statutes, Plan, or Rules (which were on the MWUA website), it would have known there was a system for claiming credits. (RE Tab 10 at 1909-11.) It simply did not bother to do so.

4. OneBeacon's Failure to Submit Data Regarding Exclusion of Farm Property Premiums from Net Direct Premiums

Notices from the MWUA go to OneBeacon's office in Boston, Massachusetts, where its comptroller is located. OneBeacon received the January 17 and February 1 true-up letters. Although

OneBeacon writes some wind and hail coverage in Mississippi that falls into the category of farm property premiums, it had never reported these farm property premiums to the MWUA for exclusion from net direct premiums. (RV37 at 1208-13; RE Tab 10 at 1928-29.)

When OneBeacon received the December 2, 2005 assessment, a copy of it was sent internally to Andy Borst, the company's Chief Financial Officer, Specialty Lines, in Lenexa, Kansas. (RV53 at 73, 74-77.) Mr. Borst did not normally receive MWUA reports or participate in submitting OneBeacon's reports to the MWUA. OneBeacon only internally forwarded a copy of the December assessment to Mr. Borst because it affected his spreadsheet as product manager for OneBeacon's agricultural business. (RV53 at 73, 74-77, 96-97.)

Upon receiving the December assessment, Mr. Borst read the MWUA statutes, Plan, and Rules and saw there was an exclusion for farm property premiums. (RV53 at 77-78.) On December 29, 2005, he called the MWUA directly to determine the definition of "farm property." Mr. Borst was referred to Jim Redd, the accountant for the MWUA at that time. On December 29, 2005, Mr. Redd told Mr. Borst the definition of farm property. Mr. Borst responded that, "It sounds like we have some of that. What do we do?" Jim Redd purportedly looked at the insurer's report filed by OneBeacon and told Mr. Borst it was filled out correctly. (RV53 at 79-80; RE Tab 10 at 1928-30.) Mr. Borst admitted, in testimony, that the insurer's report for OneBeacon is, in fact, filled out correctly. As set forth in the Welcome Packet, farm property premiums are not reported on that form. (RE Tab 13 at 816-17, 818.)

After this December 29, 2005 conversation, Mr. Borst contacted Natalie Greene in OneBeacon's legal department in Boston. Ms. Greene emailed Cecil Pearce, Counsel for the American Insurance Association, with questions about farm property. She asked Mr. Pearce to forward the email to Greg Copeland, counsel for the MWUA. Mr. Pearce did so. On January 30,

2006 – one month before the true-up deadline – Greg Copeland responded to Cecil Pearce, answering the questions asked of him concerning the definition of farm property. According to OneBeacon, Mr. Pearce purportedly never forwarded the response back to Natalie Greene. (RE Tab 10 at 1928-29; RV53 at 81, 112-13; RV37 at 1236.)

In March 2006, the company comptroller contacted Mr. Borst and told him OneBeacon had missed the true-up deadline. (RE Tab 10 at 1929; RV53 at 81-82.) Mr. Borst and Natalie Greene then arranged to meet with Mr. Redd and Albert Parks, then the MWUA manager, in person on April 20, 2006. (RE Tab 10 at 1929-30; RV53 at 82-84.) At that meeting, Mr. Borst looked at OneBeacon's statement of participation for the first time, which clearly showed OneBeacon was not submitting its farm property premiums for exclusion. *Id.* OneBeacon does not deny that, on becoming a member of the MWUA, it was sent the MWUA information packet which tells companies how to provide farm property premium data for exclusion. OneBeacon simply alleges that it is unreasonable for the MWUA to expect OneBeacon to retain that information and follow it for eighteen years. (RV27 at 3837.)

5. RLI Participates in the True-Up But Then Wants to Submit More Corrections After the Deadline.

After the MWUA issued its December 2, 2005 assessment, RLI sent the MWUA a letter dated December 16, 2005, asking questions about the assessment and stating in the subject line of the letter that it was an "Appeal of Windstorm Assessment." The letter did not allege that any of the data submitted by RLI was incorrect. It asked how the assessments were calculated and asked for information about the credit system. (RV38 at 1286.) In response to the letter, Albert Parks, the MWUA manager at the time, called RLI. He answered the questions in RLI's letter. RLI paid the December 2, 2005 assessment. The matter was resolved. Parks therefore never advised the

MWUA's legal counsel of any "appeal" by RLI. (RE Tab 10 at 1933; RV38 at 1390-91, 1393-94; RV54 at 57.)

On January 11, 2006 – after RLI had paid its assessment – the Board decided to allow the true-up period, which mooted the participation percentages used for the December 2, 2005 assessment. All members were required to pay the December 2 assessment but overpayments and underpayments would be adjusted as needed to match the revised percentages of participation calculated after the true-up period. (RE Tab 14 at 822.)

RLI received the January 17, 2006 and February 1, 2006 true-up letters and participated in the true-up by submitting revised voluntary writing credit data. (RV54 at 42-46, 52-54; RE Tab 10 at 1934.) RLI sent this information to the MWUA during the true-up period, and it was used in calculating the revised post-true-up percentage of participation for RLI. The matter was handled for RLI by Brad Bernier, the RLI employee normally assigned to handle MWUA reporting by RLI. (RV54 at 52-54; RE Tab 10 at 1934.)

After receiving the April 17, 2006 revised post-true-up percentages of participation and assessment, RLI's Vice President of Actuarial Services, Chris Randall, looked at RLI's net direct premium form. He decided RLI had made mistakes in filling out the form and that they needed to be corrected. Since such additional corrections were not submitted by the March 1, 2006 true-up deadline, they were not accepted. (RV54 at 37-38; RE Tab 10 at 1934-35.) RLI alleges that because it had an "appeal" pending at the time of the true-up, via its letter dated December 16, 2005, it was somehow not bound by the true-up deadline. This "appeal" (a) had been resolved; (b) preceded the true-up; (c) had nothing to do with the true-up or allegedly incorrect data reports; (d) involved only questions that were answered by Albert Parks; and (e) involved a December 2 assessment that RLI paid. Perhaps most significantly, the true-up allowed RLI the opportunity to correct any errors. (RE

Tab 10 at 1933-36; RV54 at 57-58; RV38 at 1286.)

6. Farmers Fails to Use the True-Up Period to Change Its Manner of Group Reporting

From 1971 until 2006, the MWUA (and MIUA) explicitly allowed its member companies that are affiliated to report aggregate premium data as a group. The theory behind allowing such group reporting ("grouping") was that it encouraged companies to voluntarily write wind and hail coverage in the Coast Area. By grouping, companies were allowed to share voluntary writing credits, in that excess credits for one company in the group could then be used by other companies in the group to reduce their percentages of participation in 90% of the MWUA's policyholder losses. That "grouping" was allowed was made clear on the insurers report forms sent to every member company each year, as well as on the sample bordereau sent with new member companies' Welcome Packets upon becoming MWUA members. (RE Tab 10 at 1943-44; RV41 at 2294-95.)[25]

Farmers was aware of the option to report to the MWUA on a group basis. For several years, Farmers had reported to the MWUA in a grouped fashion with an affiliated company, Truck Insurance Exchange. (RE Tab 10 at 1943; RV54 at 104-05.) Farmers alleges that 30 days' notice was not enough time for it to re-group itself and report differently with its subsidiary company – Foremost Insurance Group. (RV54 at 101-03, 106.) In making this argument, Farmers ignored three facts. First, Farmers' accurate and final 2004 voluntary writing credit data (either individually or grouped) was actually due to the MWUA on March 1, 2005 – one year before the true-up deadline. Second, notice of the true-up was sent to all member companies on January 17, 2006 – some 43 days

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25 No company ever appealed or complained about the allowance of grouping until 2006. Group reporting was so pervasive that, in 2005, there were 300 individual companies that reported as 196 companies or groups.

before the March 1, 2006 deadline. Third, Farmers does group with Foremost when reporting to Alabama's residual insurance plan. (RV54 at 109-09.) Farmers also asserts that it had not previously understood the dollar significance of group reporting in loss years. (RV54 at 102, 106.) That is Farmer's oversight.

H. The Underlying Insurance Commission and Chancery Court Rulings on Late Data Submission

The Commissioner found and concluded, based on substantial evidence, that the internal company failures at Union National, U.S. Fire, Homesite, OneBeacon, RLI, and Farmers did not excuse them from a duty to comply with the March 1, 2006 true-up deadline or justify late submissions of data by these companies. The Commissioner also concluded that the MWUA had authority to set and enforce reporting deadlines. (RE Tab 7 at 24-31; RE Tab 9 at 2738-44; RE Tab 10 at 1912-19, 1932, 1935-36, 1943-44.) Despite the fact that the Chancery Court was not the appropriate fact-finder but rather sat as an appellate court, the Chancellor ignored the Commissioner's findings and substituted his own findings and conclusions. (RE Tab 6 at 4167-75, 4176-77, 4179-84, 4197.)

I. Other Issues Raised By the Various Companies to Try to Reduce Their Share of the MWUA Katrina Losses

Each of the Appellee companies also raised other issues that they alleged justified either refunds, late submission of data by them, or yet another true-up (encompassing either or both policy-year 2004 and 2005 percentages of participation). Appellees believe that if any corrections are needed, it means they will get to late-file data. They ignore that if other types of corrections are needed, those can be made based on already timely-submitted data, without need for a second true-up. These issues are detailed below.

1. Reinsurance Allocation

Although insurance companies are required by statute to follow certain accounting procedures and rules set forth by the National Association of Insurance Commissioners ("NAIC"), no such statutory obligations exist for the MWUA.[26] (RV45 at 146.) As found by the Commissioner, "there is nothing in any statute or regulation that mandates what type of accounting should be used by the MWUA." (RE Tab 8 at 49-55; RE Tab 10 at 1921-25.) All evidence elicited on this issue -- whether from the MWUA or from the complaining Appellee insurance companies – agrees on this point. *Id.* The Board was empowered to select the method of accounting that best suited the MWUA's unique needs, and it did so.

MWUA's member companies report their written premiums to the MWUA based on a calendar year. Miss. Code Ann. §83-34-9. This differs from policy years, which are based on the year a policy is issued. Because every insurance policy does not have an effective date of January 1, each calendar year contains two policy years. For example, a person with an insurance loss resulting from Hurricane Katrina on August 29, 2005 could have had a policy issued on August 31, 2004 and expiring on August 31, 2005. That policy is a 2004 policy, and any loss occurring in 2004 or 2005 is charged against the 2004 policy year results. Likewise, Katrina losses on August 29, 2005 are charged against the 2005 policy year where the policies involved were issued in 2005. Therefore, Hurricane Katrina created losses in two policy years – 2004 and 2005. (RE Tab 8 at 49-55; RE Tab

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The MWUA is not an insurance company and is not subject to statutory requirements for insurance company accounting. *See* Miss. Code Ann. §83-5-55 (insurance companies required to report to the Mississippi Insurance Department based on National Association of Insurance Commissioners ("NAIC") accounting standards). The MWUA is not a member of the NAIC and is not subject to NAIC accounting rules. As a state-created residual insurance market, which is a private unincorporated association (as it existed in 2005), the MWUA is unique.

10 at 1921-25.)

The percentages of participation of each MWUA member company vary from calendar year to calendar year. As a result, a member company's share in the MWUA's losses in 2004 would be different than its share in MWUA's losses in 2005. (RE Tab 8 at 49-55; RE Tab 10 at 1921-25.)

Upon receiving the $175 million in reinsurance benefits, the MWUA applied $116 million to offset all losses charged to the 2004 policy year. It applied the remainder of the reinsurance ($59 million) to losses charged to the 2005 policy year. (RE Tab 8 at 49-55; RE Tab 10 at 1921-25.) As testified by the MWUA's now-retired accountant, Jim Redd, this avoided the need for a double assessment for a single event, *i.e.*, an assessment for Katrina losses based partially on 2004 percentages of participation and partially on 2005 percentages of participation. It also allowed the accounting for policy year 2004 to be closed. All Katrina assessments – which were made for a loss that occurred in 2005 – were based on the member insurance companies' 2005 percentages of participation. (RV45 at 141, 142.)

This was the manner in which the MWUA had historically collected loss assessments and allocated reinsurance proceeds. Reinsurance proceeds were allocated in this same manner in 1998 following the September 28, 1998 losses caused by Hurricane Georges. (RV45 at 143, 152.) The MWUA's 2004 assessment following Hurricane Ivan for the MWUA's self-insured retention was, similarly, made solely on the percentages of participation for the calendar year in which the loss occurred (2004).

This process complied with the MWUA's method of accounting. Mr. Redd also served as the accountant for the MIUA, the Mississippi State Rating Bureau, the Mississippi Rural Risk Underwriting Association, and its successor, the Mississippi Residential Property Insurance Underwriting Association. (RV45 at 138-39.) Mr. Redd generally looked to the Property Insurance

Plans Service Office ("PIPSO")[27] manual on accounting issues, but the Board has never adopted the PIPSO manual as the MWUA's accounting basis. The PIPSO manual does not speak to how reinsurance should be allocated. Mr. Redd called PIPSO and spoke with it about his method of allocating reinsurance to eliminate assessments other than for the loss year, and he was advised that this was an acceptable method by which a residual market could allocate reinsurance recoveries. (RV45 at 143-44.) This method of reinsurance allocation ensured that the MWUA would be able to timely receive funds necessary to timely pay policyholders' claims.

The Appellee companies contend, and the Chancellor held, that the MWUA must allocate reinsurance by a different accounting method. The Chancellor specified the accounting method promulgated by the NAIC, ignoring the legislative mandate that the MWUA is not an insurance company and is not bound by insurance company accounting rules or statutes. (RE Tab 6 at 4188-91.) According to these companies (and the Chancellor), since approximately 18% of Katrina losses were sustained on MWUA policies issued in 2004 and approximately 82% of Katrina losses were sustained on policies issued in 2005, then only $31,500,000 (or 18%) of the reinsurance recoveries should be allocated to policy year 2004. The remaining $143,500,000 (82%) must then be allocated to policy year 2005.

The Commissioner properly rejected the argument that the MWUA must use the NAIC method of allocating reinsurance recoveries. (RE Tab 8 at 49-55; RE Tab 10 at 1921-25.) The MWUA is not an NAIC member or bound in any way by NAIC statutory accounting rules.

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27 PIPSO is a service organization that addresses some of the generic aspects of residual markets.

2. Privilege Tax

Several Appellee member companies argued that the MWUA's assessments constitute a privilege tax imposed as a condition of doing business in Mississippi. They claim that the following statute concerning overpayment of privilege taxes mandated that they receive a refund of alleged overassessments. (RE Tab 7 at 28; RE Tab 8 at 58; RE Tab 10 at 1926-27.)

> If any person, firm or corporation has paid, or shall hereafter pay to the **Auditor of Public Accounts, State Tax Commission, or the Commissioner of Insurance**, through error or otherwise, whether paid under protest or not, any ad valorem, privilege or excise tax for which such person, firm or corporation was not liable, or any such taxpayer has paid any tax in excess of the sum properly due and such erroneous payment or overpayment has been paid into the proper treasury, the taxpayer shall be entitled to a refund of the taxes so erroneously paid.

Miss. Code Ann. §27-73-1 (emphasis added). They also allege that the 3-year statute of limitations for claiming tax refunds applies. Miss. Code Ann. §27-73-5.

The MWUA's assessments are not paid to the State Auditor, the State Tax Commission, or to the Commissioner of Insurance. The Commissioner concluded that MWUA assessments are not privilege taxes (RE Tab 7 at 28; RE Tab 8 at 58; RE Tab 10 at 1926-27), but the Chancellor reversed and held that they were. (RE Tab 6 at 4186-87.)

3. Mobile Home Reporting

The Chancellor found that the MWUA accepted incorrect data on mobile homes. In 2006, the Commissioner determined that some insurance companies, on their annual statements to the Insurance Department, might be reporting premiums written for mobile home coverage under the "Auto Physical Damage" line or some other alternative line of business. Proper NAIC statutory accounting applicable to insurance company quarterly and annual reports to the Mississippi Insurance Department would require that these premiums be reported under the Homeowners

Multiple Peril line rather than Auto Physical Damage. (RE Tab 16; RV36 at 767-68.)

If mobile home premiums were improperly reported by a company to the Mississippi Department of Insurance as auto premiums, then those same companies wrongly under-reported their property premiums to the MWUA, thus reducing their percentages of participation below what they should have been. This was a reporting issue that was being pursued by the Insurance Department. (RE Tab 16; RV36 at 37-38.) The failure of some companies to properly report mobile home premiums became widely known via a bulletin issued by the Insurance Department. The Appellees seized on this issue to add to their argument for a second true-up. Engaging in fact-finding without support in the record, the Chancellor found that the MWUA somehow just "accepted" wrong reports from some mobile home insurance companies. That, however, is not the case. The MWUA does not receive auto physical damage or other auto line reports from its member companies. The MWUA has no way to know whether a company had wrongly reported its mobile home business as auto physical damage business.

Because pursuit of companies improperly reporting mobile homes as automobiles was an Insurance Department issue and not an MWUA issue, the Commissioner held that it was not properly part of any member company's appeal from the Board's decision. (Re Tab 8 at 57-58; RE Tab 10 at 1925-26, 1947.) The Chancellor reversed and held that the MWUA must actually reassess all members for both 2004 and 2005 based on corrected mobile home reporting figures. (RE Tab 6 at 4193-97.) The MWUA has always assured all member companies that any recovery of funds from any company that misreported its mobile home property premiums to the Insurance Department would be applied against Katrina claims, reducing the likelihood of a fourth Katrina assessment. If any recoverable funds were not necessary for Katrina claims, they would be distributed to the other member companies at their post-true-up 2005 percentages of participation – the same percentages

upon which their assessments were calculated. (RE Tab 8 at 57-58; RE Tab 10 at 1926.) By refunding any "mobile home recovery" on the same percentages as assessments were calculated, the mathematical result is the same as adding in the mobile home premiums and recalculating percentages of participation.

SUMMARY OF THE ARGUMENT

The Chancellor applied the wrong standard of review. Instead of granting proper deference to the decisions of the Commissioner, the Chancellor substituted his judgment for that of the Commissioner. The Chancery Court made new findings of fact, largely based on unsubstantiated arguments in the briefs of the Appellees, and issued new conclusions of law based on those findings. In short, the Chancery Court abandoned its limited role as an intermediate appellate court.

This Court has recognized that the Commissioner of Insurance is a specialist in a complex field. On appeal, decisions of the Commissioner are to be afforded great deference, and they are entitled to a rebuttable presumption of correctness. The Commissioner's rulings can only be overturned if they (1) are not undergirded by substantial evidence; (2) are arbitrary and capricious; (3) are beyond the Commissioner's powers; or (4) violate some statutory or constitutional right of a complaining party. Acts are only arbitrary and capricious if they are done whimsically, with no reason, and in disregard of established facts and legal principles. These proper, limited standards of review make it clear that the Chancellor's decision should be vacated and the decisions of the Commissioner should be reinstated. The Commissioner reached proper results based on the facts presented and based on the statutory scheme, the Plan, and the Rules governing the MWUA.

The statutory scheme establishing the MWUA sets out general principles for the MWUA to follow but largely leaves the specifics of implementing those principles to the MWUA. The MWUA's enabling statutes necessarily imply the authority for the MWUA to set deadlines for

member companies' reporting of premium data. They likewise necessarily imply the authority to enforce those deadlines. Because the Legislature gave no auditing or company examination authority to the MWUA, it must rely on accurate and timely reporting of premium data by its members in order to function. The Plan, Rules, and notices to member insurance companies establish the manner of reporting.

When the MWUA ordered the true-up period in which member companies could submit corrected 2004 premium data for determination of calendar year 2005 participation percentages of participation, it acted within its necessarily implied authority. It also acted in an equitable manner and in a fair and nondiscriminatory manner. All member companies were given an equal opportunity to correct data. All member companies were afforded the same time period in which to correct their data, and all member companies were given notice of the opportunity. Many member companies submitted corrected data. A few companies simply did not act to take advantage of the opportunity, despite the clear notice – conveyed on more than one occasion – that no corrected data submitted after March 1, 2006 would be considered. This is not the fault of the MWUA, the Board, the MWUA staff, or the other MWUA members. The MWUA assessment process should not be disturbed on the basis of the internal failures of these few companies, which simply seek to reduce their assessments and push the dollar responsibility for their internal failures to other member companies.

The Commissioner properly approved the MWUA's method of reinsurance allocation. The MWUA is not a member of the NAIC and is not subject to NAIC reporting and accounting requirements, which by law apply only to insurance companies. Nevertheless, at the urging of the Appellee insurance companies, the Chancellor imposed NAIC accounting standards on the MWUA.

The Commissioner correctly recognized that there is absolutely no statutory, regulatory, or

other legal basis for imposing NAIC accounting methods on the MWUA. The MWUA used its historical accounting method for collecting assessments and allocating reinsurance, about which no member company had ever previously complained. There was nothing arbitrary or capricious in the Commissioner's decision approving this longstanding method. The method, itself, is necessary in order for the MWUA to make assessments to have money on hand to pay claims. By contrast, it was arbitrary and without legal basis for the Chancellor to order that the MWUA follow NAIC accounting, when the Mississippi Legislature nowhere required that it do so.

MWUA assessments are not privilege taxes. They are not paid to the State Auditor, the State Tax Commission, or the Commissioner of Insurance. Because the MWUA assessments are not taxes, the statutes governing tax refunds and granting three years to demand a tax refund have no application to the MWUA. Had the Legislature meant to apply any such standards to the MWUA, it would have said so. It did not.

The Insurance Department has successfully resolved the issue of companies who wrongly reported mobile home coverage premiums as auto premiums on their quarterly and annual statutory financial statements filed with the Insurance Department. Correcting those filings was an Insurance Department issue. The MWUA does not control what materials companies file with the Insurance Department. Money from any company that wrongly reported mobile home premiums has been used to close out Katrina claims, which is in effect a *pro rata* distribution to other members based on their percentages of participation. This *pro rata* distribution method is consistent with the method set out by the Legislature for dealing with a member's underpayments to the MWUA in another context. It is not arbitrary and capricious.

The MWUA already has Rules and statutes governing appeals of any of its acts or decisions, including assessments. It already has a definition of farm property. The MWUA should not be

required to take further action with regard to rules, procedures, and definitions it already had in place.

ARGUMENT

I. The Standard of Review

A. The Proper Standard of Review

The Mississippi Supreme Court has recognized that the Commissioner of Insurance is a specialist in a complex field. *Mississippi Ins. Comm'n v. Mississippi State Rating Bureau*, 220 So. 2d 328, 333 (Miss. 1969). On appeal, decisions by the Commissioner are to be afforded great deference and are entitled a rebuttable presumption of correctness. *Davis-Everett v. Dale*, 926 So. 2d 279, 281 (Miss. Ct. App. 2006). The Commissioner's rulings can only be overturned if they are "(1) unsupported by substantial evidence, (2) arbitrary and capricious, (3) beyond the powers of the [Commissioner] to make, or (4) violative of a statutory or constitutional right of [the complaining party]." *Id.*

"Arbitrary and capricious" has been defined, as follows:

> An act is arbitrary when it is done without adequately determining principle, not done according to reason or judgment, but depending upon the will alone, absolute in power, tyrannical, despotic, non-rational,-implying either a lack of understanding of or a disregard for the fundamental nature of things ... An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or disregard for the surrounding facts and settle controlling principles.

Lowe v. Lowndes County Bldg. Inspection Dept., 760 So. 2d 711, 713 (Miss. 2000) (quotations omitted). The Commissioner's decision can only be reversed if this Court finds that the Commissioner "entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible

that it could not be ascribed to a difference in view or the product of any agency expertise." *Id.* at 714.

This Court's review of the Commissioner's findings is limited, and the appellate Court does not "substitute its own judgment in place of the agency's decision and may not reweigh the evidence." *Bay St. Louis Cmty. Ass'n v. Commission on Marine Resources*, 808 So. 2d 885, 890 (Miss. 2001). *See also Public Employees' Ret. Sys. v. Shurden*, 822 So. 2d 258, 263 (Miss. 2002).

B. The Standard of Review Applied by the Chancellor

In reviewing the decisions of the Commissioner, the Chancellor was required to sit as an intermediate appellate court and apply the same limited standard of review to the Commissioner's decisions that this Court will now apply. *Mississippi State Bd. of Psychological Exam'rs v. Hosford*, 508 So. 2d 1049, 1054 (Miss. 1987); *Tyson Foods, Inc. v. Thompson*, 765 So. 2d 589, ¶13 (Miss. Ct. App. 2000) (Circuit Court applied wrong standard of review when it sat as intermediate appellate court and did not defer to decision of workers compensation commission). However, at the urging of the Appellees, the Chancellor did not apply this standard of review. The Appellees asserted that, since the MWUA is not an administrative agency, decisions by its Board that are appealed to the Commissioner are not entitled to the deference traditionally afforded decisions made by administrative agencies.

This argument overlooks that the Chancellor was not reviewing the decisions of the MWUA. The Chancellor was reviewing the decisions of the Commissioner – an administrative agency – which had reviewed the decisions of the MWUA and upheld them. The Commissioner upheld the MWUA decisions after *de novo* evidentiary hearings and fact-finding.

In support of their argument, the Appellees relied on a case involving the Mississippi Insurance Guaranty Association ("MIGA"), where the Mississippi Supreme Court stated that MIGA

"is not a state agency, and therefore MIGA's interpretation of the Insurance Guaranty Act is not entitled to deference." *Owens-Corning v. Mississippi Ins. Guar. Ass'n*, 947 So. 2d 944, 946 (Miss. 2007). But the *Owens-Corning* case was not an appeal from a decision of the Commissioner – or any administrative agency – as MIGA's actions were not appealed to the Commissioner.

By contrast, MWUA decisions are appealed to the Commissioner. Miss. Code Ann. §83-34-19. The Department of Insurance is a state agency, and it is the Commissioner's decision the Chancellor was to review. There is no corresponding statutory provision for MIGA's decisions to be reviewed by the Commissioner. *See generally* Miss. Code Ann. §83-23-101 *et seq.* Instead, a party aggrieved with a decision made by MIGA follows the ordinary course of civil litigation and files a direct suit against MIGA. No state agency is involved, and no agency decision is reviewed. In *Owens-Corning*, that is exactly what happened, and the Mississippi Supreme Court applied the ordinary standards of review applicable in a direct suit heard by the lower court *de novo* in which no intermediate state agency decision is involved. *Owens-Corning*, 947 So. 2d at 945.

By contrast, the MWUA appeal and review process is unique, pursuant to statute and the MWUA Plan and Rules. It is this procedural process that dictates the appropriate standard of review to apply and that has been applied in the past in appeals involving the MWUA's predecessor association (MIUA). *Maenza*, 413 So. 2d at 1389. Thus, the Chancellor erred when he conducted a *de novo* review, made new fact findings of his own, and failed to give deference to the decisions of the Commissioner.

The Commissioner did not err in conducting a *de novo* factual review, while giving deference to the overall decision of the Board regarding the member companies' appeals. *Morf v. North Cent. Miss. Bd. of Realtors, Inc.*, 27 So. 3d 1188, ¶29 (Miss. Ct. App. 2009) (decision of private association Board applying its own rules and regulations reviewed under arbitrary and capricious

standard). Even if it could be said that the Commissioner somehow erred in giving any level of deference to the MWUA's interpretation and application of its own Plan and Rules, that error was harmless. The Commissioner reached the proper decision, consistent with the facts and with the law governing the MWUA. His decisions should have been affirmed by the Chancellor, and they should be reinstated by this Court. A review of the Commissioner's decisions shows that the Commissioner carefully examined each issue presented by the MWUA member companies along with the arguments presented by all parties, and properly determined that the Board's actions were neither (1) unsupported by substantial evidence; (2) arbitrary and capricious; (3) beyond the powers of the Board to make; nor (4) in violation of the MWUA members' statutory rights.

II. The MWUA Board Had the Authority to Establish a Reporting Deadline for the True-Up and Enforce It.

A. MWUA Authority to Set the March 1, 2006 Deadline

Union National, U.S. Fire, Farmers, and Homesite essentially claimed that they should be able to submit additional or revised voluntary credit data at any time they chose, with no enforceable deadline. OneBeacon claimed it should be able to submit farm property premium data for exclusion from net direct premiums at any time. RLI claimed it should be able submit a corrected insurer's report of its net direct premiums at any time.[28]

Each of these positions, accepted by the Chancellor, would make it impossible for the MWUA to operate and timely pay valid policyholder claims. The MWUA would have no way to issue a final set of member percentages of participation for profits, losses, or expenses in any given

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The Chancellor's opinion states that RLI sought to submit voluntary credit data. This is incorrect and is in error. RLI desired to submit a corrected insurer's report of statewide premiums for 2004 – the report that is usually due on April 1 of each year – not the separate voluntary credit reporting bordereau that is normally due on March 1 of each year.

policy year. If member companies could continually re-submit new and revised or regrouped data, then the MWUA would be forced to continually revise member percentages of participation for a given policy year. The MWUA would then have to continually reassess all members for a given policy year, never knowing when the open-ended process of determining member participation for that policy year, and issuing assessments based on it, would be concluded. Eventually, member companies would begin to ignore the umpteenth revised assessment, leaving the MWUA no avenue but collection suits. Moreover, insurance companies would lose confidence in the MWUA and Mississippi's regulation of insurance. It would end the MWUA's ability to pay claims.

The Chancellor's decision was based on the idea that the word "shall" contained in Miss. Code Ann. §83-34-9 prevented the Board from setting or enforcing any data reporting deadlines that would potentially deny annual voluntary credits or exclusion of farm property premiums from net direct premiums. In essence, the Appellees want "shall" to mean "forever." This is a misreading of the statute's limiting language concerning receipt of voluntary credits and determination of member company percentages of participation. The Chancellor's decision also wholly ignored other statutes concerning the MWUA's powers and ignored the MWUA's validly-enacted Rules which place the responsibility for timely and accurate reporting on the member companies.

Section 83-34-9 actually contains limiting language which precludes the result sought by the Appellees and dictated by the Chancellor's decision. Critically, the statute says:

> A member shall, **in accordance with the plan of operation**, annually receive credit for essential property insurance voluntarily written in a coast area, and its participation in the writings of the association shall be reduced **in accordance with the provisions of the plan of operation**. Each member's participation in the association shall be determined annually in the manner provided **in the plan of operation**.

Miss. Code Ann. §83-34-9 (emphasis added). Thus, the word "shall" in the statute is not absolute

nor does it mean "forever." It is consistently modified, throughout the statute, by the phrase "in accordance with the plan of operation." It is also consistently modified by the term "annually." The Mississippi Legislature simply left it to the MWUA to determine how the credit system would work and instructed that it be applied "annually." The MWUA was empowered by the Legislature to set rules. Miss. Code Ann. §83-34-29. The Legislature recognized that the data to determine net direct premiums must come from the MWUA member companies. Further, it empowered the Commissioner to require any necessary information from any member of the MWUA in order for the annual participation percentages to be determined. Miss. Code Ann. §83-34-9.

Statutes must be read as a whole, and amending phrases, terms, and complementary statutes must be considered. *See, e.g., Brady v. John Hancock Mut. Life Ins. Co.*, 342 So. 2d 295, 303 (Miss. 1977). As the Commissioner found, an MWUA member company can only receive credit, exclusion of farm premiums, or assessment based on any particular net direct premium figure, if the company submits that information to the MWUA at the appropriate time, annually. In fact, the MWUA Rules expressly require companies to set up their internal procedures so as to timely and accurately report voluntary credits. (RE Tab 12 at 238.) The Board validly and expressly set an annual deadline for reporting of voluntary credits and farm property exclusions. (RE at Tab 13.) It validly set an annual deadline for reporting of statewide wind and hail premiums. (RV43 at 3443-48.) Similarly, the Board validly set a March 1, 2006 deadline for all member companies to participate in the true-up and submit revised or corrected 2004 premium data for use in calculating calendar year 2005 member participation percentages.

A state created entity such as the MWUA has the powers that are expressly granted to it by statute as well as those powers that are "necessarily implied" by the statutory grant of authority. *Mississippi Pub. Serv. Comm'n v. Columbus & Greenville Ry. Co.*, 573 So. 2d 1343, 1346 (Miss.

1990).

> "Necessarily implied" refers to a logical necessity and means that no other interpretation is permitted by the words of the instrument construed, and it has been defined as an implication which yields so strong a probability of intent that any intention to the contrary cannot be supposed leaving no room for doubt. *Strong v. Bostick*, 420 So. 2d 1356, 1361 (Miss. 1982) (citing 42 *C.J.S. Implication* at 405 (1944)). Furthermore, any such power exercised by an administrative agency must be found within the four corners of the statute under which it operates.

Id. at 1346-47. The Legislature's fixing of an annual system for operation of the MWUA necessarily implies to the MWUA the authority to set the deadlines that are necessary to operate that system and for the MWUA to meet its own obligation to report annually to the Commissioner (§83-34-25). Without such authority to set deadlines, the MWUA would simply be unable to operate the annual system set forth by the Legislature. Because member reporting deadlines are a necessary aspect of the MWUA's carrying out of its legislative mandate, the power to set deadlines is one that is necessarily implied to the MWUA.

Rather than rendering an arbitrary and capricious decision, the Commissioner was correct in determining that the MWUA had the authority to set reporting deadlines, including the reporting deadline of March 1, 2006 for the true-up. By doing so, the MWUA remained within the boundaries provide in its statutes. The Chancellor erred as a matter of law in determining otherwise, based on his isolated reading of the word "shall" in the statutes creating the MWUA and providing it with its grant of authority.[29] The Chancery Court decision should be reversed, and the decisions of the

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In fact, after indicating that the statutory word "shall" prohibited the MWUA from establishing any deadline that might deny a voluntary credit if a member missed the deadline, the Chancery Court went on to indicate that the MWUA could, nevertheless, put such a deadline in place as long as it published that deadline in the Plan and had approval from the Commissioner. (RV29 (continued...)

Commissioner should be reinstated.

B. MWUA Authority to Enforce the March 1, 2006 Deadline

All six of these companies simply missed all of the MWUA deadlines in some respect. They admittedly, just like several other companies, missed the MWUA regular annual March 1, 2005 and April 1, 2005 deadlines for correctly reporting 2004 voluntary credit data, farm property exclusion data, and statewide premium data. Because of the number of members reporting that they had made errors, the MWUA acted equitably and in the only fair and nondiscriminatory manner possible to allow corrections by all members. It gave all member companies the identical opportunity and held all member companies to that identical opportunity. It provided all companies a second chance to submit data that should have been submitted correctly in March and April 2005.

The Commissioner was correct – not arbitrary or capricious – to determine that the MWUA had the authority to enforce the March 1, 2006 deadline, even in the face of the excuses proffered by these companies for missing it. Along with the authority to set deadlines comes the authority to enforce them. If authority to enforce deadlines is not necessarily implied as part of the authority to set them, then such deadlines are absolutely meaningless. The authority to set deadlines would be no authority at all. That is not what the Mississippi Legislature intended when setting up an association of member insurers to be sure that wind and hail coverage – and, critically, the money to pay wind and hail coverage claims – was available to residents of Mississippi's coastal counties.

When the Board established and allowed all member companies a true-up period and set a March 1, 2006 deadline, each of these six companies simply missed that deadline, too. The

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[29](...continued)
at 4183). There is little to explain this internal inconsistency except that it is based, in the first instance, on a wrong reading of the statute and the term "shall."

companies' arguments that they should be excused from the deadline were all based on their own internal operational failures.

U.S. Fire claimed it had no record of receiving the February 1, 2006 MWUA second true-up notice, and Homesite claimed it had no record of receiving either the January 17, 2006 or February 1, 2006 true-up notice. However, each of these companies inexplicably got all of their other MWUA mail, and they presented absolutely nothing to overcome the strong legal presumption that they, likewise, received both the January 17 and February 1 MWUA mail sent to their usual address (just like the other mailings admittedly received).

Although Homesite also claimed it had no record of receiving an MWUA welcome packet, it admittedly never checked the records of Royal Special Risks, the company it bought that was already a member of the MWUA and that had been reporting to the MWUA for years. The Commissioner appropriately applied the strong presumption in Mississippi law that mail sent to a person's valid address is presumed to have been received. *Holt v. Mississippi Emp. Sec. Comm'n*, 724 So. 2d 466, ¶¶17-24 (Miss. 1998) (bare denial that mail was received is insufficient to overcome presumption, particularly when facts show earlier and later notices were received at same address).

Farmers did not deny receiving the true-up notices but claimed it did not fully realize the financial effects of grouping in a loss year and also claimed that 30-days' notice was not sufficient time for it to regroup with Foremost. This ignored that Farmers actually received 43 days' notice of the true-up and that Farmers was already group reporting with another company (Truckers Insurance Exchange) and was obviously aware of the effects of grouping for sharing of voluntary credits. Union National likewise did not deny receiving the notices, but rather claimed an employee mistake.

OneBeacon claims that it did not know about the definition of farm property or how to claim

farm property premium exclusions in time to meet the March 1, 2006 true-up reporting deadline. However, OneBeacon had been an MWUA member for several years. OneBeacon does not claim it never received an MWUA Welcome Packet with instructions about claiming farm property exclusions. Instead, OneBeacon simply argues it was unreasonable for the MWUA to expect companies to retain that information and follow it. In any event, the availability of an exclusion for farm property premiums is evident from Mississippi's statutes and from the MWUA's Plan and Rules. OneBeacon simply did not notice it or inquire into it in any way that was timely to meet the March 1, 2006 true-up deadline.

RLI admittedly received the MWUA notices about the true-up. It even participated in the true-up and submitted corrected figures. RLI now claims that it wants to submit further corrected figures. Its argument that its "appeal" letter submitted in December 2005 excused it from participating in the true-up is unusual, to say the least. First, it is not clear that the letter even constituted an appeal. However, even if it did, that appeal concerning the December 2, 2005 assessment was resolved and mooted. The true-up provided any and all relief RLI could have sought by an appeal of the December 2, 2005 assessment. It offered RLI the opportunity to submit new, corrected, and accurate data to the MWUA for a recalculation of participation percentages and a revised assessment based on new, accurate data. RLI participated in the true-up and was clearly aware of its opportunity. It simply failed to fully utilize that opportunity.

Rather than demonstrate any reason for excusing these companies' compliance with the March 1, 2006 true-up deadline, the excuses do nothing more than point out that Union National, U.S. Fire, Homesite, Farmers, OneBeacon, and RLI were not properly tending to their MWUA reporting duties until the size of the losses occasioned by Hurricane Katrina got their attention.

Every MWUA member company's percentage of participation necessarily affects every other

member company's percentage of participation – the total must equal 100%. In light of this, it would actually have been arbitrary and capricious for the MWUA not to enforce the true-up deadline or for the Commissioner to hold that the MWUA must excuse these companies from the deadline. Otherwise, any single company that was dilatory and in violation of the MWUA's Rules could, at any time, affect the percentages of participation of companies that complied with the MWUA's Rules. Continual additional reassessment based on ever-changing member percentages of participation is impossible to manage. By enforcing a deadline to ensure that the member percentages could be effectively calculated in time to assess the monies necessary to pay policyholder claims, yet by doing so in a way that gave MWUA members a chance to be sure they submitted accurate data, the MWUA acted reasonably and within its authority. The Commissioner was correct in his ruling in that regard. The Chancellor, however, was in error. The Chancellor's decision ordering yet another true-up for 2005 should be reversed, and the Commissioner's decisions should be reinstated.

III. The Commissioner Properly Approved the MWUA's Manner of Allocating Reinsurance, and His Decision in That Regard Should Be Reinstated.

After Hurricane Katrina, the MWUA received $175 million in reinsurance, immediately using that money to pay for policyholders' losses. When it was time to allocate the reinsurance recoveries between policy year 2004 and policy year 2005, the MWUA followed its longstanding historical procedure used after other hurricane loss years – use the reinsurance recoveries to close out losses from the previous policy year so there would only be assessments based on the one set of percentages for the physical year of the loss. Applying $116 million of the reinsurance to policy year 2004 closed out that year and eliminated the need for a double assessment based in part on 2004 percentages of participation and in part on 2005 percentages of participation.

While several of the Appellee companies complain that this is an incorrect form of accounting, none of them can direct this Court to any statute or regulation that mandates the MWUA to use the NAIC form of accounting (or any other form of accounting) that the Appellee companies espouse. They simply disagree with the accounting form used by the MWUA because they say they believe they would benefit more from a different form. This overlooks that other companies might be disadvantaged by a different form.

The Commissioner correctly recognized that there was absolutely no statutory, regulatory, or other legal basis for this argument by the Appellee companies. The MWUA used its historical accounting method, about which no member company had ever previously complained, and there was nothing arbitrary or capricious about the Commissioner's decision approving this. It was, in fact, arbitrary and without legal basis for the Chancellor to order that the MWUA follow NAIC accounting, when the legislature nowhere required that it do so. The MWUA is not an insurance company and not subject to Miss. Code Ann. §83-5-55, regardless of the fact that its member companies are subject to this statute. The Chancellor's decision on this point should be vacated and the Commissioner's decision reinstated, leaving the MWUA able to operate based on its historical accounting method which assists in preserving the MWUA's ability to timely pay policyholder claims.

IV. The Commissioner Properly Held That MWUA Assessments Are Not Privilege Taxes.

Several Appellees argued that the MWUA's assessments constitute a privilege tax, imposed on members as a condition of their doing business in Mississippi. The Commissioner properly rejected this argument, as Mississippi's privilege tax statutes have absolutely nothing to do with MWUA assessments. By contrast, the Chancellor held that the assessments are privilege taxes pursuant to Miss. Code Ann. §27-73-1 and are therefore subject to a three-year statute of limitations

for any member company to demand a refund, pursuant to Miss. Code Ann. §27-73-5. The Chancellor's decision was wrong as a matter of law. It should be reversed, and the Commissioner's decision on this issue should be reinstated.

Mississippi's statute concerning overpayment of privilege taxes provides:

> If any person, firm or corporation has paid, or shall hereafter pay to the **Auditor of Public Accounts, State Tax Commission, or the Commissioner of Insurance**, through error or otherwise, whether paid under protest or not, any ad valorem, privilege or excise tax for which such person, firm or corporation was not liable, or any such taxpayer has paid any tax in excess of the sum properly due and such erroneous payment or overpayment has been paid into the proper treasury, the taxpayer shall be entitled to a refund of the taxes so erroneously paid.

Miss. Code Ann. §27-73-1 (emphasis added).

This statute, simply put, has absolutely nothing whatsoever to do with the MWUA and its assessments. MWUA assessments are not paid to the State Auditor, the State Tax Commission, or to the Commissioner of Insurance. MWUA assessments are not taxes imposed on all insurance companies as a condition of doing business in this state. Rather, they are assessments made only of those insurance companies both doing business in this state and taking advantage of the opportunity to write property insurance in Mississippi. Those companies doing business in Mississippi who do not write property coverage in any given year are not MWUA member companies in that year and are not assessed for excess losses.

While the Chancellor's opinion cited numerous decisions regarding tax refund remedies, they are completely inapplicable because MWUA assessments are not a tax. (RV29 at 4187.) Had the Legislature desired to relate the MWUA membership and assessment process to these tax statutes and the manner in which tax refunds operate, it could have. It did not. The MWUA assessment system and Mississippi's tax systems are two entirely different, disparate systems. One has nothing

to do with the other.

Subjection of the MWUA's assessment system to the tax code's three-year statute of limitations for demanding refunds would wreak havoc on the MWUA assessment process. Unlike an individual tax refund, which affects only one individual taxpayer, a refund and consequent change in one MWUA member's assessment necessitates a recalculation of every other MWUA member's participation percentages and a reassessment for every MWUA member. If this process were to remain open for three years, the MWUA would be unable to have any stable assessment process by which to collect funds due it and timely pay policyholder claims. Aside from the error made by the Chancellor as a matter of law, the implication that a three-year statute of limitations applies would subject the MWUA to recalculations and reassessments, *ad infinitum*, for any given policy year of participation and a resulting delay in paying policyholder claims.

The Chancellor's ruling on this issue should be vacated, and the Commissioner's decisions reinstated.

V. The Commissioner Correctly Held That the Issue of Proper Reporting of Mobile Homes Was Not Properly Part of the Member Companies' Appeals of Decisions of the MWUA Board, as the Mobile Home Issue Was an Issue Being Pursued By the Mississippi Department of Insurance.

The Chancellor held that the MWUA had allowed member companies to wrongly submit reports based on premium classification of mobile home insurance coverage as auto insurance rather than property insurance. The Chancellor further stated that the MWUA accepted this information, despite mis-classifications and errors in reporting. (RV29 at 4196.) The Chancellor is not sitting as a fact-finder. Moreover, the record does not support this conclusion, and nothing could be further from the truth. The Chancellor erred on this issue, evidently misunderstanding it, and once again wrongly substituted himself for the Commissioner. The Chancellor's decision should be vacated and

the Commissioner's decision reinstated.

In May 2006, the Insurance Department discovered that some companies writing mobile home coverage were reporting mobile home premiums as auto coverage premiums and not as property insurance premiums. This was an issue the Insurance Department sought to correct, and it issued its Bulletin 2006-6 (quoted at length in the Chancellor's opinion). The Bulletin advised all insurance companies that mobile home coverage must be reported under the Homeowners Multiple Peril line on the statutory financial statements that insurance companies are required to file quarterly and yearly with the Insurance Department. This Insurance Department Bulletin ordered that these premiums be reported correctly on insurance companies annual and quarterly reports to the Insurance Department. By June 15, 2006, amended annual statutory financial statements for the years 2004 and 2005 were to be filed with the Insurance Department by any company that had incorrectly reported its mobile home premiums as auto premiums.

The Bulletin also required that copies of any such amended statements had to be sent to the MWUA. This is because property insurance premiums must be reported to the MWUA, and companies must properly and accurately report to the MWUA to be counted as MWUA members and to assist in supporting the residual market insurance pool for the Mississippi's six coastal counties. The MWUA did not whimsically allow any company to under-report its property premiums or accept any under-reporting. The MWUA simply does not receive auto insurance reports and has no way to know if a company is mis-classifying its premiums as automobile premiums.

It was an Insurance Department issue to identify and, by law, to require proper reporting to the Insurance Department, with copies to the MWUA. Because this was an issue for pursuit by the Insurance Department, the Commissioner correctly held that it was not properly part of any of the

member companies' appeals as against the MWUA. Nevertheless, the MWUA assured its member companies that any monies collected from companies that had previously reported mobile home coverage as auto coverage would be distributed back to the other MWUA member companies *pro rata*, based on their participation percentages, if the funds were not needed for payment of Katrina claims.

Since all members would benefit proportionally to the 2005 percentages of participation, any infusion of additional funds does not change the percentages or create a need for recalculation of the percentages of participation.

The Chancellor was, once again, wrong to substitute himself for the Commissioner to hold that this was arbitrary and capricious, and to require a complete recalculation of assessments for 2004 and 2005 after the Insurance Department finished its investigation into companies that wrongly reported mobile home premiums. It is completely fair and appropriate to handle the issue by *pro rata* distribution of any future monies not needed to finish paying of Katrina claims. The funds ultimately received by the MWUA as a result of corrected reporting were, in essence, deferred payments to the MWUA.

In another context, the Mississippi Legislature has defined how deferred payments to the MWUA should be handled – *pro rata*. Under Miss. Code Ann. §83-34-11, member companies can seek deferment of their assessments in whole or part if payment of an assessment would place the member company in danger of insolvency. If an assessment is deferred, the deferred amount is then assessed against the other MWUA members. The Commissioner prescribes a plan for repayment of the deferred assessment with interest at the six-month treasury bill rate, adjusted semi-annually. Additionally, the member company receiving the deferment cannot participate in profits of the MWUA during the deferment period. Repayments of the deferred monies by the member company

are then handled, by statute, as follows:

> The association shall distribute the repayments, including any interest thereon, to the other member companies on the basis at which assessments were made.

Miss. Code Ann. §83-34-11.

Far from being arbitrary and capricious, the MWUA's decision about how to handle payments from any companies found to have under-reported (and consequently to have under-paid the MWUA) mobile home premiums is exactly consistent with the manner in which the Legislature decided other types of deferred payments should be handled. In holding otherwise, the Chancellor mistakenly substituted his judgment for that of both the Commissioner and the Legislature. This was error. The Chancellor's decision should be vacated, and the decisions of the Commissioner reinstated on this issue.

VI. The Chancellor Erred in Ordering Additional Actions by the MWUA, Such as Setting Statutes of Limitation, Adopting New Rules for Appeals, Amendment of Assessments, Denial of Voluntary Credits, and Defining Farm Property.

The Chancellor further substituted his own judgment for that of the Commissioner when he ordered the following:

> **IT IS FURTHER ORDERED AND ADJUDGED** that MWUA shall adopt rules and/or regulations setting out when and how member companies should appeal, and/or seek to amend their assessments and how each must seek refunds for overassessments. MWUA shall also adopt rules or regulations regarding statute of limitations concerning appeals or seeking a reduction in assessment. Finally, MWUA shall adopt a rule or regulation specifically defining farm property.

(RV29 at 4199.) The Chancellor inexplicably ordered the MWUA to do exactly what it had already done before the true-up ever occurred and before these appeals ever occurred, as if the MWUA's prior statutes and operational Rules did not even exist.

The MWUA, in its form of existence relevant to these consolidated cases, already had an appeal procedure, set forth by the Mississippi Legislature and the MWUA Plan. The MWUA Plan already provided the following with regard to appeals:

> any affected insurer may appeal to the Board of Directors within fifteen days after final ruling, action, or decision of the Association. The Board or an Appeals committee designated by the Board shall hear and determine such appeal within fifteen days after the same is filed. Such determination may be appealed to the Commissioner within thirty days as provided by Statute.
>
> Orders of the Commissioner shall be subject to judicial review as provided by Statute.

(RV 2 at 100; Section VII-APPEALS.) The statutes governing the MWUA, as established by the Mississippi Legislature provide:

> any affected insurer who may be aggrieved by an act, ruling or decision of the association may, within thirty (30) days after such ruling, appeal to the commissioner. Any hearings held by the commissioner pursuant to such an appeal shall be in accordance with the procedure set forth in the insurance laws of Mississippi. The commissioner is authorized to appoint a member of his staff for the purpose of hearing such appeals, and a ruling based upon such hearing shall have the same effect as if heard by the commissioner. All persons or insureds aggrieved by any order or decision of the commissioner may appeal as provided by the insurance laws of the State of Mississippi.

Miss. Code Ann. §83-34-19.

The Mississippi Legislature, and the MWUA in its Plan, have already set forth a procedure and deadline (*i.e.*, statute of limitations) for appeals of any ruling, action, or decision by the MWUA. This includes appeals of assessments. It includes appeals that seek amendment of assessments or refunds of alleged over-assessments. The Commissioner further set forth a procedure to be applied during appeals to the Commission from the MWUA. (RV32 at 106.)

Similarly, the MWUA had already, many years previous, adopted a definition of farm

property. That definition was distributed to the MWUA's members, as was a revision of matters concerning farm property that was issued in 1994. (RE Tab 13 at 816-18.) Thus, the Chancellor's order to adopt a definition of farm property wrongly ignored that this had already been done by the MWUA long before.

This was yet another instance in which the Chancellor incorrectly substituted the his own decision for the Commissioner's. The Commissioner noted, based on substantial evidence as shown by the Plan and the Rules and materials distributed by the MWUA, that such procedures and definitions were already in place at the MWUA. The complaining member companies did not necessarily follow those procedures or pay attention to the MWUA instructions and procedural materials, but this did not invalidate the procedures themselves. To the extent that the Legislature has set the process and deadlines for MWUA appeals, the MWUA cannot set any contrary deadlines. Farm property was already adequately defined by the MWUA. The Chancery Court decision should be vacated and the Commissioner's rulings reinstated.

CONCLUSION

The MWUA needs finality to the Hurricane Katrina assessment process. Prior to these member companies' appeals, the accounting for policy year 2004 was closed. The accounting for policy year 2005 needs to be closed. The MWUA must necessarily have the authority to set and enforce reporting deadlines. Otherwise, it cannot operate. The MWUA followed its longstanding accounting practices with regard to reinsurance allocation, and those practices were necessary to assess for funds to pay claims. MWUA assessments are not taxes. Pursuit of companies that wrongly reported mobile home coverage to the Mississippi Insurance Department on their quarterly and annual NAIC accounting statements to the Mississippi Insurance Department is an Insurance Department issue. It is not an MWUA issue, other than to the extent it brings additional funds to the

MWUA in a deferred manner, which will then be appropriately distributed to member companies, if not needed for claims.

The complaining member companies involved in these appeals have one motivation – they desire to excuse their own internal supervisory and reporting failures and reduce their shares of MWUA Katrina loss assessments. The MWUA gave them a fair, non-discriminatory, and equitable chance to correct their reporting errors. While numerous companies took advantage of this second chance, the Appellees simply did not avail themselves of it.

The Commissioner properly recognized the situation and the MWUA's need for finality in dealing with Katrina losses. He properly held that the MWUA's actions were not arbitrary or capricious, contrary to substantial evidence, or contrary to law. The Commissioner's decisions should be reinstated. By statute, in 2007, the structure of the MWUA completely changed by legislative mandate, and the MWUA should be freed so as to operate under its new structure with issues from the past closed.

Alternatively, should this Court agree with the Chancellor in any respect, then finality is the key. If that is the case, the MWUA seeks specific instructions as to what must be done to achieve finality as to its 2004 and 2005 accounting years. The MWUA also requests that it be clarified that any new true-up would be for all MWUA members, not just the eight complaining companies. That is the only way that a second true-up could be administered fairly, efficiently, and without discrimination.

Respectfully submitted, this 9th day of August, 2010.

BY: 

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CERTIFICATE OF FILING

I, Rebecca Blunden, do hereby certify that I have this day caused to be hand-delivered for filing, via courier, the original and three correct paper copies and an electronic disc of the Brief for Appellant Mississippi Windstorm Underwriting Association, including Appendix A to:

Ms. Kathy Gillis
Mississippi Supreme Court Clerk
Gartin Justice Building
450 High Street
Jackson, Mississippi 39201

This 9th day of August, 2010.

Rebecca Blunden (MSB #[redacted]

CERTIFICATE OF SERVICE

I, Rebecca Blunden, do hereby certify that I have this day caused to be mailed via United States Mail, first class, postage pre-paid, a true and correct copy of the Brief for Appellant Mississippi Windstorm Underwriting Association, including Appendix A to:

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Jackson, Mississippi 39205

Hon. Mike Chaney
Commissioner of Insurance
Mississippi Department of Insurance
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This 9th day of August, 2010.

Rebecca Blunden (MSB [redacted]

APPENDIX A

Miss. Code Ann. §§83-34-1 *et seq.* as in effect in 2005.

C
West's Annotated Mississippi Code Currentness
Title 83. Insurance
Chapter 34. Windstorm Underwriting Association

§ 83-34-1. Definitions

In this chapter, unless the context otherwise requires:

(a) "Essential property insurance" means insurance against direct loss to property as defined and limited in the Windstorm and Hail Insurance form approved by the commissioner.

(b) "Association" means the Mississippi Windstorm Underwriting Association established pursuant to the provisions of this chapter.

(c) "Plan of operation" means the plan of operation of the association approved or promulgated by the Mississippi Insurance Commissioner pursuant to the provisions of this chapter.

(d) "Insurable property" means builder's risk and real property at fixed locations in coast areas or the contents located therein (but shall not include insurance on motor vehicles), which property is determined by the association, after inspection and pursuant to the criteria specified in the plan of operation, to be in an insurable condition; provided, however, any one- or two-family dwelling built in substantial accordance with the standard building code, including the design-wind requirements, which is not otherwise rendered uninsurable by reason of use, occupancy or state of repair, shall be an insurable risk within the meaning of this chapter; but neighborhood, area, location and environmental hazards beyond the control of the applicant or owner of the property shall not be considered in determining insurable condition. Provided, further, that any structure commenced on or after June 1, 1987, not built in substantial compliance with the standard building code, including the design-wind requirements therein, shall not be an insurable risk under the terms of this chapter.

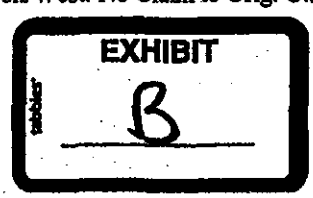
(e) "Commissioner" means the Insurance Commissioner of the State of Mississippi.

(f) "Coast area" means Hancock, Harrison, Jackson, Pearl River, Stone and George Counties.

(g) "Net direct premiums" means gross direct premiums, excluding reinsurance assumed and ceded, written on property in this state for the windstorm and hail causes of loss or equivalent causes of loss components of property insurance policies, including the windstorm and hail causes of loss or equivalent causes of loss components of approved residential package policies and commercial multiple peril policies, less return premiums upon cancelled contracts, dividends paid or credited to policyholders or the unused or unabsorbed portion of premium deposits and excluding premiums on farm property.

CREDIT(S)

Laws 1987, Ch. 459, § 2, eff. from and after passage (approved April 14, 1987).



C
West's Annotated Mississippi Code Currentness
Title 83. Insurance
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§ 83-34-3. Mississippi Windstorm Underwriting Association

There is hereby created the Mississippi Windstorm Underwriting Association, consisting of all insurers authorized to write and engaged in writing property insurance within this state on a direct basis. Every such insurer shall be a member of the association and shall remain a member of the association so long as the association is in existence as a condition of its authority to continue to transact the business of insurance in this state.

CREDIT(S)

Laws 1987, Ch. 459, § 3, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⚿1221(1).
WESTLAW Topic No. 217.

Miss. Code Ann. § 83-34-3, MS ST § 83-34-3

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

END OF DOCUMENT

C
West's Annotated Mississippi Code Currentness
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➡§ 83-34-5. Association powers

The association shall, pursuant to the provisions of this chapter and the plan of operation, and with respect to essential property insurance on insurable property, have the power on behalf of its members:

(a) To cause to be issued, or issue, policies of insurance to applicants;

(b) To assume reinsurance from its members; and

(c) To cede reinsurance to its members and to purchase reinsurance in behalf of its members.

CREDIT(S)

Laws 1987, Ch. 459, § 4, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⚿1207.
WESTLAW Topic No. 217.

Miss. Code Ann. § 83-34-5, MS ST § 83-34-5

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

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West's Annotated Mississippi Code Currentness
Title 83. Insurance
Chapter 34. Windstorm Underwriting Association

§ 83-34-7. Temporary boards of directors

The Board of Directors of the Mississippi Insurance Underwriting Association as presently constituted shall serve as the temporary board of directors of the association. Such temporary board of directors shall prepare and submit a plan of operation in accordance with Section 83-34-13 and shall serve until the permanent board of directors shall take office in accordance with the plan of operation. The permanent board shall consist of five (5) representatives of the members to be appointed by the temporary board of directors subject to the approval of the commissioner and three (3) agents from the coast area to be appointed by the commissioner.

CREDIT(S)

Laws 1987, Ch. 459, § 5, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⚿1208(1), 1208(2).
WESTLAW Topic No. 217.
C.J.S. Insurance § 1720.

Miss. Code Ann. § 83-34-7, MS ST § 83-34-7

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

END OF DOCUMENT

HISTORICAL AND STATUTORY NOTES

Laws 1987, Ch. 459, § 1, provides:

"The Legislature of the State of Mississippi hereby declares that an adequate market for windstorm and hail insurance is necessary to the economic welfare of the State of Mississippi and that without such insurance the orderly growth and development of the State of Mississippi will be severely impeded; that furthermore, adequate insurance upon property in the coast area is necessary; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future. It is the purpose of this act to provide a mandatory program to assure an adequate market for windstorm and hail insurance in the coast area of Mississippi."

LIBRARY REFERENCES

Insurance ⚿1220.
WESTLAW Topic No. 217.
C.J.S. Insurance § 1709.

JUDICIAL DECISIONS

Construction and application 1

1. Construction and application

Homeowners whose policy had expired without an application for renewal were not "applicants" or "insureds" within the meaning of the Plan of Operation of the Mississippi Windstorm Underwriting Association (MWUA) which provides for appeals, by applicants or insureds, first to the board of MWUA and then to the Commissioner of Insurance. Luedke v. Audubon Ins. Co., 2004, 874 So.2d 1029. Insurance ⚿ 1538

Miss. Code Ann. § 83-34-1, MS ST § 83-34-1

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

END OF DOCUMENT

C
West's Annotated Mississippi Code Currentness
Title 83. Insurance
Chapter 34. Windstorm Underwriting Association

§ 83-34-9. Member participation

All members of the association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premiums of each such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association, as certified to the association by the commissioner after review of annual statements, other reports and any other statistics the commissioner shall deem necessary to provide the information herein required and which the commissioner is hereby authorized and empowered to obtain from any member of the association. A member shall, in accordance with the plan of operation, annually receive credit for essential property insurance voluntarily written in a coast area, and its participation in the writings of the association shall be reduced in accordance with the provisions of the plan of operation. Each member's participation in the association shall be determined annually in the manner provided in the plan of operation. Any insurer authorized to write and engage in writing any insurance, the writing of which requires such insurer to be a member of the association pursuant to the provisions of Section 83-34- 3, who engages in writing such insurance after the effective date of this chapter, shall become a member of the association on the January 1 immediately following such authorization; and the determination of such insurer's participation in the association shall be made as of the date of such membership in the same manner as for all other members of the association.

CREDIT(S)

Laws 1987, Ch. 459, § 6, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance 1211(1).
WESTLAW Topic No. 217.

Miss. Code Ann. § 83-34-9, MS ST § 83-34-9

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

West's Annotated Mississippi Code Currentness
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§ 83-34-11. Assessment deferral; repayment plans

The assessment of a member insurer may, after hearing, be ordered deferred in whole or in part upon application by the insurer if, in the opinion of the commissioner, payment of the assessment would render the insurer insolvent or in danger of insolvency, or would otherwise leave the insurer in such a condition that further transaction of the insurer's business would be hazardous to its policyholders, creditors, members, subscribers, stockholders or the public. In the event that payment of an assessment against a member insurer is deferred by order of the commissioner in whole or in part, the amount by which such assessment is deferred must be assessed against other member insurers in the same manner as provided in Section 83-34-9. In its order of deferral, or in such subsequent orders as may be necessary, the commissioner shall prescribe a plan by which the assessment so deferred must be repaid to the association by the impaired insurer with interest at the six-month treasury bill rate adjusted semi-annually. Any profits, dividends or other funds of the association to which the insurer is otherwise entitled may not be distributed to the impaired insurer but must be applied toward repayment of any assessment until the obligation has been satisfied. The association shall distribute the repayments, including any interest thereon, to the other member companies on the basis at which assessments were made.

CREDIT(S)

Laws 1987, Ch. 459, § 7, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance 1211(5).
WESTLAW Topic No. 217.

Miss. Code Ann. § 83-34-11, MS ST § 83-34-11

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

END OF DOCUMENT

C
West's Annotated Mississippi Code Currentness
Title 83. Insurance
Chapter 34. Windstorm Underwriting Association

§ 83-34-13. Contents of plan of operation

Within forty-five (45) days after the passage of this chapter, the directors of the association shall submit to the commissioner for review and approval a proposed plan of operation. Such proposed plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors; shall grant proper credit annually to each member of the association for essential property insurance voluntarily written in the coast area; and shall provide for the efficient, economical, fair and nondiscriminatory administration of the association. Such proposed plan may include a preliminary assessment of all members for initial expenses necessary to the commencement of operation, the establishment of necessary facilities, management of the association, plans for the assessment of members to defray losses and expenses, underwriting standards, procedures for the acceptance and cession of reinsurance, procedures for determining the amounts of insurance to be provided to specific risks, time limits and procedures for processing applications for insurance, and for such other provisions as may be deemed necessary by the commissioner to carry out the purposes of this chapter.

The proposed plan shall be reviewed by the commissioner and approved if he finds that such plan fulfills the purposes provided by Section 1 of Chapter 459, Laws 1987. In the review of the proposed plan, the commissioner, in his discretion, may consult with the directors of the association and may seek any further information which it deems necessary for a decision. If the commissioner approves the proposed plan, he shall certify such approval to the directors, and the plan shall become effective ten (10) days after such certification. If the commissioner disapproves all or any part of the proposed plan of operation, he shall return the same to the directors with a written statement giving the reasons for disapproval and any recommendations the commissioner may wish to make. The directors may alter the plan in accordance with the commissioner's recommendation or may, within thirty (30) days from the date of disapproval, return a new plan to the commissioner. Should the directors fail to submit a proposed plan of operation within forty-five (45) days following passage of this chapter, or a new plan which is acceptable to the commissioner, or accept the recommendation of the commissioner within thirty (30) days after disapproval of the plan, the commissioner shall promulgate and place into effect a plan of operation certifying the same to the directors of the association. Any such plan promulgated by the commissioner shall take effect ten (10) days after certification to the directors.

The directors of the association may, subject to the approval of the commissioner, amend the plan of operation at any time. The commissioner may review the plan of operation at any time he deems expedient or prudent. After review of such plan, the commissioner may amend the plan after consultation with the directors of the association and upon certification to the directors of such amendment.

CREDIT(S)

Laws 1987, Ch. 459, § 8, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⚿1207.
WESTLAW Topic No. 217.

Miss. Code Ann. § 83-34-13, MS ST § 83-34-13

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

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West's Annotated Mississippi Code Currentness
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§ 83-34-15. Application for coverage; issuance; appeal

(1) Any person having an insurable interest in insurable property is entitled to apply to the association for such coverage and for an inspection of the property on or after the effective date of the plan of operation. Applications shall be made on behalf of the owner of the insurable interest by a licensed resident broker or agent authorized by him. Applications shall be submitted on forms prescribed by the association.

The commissions paid to the submitting broker or agent shall not exceed fifteen percent (15%) of the premium.

The term "insurable interest" as used in this subsection shall be deemed to include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage.

(2) If the association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued, or issue, a policy of essential property insurance for a term of one (1) year. Any policy issued pursuant to the provisions of this section shall be renewed annually, upon application therefor, so long as the property meets the definition of "insurable property" set forth in Section 83-34-1. Such coverage limits shall be determined by the value of the insurable property at the time the policy is issued subject to maximum limits which shall be set forth under the plan of operation adopted by the board; provided that the commissioner may revise any limit which he determines to be inadequate. The coverage afforded by policies issued by or through the association shall not be subject to any deductible or coinsurance provision except as specifically approved by the commissioner.

(3) If the association for any reason denies an application and refuses to issue or cause to be issued an insurance policy on insurable property to any applicant, or takes no action on an application within the time prescribed in the plan of operation, such applicant may appeal to the commission. The commission or a designated member of its staff, after reviewing the facts, may direct the association to issue or cause to be issued an insurance policy to the applicant. In carrying out its duties pursuant to this section, the commission may request, and the association shall provide, any information the commission deems necessary to a determination concerning the reasons for the denial or delay of the application.

CREDIT(S)

Laws 1987, Ch. 459, § 9, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⇐1211(2).

WESTLAW Topic No. 217.

JUDICIAL DECISIONS

Construction and application 1/2
Delivery of application 1
Notice of expiration 2

1/2. Construction and application

"Cancellation" means termination of a policy prior to the expiration of the policy period by an act of one or all of the parties; in contrast, "termination" refers to the expiration of the policy by lapse of the policy period. Luedke v. Audubon Ins. Co., 2004, 874 So.2d 1029. Insurance ⚷ 1912; Insurance ⚷ 1941; Insurance ⚷ 1962

Termination of homeowners' policy when they failed to pay annual premium to renew it was not "cancellation" for non-payment of premium within the meaning of Mississippi Windstorm Underwriting Association's (MWUA) Plan of Operation which requires notice of cancellation for non-payment of premium; the policy expired by lapse of the policy period. Luedke v. Audubon Ins. Co., 2004, 874 So.2d 1029. Insurance ⚷ 2044(1)

Homeowners whose policy had expired without an application for renewal were not "applicants" or "insureds" within the meaning of the Plan of Operation of the Mississippi Windstorm Underwriting Association (MWUA) which provides for appeals, by applicants or insureds, first to the board of MWUA and then to the Commissioner of Insurance. Luedke v. Audubon Ins. Co., 2004, 874 So.2d 1029. Insurance ⚷ 1538

1. Delivery of application

Inasmuch as insurance company adopted postal service as its agent and insured's insurance agent mailed applications two days before the due date, in apt time to reach insurer's office, failure of the application to reach the insurer until one day past due would not defeat coverage. Mississippi Ins. Underwriting Ass'n v. Maenza (Miss. 1982) 413 So.2d 1384. Insurance ⚷ 1729

Automatic renewals of insurance policies which are delivered on time show that the offer for renewal is made by the insurance company when it sends its notice of expiration, and it is accepted by the offeree/insured when he sends in his premium payments to be automatically renewed; therefore, as the offeror, insurance company should bear consequences of any delay on part of the post office. Mississippi Ins. Underwriting Ass'n v. Maenza (Miss. 1982) 413 So.2d 1384. Insurance ⚷ 1902

2. Notice of expiration

Mississippi Windstorm Underwriting Association (MWUA) was not required to send a notice of expiration and renewal to homeowners prior to the expiration of their policy for failure to pay annual premium, even though the MWUA had done so in prior years; the policy expired by its own terms, and mailing a notice of expiration and renewal in prior year was insufficient to establish a course of conduct between the parties as nothing about the past notices suggested that coverage was being provided beyond the date of expiration. Luedke v. Audubon Ins. Co., 2004, 874 So.2d 1029. Insurance ⚷ 1900

Miss. Code Ann. § 83-34-15, MS ST § 83-34-15

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

END OF DOCUMENT

West's Annotated Mississippi Code *Currentness*
Title 83. Insurance
Chapter 34. Windstorm Underwriting Association

§ 83-34-17. Rates and surcharges

The rates, rating plans, rating rules, forms and endorsements applicable to the insurance written by the association shall be those approved for use of the association by the commissioner. Surcharges may be used as approved by the commissioner. Rates shall be nondiscriminatory as to the same class of risk.

CREDIT(S)

Laws 1987, Ch. 459, § 10, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⇐1541.
WESTLAW Topic No. 217.
C.J.S. Insurance § 68.

Miss. Code Ann. § 83-34-17, MS ST § 83-34-17

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

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C
West's Annotated Mississippi Code Currentness
Title 83. Insurance
Chapter 34. Windstorm Underwriting Association

§ 83-34-19. Appeals

Any person insured pursuant to this chapter, or his representative, or any affected insurer who may be aggrieved by an act, ruling or decision of the association may, within thirty (30) days after such ruling, appeal to the commissioner. Any hearings held by the commissioner pursuant to such an appeal shall be in accordance with the procedure set forth in the insurance laws of Mississippi. The commissioner is authorized to appoint a member of his staff for the purpose of hearing such appeals, and a ruling based upon such hearing shall have the same effect as if heard by the commissioner. All persons or insureds aggrieved by any order or decision of the commissioner may appeal as provided by the insurance laws of the State of Mississippi.

CREDIT(S) Laws 1987, Ch. 459, § 11, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⚿1055.
WESTLAW Topic No. 217.
C.J.S. Insurance §§ 36, 37.

Miss. Code Ann. § 83-34-19, MS ST § 83-34-19

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

END OF DOCUMENT

West's Annotated Mississippi Code Currentness
Title 83. Insurance
Chapter 34. Windstorm Underwriting Association

§ 83-34-21. Inspection reports

All reports of inspection performed by or on behalf of the association shall be made available to the members of the association, applicants, agents, brokers and the commissioner.

CREDIT(S)

Laws 1987, Ch. 459, § 12, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance 1603.

WESTLAW Topic No. 217.

Miss. Code Ann. § 83-34-21, MS ST § 83-34-21

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

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West's Annotated Mississippi Code Currentness
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➡§ 83-34-23. Liability

There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner or any of his staff, the association or its agents or employees, or against any participating insurer, for any inspections made hereunder or any statements made in good faith by them in any reports or communications concerning risks submitted to the association or at any administrative hearings conducted in connection therewith under the provisions of this chapter.

CREDIT(S)

Laws 1987, Ch. 459, § 13, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⚿1035, 1223, 1227(4).
WESTLAW Topic No. 217.
C.J.S. Insurance §§ 38, 1714.

Miss. Code Ann. § 83-34-23, MS ST § 83-34-23

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

END OF DOCUMENT

West's Annotated Mississippi Code Currentness
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§ 83-34-25. Annual statements

The association shall file in the office of the commissioner on or before March 1 of each year a statement which shall summarize the transactions, conditions, operations and affairs of the association during the preceding fiscal year ending December 31. Such statement shall contain such matters and information as are prescribed by the commissioner and shall be in such form as required by him. The commissioner may at any time require the association to furnish to him any additional information with respect to its transactions or any other matter which the commissioner deems to be material to assist him in evaluating the operation and experience of the association.

CREDIT(S)

Laws 1987, Ch. 459, § 14, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance ⚷1230(2).
WESTLAW Topic No. 217.

Miss. Code Ann. § 83-34-25, MS ST § 83-34-25

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

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West's Annotated Mississippi Code Currentness
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§ 83-34-27. Examination of association affairs

The commissioner may from time to time make an examination into the affairs of the association when he deems prudent and, in undertaking such examination, may hold a public hearing. The expenses of such examination shall be borne and paid by the association.

CREDIT(S)

Laws 1987, Ch. 459, § 15, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance 1048.
WESTLAW Topic No. 217.
C.J.S. Insurance § 50.

Miss. Code Ann. § 83-34-27, MS ST § 83-34-27

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

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C
West's Annotated Mississippi Code Currentness
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§ 83-34-29. Rules and regulations

The association is authorized to promulgate rules for the implementation of this chapter, subject to the approval of the commissioner.

CREDIT(S)

Laws 1987, Ch. 459, § 16, eff. from and after passage (approved April 14, 1987).

LIBRARY REFERENCES

Insurance 1058.
WESTLAW Topic No. 217.

Miss. Code Ann. § 83-34-29, MS ST § 83-34-29

Current through End of 2005 Reg. and 1st to 4th Ex. Sess.

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