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BEFORE THE TENNESSEE CLAIMS COMMISSION  
MIDDLE DIVISION AT NASHVILLE

2016 FEB -2 P 3:13

OLD REPUBLIC INSURANCE COMPANY, )  
PENNSYLVANIA MANUFACTURERS' )  
ASSOCIATION INSURANCE COMPANY, )  
MANUFACTURERS ALLIANCE )  
INSURANCE COMPANY and )  
PENNSYLVANIA MANUFACTURERS )  
INDEMNITY COMPANY, )

*Claimants,*

v.

STATE OF TENNESSEE,

*Defendant.*

Claim Nos. X03152011 and  
X20120308 (*Consolidated*)

On Mandate from the Tennessee Supreme  
Court, No. M2013-00904-SC-R11-CV

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**FINAL JUDGMENT ORDER**

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This matter is before the Claims Commission following the Tennessee Supreme Court's decision on appeal and issuance of mandate to the Claims Commission. Pursuant to the decision of the Tennessee Supreme Court on consolidated review in *Chartis Cas. Co., et al. v. State*, --- S.W.3d ---, 2015 WL 5766279 (Tenn. Oct. 2, 2015), the Claims Commission finds that (i) the prior Order entered in this cause by the Claims Commission on March 8, 2013 granting summary judgment to the State of Tennessee and dismissing the Claimants' claims for refunds of retaliatory taxes paid under protest for tax years 2007 through 2011 years should be vacated; (ii) the prior Order entered in this cause by the Claims Commission on January 31, 2013 granting partial summary judgment to Claimants for tax years 2005 and 2006 on statute of limitations grounds should be incorporated herein by reference and made part of this final judgment, a copy of which is attached hereto; and (ii) Claimants Old Republic Insurance Company, Pennsylvania

Manufacturers' Association Insurance Company, Manufacturers Alliance Insurance Company and Pennsylvania Manufacturers Indemnity Company, Appeal No. M2013-00904-SC-R11-CV, are entitled to and should be awarded judgments for full refunds of the retaliatory insurance taxes, penalties, and interest paid under protest for tax years 2005 through 2011 that are the subject of this action, plus additional accrued interest.

It is, accordingly, ORDERED, ADJUDGED, and DECREED that the Claims Commission's prior Summary Judgment Order entered on March 8, 2013 granting summary judgment to the State of Tennessee and dismissing Claimants refund claims for tax years 2007 through 2011 be and hereby is **VACATED**;

It is FURTHER ORDERED, ADJUDGED, and DECREED that the Claims' Commission's prior Order on Motion for Partial Summary Judgment entered on January 31, 2013 granting partial summary judgment to Claimants for tax years 2005 and 2006 be and hereby is **INCORPORATED** by reference and made a part of this Final Judgment Order;

It is FURTHER ORDERED, ADJUDGED, and DECREED that Claimant Old Republic Insurance Company be and hereby is **AWARDED JUDGMENT** for and the State shall pay the principal refund amount of \$2,308,904.25 for retaliatory insurance taxes, penalties, and interest paid under protest by Claimant for tax years 2005 through 2011, plus applicable interest thereon at the rate of 5.25% per annum in accordance with Tenn. Code Ann. §§ 9-8-307(d) and 47-14-121(a)(1), from the respective dates of the amounts paid under protest as set forth below through the date of payment of the refunds. The accrued interest due on the principal refund amount through December 31, 2015 is \$589,573.93, for a total judgment of \$2,898,478.18 as of

December 31, 2015, after which interest shall continue to accrue and shall be paid by the State in the amount of \$332.10 per day through the date of payment of the refund:

- (i) \$424,118 paid under protest on December 17, 2010 for tax year 2005;
- (ii) \$2,292.58 paid under protest on January 12, 2011 for tax year 2005;
- (iii) \$392,793.00 paid under protest on December 17, 2010 for tax year 2006;
- (iv) \$2,34.40 paid under protest on January 12, 2011 for tax year 2006;
- (v) \$255,686.00 paid under protest on December 17, 2010 for tax year 2007;
- (vi) \$1,533.21 paid under protest on January 12, 2011 for tax year 2007;
- (vii) \$618,955.00 paid under protest on December 17, 2010 for tax year 2008;
- (viii) \$4,270.40 paid under protest on January 12, 2011 for tax year 2008;
- (ix) \$312,125.00 paid under protest on February 28, 2011 for tax year 2010;
- (x) \$7,536.66 paid under protest on September 8, 2011 for tax year 2010; and
- (xi) \$287,270.00 paid under protest on February 23, 2012 for tax year 2011.

It is FURTHER ORDERED, ADJUDGED, and DECREED that Claimant Pennsylvania Manufacturers' Association Insurance Company be and hereby is **AWARDED JUDGMENT** for and the State shall pay the principal refund amount of \$239,032.44 for retaliatory insurance taxes, penalties, and interest paid under protest by Claimant for tax years 2005 through 2011, plus applicable interest thereon at the rate of 5.25% per annum in accordance with Tenn. Code Ann. §§ 9-8-307(d) and 47-14-121(a)(1), from the respective dates of the amounts paid under protest as set forth below through the date of payment of the refunds. The accrued interest due on the principal refund amount through December 31, 2015 is \$55,353.98, for a total judgment

of \$294,386.42 as of December 31, 2015, after which interest shall continue to accrue and shall be paid by the State in the amount of \$34.38 per day through the date of payment of the refund:

- (i) \$76,330.26 paid under protest on December 23, 2010 for tax year 2005;
- (ii) \$18,511.18 paid under protest on January 18, 2011 for tax year 2005;
- (iii) \$21,062.00 paid under protest on February 25, 2011 for tax year 2010; and
- (iv) \$123,129.00 paid under protest on February 16, 2011 for tax year 2011.

It is FURTHER ORDERED, ADJUDGED, and DECREED that Claimant Manufacturers Alliance Insurance Company be and hereby is **AWARDED JUDGMENT** for and the State shall pay the principal refund amount of \$41,950.49 for retaliatory insurance taxes, penalties, and interest paid under protest by Claimant for tax years 2005 through 2011, plus applicable interest thereon at the rate of 5.25% per annum in accordance with Tenn. Code Ann. §§ 9-8-307(d) and 47-14-121(a)(1), from the respective dates of the amounts paid under protest as set forth below through the date of payment of the refund. The accrued interest due on the principal refund amount through December 31, 2015 is \$11,033.13, for a total judgment of \$52,983.62 as of December 31, 2015, after which interest shall continue to accrue and shall be paid by the State in the amount of \$6.03 per day through the date of payment of the refund:

- (i) \$10,119.43 paid under protest on December 23, 2015 for tax year 2005;
- (ii) \$2,454.11 paid under protest on January 18, 2011 for tax year 2005;
- (iii) \$4,166.68 paid under protest on December 23, 2010 for tax year 2007;
- (iv) \$819.65 paid under protest on January 18, 2011 for tax year 2007;
- (v) \$20,130.65 paid under protest on December 23, 2010 for tax year 2008;
- (vi) \$3,342.97 paid under protest on January 18, 2011 for tax year 2008; and

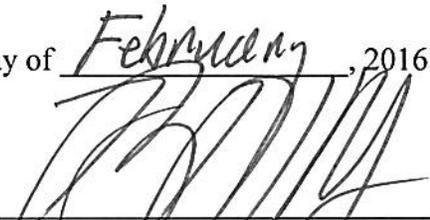
(vii) \$917.00 paid under protest on February 25, 2011 for tax year 2010.

It is FURTHER ORDERED, ADJUDGED, and DECREED that Claimant Pennsylvania Manufacturers Indemnity Company be and hereby is **AWARDED JUDGMENT** for and the State shall pay the principal refund amounts of \$27,131.00 for retaliatory insurance taxes, penalties, and interest paid under protest by Claimant for tax years 2005 through 2011, plus applicable interest thereon at the rate of 5.25% per annum in accordance with Tenn. Code Ann. §§ 9-8-307(d) and 47-14-121(a)(1), from the respective dates of the amounts paid under protest as set forth below through the date of payment of the refund. The accrued interest due on the principal refund amount through December 31, 2015 is \$6,103.63, for a total judgment of \$33,234.63 as of December 31, 2015, after which interest shall continue to accrue and shall be paid by the State in the amount of \$3.90 per day through the date of payment of the refund:

- (i) \$11,437.00 paid under protest on February 25, 2011 for tax year 2010; and
- (ii) \$15,694.00 paid under protest on February 16, 2012 for tax year 2011.

It is FURTHER ORDERED, ADJUDGED, and DECREED that the costs of this action be and hereby are taxed to the State of Tennessee.

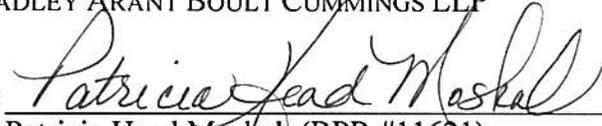
IT IS SO ORDERED this the 11 day of February, 2016.

  
\_\_\_\_\_  
ROBERT N. HIBBETT  
Claims Commissioner, Middle Division

Approved and Submitted for Entry by:

BRADLEY ARANT BOULT CUMMINGS LLP

By:



Patricia Head Moskal (BPR #11621)

Brett R. Carter (BPR #19326)

1600 Division Street, Suite 700

P.O. Box 340025

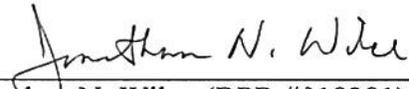
Nashville, TN 37203

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*Attorneys for Claimants*

HERBERT H SLATERY III

ATTORNEY GENERAL AND REPORTER



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*Attorneys for the State of Tennessee*

**BEFORE THE TENNESSEE CLAIMS COMMISSION  
MIDDLE DIVISION AT NASHVILLE**

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OLD REPUBLIC INSURANCE COMPANY, )  
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*Claimants,* )

v. )

STATE OF TENNESSEE, )

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Claim Nos. X03152011 and  
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**ORDER ON MOTIONS FOR PARTIAL SUMMARY JUDGMENT  
ON STATUTE OF LIMITATIONS GROUNDS**

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This matter came before the Claims Commission for hearing on January 9, 2013 on the parties' cross-motions for partial summary judgment on statute of limitations grounds. Claimants Old Republic Insurance Company, Pennsylvania Manufacturers' Association Insurance Company, Manufacturers Alliance Insurance Company and Pennsylvania Manufacturers Indemnity Company filed a motion for partial summary judgment on the grounds that they are entitled, as a matter of law, to full refunds of the retaliatory taxes, penalties, and interest paid under protest for tax years 2005 and 2006 that are the subject of their insurance tax refund complaints in this matter because the State's collection of those taxes, imposed under Title 56 of the Tennessee Code for which the filing of returns are required by the State, is time-barred pursuant to the three-year statute of limitations set forth at Tenn. Code Ann. § 67-1-

1501(b). Defendant State of Tennessee filed a cross-motion for partial summary judgment on the grounds that the State's collection of the retaliatory taxes, penalties, and interest paid by Claimants under protest for tax years 2005 and 2006 is not time-barred because Claimants filed tax refund claims, and not challenges to tax assessments, and the three-year limitations period contained in Tenn. Code Ann. § 67-1-1501(b) does not apply to refund claims. The State further argued that because Claimants filed amended returns and paid the resulting disputed taxes Claimants waived any right to challenge the State's action on statute of limitations grounds and that Claimants' only recourse is to file refund claims challenging the substantive tax liability.

Based upon the cross-motions of the parties, the responses to the statements of undisputed material facts, the memoranda of law, the arguments of counsel, and the entire record in this cause, the Claims Commission finds that there are no genuine issues of disputed material facts on the parties' cross-motions for partial summary judgment and the statute of limitations issue is a question of law appropriate for resolution under Rule 56 of the Tennessee Rules of Civil Procedure. The Claims Commission further finds that Claimants' Motion for Partial Summary Judgment is well-taken and should be granted as a matter of law and the State's Motion for Partial Summary Judgment should be denied.

No case law has been cited on the issue presented and the Claims Commission considers this to be an issue of first impression. The Claims Commission is required to construe and apply the statute of limitations consistent with its legislative intent and purpose. The applicable statute of limitations is set forth at Tenn. Code Ann. § 67-1-1501(b) and provides that "the amount of any tax imposed under any title, in which the filing of a return is required by the state, shall be assessed within three years from December 31 of the year in which the return was filed, and no levy or other proceeding to enforce the collection of such tax without assessment shall be made

or begun after expiration of such period . . . .” In this case, it is undisputed that the subject retaliatory taxes are taxes imposed under Title 56 of the Tennessee Code for which the filing of returns is required by state law. Claimants timely filed annual premium tax returns for 2005 and 2006 on or before March 1 of the following years, respectively. The State did not issue any assessments for the disputed Tennessee retaliatory taxes within three years from December 31 of the years in which the 2005 and 2006 returns were filed, respectively. Accordingly, the Claims Commission concludes that the State’s collection of retaliatory taxes, penalties and interest for 2005 and 2006 is time-barred under Tenn. Code Ann. § 67-1-1501(b), the Claimants’ motion should be granted, and the Claimants are due refunds of the tax, penalties, and interest paid under protest for the years 2005 and 2006. The Commission further finds that the filing of an amended return for any tax year does not restart the running of the statute of limitations, and the Claimant’s payment of the disputed taxes under protest and filing a claim for refund does not waive the Claimants’ right to assert the statute of limitations bar.

It is, accordingly, ORDERED as follows:

A. Claimants’ Motion for Partial Summary Judgment on statute of limitations grounds be and hereby is **GRANTED**;

B. The State’s Motion for Partial Summary Judgment on statute of limitations grounds be and hereby is **DENIED**;

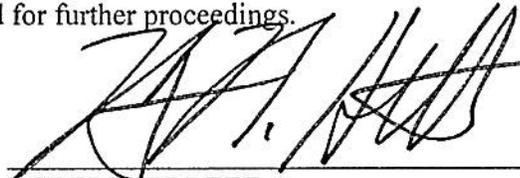
C. Claimants are **AWARDED** and the State shall pay refunds of the retaliatory taxes, penalties, and interest paid under protest by Claimants for tax years 2005 and 2006 as follows:

Old Republic Insurance Company – \$821,527.98, plus applicable interest thereon at the rate of 5.25% per annum in accordance with Tenn. Code Ann. §§ 9-9-307(d) and 47-14-121(a)(1) from the date of payment under protest, December 17, 2010, and continuing thereafter through the date of payment of the refund;

Pennsylvania Manufacturers' Association Insurance Company – \$94,841.45, plus applicable interest thereon at the rate of 5.25% per annum in accordance with Tenn. Code Ann. §§ 9-9-307(d) and 47-14-121(a)(1) from the date of payment under protest, December 22, 2010, and continuing thereafter through the date of payment of the refund; and

Manufacturers Alliance Insurance Company – \$12,573.54, plus applicable interest thereon at the rate of 5.25% per annum in accordance with Tenn. Code Ann. §§ 9-9-307(d) and 47-14-121(a)(1) from the date of payment under protest, December 22, 2010, and continuing thereafter through the date of payment of the refund.

D. All other matters are reserved for further proceedings.

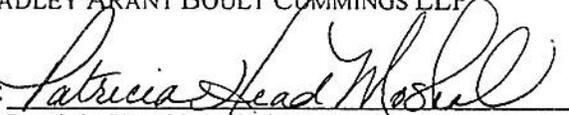


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ROBERT HIBBETT  
Claims Commissioner

Submitted for Entry by:

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

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Brett R. Carter (BPR #19326)

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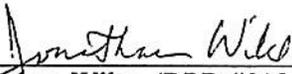
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(615) 252-2369

*Attorneys for Claimants*

Approved as to Form by:

ROBERT E. COOPER, JR.  
ATTORNEY GENERAL AND REPORTER

  
\_\_\_\_\_  
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*Attorneys for the State*

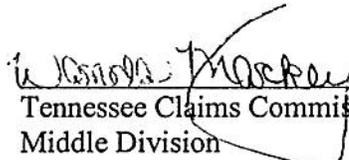
**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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(615) 741-3518

PATRICIA MOSKAL  
Attorney for Claimant  
P.O. Box 340025  
Nashville, TN 37203  
(615) 252-2369

This 31<sup>st</sup> day of Jan, 2013.

  
\_\_\_\_\_  
Patricia Moskal  
Tennessee Claims Commission  
Middle Division

**CERTIFICATE OF SERVICE**

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

JON WIKE  
Attorney General's Office  
Tax Division  
P.O. Box 20207  
Nashville, TN 37202-0207  
(615) 741-3518

PATRICIA MOSKAL  
Attorney for Claimant  
P.O. Box 340025  
Nashville, TN 37203  
(615) 252-2369

This 16<sup>th</sup> of Feb., 2016.

*Paula Merrifield*

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PAULA MERRIFIELD  
Administrative Clerk  
Tennessee Claims Commission