

STATE OF MAINE
BUREAU OF INSURANCE

IN RE:

DORCHESTER MUTUAL
INSURANCE COMPANY,
Maine License No. PCF436,
NAIC Code 13706,

FITCHBURG MUTUAL
INSURANCE COMPANY,
Maine License No. PCF444,
NAIC Code 13943,
And

NORFOLK AND DEDHAM
MUTUAL FIRE INSURANCE
COMPANY,
Maine License No. PCF535,
NAIC Code 23965

CONSENT AGREEMENT

Docket No. INS-12 - 213

INTRODUCTION

Dorchester Mutual Insurance Company, Fitchburg Mutual Insurance Company, and Norfolk and Dedham Mutual Fire Insurance Company, each of which is a part of the Norfolk and Dedham Group. (collectively, the “Companies” and, individually, a “Company”), the Maine Superintendent of Insurance (“the Superintendent”), and the Office of the Maine Attorney General (“Attorney General”) hereby enter into this Consent Agreement pursuant to 10 M.R.S. § 8003(5)(B) to resolve, without an adjudicatory proceeding, violations of the Maine Insurance Code. As more fully set out below, the Superintendent finds that the Companies each violated 24-A M.R.S.A. § 2174 and § 2304-A by failing to file certain rates that it charged to its personal and commercial lines policyholders between September 29, 2003, and March 14, 2010.

PARTIES

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine’s insurance laws and regulations, and the Bureau of Insurance is the administrative agency with such jurisdiction. The Superintendent has jurisdiction over this matter pursuant to 24-A M.R.S.A. §§ 12-A and 211.
2. Dorchester Mutual Insurance Company is a Massachusetts domiciled insurance company that has been licensed in Maine as a property and casualty insurance company since March 20, 1919. The Company’s Maine License number is PCF426 and its NAIC Code is 13706.

3. Fitchburg Mutual Insurance Company is a Massachusetts domiciled insurance company that has been licensed in Maine as a property and casualty insurance company since July 14, 1913. The Company's Maine License number is PCF444 and its NAIC Code is 13943.
4. Norfolk and Dedham Mutual Insurance Company is a Massachusetts domiciled insurance company that has been licensed in Maine as a property and casualty insurance company since July 1, 1937. The Company's Maine License number is PCF535 and its NAIC Code is 123965.
5. Each of these Companies is a part of the Norfolk and Dedham Group.

STATUTORY AUTHORITY

6. Under 10 M.R.S. § 8003(5)(A), and 24-A M.R.S.A. § 12-A and 1420-K, the Superintendent may issue a warning, censure, or reprimand to a licensee, may suspend, revoke or refuse to renew the license of a licensee, may impose conditions of probation on the licensee, may levy a civil penalty, or may take any combination of such actions, for violating any insurance laws, or violating any rule, regulation, subpoena, or order of the Superintendent.
7. Pursuant to 10 M.R.S.A. § 8003(5)(B), the Superintendent may resolve a complaint by entering into a consent agreement with a licensee and with the agreement of the Attorney General.

FACTS

8. Between October 20, 2003 and February 2, 2010, the Companies made numerous rate and rule filings with the Superintendent, all of which were approved under 24-A M.R.S.A. § 2403-A.
9. None of these filings included fees associated with electronic funds transfer, installment payment of premium, late payment of premium, or non-sufficient funds.
10. On December 8, 2009, in the course of investigating a complaint against Dorchester Mutual Insurance Company, Bureau staff discovered that the Company had charged a \$20 late fee to the complainant when it reinstated his homeowners insurance policy. Bureau staff told the Company that no rule filing including this or any other policy fees appeared in the Bureau's records and asked the Company to send the Bureau a copy of the relevant filing to confirm its approval.
11. By letter dated December 3, 2009, the Company responded that it could not find a rule filing related to late fee charges.
12. According to the information that the Companies provided to the Bureau, between 2003 and March 14, 2010, the Companies charged their policyholders the following fees which had been neither filed nor approved by the Bureau:

Fee Description	Fee Amount per Transaction
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Electronic Funds Transfer	\$1.00
Installment Payment of Premium	\$4.00 or \$5.00 on personal lines accounts
Installment Payment of Premium	\$6.00 on commercial lines accounts
Late Payment of Premium	\$10.00 or \$20.00 between 2003 and 2004
Late Payment of Premium	\$20.00 between 2005 and 2010
Non-Sufficient Funds	\$25.00

13. According to information that the Companies provided to the Bureau, between 2003 and March 14, 2010, the Companies applied unapproved fees in 50,889 transactions, totaling \$255,048, as follows:

Year	Fees											
	Electronic Funds Transfer			Installment Fees			Late Fees			Non-Sufficient Funds		
	Number		Amt. in \$s	Number		Amt. in \$s	Number		Amt. in \$s	Number		Amt. in \$s
	Policies	Applied		Policies	Applied		Policies	Applied		Policies	Applied	
2003	28	86	86	1,613	6,015	24,804	158	224	2,240	16	16	400
2004	36	84	84	1,883	6,652	27,642	381	484	6,100	24	25	625
2005	25	104	104	1,849	6,483	27,058	591	769	15,380	19	20	500
2006	42	199	199	1,885	6,404	27,250	346	455	9,100	22	25	625
2007	57	463	463	2,126	7,149	31,720	220	295	5,900	19	21	525
2008	65	437	437	1,953	6,531	29,655	173	227	4,540	22	24	600
2009				1,824	6,097	26,918	186	252	5,040	13	14	350
2010				913	1,275	5,508	54	56	1,120	3	3	75
Totals:	253	1,373	1,373	14,046	46,606	200,555	2,109	2,762	49,420	138	148	3,700

14. On February 2, 2010, Bureau staff received a multiple lines filing (SERFF No. NFDG-126483488) in which the Companies requested that the following fee schedule be approved: the electronic funds transfer fee was eliminated, the late payment and non-sufficient fund fees were reduced to \$10, the installment payment fee for personal lines was \$4, and the installment payment fee for commercial lines was \$6. The new fees were to be effective upon Bureau approval. The Bureau approved the fees on the date received, February 2, 2010.

15. The Companies did not implement the new fees until March 15, 2010; instead the Companies continued to charge their policyholder the unapproved fees as reflected in paragraphs 12 and 13 above.

16. The Companies have not refunded to their customers the unapproved fees they collected during the period January 1, 2003 to March 15, 2010.

17. The Bureau's Market Conduct Division conducted a targeted market conduct examination of Norfolk and Dedham Mutual Fire Insurance Company in the areas of company operations and management, underwriting rates and forms, claims, and complaint handling to

determine compliance with Maine law and the Company's procedures. The investigation period of the examination was September 1, 2008, through September 30, 2010.

18. In the Report of the Market Regulation Examination, the examiners found that a payment processing vendor was charging an unapproved "convenience fee" to customers of the Company who elected to make an instant payment by credit card, debit card or automated clearing house (ACH) transactions. The payment processing vendor, not the Company, billed and collected the convenience fee from the customer. The examiners also found that there were instances in which the Company communicated to policyholders information regarding replacement cost coverage payments that was more restrictive than the language in the applicable policies.

19. The Report of the Market Regulation Examination was accepted by the Superintendent on October 25, 2011.

APPLICABLE LAW

20. Title 24-A M.R.S.A. § 2304-A provides in part that "Every insurer shall file with the Superintendent ... every manual rate, minimum premium, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing that it proposes to use.

21. Title 24-A M.R.S.A. § 2302-A provides in part that:

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings...

3. "Expense" means that portion of a rate attributable to acquisition, field supervision and collection expenses; general expenses; and taxes, licenses and fees.

7. "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation is loss experience, prior to any application of individual risk variation based on loss or expense considerations, and not including minimum premium.

22. Title 24-A M.R.S.A. § 2174 provides in part that "No person shall willfully collect as premium or charge for insurance any sum in excess of the premium or charge applicable to such insurance, and as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the superintendent..."

CONCLUSIONS OF LAW

23. The Companies violated 24-A M.R.S.A. § 2304-A by issuing policies between January 1, 2003 and March 14, 2010 that were based on rates that included expenses not reflected in the rates filed with the Superintendent.

24. The Companies violated by willfully collecting, between January 1, 2003 and February 1, 2010, charges for electronic funds transfers, installment payments of premium, late payments of

premium, and non-sufficient funds that the Companies had not filed with the Superintendent for approval as required by 24-A M.R.S.A. § 2304-A(1) and that the Superintendent had not approved.

25. Dorchester and Norfolk & Dedham further violated 24-A M.R.S.A. § 2174 by willfully collecting, between February 2, 2010 and March 14, 2010, charges for electronic funds transfers, installment payments of premium, late payments of premium, and non-sufficient funds that were in excess of the fees approved by the Superintendent, effective February 2, 2010.

COVENANTS

26. The Companies admit to the Statement of Facts and Conclusions of Law stated above and admit that their actions make them subject to disciplinary action.

27. Within 90 days of the execution of this Consent Agreement, the Companies will provide all policyholders who have in-force policies as of the effective date of this Consent Agreement, a credit for all charges for electronic fund transfer, installment payment of premium, late payment of premium, and non-sufficient funds collected by the Companies from January 1, 2008 to March 14, 2010 if the total charges collected from the policyholder was \$5.00 or more.

28. The Companies accept as disciplinary action the imposition of a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00). The Companies shall remit payment of this civil penalty within thirty (30) days after the execution of this Consent Agreement. Payment shall be by check or money order made out to "Treasurer, State of Maine" and delivered to the Bureau.

29. The parties to this Consent Agreement understand that nothing herein shall affect any rights or interest that any person not a party to this Consent Agreement may possess.

30. In consideration of the Companies' execution of and compliance with the terms of this Consent Agreement, the Superintendent and Attorney General agree to forgo pursuing against the Companies any further disciplinary measures or other civil or administrative sanctions available under the Maine Insurance Code concerning the specific conduct described in this Consent Agreement, including any conduct described in the Report of the Market Regulation Examination accepted by the Superintendent on October 25, 2011, unless the Companies fail to comply with the terms and conditions of this Consent Agreement.

31. This Consent Agreement is enforceable by an action in Maine Superior Court.

32. This Consent Agreement is not subject to appeal. The parties waive any further hearings or appeals regarding the matters that are the subject of this Consent Agreement.

33. This Consent Agreement may be modified only by a written agreement executed by all of the parties hereto. The parties each retain absolute discretion to reject any request to modify, continue, or terminate any or all of the provisions of this Consent Agreement.

34. This Consent Agreement is a public record subject to the provisions of the Maine Freedom of Access Law, 1 M.R.S. §§ 401 through 410, will be available for public inspection

and copying as provided for by 1 M.R.S. § 408, and will be reported to the Regulatory Information Retrieval System database at the National Association of Insurance Commissioners.

35. The Companies have been advised of their right to consult with counsel and have, in fact, consulted with counsel before executing this Consent Agreement.

36. The effective date of this Consent Agreement is the date entered in the Superintendent's signature line below.

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**DORCHESTER MUTUAL INSURANCE
COMPANY**

**FITCHBURG MUTUAL INSURANCE
COMPANY**

**NORFOLK AND DEHAM MUTUAL FIRE
INSURANCE COMPANY**

Dated: _____, _____

By: _____

Its Authorized Representative

Print Name and Title

Subscribed and sworn to before me this _____ day of _____, 2011.

Notary Public

Printed name

Date commission expires

**THE MAINE SUPERINTENDENT OF
INSURANCE**

Dated: _____, _____

By: _____

Eric A. Cioppa
Superintendent of Insurance

**THE MAINE OFFICE OF THE ATTORNEY
GENERAL**

Dated: _____, _____

By: _____

Jonathan R. Bolton
Assistant Attorney General