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NH INSURANCE DEPARTMENT
AUG 18 2021

STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In Re: Scottsdale Insurance Company
Docket No.: Ins. No. 21-029-EP

CONSENT ORDER

This Consent Order is made between the New Hampshire Insurance Department ("NHID") and Scottsdale Insurance Company, ("Respondent"), the terms of which are as follows:

FINDINGS OF FACT

1. Respondent is an Ohio domiciled insurer and a foreign, non-admitted insurer that is eligible to write surplus lines business in the State of New Hampshire.
2. Phoenix American Administrators, Inc. ("Phoenix") administers a Guaranteed Asset Protection ("GAP") waiver program in New Hampshire, which is offered to NH consumers through automobile dealerships pursuant to agreements between Phoenix and such dealerships. In general, a GAP program covers the risk to a consumer where there is the total loss of a vehicle and there is a gap between the actual cash value of the vehicle at the time of the loss and the remainder of the financing loan on the vehicle.
3. In New Hampshire, GAP waiver is *not* an insurance product and is instead considered a banking product. *See* NH RSA 361-E.
4. Those dealerships offering GAP waivers through Phoenix are also provided Contractual Liability Insurance Policies ("CLIP") arranged for by Phoenix and issued by Respondent. The CLIP covers the risk the dealership may incur should it experience a loss under the GAP program and have insufficient funds held in trust to cover those losses.

5. Since 2018, Respondent has sold CLIPs to NH automobile dealerships through Phoenix, an entity which was not appropriately licensed as an eligible surplus lines producer in New Hampshire.

6. In the years 2018, 2019, and 2020, Respondent inaccurately reported CLIP premium by including both (i) the CLIP premium remitted by Phoenix and earned by Respondent and (ii) funds that were held by Phoenix in trust for the benefit of the automobile dealerships to cover losses to the dealerships on the sale of the GAP waivers, for a total premium of over $500,000. Respondent refused to pay the associated premium tax on that reported premium, insisting it was not insurance, and therefore not subject to premium taxes.

7. During those years the actual premium for the CLIP policies, which is subject to surplus lines premium taxes, was not reported accurately.

8. Throughout 2019, 2020, and 2021, the NHID communicated repeatedly with Respondent to correct the error it had identified, namely that Respondent was incorrectly reporting non-premium revenue as premium.

9. It was not until June of 2021 that Respondent finally identified the error and agreed to make corrections to its annual filing and pay the associated surplus lines tax on the revenue that is appropriately classified as premium.

CONCLUSIONS OF LAW

10. Based on the foregoing Findings of Fact and the applicable provisions of law, the NHID concludes and finds the following Conclusions of Law:

    a. The Respondent is subject to the jurisdiction of the NHID; and

b. The Respondent violated NH RSA 405:29, I in the years 2018, 2019, and 2020 by failing to file accurate financial statements when it included non-insurance premium on its exhibit of premiums and losses; and

c. The Respondent violated NH RSA 405:29, I by failing to remit the appropriate premium tax for the premium it had collected on NH policies.

ORDER

WHEREFORE, the NHID orders and Respondent consents to the following:

a. The Respondent waives all rights to a formal administrative hearing in this matter and agrees that this Consent Order shall have the full force and effect of an Order fully entered in accordance with the adjudicatory procedure provided for in RSA Chapter 541-A and Ins Part 200.

b. For the purposes of resolving this matter without a formal administrative hearing, Respondent agrees pay the following:

   i. The $520 in premium tax owed for the years 2018, 2019, and 2020;

   ii. The statutory penalty of 12% of the unpaid premium tax for years 2018 and 2019, and the statutory penalty of 10% of the unpaid premium for year 2020, equaling $59 for the payment of late premiums for the years 2018, 2019, and 2020;

   iii. A $20,000 administrative penalty. $10,000 of the administrative penalty is suspended for a period of two years from the date of the execution of this consent order.

c. The remainder of the administrative penalty, $10,000, as well as the premium tax and statutory penalty identified above, for a total of **$10,579** is due upon

execution of this consent order, to be made payable to "Treasurer, State of New Hampshire", and mailed to the attention of Sarah Prescott, New Hampshire Insurance Department, 21 South Fruit Street, Suite 14, Concord, New Hampshire 03301.

d. The Respondent agrees to provide to the NHID, within 45 days of the execution of this consent order, a written remediation plan outlining the steps it has taken and will take in the future to avoid the errors identified above, or similar types of errors in reporting annual premium or other information to the NHID.

e. Respondent agrees to correct the accounting and reporting errors in any other state or territory where it has incorrectly reported GAP Waiver as insurance premium.

f. In the event that Respondent fails to meet any of the terms set forth in this section, the NHID may institute further administrative proceedings under the authority of RSA 400-A:15, III or any other applicable law, and/or impose the suspended $10,000 administrative penalty.

g. By entering into this Consent Order, the NHID and the Respondent intend to fully resolve all issues relating to the above-mentioned matters. This Consent Order shall be deemed a complete settlement and full and final resolution and is in lieu of any other action(s) that has and could have been brought by the NHID relating to these matters. Provided however, notwithstanding the foregoing, the NHID may take any and all appropriate actions should the Respondent violate any provision of the State's insurance laws in the future.

h. This Consent Order shall be fully enforceable in any Superior Court in the State of New Hampshire, and any actions to enforce this Consent Order shall be governed by the laws of the State of New Hampshire.

i. This Consent Order is considered a public regulatory action and will be reported to the National Association of Insurance Commissioners. The Respondent must, in the future, answer "YES" to any question which asks "have you ever been named or involved as party in an administrative proceeding" or any substantially similar question.

IT IS SO ORDERED.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 8-18-21

Christopher Nicolopoulos, Commissioner

Date: 8-5-21

Heather Schenker, Vice President and
Authorized Representative of
Scottsdale Insurance Company, Respondent