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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

