

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

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

**ORDER TO SHOW CAUSE
AND
NOTICE OF HEARING**

The New Hampshire Insurance Department ("NHID") orders Scottsdale Insurance Company ("Respondent") to show cause why the New Hampshire Insurance Commissioner should not levy an administrative fine against it. In support of the Order to Show Cause and pursuant to RSA 541-A:31, RSA 400-A:17 *et seq.* and Ins Chapter 200, the NHID states as follows:

STATEMENT OF FACTS

1. Respondent is a surplus lines insurance carrier that is domiciled in Ohio and authorized to do business in New Hampshire as a foreign insurance company.
2. In 2018 Respondent issued certificates to NH consumers through a Guaranteed Asset Protection ("GAP") waiver program. The GAP program was issued to NH consumers through automobile 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 NH, GAP waiver is *not* an insurance product and is instead considered a banking product. *See* NH RSA 361-E.
4. Pursuant to RSA 405:29, Respondent filed its 2018 annual statement with the NHID. That statement listed a credit insurance premium written in NH of \$175,548.
5. Respondent did not pay the associated premium tax for the credit insurance premium it reported in its 2018 annual filing.
6. The next year, Respondent filed its 2019 annual statement which revealed it had written credit insurance premium of \$158,552.
7. Respondent did not pay the associated premium tax for the credit insurance premium it reported in its 2019 annual filing.

8. Similarly, in the following year, Respondent filed its 2020 annual statement, which revealed a written credit insurance premium of \$166,757.
9. Respondent did not pay the associated premium tax for the credit insurance premium it reported in its 2020 annual filing.
10. Respondent and NHID have been in communication regarding this matter for many months; Respondent asserts that the premium it reports as credit insurance premium is for its GAP waiver program identified above and because that program is not insurance, no premium tax is due.
11. In its 2018 filings Respondent listed "no NH license" as the broker selling the 54 Contractual Liability Insurance Policies ("CLIP") it offered dealerships alongside the GAP Waiver program. In its 2019 filings, Respondent listed "Phoenix American Insurance" as the broker for the 60 CLIPs it offered alongside the GAP Waiver program. The CLIP covers the risk the dealership faces when covering the potential loss under a GAP waiver.
12. In 2019 when Phoenix American Insurance was selling CLIP for Respondent, it was not licensed as a resident or non-resident NH insurance producer.

STATEMENT OF ISSUES

13. Whether the Respondent violated NH RSA 405:29 in the years 2018, 2019, and 2020 by failing to file an accurate annual financial statement when it included non-insurance premium items on its exhibit of premiums and losses.
14. Whether the Respondent violated NH RSA 405:17-b by issuing insurance policies and contracts of insurance in 2018 without an entity licensed to produce insurance in NH, and in the year 2019 through an entity that was not licensed to produce insurance in New Hampshire.
15. The NHID reserves the right to amend this statement of issues upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

INSURANCE LAWS VIOLATED BY RESPONDENT

16. The NHID maintains the Respondent violated the following New Hampshire insurance law statutes: NH RSA 405:29 and RSA 405:17-b.

17. The NHID reserves the right to amend this list of insurance laws violated by the Respondent upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

PENALTY REQUESTED

18. In the event that the Hearing Officer determines after an evidentiary hearing that the NHID sustained its burden of proof with respect to the allegations of fact and violations of law outlined above, the NHID requests that the Hearing Officer impose the following sanctions on the Respondent:
 - a. Order the Respondent to pay a fine in an amount not to exceed \$2,500 per violation, equaling a total fine of \$292,500.

19. The NHID reserves the right to amend penalty requested upon reasonable notice to the Commissioner (or his designated Representative) and the Respondent.

NOTICE OF HEARING

20. An adjudicatory proceeding shall be commenced for the purpose of resolving the issues articulated above pursuant to RSA 541-A:31, RSA 400-A:17:6, *et seq.*, RSA 417:6, *et seq.*, and Ins 200. To the extent that the Department's rules do not address an issue of policy or procedures, the Department shall apply the N.H. Department of Justice Rules, Part 800.
21. The Respondent shall appear at Department on **June 24, 2021 at 10 AM**, at the Department's office located at 21 South Fruit Street, Suite 14, in Concord New Hampshire to participate in this adjudicatory proceeding and, if deemed appropriate, be subject to sanctions pursuant to RSA 402-J:12, I and RSA 400-A:15, III. Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia* and sanctions may be imposed without further notice or an opportunity to be heard.
22. Roni Karnis, Esq. is appointed to act as Hearing Officer in this matter with all the authority within the scope of RSA 400-A:19 and Ins 203.01.
23. Linda Zalinskie shall serve as clerk to the Hearing Officer. The parties should direct all communications to Ms. Zalinskie, whose contact information is:

Linda Zalinskie, Clerk
New Hampshire Insurance Department

21 South Fruit Street, Suite 14
Concord, NH 03301
Tel: (603) 271-2261
Fax: (603)271-1406
Email: linda.zalinskie@ins.nh.gov

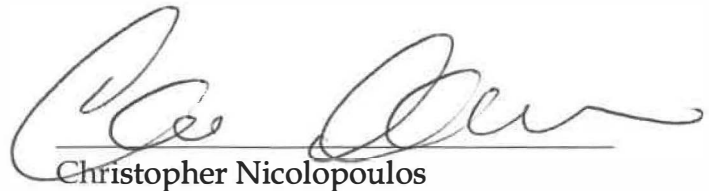
24. The Respondent has the right to be represented by a lawyer in this proceeding. However, the Respondent shall bear the cost of retaining said lawyer. Should the Respondent elect to retain a lawyer, his lawyer shall file a Notice of Appearance with Ms. Zalinskie, and said lawyer should do so at the earliest possible date. A copy of the NHID's Notice of Appearance form is enclosed with this Order.
25. Any party may request a transcript of the proceeding. The party requesting a transcript of the proceedings shall file a written request for a certified court reporter with the Hearing Officer at least 10 days prior to the scheduled hearing date. The costs incurred for the services of a certified court reporter shall be borne by the requesting party.
26. Joshua Hilliard, Esq. shall serve as staff advocate representing the interests of the NHID.
27. All routine procedural inquiries may be made by contacting Linda Zalinskie, Hearing Clerk, New Hampshire Insurance Department, 21 South Fruit Street, Suite 14, Concord NH 03301, (603) 271-2261, but that all other communications with the Hearing Officer and the Commissioner shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Department's regulations.
28. A copy of this hearing notice shall be served upon Respondent by certified mail addressed to the mailing address on file with New Hampshire Insurance Department. *See*, RSA 400-A:14.

It is **SO ORDERED**.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date:

5/14/2021



Christopher Nicolopoulos
Insurance Commissioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Order to Show Cause and Notice of Hearing was sent this date by first-class mail, postage prepaid, and by certified mail, return receipt requested, to Scottsdale Insurance Company, One West Nationwide Blvd., Frap Solutions, Columbus, OH 43215-2220, and supprpt@nationwide.com the mailing and email addresses the Respondent maintains on file with the Department.

Date: 5/14/21



Joshua S. Hilliard, Esq.
Compliance & Enforcement Counsel

NEW HAMPSHIRE INSURANCE DEPARTMENT

ATTORNEY APPEARANCE or WITHDRAWAL

Docket No. (if known): _____

Respondent Name or Case Name: _____

APPEARANCE

WITHDRAWAL

Please **ENTER** my appearance as
Counsel for _____

Please **WITHDRAW** my appearance as
Counsel for _____

I confirm that neither I nor any member of my
law firm have been retained by the Department
of Insurance or the Commissioner of Insurance.

Notice of Withdrawal sent to my client on:
_____ at the following address:

I hereby certify that I provided a copy of this original request to the Department and a copy to all other
known parties to this matter in accordance with Ins 204.09.

Signed: _____

Name: _____ **NH Bar #:** _____

Firm Name: _____ **Email:** *(see also below)* _____

Physical Address: _____

Mailing Address *(if different):* _____

Phone: _____

Email Consent: By checking this box, I consent to delivery by email in accordance with Ins 204.09(c).
Please send communications and documents to the above email address.

Date: _____ **Signature:** _____

***If you do not consent to delivery by email, all communications will be sent to you by personal delivery
at your physical address or by United States Postal Service first class mail to your mailing address.***