



BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,)
)
 Petitioner,)
)
 vs.) TID No.: 19-156
)
 AMERICAN RESOURCES INSURANCE)
 COMPANY, INC.,)
)
 Respondent.)

AGREED FINAL ORDER

COME NOW, Petitioner, the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division"), by and through counsel, and the Respondent, American Resources Insurance Company, Inc. ("Respondent" or "ARIC"), and hereby stipulate and agree, subject to the approval of the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner"), as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Agreed Final Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry and execution of this Agreed Final Order by the Commissioner. Entry and execution of the Agreed Final Order by the Commissioner shall occur when the Commissioner signs and dates this Agreed Final Order.

2. This Agreed Final Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Final

Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Final Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. The Respondent fully understands that this Agreed Final Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Agreed Final Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. The Respondent fully understands that this Agreed Final Order will in no way preclude proceedings by state government representatives, other than the Commissioner, for violations of the statutes, rules, or regulations addressed specifically in the Findings of Fact and Conclusions of Law in this Agreed Final Order, or which may arise as a result of the execution of this Agreed Final Order by the Respondent.

5. The Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Agreed Final Order and the consideration and entry and execution of said Agreed Final Order by the Commissioner.

AUTHORITY AND JURISDICTION

6. The Commissioner has jurisdiction over this matter pursuant to Tennessee insurance law, Title 56 of the Tennessee Code Annotated ("Tenn. Code Ann."), specifically Tenn. Code Ann. §§ 56-1-101 *et seq.*, 56-1-202, 56-1-401 *et seq.*, 56-2-101 *et seq.*, and 56-2-305 (the "Law"). The Law places on the Commissioner the responsibility of the administration of its provisions.

PARTIES

7. The Division is the lawful agent through which the Commissioner administers the Law and is authorized to bring this action for the protection of the public.

8. The Respondent is an accredited insurance company licensed by the Commissioner to conduct insurance business in the State of Tennessee.

FINDINGS OF FACT

9. The Respondent has received a certificate of authority in Tennessee and writes the following lines: fire, commercial multi-peril, inland marine, workers compensation, other liability occurrence, commercial auto liability, and auto physical damage. The Respondent is currently licensed to write business in eight (8) states: Alabama, Georgia, Indiana, Kentucky, Mississippi, Oklahoma, South Carolina, and Tennessee. The Respondent has decided to non-renew policies in the Atlanta market.

10. During 2018, the Respondent wrote five hundred fifty-five thousand, three hundred ninety-nine dollars (\$555,399) of premiums in Tennessee.

11. At year-end 2018, the Respondent reported a net underwriting loss of one million, nine hundred fifty thousand, seven hundred thirty-seven dollars (\$1,950,737) and a surplus as regards policyholders of four million, six hundred eighty-five thousand, five hundred fifty-eight dollars (\$4,685,558).

12. The Respondent's Risk-Based Capital ("RBC") at year-end 2017 was one hundred eighty-five percent (185%). The Respondent's RBC was two hundred forty-four and five tenths percent (244.5%) at year-end 2018.

13. The Respondent had an operating loss in the last twelve-month period at year-end 2018, excluding net capital gain, of ninety-two and nine tenths percent (92.9%).

14. The Respondent had an operating loss in the last twelve-month period at year-end 2018, including but not limited to, net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders of sixty-two and twenty-one hundredths percent (62.21%).

15. Adverse reserve development is sixty-three and seven tenths percent (63.7%) of policyholder surplus for two-year development, and nineteen percent (19%) of policyholder surplus for one-year development.

16. As reported in the 2018 Annual Statement, the Respondent was issued a surplus note in the amount of one million, two hundred fifty thousand dollars (\$1,250,000) by a shareholder. The note was issued to bolster the Respondent's operations as it moves past the Atlanta-based book of business that it has discontinued writing.

CONCLUSIONS OF LAW

17. Tenn. Code Ann. § 56-1-416 provides that the Commissioner shall revoke or suspend all certificates of authority granted to an insurance company if the Commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound condition or has failed to comply with the law and, upon such a finding, no new business shall be done by the company or its agents under suspension or revocation while such default or disability continues and not until its authority to do business is restored by the Commissioner.

18. Tenn. Comp. R. & Regs. 0780-01-66-.03(1) provides that the Commissioner may consider “[a]dverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries” in determining whether an insurance company transacting business in this state is in a hazardous financial condition.

19. Tenn. Comp. R. & Regs. 0780-01-66-.03(2) provides that the Commissioner may consider “[t]he National Association of Insurance Commissioners Insurance Regulatory

Information System and its other financial analysis solvency tools and reports” in determining whether an insurance company transacting business in this state is in a hazardous financial condition.

20. Tenn. Comp. R. & Regs. 0780-01-66-.03(5) provides that the Commissioner may consider “[w]hether the insurer’s operating loss in the last twelve-month period . . . including but not limited to net capital gains or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer’s remaining surplus . . .” in determining whether an insurance company transacting business in this state is in a hazardous financial condition.

21. Tenn. Comp. R. & Regs. 0780-01-66-.03(6) provides that the Commissioner may consider “[w]hether the insurer’s operating loss in the last twelve-month period . . . excluding net capital gains, is greater than twenty percent (20%) of the insurer’s remaining surplus . . .” in determining whether an insurance company transacting business in this state is in a hazardous financial condition.

22. Tenn. Comp. R. & Regs. Ch. 0780-1-66-.03(16) provides, in pertinent part, that the Commissioner may consider if the insurer has experienced or will experience in the foreseeable future, cash flow or liquidity problems in determining whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous, financially or otherwise, to the policyholders, creditors, or the general public.

23. Considering the hazardous financial condition factors in Tenn. Comp. R. & Regs. Ch. 0780-1-66-.03, the Respondent is in an unsound financial condition and fails to meet all requirements for accreditation under Tennessee law and thus is subject to sanctions under Tenn. Code Ann. § 56-1-416.

ORDER

NOW, THEREFORE, on the basis of the foregoing and the Respondent's waiver of the right to a hearing and appeal under Tennessee insurance law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 *et seq*, and the Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that the Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry and execution of this Agreed Final Order and agrees that this Agreed Final Order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Law.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-1-416 of the Tennessee insurance law, that:

1. ARIC's certificate of authority is **SUSPENDED**.
2. ARIC agrees that it shall not write any new business in Tennessee until the Commissioner determines that ARIC is no longer in a hazardous financial condition based on any of the factors in Tenn. Comp. R. & Regs. Ch. 0780-01-66-.03.
3. Should the Commissioner determine that ARIC's financial condition is no longer unsound, he may at any time remove, by order, the suspension of the Respondent's certificate of authority, provided the Respondent meets all requirements for Tenn. Code Ann. §§ 56-1-501, 56-1-502, 56-2-101 through 56-2-104, 56-2-113 through 56-2-115, 56-2-201, and 56-2-301.

4. ARIC shall have two (2) years to demonstrate that its financial condition is no longer unsound. However, in the event the Respondent has not shown to the Commissioner that its financial condition is no longer unsound within two (2) years from the date of this Agreed Final Order, unless the Commissioner has extended the no-writing period at the reasonable request of ARIC, the Respondent waives all rights to notice and a hearing under Tenn. Code Ann. §§ 4-5-301 *et seq.* and the Respondent's certificate of authority shall be automatically REVOKED without further action by the Commissioner or the Division.

5. ARIC shall continue to pay fees, licensure, and taxes as required by law, and to service existing policyholders and adjust losses.

6. ARIC shall continue to file financial statements and other information that are required of a licensed insurance company in Tennessee.

7. Prior to any reinstatement of its license, ARIC shall pay any and all penalties accrued as a result of late or missed filings required to maintain an active license.

8. This Agreed Final Order is in the public interest and in the best interests of the parties. This Agreed Final Order represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, in two (2) or more counterparts, ARIC affirmatively states it has freely agreed to the entry and execution of this Agreed Final Order; it has been advised that it may consult legal counsel in this matter and has had the opportunity to consult with legal counsel; it waives its right to a hearing on the matters underlying this Agreed Final Order, to a review of the Findings of Fact and Conclusions of Law contained herein, and to objections to enforcement of this Agreed Final Order; and no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Agreed Final Order, affirmatively state their


agreement to be bound by the terms of this Agreed Final Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Agreed Final Order, are binding upon them.

9. Nothing in this Agreed Final Order should be construed to limit the authority of the Insurance Division or the Commissioner to take further action against the Respondent should such action, in the opinion of the Insurance Division or the Commissioner, be necessary.


10. This Agreed Final Order may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies shall be deemed to constitute duplicate originals.


IT IS SO ORDERED.


ENTERED AND EXECUTED this 3 day of February, 2020.


Hodgen Mainda, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY AND EXECUTION:


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