

NORTH CAROLINA DEPARTMENT OF INSURANCE  
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE COMMISSIONER  
OF INSURANCE

RECEIVED IN AGENT SERVICES A.S. - N.C.D.O.I.
JUN 30 2022
CHECK NO. [REDACTED]
CHECK AMT. 225,000.00
PROCESSOR

IN THE MATTER OF  
THE LICENSURE OF  
APPALACHIAN UNDERWRITERS,  
INCORPORATED  
LICENSE NO. 3893743

VOLUNTARY SETTLEMENT  
AGREEMENT

NOW COME, Appalachian Underwriters, Inc. (hereinafter "Appalachian Underwriters") and the Agent Services Division of the N.C. Department of Insurance (hereinafter "Agent Services Division"), and hereby voluntarily and knowingly enter into the following Voluntary Settlement Agreement (hereinafter "this Agreement").

**WHEREAS**, the Department has the authority and responsibility for enforcement of the insurance laws of this State, and for regulating and licensing insurance agents and agencies; and

**WHEREAS**, Appalachian Underwriters is a Tennessee insurance brokerage which holds a nonresident business entity license issued by the Department on or about June of 2004 and a surplus lines business entity license issued on or about July of 2015; and

**WHEREAS**, a Department agency review ("Agency Review") was conducted by Department investigators on or about Feb. 10, 2020 through Aug. 13, 2020 of Appalachian Underwriters, with supplemental analysis performed through December 22, 2020, following receipt of all requested information from Appalachian Underwriters; and

**WHEREAS**, Appalachian Underwriters is located at 800 Oak Ridge Turnpike, Suite A-1000, Oak Ridge, TN 37830; and

**WHEREAS**, Appalachian Underwriters is a Nationwide Managing General Agent and insurance brokerage that places surplus lines in North Carolina with non-admitted carriers; and

**WHEREAS**, N.C. Gen. Stat. § 58-33-26(a) & (b) provide:

(a) No person shall act as or hold himself or herself out to be an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser unless duly licensed.

(b) No agent, broker, or limited representative shall make application for, procure, negotiate for, or place for others, any policies for any kinds of insurance as to which that person is not then qualified and duly licensed; and

**WHEREAS**, N.C. Gen. Stat. § 58-33-40(a) provides that no person shall solicit, negotiate, or otherwise act as an agent for an insurer unless appointed by such insurer; and

**WHEREAS**, N.C. Gen. Stat. § 58-21-65(a) provides:

(a) For insureds whose home state is in this State, no agent or broker licensed by the Commissioner shall directly procure any contract of surplus lines insurance with any non-admitted domestic surplus lines insurer or non-admitted insurer, unless he possesses a current surplus lines insurance license issued by the Commissioner

**WHEREAS**, at the investigators' request, in March of 2020, Appalachian Underwriters provided a list of 4,249 active North Carolina policies written during the time period of 2019 which were insured with admitted and non-admitted companies; the investigators randomly selected approximately 100 policies, which included 6 risk retention policies, 62 admitted policies, and 32 non-admitted policies; and

**WHEREAS**, at the investigators' request, in October of 2020, Appalachian Underwriters provided a list of 7,432 active North Carolina policies written during the time period of 2017-2018 which were insured with admitted and non-admitted companies; the investigators randomly selected approximately 93 policies, which included 2 risk retention policies, 52 admitted policies, and 38 non-admitted policies, and 1 policy where the policy type could not be determined due to only a partial policy being sent; and

**WHEREAS**, investigators reviewed a total of 193 policy files, 70 written through non-admitted insurers and 114 written through admitted insurers, 8 Risk Retention Group policies, and 1 undetermined policy, and noted that 182 of the 193 files reviewed indicated that unlicensed employees, employees without company appointments, and/or employees without surplus lines licenses were involved in the procurement of coverage; and

**WHEREAS**, such activities on the part of such employees of Appalachian Underwriters were in violation of the provisions of N.C. Gen. Stats. §§ 58-33-26(a) & (b), 58-33-40(a), and 58-21-65(a); and

**WHEREAS**, N. C. Gen. Stat. § 58-2-185 provides that all companies, agents, or brokers doing any kind of insurance business in this State must make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the persons to whom issued, of every policy or certificate or renewal. Information from these records must be furnished to the Commissioner on demand, and the original books of records shall be open to the inspection of the Commissioner when demanded; and

**WHEREAS**, N. C. Gen. Stat. § 58-2-195 provides:

(a) The Commissioner is empowered to make and promulgate reasonable rules and regulations governing the recording and reporting of insurance business transactions by insurance agencies, agents,

brokers and producers of record, any of which agencies, agents, brokers or producers of record are licensed in this State or are transacting insurance business in this State to the end that such records and reports will accurately and separately reflect the insurance business transactions of such agency, agent, broker or producer of record in this State. Information from records required to be kept pursuant to the provisions of this section must be furnished the Commissioner on demand and the original records required to be kept pursuant to the provisions of this section shall be open to the inspection for the Commissioner or any other authorized employee described in G.S. 58-2-25 when demanded.

(b) Every insurance agency transacting insurance business in this State shall at all times have appointed some person employed or associated with such agency who shall have the responsibility of seeing that such records and reports as are required pursuant to the provisions of this section are kept and maintained.

(c) Any person subject to the provisions of subsection (a) of this section who violates the provisions of this section or the rules and regulations prescribed by the Commissioner pursuant to the provisions of this section may after notice and hearing: for the first offense have his license or licenses (in case license be issued for more than one company in such person's case) suspended or revoked for not less than one month nor more than six months and for the second offense shall have his license or licenses (in case license be issued from more than one company in his case) suspended or revoked for the period of one year and such person shall not thereafter be licensed for one year from the date said revocation or suspension first became effective.

(d) For the purpose of enforcing the provisions of this section the Commissioner or any other authorized employee described in G.S. 58-2-25 is authorized and empowered to examine persons, administer oaths and require production of papers and records relative to this section.

(e) Whenever the Commissioner deems it to be prudent for the protection of policyholders in this State, he or any other authorized employee described in G.S. 58-2-25 shall visit and examine any insurance agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record. The refusal of any agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record to submit to examination is grounds for the revocation or refusal of a license.

**WHEREAS**, the Department did not receive several items requested from Appalachian Underwriters for several months, and this caused significant delay and additional time spent by the Department's investigators in conducting the Agency Review; and

**WHEREAS**, the delay on the part of Appalachian Underwriters in providing the records requested by the Department constitutes violations of N.C. Gen. Stat. § 58-2-185 and N.C. Gen. Stat. § 58-2-195, as this hindered the Department's ability to timely and efficiently conduct the Agency Review; and

**WHEREAS**, Appalachian Underwriters' delay was caused in part by internal miscommunication, and in part by delays related to the COVID-19 pandemic affecting office operations; and

**WHEREAS**, N. C. Gen. Stat. § 58-33-46(a)(2) provides that the Commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license issued under Article 58 of the General Statutes of North Carolina for violating any insurance law of this or any other state, violating any administrative rule, subpoena, or order of the Commissioner or of another state's regulator; and

**WHEREAS**, N. C. Gen. Stat. § 58-2-70 provides that whenever the Commissioner has reason to believe that any person has violated any law that would subject the license or certification of that person

to suspension or revocation, the Commissioner is authorized, in lieu of a hearing, to negotiate a mutually acceptable agreement as to the status of the person's license or certificate or to any civil penalty or restitution; and

**WHEREAS**, Appalachian Underwriters has agreed to settle, compromise, and resolve the matters referenced in this Agreement, and the Agent Services Division has agreed not to pursue additional civil ramifications, including penalties, sanctions, remedies, or restitution based on these matters against Appalachian Underwriters; and

**WHEREAS**, the parties to this Agreement mutually wish to resolve this matter by consent before the Department initiates an administrative hearing and have reached a mutually agreeable resolution of this matter as set out in this Agreement.

**NOW, THEREFORE**, in exchange for the consideration and promises and agreements set out herein, Appalachian Underwriters and the Agent Services Division hereby agree to the following:

1. Immediately upon the signing of this Agreement, Appalachian Underwriters shall pay a civil penalty of **\$225,000.00** to the Agent Services Division. The form of payment shall be by certified check, cashier's check or money order. The check or money order for the payment of this civil penalty shall be payable to the "**North Carolina Department of Insurance.**" Appalachian Underwriters shall remit the civil penalty by certified mail, return receipt requested, to the Agent Services Division along with a copy of this signed Agreement. The civil penalty and the signed Agreement must be received by the Agent Services Division no later than **July 1, 2022**. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.
2. This Agreement does not in any way affect the Agent Services Division's disciplinary power in any future examination of Appalachian Underwriters.
3. Appalachian Underwriters enters into this Agreement freely and voluntarily and with the knowledge of its right to have an administrative hearing on this matter. Appalachian Underwriters understands it may consult with an attorney prior to entering into this Agreement.
4. The parties to this Agreement agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Appalachian Underwriters understands that N.C.G.S. § 58-33-46(a)(2) provides that a Corporate (business entity) license may be revoked for violating an Order of the Commissioner.
5. This Agreement, when finalized, will be a public record and will **not** be held confidential by the Agent Services Division. Following the execution of this Agreement, all licenses issued by the Agent Services Division to Appalachian Underwriters shall reflect that Regulatory Action has been taken against it. The Department is free to disclose the contents of this Agreement with third parties upon request or pursuant to any law or policy providing for such disclosure. The Agent Services Division, upon request, routinely provides a copy of the voluntary settlement agreement to all companies that have licensed the producer.
6. The parties have read and understand this Agreement and agree to abide by the terms and conditions stated herein.

7. Be aware that if a state or federal regulator other than the Agent Services Division has issued an occupational or professional license to you, that regulator may require you to report this administrative action to it. The Agent Services Division cannot give you legal advice as to the specific reporting requirements of other state or federal regulators.

Appalachian Underwriters, Inc.  
License No. 3893743

N. C. Department of Insurance  
Agent Services Division

By: Robert J. Anowood  
President

By: Angela Hatchell  
Deputy Commissioner

Date: June 28, 2022

Date: 6/30/2022