

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

OLYMPIA OFFICE:
INSURANCE BUILDING
P.O. BOX 40255
OLYMPIA, WA 98504-0255
Phone: (360) 725-7000

May 14, 2019

Catherine Woods, Attorney
Carney Badley Spellman
701 Fifth Avenue, Suite 3600
Seattle, WA 98104
woods@carneylaw.com

Re: International Hole In One Association dba Hole In One International
Proposed Consent Order Levying a Fine, Assessing Unpaid Premium Tax, Interest, and Penalties, and
Rescinding Cease and Desist Order No. 19-0113 - OIC Order No. 19-0254

Dear Ms. Woods:

The Office of the Insurance Commissioner has found that International Hole In One Association dba Hole In One International ("IHIOA") has violated a provision of Washington State law. The violation(s) are detailed in the attachment to this letter. When a violation occurs, the Insurance Commissioner is granted the authority to take action, which includes levying a fine.


We are offering IHIOA an opportunity to settle this matter by signing the attached Consent Order and paying a fine. As part of this settlement, IHIOA will admit its violation, pay the imposed fine, premium taxes, and penalties, and agree to fully comply with all applicable laws of Washington State going forward. Upon receipt of the signed Order, the Insurance Commissioner will rescind Cease and Desist Order No. 19-0113.

The deadline to accept the settlement offer, pay the fines, taxes, and penalties is **June 10, 2019**. Please refer to the instructions on the next page. Payment for the fine and taxes and penalties must be paid by separate checks. Payments will not be accepted without the signed order. When we receive your signed order and separate payments for the fine and taxes and penalties, the Insurance Commissioner will execute the agreement and provide you with a validated copy of the settlement agreement for your records. If the settlement offer is not accepted by that date, it will be withdrawn.

Upon withdrawal of the settlement offer, the Insurance Commissioner may request a hearing to impose the fine. Alternatively, you may request a hearing yourself. If this matter results in a hearing, the Insurance Commissioner is not bound by this settlement offer and may seek a fine in the full amount warranted for your particular situation.

If you have any questions regarding this matter, I can be reached at (360) 725-7261 or by email at EllenR@oic.wa.gov.

Sincerely,


Ellen Range
Insurance Enforcement Specialist
Legal Affairs Division

Enclosure: Consent Order

How do I accept this time-limited settlement offer?

By June 10, 2019, you must:

1. Sign the attached settlement order. The settlement order is called a Consent Order because you are agreeing or consenting to the terms of the agreement.
2. Pay the fine amount, and taxes and penalties indicated in the order by separate checks or money orders. Make the checks or money orders payable to WA Office of Insurance Commissioner.
3. Mail the signed order with your payment to:

Office of the Insurance Commissioner
Attn: Fiscal
PO Box 40255
Olympia, WA 98504-0255

or

Office of the Insurance Commissioner
Attn: Fiscal
5000 Capitol Blvd SE
Tumwater, WA 98501

Payments will not be accepted without the signed order. When we receive your signed order and separate payments, the Insurance Commissioner will execute the agreement and provide you with a validated copy of the settlement agreement for your records. If the settlement offer is not accepted by the date given, it will be withdrawn.

How do I request an administrative hearing?

By August 12, 2019, you must fill out and sign the Demand for Hearing form online at the following location:

<https://www.insurance.wa.gov/how-file-demand-hearing>

Your Demand for Hearing can be in a separate document, but the completed Demand for Hearing form must also be filed along with your written demand.

1. If you would like to also provide a written request for an administrative hearing, your written request should include:
 - A brief statement of how you are harmed by the commissioner's proposed action.
 - A statement of the outcome you seek.
 - Your contact information: name, mailing address, email address, and phone number.
 - A copy of the commissioner's proposed order you are challenging.

Although not required, it would be helpful if you also included the following information in your written request for a hearing:

- A statement identifying the facts in the Consent Order you disagree with or believe are inaccurate, and why you think so.
 - A statement identifying any additional facts or information you want the Insurance Commissioner to consider.
2. Mail your written request to:

Office of the Insurance Commissioner
ATTN: Hearings Unit
PO Box 40255
Olympia, WA 98504-0255

For more information about the hearings process, please visit: <http://www.insurance.wa.gov/about-administrative-hearings>

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

**INTERNATIONAL HOLE IN ONE
ASSOCIATION dba HOLE IN ONE
INTERNATIONAL,**

Unauthorized Insurer/ Respondent.

ORDER No. 19-0254

WAOIC NO. 180391

CONSENT ORDER LEVYING A FINE,
ASSESSING UPAD PREMIUM TAX,
INTEREST, AND PENALTIES, AND
RESCINDING CEASE AND
DESIST ORDER NO. 19-0113

This Consent Order Levying a Fine, Assessing Unpaid Premium Tax, Interest, and Penalties, and Rescinding Cease and Desist Order No. 19-0113 ("Order") is entered into by the Insurance Commissioner of the state of Washington ("Insurance Commissioner"), acting pursuant to the authority set forth in RCW 48.02.060, RCW 48.14.020, RCW 48.14.060, RCW 48.14.095, RCW 48.92.095, and RCW 48.15.023, and International Hole in One Association. This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner's policies and procedures.

BASIS:

1. International Hole in One Association ("the Company" or "IHIOA") is a foreign non-profit corporation domiciled in Nevada since May 4, 1995. IHIOA is a Risk Purchasing Group registered in Washington State since May 18, 2001, and doing business as Hole in One International and Odds On Promotions. Its President, Mark Gilmartin, has been authorized in Washington as an insurance producer since July 1, 2009, and as a surplus line broker since August 18, 2014. The Insurance Commissioner has not authorized the Company to act as an insurer in Washington State.

2. The Insurance Commissioner's Investigations Unit ("Investigations") received a copy of a marketing brochure from the Surplus Lines Association of Washington. The brochure advertised "hole in one insurance," described the Company as a "purchasing group," and promised that coverage was underwritten in Washington State by Lloyd's. Investigations determined that the Company acts as an insurer and the Company, in transacting insurance, made several representations that were misleading and false.

Unauthorized Insurer

3. In 2014, the Insurance Commissioner alerted the President of the Company, Mark Gilmartin ("Gilmartin"), that he must immediately cease placing coverage with his prior insurer, because its policies were not authorized. Gilmartin informed the Insurance Commissioner that the Company had ceased placing insurance with that insurer and stopped doing business in Washington State.

4. Starting in 2015, the Company started doing business again in Washington State and obtained prize indemnity insurance for Washington events. These policies cost the Company \$5,000 each year in premium, have a \$250,000 deductible and a \$1 million coverage limit. They do not insure Washington risks, rather, they provide coverage to the Company for its contractual liability to cover prizes for event organizers. For the first year, the deductible applied to each approved and insured event. After that, the deductible applied to each policy year.

5. Following the procurement of these policies, the Company acted as an unauthorized insurer when it issued 860 certificates to Washington consumers and collected \$395,650 in premiums. On the back of the certificates, under "certificate terms," the Company "agrees to reimburse the Association Member named on the Certificate up to the specified prize value for each and every hole in one that occurs during the hole in one contest" and provides terms for coverage. According to Gilmartin, if a claim is made, the Company investigates the claims and determines if coverage is afforded. For all claims, the Company acted as the obligator to the event organizers from the first dollar up to \$250,000. Only after meeting this deductible could the Company make a claim against the Lloyd's insurance. The surplus lines brokers reported that the Company typically paid certificate holders for three (3) to four (4) claims per year, and it did not submit any claims to Lloyd's for reimbursement.

6. During an interview with the OIC, Gilmartin asserted that all contracts for the state of Washington are insured through Lloyd's from the first dollar. When confronted with the \$250,000 deductible, he said he did not realize the policy terms meant the Company was acting as an insurer. Mr. Gilmartin asked for guidance from the OIC to bring the Company into compliance.

Unpaid Taxes on Insurance Premiums

7. The Company failed to pay taxes on the \$395,650 it collected in premiums. As of January 11, 2019, it owes \$10,814 in premium taxes, penalty, and calculated interest.

False, Deceptive, and Misleading Advertisements

8. The Company used the following false, deceptive, and misleading advertisements and representations in its brochure for Hole in One International:

- Does not make clear that Hole in One International is merely a trade name and does not mention the legal entity, International Hole In One Association;
- Falsely represents that signs, tee markers, ancillary prizes are "free"; and
- Falsely represents that coverage is underwritten in Washington State by Lloyd's.

And the Company used the following false, deceptive, and misleading advertisements and representations on its Hole in One International website:

- Falsely represents that ancillary prizes are "free" and "courtesy of our sponsors"; and
- Falsely represents that an insurer underwrites the coverage and fails to disclose this is not the case for Washington events.

9. During his interview, Gilmartin admitted that the non-insurance products and services were not "free" and the use of the word "free" was simply a marketing tactic.

Policy Misrepresentations and Illegal Dealings in Premiums

10. Investigations also reviewed the Company's certificates of participation issued by the Company to members of the Company for their "prize coverage program" and found false and misleading representations.

11. First, these certificates falsely represented that “[the Company’s] prize reimbursement obligations . . . [are] insured through Lloyd’s of London” and prominently featured the Lloyd’s logo at the bottom. Based on these certificates, the Washington consumers would have falsely believed that they were covered by an authorized insurer.

12. Second, the fee structure was false and misleading. Each certificate charged a “certificate fee” that was based on the number of contestants, hole in one prize value, and the length of the target par 3 hole. The fees are premiums that the consumers paid in exchange for the coverage. These fees do not make clear that the consumer is paying a 10% commission to the insurance producer and fees for the “free” items. For example, a Washington consumer paid \$895 for hole in one insurance. Out of that \$895, \$90 went to the producer for their commission, \$50 for signage, \$29 for tee prizes, \$20 for services, \$24 for shipping, and \$647.35 for the prize pack, and \$34.65 for the “premium.” Per RCW 48.18.170, the entire fee is the premium, because it was non-negotiable and the consumer paid the entire fee in exchange for coverage.

13. RCW 48.05.030(1) provides that no person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the Insurance Commissioner and then in force; except, as to such transactions as are expressly otherwise provided for in this code.

14. RCW 48.15.020(1) provides that an insurer that is not authorized by the Insurance Commissioner may not solicit insurance business in this state or transact insurance business in this state, except as provided in this chapter.

15. RCW 48.92.090(2) provides that a purchasing group that obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group that have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.

16. RCW 48.92.090(3) prohibits a purchasing group from purchasing insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

17. RCW 48.92.095 provides that premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups must be: (1) Imposed at the same rate and subject to the same interest, fines,

and penalties as those applicable to premium taxes and taxes on premiums paid for similar coverage from authorized insurers, as defined under chapter 48.05 RCW, or unauthorized insurers, as defined and provided for under chapter 48.15 RCW, by other insurers; and (2) The obligation of the insurer; and if not paid by the insurer, then the obligation of the purchasing group; and if not paid by the purchasing group, then the obligation of the insurance producer for the purchasing group; and if not paid by the insurance producer for the purchasing group, then the obligation of each of the purchasing group's members. The liability of each member of the purchasing group is several, not joint, and is limited to the tax due in relation to the premiums paid by that member.

18. RCW 48.14.020(1) provides that an insurer shall on or before the first day of March of each year pay to the state treasurer through the Insurance Commissioner's office a tax on premiums. Except as provided in subsection (3), such tax shall be in the amount of two percent of all premiums.

19. RCW 48.14.060(1) provides that any insurer or taxpayer failing to file its tax statement and to pay the specified tax on premiums by the last day of the month in which the tax becomes due shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not paid within forty-five days after the due date, the insurer will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not paid within sixty days of the due date, the insurer will be assessed a total penalty of twenty percent of the amount of the tax. The tax may be collected by distraint, and the penalty recovered by any action instituted by the Insurance Commissioner in any court of competent jurisdiction. The amount of any penalty collected must be paid to the state treasurer and credited to the general fund.

20. RCW 48.14.060(2) provides that, in addition to the penalties in subsection (1), interest will accrue on the amount of the unpaid tax or prepayment at the maximum legal rate of interest permitted under RCW 19.52.020 commencing 61 days after the tax is due until paid.

21. RCW 48.14.095(1)-(5) provides:

- (1) This section applies to any insurer or taxpayer, as defined in RCW 48.14.0201, violating or failing to comply with RCW 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or 48.46.027(1).
- (2) Except as provided in subsection (7) of this section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers or taxpayers identified in subsection (1) of this section.

- (3) If an insurance contract, health care services contract, or health maintenance agreement covers risks or exposures, or enrolled participants only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state, or enrolled participants residing in this state.
- (4) In determining the amount of taxable premiums under subsection (3) of this section, all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are considered to be written on risks or property resident, situated, or to be performed in this state, or for health care services to be provided to enrolled participants residing in this state.
- (5) Insurance on risks or property resident, situated, or to be performed in this state, or health coverage for the provision of health care services for residents of this state, is considered to be insurance procured, continued, renewed, or performed in this state, regardless of the location from which the application is made, the negotiations are conducted, or the premiums are remitted.

22. RCW 48.18.170 defines "Premium" to mean all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof. "Premium" does not include a regulatory surcharge imposed by RCW 48.02.190, except as otherwise provided in this section. Any assessment, or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge made by the insurer in consideration for an insurance contract is deemed part of the premium.

23. RCW 48.18.180(1) states that the premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

24. RCW 48.30.040 provides that no person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein.

25. RCW 48.30.050 states that every advertisement of, by, or on behalf of an insurer shall set forth the name in full of the insurer and the location of its home office or principal office, if any, in the United States (if an alien insurer).

26. RCW 48.30.090 provides that no person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof.

27. WAC 284-30-355(5) provides that no person may knowingly issue or circulate a certificate that contains any false or misleading information or that purports to alter, amend, or extend the coverage provided by the insurance policy.

28. RCW 48.05.190(1) and WAC 284-30-670 requires that every insurer conduct its business in its own legal name.

29. RCW 48.15.023(5)(a) states that if the Insurance Commissioner has cause to believe that any person has violated the provisions of RCW 48.15.020(1), the Insurance Commissioner may: (i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or (ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

30. By purchasing insurance through a surplus lines broker with a deductible that applied to the purchasing group as a whole; acting as an insurer, transacting, and soliciting insurance without a Certificate of Authority; failing to file its tax statement and to pay its premium tax; conducting insurance business without using its legal name; false, deceptive, or misleading advertisements or representations on its brochure and website; misrepresenting the terms, benefits, and advantages of Respondent's policy by failing to make clear the producer's commission fee and fee for "free" items; and issuing certificates that falsely led Washington consumers to believe that they were covered by an insurer, Respondent violated RCW 48.92.090(2), RCW 48.92.090(3), RCW 48.05.030(1), RCW 48.15.020(1), RCW 48.05.190(1), WAC 284-30-670, RCW 48.14.020(1), RCW 48.18.180(1), RCW 48.30.040, RCW 48.30.050, RCW 48.30.090, and WAC 284-30-355(5), justifying the assessment of a civil penalty, and the assessment of premium tax, interest, and penalties, in accordance with RCW 48.15.023, RCW 48.92.095, RCW 48.14.020(1), RCW 48.14.060(1), RCW 48.14.060(2), and RCW 48.14.095.

CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and the Company agree that the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Company consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle this matter in consideration of the Company's payment of a fine, and upon such terms and conditions as are set forth below:

1. The Company acknowledges its duty to comply fully with the applicable laws of the state of Washington.

2. The Company consents to the entry of this Order, waives any and all hearing or other procedural rights, and further administrative or judicial challenges to this Order.

3. By agreement of the parties, the Insurance Commissioner will impose a fine of Twenty Five Thousand Dollars (\$25,000.00) and suspend Ten Thousand Dollars (\$10,000.00) of that, on the conditions that:

a. The Company pays Fifteen Thousand Dollars (\$15,000.00) by **June 10, 2019**; and

b. The Company commits no further violations of the statutes and/or regulations that are the subject of this Order for a period of two (2) years from the date this Order is entered.

4. The suspended portion of this fine will be imposed at the sole discretion of the Insurance Commissioner according to the conditions as set forth above, without any right to hearing, appeal or advance notice. The suspended portion of the fine will be paid within thirty (30) days of the entry of an Order imposing it. Failure to pay the suspended portion of the fine when imposed shall constitute grounds for revocation of the Company's certificate of authority.

5. The Company understands and agrees that any further failure to comply with the statutes and/or regulations that are the subject of this Order constitutes grounds for further penalties, which may be imposed in direct response to further violations.

6. By agreement of the parties, the Company will pay premium tax owed to the Office of the Insurance Commissioner, plus penalties and interest, totaling Ten Thousand Eight Hundred Fourteen Dollars (\$10,814.00) (\$7,908 2% premium tax, \$1,430.00 penalties, and \$1,476.00 interest) to be paid by **June 10, 2019**.

7. Upon entry of this Order and payment of the fine, the Insurance Commissioner will rescind Order to Cease and Desist, Order No. 19-0113, and only this Order No. 19-0254, will remain in effect.

8. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Company. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this _____ day of _____, 2019.

INTERNATIONAL HOLE IN ONE ASSOCIATION

By: _____

Printed Name: _____

Printed Corporate Title: _____

AGREED ORDER:

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. The Company shall pay the unsuspended portion of the fine in the amount of Fifteen Thousand Dollars (\$15,000.00), receipt of which is hereby acknowledged by the Insurance Commissioner.

2. The Company shall pay premium tax in the amount of Ten Thousand Eight Hundred Fourteen Dollars (\$10,814.00) (\$7,908 2% premium tax, \$1,430.00 penalties, and \$1,476.00 interest), receipt of which is hereby acknowledged by the Insurance Commissioner.

3. Order to Cease and Desist, Order No. 19-0113, is hereby rescinded, and only this Order shall remain in effect.

4. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Company. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

ENTERED at Tumwater, Washington, this _____ day of _____, 2019.



MIKE KREIDLER
Insurance Commissioner

By and through his designee

ELLEN RANGE
Insurance Enforcement Specialist
Legal Affairs Division