

Carter, Rebekah (OIC)

From: Ray Weber <Ray.Weber@stokeslaw.com>
Sent: Wednesday, September 4, 2019 4:52 PM
To: Carter, Rebekah (OIC)
Cc: Caryn Jorgensen; Linda Wheeler; Michael Russell
Subject: RE: Alaska Air Group's Demand for Hearing
Attachments: Draft ASA Consent Order[1].docx; Redlined Draft ASA Consent Order With All Changes 05022019.pdf

Ms. Carter,

Thank you for the email. Attached, please find a copy of the Draft Consent Order received by Alaska Air Group on April 18, 2019 which includes fines, penalties and premium taxes. Also attached is Alaska Air Group's reply to the Draft Consent Order provided to OIC on May 2, 2019 which has not yet been addressed by OIC. No formal Order has been issued. Accordingly, there is no Order Number. Further, on August 16, 2019, Alaska Air Group received a verbal order from the OIC enforcement attorneys to re-respond to OIC Enforcement's positions by August 30, 2019 or face commencement of an action and removal from the voluntary self-reporting program. Please let us know if you require any further information.

Regards,

Ray Weber

From: Carter, Rebekah (OIC) <RebekahC@oic.wa.gov>
Sent: Wednesday, September 4, 2019 12:58 PM
To: Ray Weber <rweber@millsmeyers.com>
Subject: FW: Alaska Air Group's Demand for Hearing

From: Carter, Rebekah (OIC) **On Behalf Of** OIC Hearings Unit
Sent: Wednesday, September 4, 2019 12:35 PM
To: 'Linda Wheeler' <lwheeler@millsmeyers.com>; OIC Hearings Unit <HearingsU@oic.wa.gov>
Cc: Caryn Jorgensen <cjorgensen@millsmeyers.com>; Pace, Josh (OIC) <JoshuaP@oic.wa.gov>
Subject: RE: Alaska Air Group's Demand for Hearing

Good afternoon,

This confirms receipt.

Our Hearings Office is separate from the rest of the agency, so we unfortunately are unable to access the same records (it's part of the screening protocol under the APA to ensure fairness to parties).

To assist us in screening this and expedite processing, do you have a copy of the proposed order or order number that was on it? Was the proposed consent order levying fine, premiums, etc., against Alaska Air Group, Inc., or against ASAA Assurance? When was this threat of action/proposed action made?

I am here until 5 p.m. today as well so if it's easier to call me with an order number that is fine too.

Thank you,



Rebekah Carter

Paralegal
Operations / Appeals Unit

Washington State Office of the Insurance Commissioner
(360) 725-7002 (office) | (360) 664-2782

RebekahC@oic.wa.gov

From: Linda Wheeler [<mailto:lwheeler@millsmeyers.com>]

Sent: Friday, August 30, 2019 3:07 PM

To: OIC Hearings Unit <HearingsU@oic.wa.gov>

Cc: Caryn Jorgensen <cjorgensen@millsmeyers.com>

Subject: Alaska Air Group's Demand for Hearing

Please see attached Demand for Hearing with Attachment A. This was also uploaded via the Office of the Insurance Commissioner's Website.

Thanks.

Linda

Linda McIntosh Wheeler | [vCard](#)
Legal Assistant/Paralegal

Mills Meyers Swartling P.S.

[1000 Second Avenue, 30th Floor | Seattle, WA 98104](#)

Direct: [206.812.7474](tel:206.812.7474) | Reception: [206.382.1000](tel:206.382.1000)

lwheeler@millsmeyers.com | www.millsmeyers.com

**Please note, effective September 1, 2019, Mills Meyers Swartling will no longer be providing legal services and I will be joining Stokes Lawrence. Read more [here](#) about this exciting transition.*

After September 1, you can reach me at Linda.Wheeler@stokeslaw.com or 206-812-7474.

This e-mail is intended to be private. It may contain privileged or confidential information. If you are not

a person for whom the e-mail was intended, please notify me immediately and then permanently delete the e-mail, including any attachments, without copying or forwarding it.

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

In the Matter of

ASA ASSURANCE, INC.

Unauthorized Insurer.

Order No. 19-0XXX

CONSENT ORDER

This Consent Order (“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, and RCW 48.15.023, and ASA Assurance, Inc. (“ASA”). ASA stipulates to paragraphs 1-22 in the section below labeled “Basis” and consents to entry of the Order. The Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner’s policies and procedures.

BASIS:

1. ASA is a Hawaii-domiciled captive insurance company. ASA was licensed as a captive insurance company in Hawaii on July 11, 2016.
2. ASA is a pure captive insurance company, whose sole insured is a holding company (the “Insured”) headquartered in Washington State.
3. Starting in 2016, ASA issued three (3) contractual indemnification policies and conducted one (1) loss portfolio transfer related to workers’ compensation liabilities of the Insured. These insurance transactions covered risk that was entirely located in Washington State.
 - i. The first policy was effective July 26, 2016 to June 30, 2017.
 - ii. The second policy was effective July 1, 2017 to June 30, 2018.
 - iii. The third policy was effective July 1, 2018 to June 30, 2019.
 - iv. The loss portfolio transfer was effective December 1, 2017 and covered losses that occurred from 2000 to 2016.
4. ASA does not hold a certificate of authority to transact insurance in Washington State.

5. ASA issued insurance coverage to a Washington insured without having the insurance placed through a licensed surplus line broker.

6. On January 30, 2019, ASA submitted a reporting form under the Insurance Commissioner's captive insurer Self-Reporting Plan. Documents submitted by ASA demonstrate the following:

- i. The Insured maintains its principal place of business in Washington State.
- ii. Insurance coverage issued by ASA to the Insured covers risks located in Washington State.
- iii. ASA's board of directors is made up of three (3) individuals. All three (3) of these individuals are employees of the Insured and have business addresses in Washington State.
- iv. ASA received approximately \$91,174,699 in direct written premium for policies issued to the Insured between 2016 and 2019 that covered risk in Washington State.

7. ASA has not paid premium tax to the state of Washington for the tax years 2016 through 2019 on the portion of premium that can be allocated to a risk or exposure located in this state. This represents approximately \$1,823,494 in unpaid premium taxes.

8. RCW 48.01.020 provides that all insurance and insurance transactions in this state, or affecting subjects located wholly or in part or to be performed within this state, and all persons having to do therewith are governed by this code.

9. RCW 48.01.040 defines "insurance" as a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.

10. RCW 48.01.050 defines "insurer" to include every person engaged in the business of making contracts of insurance, other than a fraternal benefit society.

11. RCW 48.01.060 defines "insurance transaction" to include any:

- (1) Solicitation.
- (2) Negotiations preliminary to execution.
- (3) Execution of an insurance contract.
- (4) Transaction of matters subsequent to execution of the contract and arising out of it.
- (5) Insuring.

12. 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.

13. RCW 48.11.070(3) defines “general casualty insurance” to include insurance of the obligations accepted by, imposed upon, or assumed by employers under law for workers’ compensation.

14. RCW 48.11.070(10) defines “general casualty insurance” to include insurance against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy.

15. 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.

16. RCW 48.15.023(5)(a) provides 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.

17. RCW 48.14.020(1) provides that subject to other provisions of this chapter, each authorized insurer except title insurers 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) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer under RCW 48.14.090 during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-

for basis consistent with the basis required by the annual statement. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

18. RCW 48.14.060(1) provides that any insurer failing to file its tax statement and to pay the specified tax or prepayment of tax on premiums and prepayments for health care services 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.

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

20. RCW 48.14.090 provides that in determining the amount of direct premium taxable in this state, all such premiums written, procured, or received in this state shall be deemed written upon risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement.

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. By transacting insurance in Washington State without holding a certificate of authority, issuing unauthorized insurance to a Washington insured without having it placed through a licensed surplus broker, and failing to timely remit a two (2) percent premium tax to the state of Washington for insurance on risks or exposures located in Washington State, ASA Assurance, Inc. violated RCW 48.05.030(1) (certificate of authority required), RCW 48.15.020(1) (transaction of insurance by unauthorized insurer prohibited), RCW 48.14.020(1) (payment of two (2) percent premium tax required), and RCW 48.14.060 and RCW 48.14.095(1)-(5) (failing to timely remit premium tax payment). These violations justify the imposition of a fine and payment of premium tax, interest and penalties under RCW 48.14.020(1), RCW 48.14.060(1), RCW 48.14.095(1)-(5), and RCW 48.15.023(5)(a)(ii).

CONSENT TO ORDER:

NOW, THEREFORE, ASA consents to entry of the Agreed Order in light of its desire to resolve this matter without further administrative or judicial proceedings. ASA waives any and all hearing or other procedural rights and waives administrative or judicial challenges to the Agreed Order. The Insurance Commissioner consents to settle this matter on the terms described in the Agreed Order in consideration of ASA's payment of a fine, premium tax, and interest and penalties that have accrued upon the unpaid premium tax amount.

EXECUTED this _____ day of _____, 2019.

ASA Assurance, Inc.

By: _____

Printed Name: _____

Printed Corporate Title: _____

AGREED ORDER:

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

1. ASA will cease and desist from engaging in the unlawful transaction of insurance in Washington State on the effective date of this Order.

a. However, nothing herein shall prevent ASA from fulfilling the terms of policy no. 922-1WC-18 until coverage concludes on or before June 30, 2019.

2. ASA will pay a fine in the amount of \$25,000.00 by **[insert deadline]**, receipt of which is hereby acknowledged by the Insurance Commissioner.

3. ASA will pay premium tax in the amount of \$1,823,494, a tax penalty in the amount of \$63,673.50, and tax interest in the amount of \$138,820 by **[insert deadline]**, receipt of which is hereby acknowledged by the Insurance Commissioner.

4. ASA acknowledges its duty to comply fully with the applicable laws of the state of Washington.

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

6. This Order and the basis set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving ASA. However, 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.

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

FILL IN SIGNATURE

MIKE KREIDLER
Insurance Commissioner

By and through his designee

ELLEN RANGE
Insurance Enforcement Specialist
Legal Affairs Division

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

ASA ASSURANCE, INC.

Unauthorized Insurer.

Order No. 19-0XXX

CONSENT ORDER

Commented [A1]: To be finalized

This Consent Order (“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, and RCW 48.15.023, and ASA Assurance, Inc. (“ASA”). ASA stipulates to paragraphs 1-22 in the section below labeled “Basis” and consents to entry of the Order. The Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner’s policies and procedures.

Commented [A2]: To be finalized

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BASIS:

1. ASA is a Hawaii-domiciled captive insurance company. ASA was licensed as a captive insurance company in Hawaii on July 11, 2016.

2. ASA is a pure captive insurance company, whose ~~sole insured is a holding company~~ insureds include Alaska Air Group, Inc., Alaska Airlines, Inc., Horizon Air Industries, Inc. and McGee Air Services, Inc. (collectively the “Insureds”). ~~headquartered~~ These businesses primarily operate in the aviation industry throughout North America and have principal places of business in Washington State.

3. Starting in 2017, the Insureds negotiated and purchased two 2016, ASA issued three (3) contractual indemnification policies and conducted one (1) loss portfolio transfer related to their State of Washington self-insured and All Other State high-deductible insurance workers’ compensation liabilities ~~of from ASA in the Insured~~ State of Hawaii. These insurance transactions covered risk that was ~~entirely located~~ located both in Washington State (the self-insured liabilities) and in states other than Washington (the high-deductible insurance liabilities). In 2017, the Insureds negotiated and reinsured a loss portfolio transfer of previously held wholly self-insured

CONSENT ORDER NO. 19-0XXX

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State of Washington
Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

LA – 1597637 - 1

and self-insured deductible liabilities from ASA in the State of Hawaii. Additionally, the Insureds negotiated and purchased certain aviation-related policies from ASA in the State of Hawaii that are beyond the scope of the Insurance Commissioner's regulatory authority.

- i. The first policy was effective July 1, 2017 to June 30, 2018.
- ii. The second policy was effective July 1, 2018 to June 30, 2019.

~~ASA does not hold a certificate of authority to transact insurance in Washington
The loss portfolio transfer was effective December 1, 2017 and covered losses that occurred from 2000 to 2016.~~

6.4. ASA does not hold a certificate of authority to transact insurance in Washington State.

7. On January 30, 2019, the Insureds submitted a reporting form under the Insurance Commissioner's

8-5. On January 30, 2019, the Insureds ~~ASA~~ submitted a reporting form under the Insurance Commissioner's captive insurer Self-Reporting Plan. Documents submitted by ~~ASA~~ the Insureds demonstrate the following:

- i. The Insureds maintain their principal places of business in Washington State.
- ii. Insurance coverage procured by the Insureds from ASA covers risks located in Washington State, as well as risks located in other states.
- iii. ASA's board of directors is made up of three (3) individuals. All three (3) of these individuals are employees of the Insureds. All three (3) individuals have business addresses in Washington State, while one (1) individual additionally holds a business address in the State of Hawaii.
- iv. The Insureds paid approximately \$14,724,925 in premiums for policies between 2017 and 2018 that covered risk in Washington State.

6. ASA has not paid premium tax to the state of Washington for the tax years 2017 through 2018 on the portion of payments related to premiums that can be allocated to a risk or exposure located in this state. This represents approximately \$294,499 in unpaid premium taxes.

9-7. ASA has paid premium tax on its payments related to premiums outside of the State of Washington.

10.8. RCW 48.01.020 provides that all insurance and insurance transactions in this state, or affecting subjects located wholly or in part or to be performed within this state, and all persons having to do therewith are governed by this code.

11.9. RCW 48.01.040 defines “insurance” as a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.

12.10. RCW 48.01.050 defines “insurer” to include every person engaged in the business of making contracts of insurance, other than a fraternal benefit society.

13.11. RCW 48.01.060 defines “insurance transaction” to include any:

- (1) Solicitation.
- (2) Negotiations preliminary to execution.
- (3) Execution of an insurance contract.
- (4) Transaction of matters subsequent to execution of the contract and arising out of it.
- (5) Insuring.

14.12. 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.

15.13. RCW 48.11.070(3) defines “general casualty insurance” to include insurance of the obligations accepted by, imposed upon, or assumed by employers under law for workers’ compensation.

16.14. RCW 48.11.070(10) defines “general casualty insurance” to include insurance against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy.

17.15. 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.

18.16. RCW 48.15.023(5)(a) provides 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.

19.17. RCW 48.14.020(1) provides that subject to other provisions of this chapter, each authorized insurer except title insurers 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) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer under RCW 48.14.090 during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

20.18. RCW 48.14.060(1) provides that any insurer failing to file its tax statement and to pay the specified tax or prepayment of tax on premiums and prepayments for health care services 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.

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

22.20. RCW 48.14.090 provides that in determining the amount of direct premium taxable in this state, all such premiums written, procured, or received in this state shall be deemed written upon risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement.

23.21. 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.

24.22. ~~By The Insurance Commissioner has alleged that~~ transacting insurance in Washington State without holding a certificate of authority, issuing unauthorized insurance to a

Washington insured without having it placed through a licensed surplus broker, and failing to timely remit a two (2) percent premium tax to the state of Washington for insurance on risks or exposures located in Washington State, ASA Assurance, Inc. violated RCW 48.05.030(1) (certificate of authority required), RCW 48.15.020(1) (transaction of insurance by unauthorized insurer prohibited), RCW 48.14.020(1) (payment of two (2) percent premium tax required), and RCW 48.14.060 and RCW 48.14.095(1)-(5) (failing to timely remit premium tax payment). ~~These~~ The Insurance Commissioner has further alleged that these violations justify the imposition of a fine and payment of premium tax, interest and penalties under RCW 48.14.020(1), RCW 48.14.060(1), RCW 48.14.095(1)-(5), and RCW 48.15.023(5)(a)(ii).

CONSENT TO ORDER:

NOW, THEREFORE, ASA denies any wrongdoing or violation of Washington law and nothing in this Agreed Order nor any performance by ASA hereunder shall constitute an admission of wrongdoing, liability, fault, or any other improper action. ASA and the Insurance Commissioner consent to entry of this Agreed Order solely as a means of resolving this dispute to avoid any administrative or judicial proceedings with regard to this matter.

EXECUTED this _____ day of _____, 2019
in Honolulu, Hawaii.

ASA Assurance, Inc.

By: _____

Printed Name: _____

Printed Corporate Title: _____

AGREED ORDER:

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

1. The Insurance Commissioner agrees that Captive Insurance Companies (Captives) are a “gray area” under the current Revised Code of Washington as the office has previously stated. The Insurance Commissioner agrees that Captives serve an important business purpose and restricting the use of Captives puts Washington based businesses at a competitive disadvantage to their peers in other states. The Insurance Commissioner agrees to partner with the Insureds and other Washington based businesses to develop a viable solution that both protects the interests of the State and furthers the interests of business desiring to use Captives in their finance operations to be implemented during or before the 2020 legislative session.

2. The Insureds agree that the State and the Insurance Commissioner have an interest in regulation of insurance contracts covering risks within the State of Washington. The Insureds agree that the State and the Insurance Commissioner have a valid interest in collecting taxes on direct insurance premiums for risks within the State of Washington. The Insureds agree to partner with the Insurance Commissioner and other Washington based businesses to develop a viable solution that both protects the interests of the State and furthers the interests of business desiring to use Captives in their finance operations to be implemented during or before the 2020 legislative session.

~~1.3. ASA will cease and desist from engaging in the unlawful transaction of insurance in Washington State on the effective date of this Order. The Insureds will not procure, and ASA will not issue direct policies of insurance of Washington based risks without being authorized to~~

do so via a certificate of authority from the Insurance Commissioner on the effective date of this Order.

- a. The Insurance Commissioner will issue ASA a temporary limited certificate of authority on the date of this Order.
- b. The limited certificate of authority will allow ASA to continue to issue direct policies of insurance to the Insureds for Washington-based risks until statutes or permanent regulations fully defining Captive operations and taxation within the State are duly enacted or promulgated.
- a.c. As long as ASA maintains its temporary limited certificate of authority, ASA will timely pay its future premium taxes relating to premiums that cover risk in Washington State at the rate stated in RCW 48.14.020.

2.4. ASA will pay a fine in the amount of \$25,000.00 upon issuance of the temporary limited certificate of authority.

3.5. ASA will pay premium tax for the tax years 2017 through 2018 in the amount of \$294,499, a tax penalty in the amount of \$17,833, and tax interest in the amount of \$2,146 by [insert deadline], receipt of which is hereby acknowledged by the Insurance Commissioner.

4.6. ASA acknowledges its duty to comply fully with the applicable laws of the state of Washington.

5.7. The Insurance Commissioner acknowledges that it does not have authority to tax The Insurance Commissioner acknowledges that it does not have authority to tax the premiums on The Insurance Commissioner acknowledges that it does not have authority to tax the premiums on any aviation policies or reinsurance contracts held or issued by ASA.

6.8. 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.

Commented [A3]: To be finalized

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

DRAFT