

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

In the Matter of

NW RE LIMITED,

Unauthorized Entity.

Order No. 19-0106

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 NW Re Limited (“NW Re”). NW Re stipulates to paragraphs 1-8 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. NW Re is an Arizona-domiciled captive insurance company. NW Re was licensed as a captive insurance company in Arizona on September 4, 2009.
2. Prior to its licensure in Arizona, NW Re was licensed as a captive insurance company in Bermuda on September 13, 2000. NW Re re-domiciled from Bermuda to Arizona on September 4, 2009.
3. NW Re is a pure captive insurance company, whose sole insured is a Washington corporation (the “Insured”).
4. NW Re issued self-insured retention/deductible-reimbursement policies to the Insured for general liability, products liability, and workers’ compensation from 2000 to 2019.

5. NW Re does not hold a certificate of authority to transact insurance in Washington State.

6. NW Re issued insurance coverage to a Washington insured without having the insurance placed through a licensed surplus line broker.

7. On December 20, 2018, NW Re submitted a reporting form under the Insurance Commissioner's captive insurer Self-Reporting Plan. Documents submitted by NW Re demonstrate the following:

- i. The Insured maintains its principal place of business in Washington State.
- ii. Insurance coverage issued by NW Re to the Insured covers risks located in Washington State.
- iii. Insurance contracts issued by NW Re to the Insured were delivered to the Insured's Washington State address.
- iv. Insurance contracts issued by NW Re to the Insured for policy years 2008-2009 provide for New York, New York as the seat of arbitration. Insurance contracts issued by NW Re to the Insured for policy years 2010-2013 provide for Seattle, Washington as the seat of arbitration. Insurance contracts issued by NW Re to the Insured for policy years 2014-2019 do not address arbitration.
- v. Insurance contracts issued by NW Re to the Insured for policy years 2008-2009 provide that the insurance contract shall be governed by and construed in accordance with the laws of the State of New York. Insurance contracts issued by NW Re to the Insured for policy years 2010-2013 provide that the insurance contract shall be governed by and construed in accordance with the laws of the State of Washington. Insurance contracts issued by NW Re to the Insured for policy years 2014-2019 do not address governing law.
- vi. NW Re's board of directors is made up of seven (7) individuals. Six (6) of these individuals are employees of the Insured and have business addresses in Washington State.
- vii. NW Re received approximately \$119,645,277.00 in direct written premium, attributable to risks located in Washington, for policies issued to the Insured between September 1, 2008 and September 5, 2019.

8. NW Re has not paid premium tax to the state of Washington for the tax years 2008-2019 on the portion of premium that can be allocated to a risk or exposure located in this state. This represents approximately \$2,392,907.00 in unpaid premium taxes.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. RCW 48.14.090 states 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.

16. 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.

17. 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, NW Re 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), justifying 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, NW Re consents to entry of the Agreed Order in light of its desire to resolve this matter without further administrative or judicial proceedings. NW Re 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 NW Re's payment of a fine, premium tax, and interest and penalties that have accrued upon the unpaid premium tax amount.

EXECUTED this 4th day of March 2019.

NW Re Limited

By: *Amuel Jaswal*

Printed Name: FARIED "TONY" S JASWAL
President

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. NW Re 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 NW Re from fulfilling the terms of policy no. 943704-13, provided coverage by NW Re under policy no. 943704-13 concludes on or before September 5, 2019.
2. NW Re will pay a fine in the amount of \$25,000.00 by **April 1, 2019**, receipt of which is hereby acknowledged by the Insurance Commissioner.
3. NW Re will pay premium tax in the amount of \$2,392,907.00, a tax penalty in the amount of \$99,044.75, and tax interest in the amount of \$1,117,141.00 by **April 1, 2019**, receipt of which is hereby acknowledged by the Insurance Commissioner.
4. NW Re will provide a declaration signed by a Director or Officer of NW Re, attesting to the amount of direct written premium attributable to risks located in Washington State for the tax years 2008-2019, by **April 1, 2019**.

5. NW Re acknowledges its duty to comply fully with the applicable laws of the state of Washington.

6. NW Re 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.

7. This Order and the basis set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving NW Re. 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 8th day of MARCH 2019.



By and through his designee



ROSS VALORE
Insurance Enforcement Specialist
Legal Affairs Division

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

In the Matter of

Docket No. 19-0106

NW RE LIMITED,

DECLARATION OF
ANDREA WITTFIELD

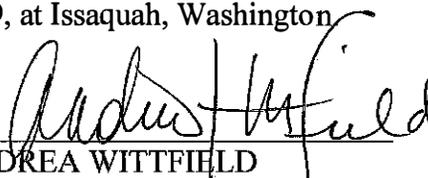
Unauthorized Entity.

I, Andrea Wittfield, under penalty of perjury under the law of the State of Washington, declare as follows:

1. I am a Director of NW Re Limited.
2. To the best of my knowledge and belief, the amount of direct written premium received by NW Re Limited from its insured for the tax years 2008-2019 that is attributable to risks located in Washington State is \$119,645,277.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Executed on this 4th day of March 2019, at Issaquah, Washington


ANDREA WITTFIELD