

STATE OF NORTH DAKOTA

BEFORE THE INSURANCE COMMISSIONER

| | | |
|--------------------------------|---|--------------------|
| In the Matter of |) | |
| |) | CONSENT ORDER |
| NAU Country Insurance Company, |) | |
| |) | FILE NO. C0-23-881 |
| FEIN 42-1265237, |) | |
| |) | |
| Respondent. |) | |

Insurance Commissioner Jon Godfread, hereinafter “Commissioner”, has determined as follows:

1. The Commissioner has authority in this matter pursuant to N.D.C.C. § 26.1-01-03.
2. NAU Country Insurance Company (“Respondent”), FEIN No. 42-1265237, a Minnesota domiciled property and casualty insurance company that provides crop insurance, is licensed under North Dakota Century Code Chapter 26.1-39 and has been duly authorized to do business in North Dakota since February 1, 1997.
3. The Commissioner has jurisdiction over the Respondent and the subject matter of this Consent Order, and this Consent Order is made in the public interest.
4. On November 22, 2021, North Dakota Insurance Commissioner Godfread issued Bulletin 2021-5 regarding Crop Hail Insurance in North Dakota. The Bulletin states in relevant part:

Use of NCIS Final Average Loss Cost – NCIS Final Average Loss Cost (FALC) is recognized as the most reliable estimate of claim costs over time. **Companies seeking to file deviations or modifications to NCIS FALC or to file independent rates must support any such requests with credible and actuarially sound data.**

Rate filings based on NCIS FALC must include the following:

1. Crop Insurance Rate Filing Form NDPC200 cover page – Adoption of Advisory Organization Loss Costs. Only one cover page is necessary to summarize the overall filing impact.

2. The company's three-year pure loss experience and expenses. The use of the most recent years' experience is optional.

Use Crop Insurance Rate Filing Form NDPC200, page 4, Historical Expense Exhibit.

3. The company's proposed loss cost multiplier for each product or tier of loss costs, including the development and support for the multiplier. Separate multipliers may be filed based upon product (i.e., crop hail versus companion hail), marketing type (i.e., agent, direct marketing, internet marketing), or rating tiers (i.e., loss cost ranges, loss cost modification, production expense, fixed expenses).

Use Crop Insurance Rate Filing Form NDPC200, page 2, Development of Loss Cost Multiplier if the filing does not include fixed expense components. Use one page for each separate loss cost multiplier you are filing.

Use Crop Insurance Rate Filing Form NDPC200, page 3, Development of Loss Cost Multiplier with Fixed Expense Component if the filing includes a fixed expense component. Use one page for each separate loss cost multiplier you are filing.

4. Crop Insurance Rate Filing Form NDPC200, page 5, Summary of Loss Cost Multipliers. Use appropriate number of forms needed to summarize all loss cost multipliers.

5. A cover letter and actuarial memorandum detailing the rationale for your request.

6. A copy of the proposed rates.

(emphasis added).

5. N.D.C.C. §26.1-25-01, which governs, in part, fire, property, and casualty insurance rates in North Dakota, highlights the importance of regulating insurance rates:

The purpose of this chapter is to promote the public welfare by regulating insurance rates so that they are not excessive, inadequate, or unfairly discriminatory, and to authorize and regulate limited cooperative action among insurers in ratemaking-related activities and in other matters within the scope of this chapter. Nothing in this chapter is intended to prohibit or discourage reasonable competition, or to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in rating systems, rating plans, or practices. This chapter must be liberally interpreted to carry into effect this section.

6. N.D.C.C. § 26.1-25-03(1)(d) explicitly mandates that "Rates may not be excessive, inadequate, or unfairly discriminatory."

7. As noted in Bulletin 2021-5, NCIS Final Average Loss Cost (FALC) is recognized as the most reliable estimate of claim costs over time. Deviations or modifications to NCIS FALC may result in loss caps that are inadequate, excessive, or unfairly discriminatory. To avoid any of these results, companies seeking to file deviations or modifications to NCIS FALC or to file independent rates **must** support any such requests with credible and actuarially sound data. The Department considers the cupping or capping of NCIS loss costs to be indicative of inadequate or excessive rates.

8. On May 8, 2023, the Department received an email tip, notifying it that Respondent was possibly capping its soybean loss costs (which ultimately leads to capped rates) for the 2023 crop year.

9. On May 9, 2023, the Department reached out to Respondent, ultimately having a phone conversation with a company official on May 10, 2023.

10. Respondent indicated its rating program is used country-wide, including in those states that allow rate caps/cups.

11. Respondent indicated it adjusted its rating program for North Dakota by setting the cap sufficiently high enough that it would not actually cap any loss costs. However, Respondent indicated soybean loss costs increased enough to exceed this cap, with the result that loss costs for certain townships in North Dakota were being capped from 2018 through 2023.

12. On May 10, 2023, the Department advised Respondent to cease writing policies at the capped rates, which Respondent complied with and ceased writing policies at the capped rates. The Department also asked for a write-up of the issue, and information on the townships and policies that were affected. Respondent sent this information to the Department on May 30, 2023.

13. This issue occurred between the years 2018 and 2023.

14. In total, 1,292 policies in North Dakota were undercharged by a total amount of \$553,000 over that period.

15. While Respondent did not self-report this issue, it was cooperative with the Department in working through this issue.

16. Respondent's implementation of inadequate rates is a violation of N.D.C.C. §§ 26.1-25-03.

17. Respondent's violation of law constitutes grounds for the Commissioner to impose a civil penalty pursuant to N.D.C.C. § 26.1-01-03.3 and issue an order to Respondent to cease and desist from implementing inadequate rates and policies in violation of N.D.C.C. § 26.1-25-03. Respondent's violations of law further constitute grounds upon which Respondent's Certificate of Authority may be revoked pursuant to N.D.C.C. § 26.1-11-08(2).

CONSENSUAL INFORMAL DISPOSITION

18. Respondent has been duly apprised of all allegations.

19. Respondent and the Commissioner have agreed to an informal disposition of this matter without entry of a Cease and Desist Order by the Commissioner or other further administrative proceedings, as provided by N.D.C.C. § 28-32-22, and enter into the following Consent Order.

NOW, PURSUANT TO THE AGREEMENT OF THE PARTIES, IT IS HEREBY ORDERED THAT:

1. Respondent agrees to immediately stop its practice of implementing inadequate rates if not already done so.

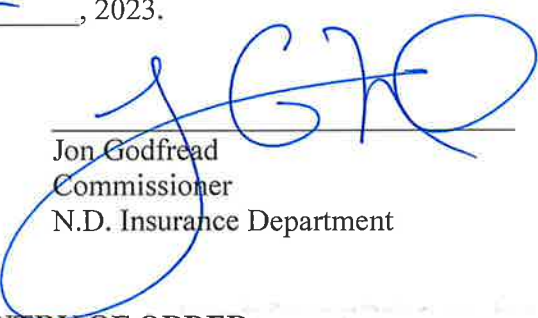
2. If the Respondent has not already done so, Respondent shall file a correction to its 2023 Crop-Hail filing no later than 60 days following the effective date of this Order.

3. Respondent shall, in lieu of other disciplinary action against its Certificate of Authority, pay an administrative penalty in the sum of \$10,000 to the State of North Dakota within 30 days

of the execution of this Order. Payment must be mailed to: North Dakota Insurance Department, 600 East Boulevard Avenue, Dept. 401, Bismarck, ND 58505. If not already completed, Respondent shall file within thirty (30) days of the execution of this Order a corrected premium tax filing statement and any associated taxes and fees with the Department.

4. The use of this Consent Order for competitive purposes by an insurance producer or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of the license or authority.

DATED this 26th day of October, 2023.



Jon Godfread
Commissioner
N.D. Insurance Department

CONSENT TO ENTRY OF ORDER

The undersigned, Doug Jakway, on behalf of NAU states that the undersigned has read the foregoing Consent Order and is authorized by the Company to consent to the entry of this order. The undersigned, on behalf of the Company, fully understands the contents and effect of the Consent Order. The Company has been advised of its right to be represented by legal counsel, to request a hearing in this matter, to present evidence and arguments to the Commissioner, and of its right to appeal from an adverse determination after hearing. By the signing of this Consent to Entry of Order the undersigned on behalf of the Company waives those rights in their entirety and consents to the entry of this Consent Order by the Insurance Commissioner and agrees to be bound by it. It is further expressly understood that this Consent Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either express or implied.

DATED this 11th day of October, 2023.

NAU

By: [Signature]
Print Name: Doug Sakway
Title: SVP / General Counsel

Subscribed and sworn to before me this 11 day of October, 2023.

[Signature]
Notary Public

State of Minnesota
County of Anoka

My Commission Expires:

