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**FILED**

**MAR 22 2012**

Department of Insurance  
State of Idaho

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE**

**STATE OF IDAHO**

In the Matter of:

SCAFFOLD INDUSTRY INSURANCE  
COMPANY RISK RETENTION GROUP,  
INC.

Idaho Registration No. 3692  
NAIC No. 12524

Docket No. 18-2744-12

**ORDER TO CEASE AND DESIST**

The State of Idaho, Department of Insurance (Department), hereby alleges the following facts that constitute a basis for the issuance of an order, pursuant to Idaho Code §§ 41-4811 and 41-213(1)(a), requiring SCAFFOLD INDUSTRY INSURANCE COMPANY RISK RETENTION GROUP, INC. (SCAFFOLD), to immediately cease and desist engaging in the business of insurance in Idaho, to include issuing and renewing insurance policies in this state.

**RESPONDENT**

1. SCAFFOLD is a risk retention group domiciled in the District of Columbia and registered in Idaho to transact casualty insurance, excluding worker's compensation insurance, under registration number 3692.

## **FINDINGS OF FACT**

2. On March 5, 2012, the District of Columbia Commissioner of Insurance, Securities and Banking issued an order, in RFB No. O-01-12, ordering SCAFFOLD to immediately cease writing all new and renewal business, effective as of the date of such order, based on the Commissioner's finding that SCAFFOLD's capital and surplus rendered the company statutorily insolvent and that it would be hazardous for the company to continue to operate without regulatory intervention.

## **CONCLUSIONS OF LAW AND VIOLATIONS**

3. Idaho Code § 41-4805(8)(b) prohibits the "solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired." The finding by the District of Columbia Commissioner of Insurance, Securities and Banking as referenced in paragraph 2 above, constitutes a finding that SCAFFOLD is "in hazardous financial condition or is financially impaired," within the meaning of Idaho Code § 41-4805(8)(b).

4. Because SCAFFOLD is in hazardous financial condition or is financially impaired, within the meaning of Idaho Code § 41-4805(8)(b) as set forth in paragraph 3 above, for SCAFFOLD to continue to transact the business of insurance in Idaho under such circumstances would violate the prohibition set forth in Idaho Code § 41-4805(8)(b).

5. Idaho Code § 41-4812 provides that "[a] risk retention group which violates any provision of [title 41, chapter 48, Idaho Code] will be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and/or the right to do business in this state."

6. Idaho Code § 41-4811 provides that the Director of the Idaho Department of Insurance (Director) is authorized to use any of the powers authorized by title 41, Idaho Code, to

enforce the laws of this state, so long as such powers are not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended. Such section authorizes the Director to issue such orders as necessary to enforce Idaho laws, including title 41, Idaho Code.

7. Idaho Code § 41-213(1)(a) provides that, if the Director believes that any person has engaged in or is about to engage in any act or practice which violates title 41, Idaho Code, the Director may issue an order requiring the person to cease and desist from any prohibited act or practice.

8. Idaho Code § 67-5247 provides that an agency may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

### **ORDER**

The Director, having reviewed the foregoing, finding good cause, and determining that the entry of this order is required for the protection of the public;

NOW, THEREFORE, based on the foregoing, and pursuant to the sections of the Idaho Code set forth above, including particularly Idaho Code §§ 41-213(1)(a) and 67-5247, IT IS HEREBY ORDERED that SCAFFOLD shall immediately CEASE AND DESIST transacting the business of insurance in Idaho, to include issuing any new policies or renewing any existing policies insuring policyholders within the state of Idaho or covering risks within the state of Idaho.

This ORDER TO CEASE AND DESIST is effective immediately and shall remain in effect until such time as the Director determines that SCAFFOLD's financial condition warrants the withdrawal of this order.

**IT IS SO ORDERED.**

### NOTIFICATION OF RIGHTS

This is a final order of the Director. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
- iv. The real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this final order, (b) an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

DATED this 21<sup>ST</sup> day of March, 2012.

STATE OF IDAHO  
DEPARTMENT OF INSURANCE



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WILLIAM W. DEAL  
Director

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 22nd day of March, 2012, I caused a true and correct copy of the foregoing ORDER TO CEASE AND DESIST to be served upon the following by the designated means:

Scaffold Industry Insurance Company  
Risk Retention Group, Inc.  
Sterling Plaza  
5949 Sherry Lane  
Dallas, TX 75225

- ☒ first class mail
- ☒ certified mail
- ☐ hand delivery
- ☐ via facsimile

William P. White, Commissioner  
Department of Insurance, Securities and Banking  
Government of the District of Columbia  
810 First Street NE, Suite 701  
Washington, DC 20002

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ via facsimile

A. René Martin  
Deputy Attorney General  
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P.O. Box 83720  
Boise, ID 83720-0043

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- ☐ certified mail
- ☒ hand delivery
- ☐ via facsimile

  
Teresa Jones