

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the Matter of:

Order No. 17-012-M

Markel Insurance Company
_____ /

Issued and Entered
this 17th day of February 2017
By Patrick M. McPharlin
Director

FINAL ORDER WITHDRAWING APPROVAL

FINDINGS OF FACT

1. Under Section 2236(5) of the Michigan Insurance Code (Code), MCL 500.2236(5), the Director (Director) of the Department of Insurance and Financial Services (DIFS) has broad authority to disapprove, withdraw approval, or prohibit the issuance of all types of insurance policy forms.

2. Under Section 2236(5) of the Code, MCL 500.2236(5), the Director may "prohibit the issuance, advertising, or delivery of a form to any person in this state if the form violates this act, contains inconsistent, ambiguous or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy."

3. On January 5, 2017, DIFS issued a Notice of Withdrawal of Approval (Notice) to Markel Insurance Company (Markel). The Notice informed Markel that its Dealer Contingent Liability and Physical Damage Policy with forms, endorsements and declaration page (collectively, the DCL Policy) was no longer approved for issuance in Michigan because it violated the Code; contained inconsistent, ambiguous, and/or misleading clauses; and contained conditions that unreasonably and deceptively affected the risk purported to be assumed.

4. The specific objectionable provisions and conditions of the DCL Policy forms were set forth in detail in the Notice, the entirety of which is incorporated herein by reference and attached to this Final Order.

5. The Notice advised Markel of its opportunity to demand a hearing under MCL 500.2236(6). Notice, p. 7. In order to avail itself of this opportunity, Markel was required to send DIFS a signed, written request for a hearing by February 4, 2017.

6. Markel did not demand a hearing by February 4, 2017, nor did Markel contest any of the findings in the Notice.

7. Accordingly, the withdrawal of approval set forth in the Notice is effective as of February 5, 2017, and Markel no longer has the Director's approval to issue, use, advertise, or deliver the DCL Policy in Michigan.

CONCLUSIONS OF LAW

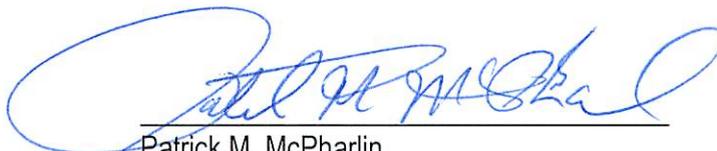
8. Pursuant to Sections 2236(5) - (7) of the Code, MCL 500.2236(5) - (7), if an insurer's form was legally in use but the Director withdraws approval, the insurer shall not issue, use, advertise, or deliver that form after the effective date of the Director's withdrawal of approval or, if a hearing has been requested after the Director's final determination of withdrawal of approval.

9. The Director's withdrawal of approval of the DCL Policy was effective on February 5, 2017.

Therefore, **IT IS ORDERED** that Markel shall immediately cease and desist from issuing, using, advertising, and delivering the DCL Policy in Michigan. Failure to do so will subject Markel to penalties as allowed by the Code, including but not limited to monetary penalties for each violation.

FURTHER, IT IS ORDERED that Markel shall notify all of its managing general agents, appointed producers, and all named and additional insureds currently insured under a DCL Policy that the DCL Policy is no longer approved for use in Michigan.

IT IS FURTHER ORDERED that, by February 24, 2017, Markel shall provide to the Director proof that it has issued the notifications required under this Order.



Patrick M. McPharlin
Director



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
LANSING

PATRICK M. MCPHARLIN
DIRECTOR

NOTICE OF WITHDRAWAL OF APPROVAL

January 5, 2017

Office of the Chief Executive Officer
Markel Insurance Company
Ten Parkway North
Deerfield, IL 60015

RE: **NOTICE OF WITHDRAWAL OF APPROVAL**
Commercial Auto Forms

Dear CEO:

Markel Insurance Company ("Markel") filed a Dealer Contingent Liability and Physical Damage Policy with forms, endorsements and declaration page ("DCL Policy") with the Michigan Department of Insurance and Financial Services ("DIFS") on September 1, 2008. Markel's September 1, 2008 cover letter stated that the DCL Policy related to a "new program tailored to meet the commercial automobile insurance needs for dealerships." (Letter from Markel to Office of Financial and Insurance Regulation (OFIR, DIFS' predecessor agency), September 1, 2008 (emphasis added)).

This letter constitutes DIFS' Notice of Withdrawal of Approval of Markel's DCL Policy, which included the following forms, endorsements and declaration page:

- (1) DEALER'S CONTINGENT LIABILITY AND PHYSICAL DAMAGE POLICY Declaration Page and Policyholder Information – MDC 001-A (06/08) ("Declaration Page");
- (2) BUSINESS AUTO COVERAGE FORM (CA 00 01 03 06) ("Business Form");
- (3) MICHIGAN CHANGES (CA 01 10 11 06);
- (4) COMMON POLICY CONDITIONS (IL 00 17 11 98) ("Conditions Endorsement");
- (5) MICHIGAN PERSONAL INJURY PROTECTION ENDORSEMENT (CA 22 20 03 11) ("PIP Endorsement");
- (6) MICHIGAN CHANGES-CANCELLATION AND NONRENEWAL (CA 02 17 03 94) ("Cancel/Renew Endorsement");
- (7) CONTINGENT AND EXCESS LIABILITY COVERAGE ENDORSEMENT – MCA 035 (06/08) ("Purchaser Endorsement"); and
- (8) NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (IL 00 21 09 08).

The Director of DIFS has general authority to regulate the insurance industry as set forth in Section 200 of the Code, MCL 500.200, which states that DIFS is "charged with the execution of the laws in relation to insurance" Section 2236(5) of the Code, MCL 500.2236(5), establishes the Director's broad authority to disapprove, withdraw approval, or prohibit the issuance of all types of insurance policy forms, and permits the Director to "... prohibit the issuance, advertising or delivery of a form to any person in this state if the

form violates this act, contains inconsistent, ambiguous or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy.”

Because the DCL Policy purports to provide both commercial and personal coverages, it is not exempt from filing under Section 2236(8)(e) of the Code because it is not sold to an “exempt commercial policyholder.” MCL 500.2236(8)(e). An “exempt commercial policyholder” is one who purchases insurance for “other than personal, family or household purposes.” MCL 500.2236(11). Because Markel’s Purchaser Endorsement purports to provide coverage to an individual driver for personal use, the DCL Policy does not meet the criteria for exemption; nor does the DCL Policy qualify for any of the other exemptions listed in Section 2236(8)(a) through (e), MCL 500.2236(8)(a-e). Accordingly, the DCL Policy was subject to DIFS’ approval under Section 2236(1) of the Code, MCL 500.2236(1), and is subject to DIFS’ disapproval, withdrawal of approval and prohibition under Section 2236(5) of the Code, MCL 500.2236(5).

The objectionable provisions or conditions of the DCL Policy forms are as follows:

DEALER’S CONTINGENT LIABILITY AND PHYSICAL DAMAGE POLICY Declaration Page and Policyholder Information – MDC 001-A (06/08) (“Declaration Page”)

Objectionable Provision or Condition

Coverage Applicability to Scheduled Autos: Symbol 10; This policy only provides coverage for the scheduled term(s) listed below. Coverage is effective when “our” administrator receives the request to schedule the vehicle within (2) hours after the “additional insured” takes delivery of the vehicle from “you”. This policy is excess coverage to the “additional insured’s” private passenger automobile insurance.

Basis for Withdrawal of Approval

The Declaration Page violates the Code; contains inconsistent, ambiguous and/or misleading clauses; and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy, in violation of MCL 500.2236(5) as follows:

- (1) It is misleading because it states that commercial and personal insurance coverages are provided in the DCL Policy, which is contrary to the Code. No-fault automobile insurance coverage for private passenger nonfleet automobiles is a personal lines insurance coverage subject to Chapter 21 of the Code. The DCL Policy is impermissible because the Conditions Endorsement allows cancellation of the coverage in a manner that does not comply with the renewability requirement of Section 2118(1) of the Code, MCL 500.2118(1), and the notices of cancellation and nonrenewal required under Section 2123 of the Code, MCL 500.2123.¹

¹ Section 3020(1)(a) of the Code, MCL 500.3020(1)(a), requires that an automobile insurance policy “may be cancelled at any time at the request of the insured . . .” The DCL Policy complies with this statutory requirement through the relevant language of its Conditions Endorsement which provides the dealer policyholder with such a cancellation right. However, because it purports to extend coverage to an additional insured purchaser, the DCL Policy must also comply with the Code’s requirements related to renewability and notices of cancellation and nonrenewal. Specifically, Section 2118(1) of the Code, MCL 500.2118(1), requires that “[a]s a condition of maintaining its certificate of authority, an insurer shall not refuse to insure, refuse to continue to insure, or limit coverage available to an eligible person for automobile insurance . . .” Similarly, Section 2119(2) requires uniform application of an insurer’s underwriting rules “so that every applicant or insured [who satisfies those rules] will be insured or renewed.” Finally, Section 2123 of the Code, MCL 500.2123, mandates that “a termination of insurance shall not be effective

- (2) It violates the Code and contains conditions that unreasonably and deceptively affect the risk purported to be assumed because it purports to limit the coverage term to 7 or 30 days without renewability. Such limited coverage terms violate Section 2118(1) of the Code, MCL 500.2118(1), by not affording the mandated continuous and renewable no-fault automobile insurance. Further, such limited coverage terms violate Section 2123 of the Code, MCL 500.2123, by not affording coverage of a sufficient duration to enable compliance with the mandated notice of nonrenewal prior to coverage termination.
- (3) It contains inconsistent clauses because it purports to limit the coverage to 7 or 30 days, which is inconsistent with the Cancel/Renew Endorsement provisions, which provide that "[i]f we decide not to renew or continue this policy we will mail or deliver to you written notice at least 30 days before the end of the policy period." If the coverage term is limited to 7 or 30 days, then the 30-day notice of nonrenewal cannot be provided prior to coverage termination. Therefore, the Declaration Page and Cancel/Renew Endorsement are inconsistent.
- (4) It contains inconsistent, ambiguous and/or misleading clauses and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed. The PIP Endorsement, page 2, Section C: Exclusions, states: "We will not pay personal injury protection benefits for bodily injury: 5. To the owner or registrant of an auto for which the coverage required by the Michigan no fault law is not in effect." Section 3101 of the Code, MCL 500.3101, requires the "owner or registrant" of a vehicle to obtain no-fault insurance coverage. This exclusion is triggered when the purchaser relies on the Purchaser Endorsement and fails to purchase his/her own no-fault coverage. Therefore, coverage purportedly described on the Declaration Page is inconsistent with the coverage limitations of the PIP Endorsement Exclusion.
- (5) It contains inconsistent, ambiguous and/or misleading clauses, and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy because the Declaration Page states that the coverage is "excess to an additional insured's private passenger automobile insurance," which is inconsistent with the coverage purportedly provided in the Purchaser Endorsement.
- (6) It violates the Code because it purports to limit coverage afforded to the purchaser as "excess to an additional insured's private passenger automobile insurance," which would not provide the coverage required under Section 3101 of the Code, MCL 500.3101.
- (7) It fails to comply with the readability score provisions set forth in Section 2236(3) of the Code, MCL 500.2236(3).

unless the insurer, at least 30 days prior to the date of termination, delivers . . . a written notice of the termination." The dealer policyholder's right to cancel the DCL Policy "at any time" under Section 3020(1)(a) of the Code cannot be reconciled with the additional insured purchaser's rights to renewable coverage under Sections 2118 and 2119 of the Code and notice prior to coverage termination under Section 2123 of the Code. Therefore, the DCL Policy is impermissible under the Code.

COMMON POLICY CONDITIONS (IL 00 17 11 98) ("Conditions Endorsement")

Objectionable Provision or Condition

A. Cancellation, Paragraphs 1-6.

Basis for Withdrawal of Approval

The Conditions Endorsement violates the Code; contains inconsistent, ambiguous and/or misleading clauses; and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy, in violation of MCL 500.2236(5) as follows:

- (1) It violates the Code and contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy because it allows the dealer policyholder to cancel the coverage in a manner that does not comply with the renewability requirements and notices of cancellation and nonrenewal required under Chapter 21 of the Code.²
- (2) It fails to comply with the readability score provisions set forth in Section 2236(3) of the Code, MCL 500.2236(3).

CONTINGENT AND EXCESS LIABILITY COVERAGE ENDORSEMENT – MCA 035 (06/08) ("Purchaser Endorsement")

Objectionable Provision or Condition

Entire endorsement.

Basis for Withdrawal of Approval

The Purchaser Endorsement violates the Code; contains inconsistent, ambiguous and/or misleading clauses; and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy, in violation of MCL 500.2236(5) as follows:

- (1) It impermissibly combines commercial and personal insurance coverages, in violation of the Code. No-fault automobile insurance coverage for private passenger nonfleet automobiles is a personal lines insurance coverage subject to Chapter 21 of the Code. The DCL Policy is impermissible because the Conditions Endorsement allows cancellation of the coverage in a manner that does not comply with the renewability requirement of Section 2118(1) of the Code, MCL 500.2118(1), and the notices of cancellation and nonrenewal required under Section 2123 of the Code, MCL 500.2123.³
- (2) A dealer contingent liability policy issued to a consumer/purchaser cannot be predicated upon having a dealer as the primary named insured because under Michigan law, the no-fault coverage must be issued to an owner or registrant of the vehicle. Section 3101 of the Code, MCL 500.3101, requires an "owner or registrant" of a vehicle to obtain no-fault insurance coverage. An "owner" is, among other things, the "person that holds the legal title to a motor vehicle or motorcycle." MCL 500.3101(2)(k)(iii).

² See Footnote 1.

³ See Footnote 1.

- (3) It contains inconsistent, ambiguous and/or misleading clauses and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed. The PIP Endorsement, page 2, Section C: Exclusions, states: "We will not pay personal injury protection benefits for bodily injury: 5. To the owner or registrant of an auto for which the coverage required by the Michigan no fault law is not in effect." Section 3101 of the Code, MCL 500.3101, requires the "owner or registrant" of a vehicle to obtain no-fault insurance coverage. This exclusion is triggered when the purchaser relies on the Purchaser Endorsement and fails to purchase his/her own no-fault coverage as required under Michigan law. Therefore, coverage purportedly provided in the Purchaser Endorsement is inconsistent with the PIP Endorsement exclusion.
- (4) It contains inconsistent, ambiguous and/or misleading clauses, and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy because the Declaration Page states that the coverage "is excess to an additional insured's private passenger automobile insurance." Therefore, coverage purportedly provided in the Purchaser Endorsement is inconsistent with the Declaration Page provisions.
- (5) It fails to comply with the readability score provisions set forth in Section 2236(3) of the Code, MCL 500.2236(3).

MICHIGAN PERSONAL INJURY PROTECTION ENDORSEMENT
Entire Form (CA 22 20 03 11) ("PIP Endorsement")

Objectionable Provision or Condition

"B. Exclusions

We will not pay personal injury protection benefits for "bodily injury":

...

5. To the owner or registrant of an 'auto' for which the coverage required by the Michigan no-fault law is not in effect."

Basis for Withdrawal of Approval

The PIP Endorsement violates the Code; contains inconsistent, ambiguous and/or misleading clauses; and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy, in violation of MCL 500.2236(5) as follows:

- (1) It contains inconsistent, ambiguous, and/or misleading clauses and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed. The PIP Endorsement, page 2, Section C: Exclusions, states: "We will not pay personal injury protection benefits for bodily injury: 5. To the owner or registrant of an auto for which the coverage required by the Michigan no fault law is not in effect." Section 3101 of the Code, MCL 500.3101, requires the "owner or registrant" of a vehicle to obtain no-fault insurance coverage. This exclusion is triggered when the purchaser relies on the Purchaser Endorsement and fails to purchase his/her own no-fault coverage. Therefore, the PIP Endorsement exclusion is inconsistent with the coverage purported to be provided in the Purchaser Endorsement.
- (2) It fails to comply with the readability score provisions set forth in Section 2236(3) of the Code, MCL 500.2236(3).

DEALER'S CONTINGENT LIABILITY AND PHYSICAL DAMAGE POLICY
Entire Policy, including all Forms, Endorsements and Declaration Page (06/08) ("DCL Policy")

Objectionable Provision or Condition
Entire policy.

Basis for Withdrawal of Approval

DIFS incorporates by reference all of its bases for withdrawal of approval related to the Declaration Page, Conditions Endorsement, Purchaser Endorsement, and PIP Endorsement hereinabove stated. In addition, the DCL Policy violates the Code; contains inconsistent, ambiguous and/or misleading clauses; and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy, in violation of MCL 500.2236(5) as follows:

- (1) It impermissibly combines commercial and personal insurance coverages, in violation of the Code. No-fault automobile insurance coverage for private passenger nonfleet automobiles is a personal lines insurance coverage subject to Chapter 21 of the Code. The DCL Policy is impermissible because the Conditions Endorsement allows cancellation of the coverage in a manner that does not comply with the renewability requirement of Section 2118(1) of the Code, MCL 500.2118(1), and the notices of cancellation and nonrenewal required under Section 2123 of the Code, MCL 500.2123.⁴
- (2) It violates the Code and contains conditions that unreasonably and deceptively affect the risk purported to be assumed because it purports to limit the coverage term to 7 or 30 days without renewability. Such limited coverage terms violate Section 2118(1) of the Code, MCL 500.2118(1), by not affording the mandated continuous and renewable no-fault automobile insurance. Further, such limited coverage terms violate Section 2123 of the Code, MCL 500.2123, by not affording coverage of a sufficient duration to enable compliance with the mandated notice of nonrenewal prior to coverage termination.
- (3) It contains inconsistent clauses because it purports to limit the coverage to 7 or 30 days, which is inconsistent with the Cancel/Renew Endorsement provisions, which provide that "[i]f we decide not to renew or continue this policy we will mail or deliver to you written notice at least 30 days before the end of the policy period." If the coverage term is limited to 7 or 30 days, then the 30-day notice of nonrenewal cannot be provided prior to coverage termination. Therefore, the Declaration Page and Cancel/Renew Endorsement are inconsistent.
- (4) It violates the Code because a dealer contingent liability policy issued to a consumer/purchaser cannot be predicated upon having a dealer as the primary named insured because under Michigan law, the no-fault coverage must be issued to an owner or registrant of the vehicle. Section 3101 of the Code, MCL 500.3101, requires an "owner or registrant" of a vehicle to obtain no-fault insurance coverage. An "owner" is, among other things, the "person that holds the legal title to a motor vehicle or motorcycle." MCL 500.3101(2)(k)(iii).

⁴ See Footnote 1.

- (5) It violates the Code and contains inconsistent, ambiguous and/or misleading clauses and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed. The PIP Endorsement, page 2, Section C: Exclusions, states: "We will not pay personal injury protection benefits for bodily injury: 5. To the owner or registrant of an auto for which the coverage required by the Michigan no fault law is not in effect." Section 3101 of the Code, MCL 500.3101, requires that the "owner or registrant" of a vehicle must obtain no-fault insurance coverage. This exclusion is triggered when the purchaser relies on the Purchaser Endorsement and fails to purchase his/her own no-fault coverage. Therefore, the PIP Endorsement exclusion unreasonably and deceptively affects the risk purported to be assumed in the general coverage of the policy, is inconsistent with the coverage purported to be provided in the Purchaser Endorsement, and violates the Code by not providing the coverage required under Section 3101 of the Code, MCL 500.3101.
- (6) It contains inconsistent, ambiguous and/or misleading clauses, and/or contains exceptions and conditions that unreasonably and deceptively affect the risk purported to be assumed in the general coverage of the policy because the Declaration Page states that the coverage "is excess to an additional insured's private passenger automobile insurance." Therefore, coverage purportedly provided in the Purchaser Endorsement is inconsistent with the Declaration Page provisions.
- (7) It violates the Code because the Declaration Page purports to limit coverage afforded to the purchaser as "excess to an additional insured's private passenger automobile insurance," which would not provide the coverage required under Section 3101 of the Code, MCL 500.3101.
- (8) It fails to comply with the readability score provisions set forth in Section 2236(3) of the Code, MCL 500.2236(3).

The Director's withdrawal of approval of the above-listed forms takes effect thirty (30) days from the date of this Notice (January 5, 2017). After that date, Markel shall not issue, advertise, or deliver any form(s) disapproved by this Notice to any person in the State of Michigan. Any issuance, use, or delivery of the disapproved form(s) in the State of Michigan after that date may subject Markel to the penalties provided in MCL 500.2236(7) and/or other sanctions provided for by law.

Should Markel desire to dispute this withdrawal of approval pursuant to MCL 500.2236(6), it may, within thirty (30) days after the date of this Notice, demand a hearing by sending a signed, written request to the attention of:

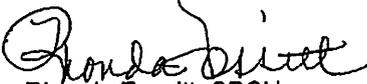
Ms. Dawn Kobus
Hearings Coordinator
Office of General Counsel
Department of Insurance and Financial Services
530 W. Allegan Street, 7th Floor
Lansing, MI 48933

NOTICE OF WITHDRAWAL OF APPROVAL
Market Insurance Company-Commercial Auto Forms
January 5, 2017
Page 8 of 8

A request for a hearing pursuant to MCL 500.2236(6) does not prevent the Director's withdrawal of approval of the DCL Policy and forms from taking effect thirty (30) days from the date of this Notice.

Should Markel wish to file for approval the DCL Policy without the objectionable provisions and/or forms identified above, the filing must be accompanied by a copy of this Notice of Withdrawal of Approval.

Sincerely,


Rhonda Fossitt, CPCU
Senior Deputy Director