

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA)	BEFORE THE COMMISSIONER OF
COUNTY OF WAKE)	INSURANCE
)	DOCKET No: D-1392
)	
)	ORDER AND FINAL AGENCY
IN THE MATTER OF)	DECISION
TRIP ASSURED, INC.)	

THIS CAUSE was heard on Thursday, January 30, 2008, by the undersigned hearing officer, designated by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 58-2-55, pursuant to a notice of hearing that was duly issued and served.

The North Carolina Department of Insurance (hereinafter "Department") was present, represented by the Consumer Services Division. The Department was represented by Assistant Attorney General Robert D. Croom.

The Respondent, Trip Assured, Inc., failed to appear after being duly served with the notice of hearing.

At the hearing, R. Terry Dorman, the Chief Examiner of Unlicensed Plan Investigations with the Department and Trip Assured policy holder Claire Dunford were called to testify on behalf of the Department.

The Department offered into evidence Administrative Exhibits A1 through A28 and Trial Exhibits B1 through B16, and said documents were admitted into evidence.

After careful consideration of the evidence and arguments presented, and based on the record as a whole, the undersigned Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Respondent is a corporation organized under the laws of Tennessee.
2. At all times relevant to this matter, the Respondent was neither licensed nor authorized by the Department to sell insurance products in the State of North Carolina.
3. On September 23, 2005, the Respondent entered into a voluntary Cease and Desist Agreement with the Department (hereinafter the "Cease and Desist Agreement"). The Cease and Desist Agreement specifically stated that "[t]his Agreement shall have the full force and effect of an order of the Commissioner of Insurance." At all times relevant to this matter,

the Cease and Desist Agreement was final and in effect.

4. As part of the terms of the Cease and Desist Agreement, the Respondent agreed to immediately, with the exception of any affirmative acts required in the Cease and Desist Agreement, cease and desist from soliciting, marketing, issuing, administering and conducting all business in this State, within the meaning of the North Carolina statutes relating to insurance in this State, without first being duly licensed by the Department.

5. As part of the terms of the Cease and Desist Agreement, the Respondent agreed to pay and otherwise fully service all valid claims on all contracts executed in North Carolina.

6. As part of the terms of the Cease and Desist Agreement, the Respondent could offer trip protection products and services to citizens of the State of North Carolina only if such trip protection products and services were fully underwritten by an insurer that was licensed to conduct the business of insurance in this State, and provided that the Respondent complied with all relevant North Carolina statutes and regulations.

7. On or about February 17, 2006, the Respondent issued a trip protection product to Claire and John Dunford of Raleigh, North Carolina to cover a vacation to the Dominican Republic they were taking in June, 2006.

8. The Dunfords paid \$109 each for the Trip Assured product.

9. At the time the Dunfords purchased the Trip Assured product, they were citizens and residents of North Carolina.

10. The Dunfords purchased the Trip Assured product from Remember Travel, a travel agency located in Raleigh, North Carolina maintaining marketing material for the Respondent's Product.

11. The Respondent's brochure, Exhibit B-2, given to the Dunfords at the time of their purchase by Remember Travel made the following representations regarding the benefits of the Trip Assured product:

- a. Trip Cancellation and Interruption up to \$10,000
- b. Trip Cost Default Protection
- c. \$10,000 Emergency Accidental Medical or Dental Expense
- d. \$1,000 Lost or Stolen Checked Baggage
- e. \$1,000 Trip Delay
- f. \$200,000 Flight Insurance
- g. \$100,000 Accidental Death while on cruise ship
- h. \$50 Airline Penalty Protection.

The Dunfords relied on the representations made in the brochure.

12. The Respondent's brochure given to the Dunfords at the time of their purchase states "No Deductibles - No Co-Payment" under the heading of "Benefits."

13. After the Dunfords had relied upon the terms of the brochure, after their trip, and only after they made a specific request to the Respondent for a copy of their contract, the Dunfords were sent a contract by the Respondent for the Trip Assured product. The contract was mailed to the Dunfords at a Raleigh, North Carolina address. The document, Exhibit B-3, listed a Raleigh, North Carolina address for the Dunfords. The confirmation date listed on the document was February 17, 2006. It covered a trip occurring from June 18, 2006 to June 24, 2006.

14. Among the services, terms, conditions and exclusions listed in the contract, it states:

- a. "Services include worldwide medical assistance while on your trip, \$200,000 scheduled flight insurance and \$100,000 accidental death cruise insurance
- b. "Trip Cancellation or Interruption permits members to cancel or interrupt their trip when they must because of a covered Reason. . . . Covered reasons include: serious and unforeseeable [sic] illness or injury to the traveler, an immediate family member or traveling companion."
- c. "Travel Supplier Default that results in the complete cessation of service because of financial reasons. Benefits include a replacement trip with another travel supplier."
- d. "Emergency Accidental Medical, Flight and Cruise Accidental Death or disability is arranged through blanket policies with various insurance companies for the added benefit of members. Benefits and deductibles change from time to time."
- e. "The sales brochure 'Membership Benefit Details' is incorporated as part of the contract."

15. Even though the brochure (Exhibit B-2) provided to the Dunfords at the time of purchase did not have the exact phrase "Membership Benefit Details," the brochure contained similar headings. The brochure included the headings "Benefits" and "Description of Benefits" and was the only document provided to the Dunfords prior to their trip which stated the membership benefit details and amounts of insurance coverage. Trip Assured, Inc. was the only company listed on the brochure. No other insurer is named or mentioned in the brochure. The undersigned finds that the brochure, Exhibit B-2, shows the insurance coverage that was being provided by the Respondent to the Dunfords and that the brochure is a part of the Respondent's policy and contract in this matter.

16. The Dunfords' policy consists of Exhibits B-2 and B-3.

17. The Dunfords' trip ran from June 18, 2006 to June 24, 2006 for a total of seven days. On the Dunfords' arrival in the Dominican Republic, the Dunfords' luggage was lost by the airline forcing the Dunfords to purchase clothing and personal items to use until their luggage was found and delivered to them.

18. The Dunfords spent approximately \$300 on necessities while their luggage was lost.

19. Pursuant to the terms of their contract with the Respondent, the Dunfords made a claim to be reimbursed for their expenses while their luggage was lost.

20. In response to the Dunfords' lost luggage claim, the Respondent stated to the Dunfords that their luggage was "delayed," not lost, and that their coverage did not include reimbursement for delayed luggage.

21. In neither the Respondent's brochure nor its contract does the Respondent exclude "delayed" luggage from its lost baggage coverage or define "lost" to mean something other than its ordinary meaning.

22. While on vacation, Mrs. Dunford suffered a serious accidental injury that required emergency surgery and hospitalization.

23. As a result of her injury and hospitalization, Mrs. Dunford incurred medical expenses in the amount of \$2,034.73, for which the Dunfords also made a claim under the terms of the policy.

24. Mr. and Mrs. Dunford incurred approximately \$150.00 in taxi fares for necessary travel related to Mrs. Dunford's emergency medical situation.

25. Mr. and Mrs. Dunford suffered a trip interruption due to Mrs. Dunford's emergency medical situation and hospitalization which caused them to miss a night at their resort, which amounted to \$574.

26. Mrs. Dunford made a claim for reimbursement for her related travel and medical expenses to the Respondent.

27. Mrs. Dunford also made a claim with her primary health insurer for her medical expenses.

28. Mrs. Dunford's primary health insurer determined that the medical expenses were not covered by her policy or did not meet her deductible. Her primary health insurer did not reimburse her for any of her expenses.

29. The Respondent did not reimburse Mrs. Dunford for her medical expenses on the

grounds that it believed Mrs. Dunford's claim should have been covered by her primary health insurer.

30. The Respondent has not responded to the Dunfords' 2006 request for trip interruption benefits.

31. The Petitioner investigated the Respondent's contract issued to the Dunfords, and the Respondent was informed by the Petitioner that the Respondent was liable for Mrs. Dunford's claim on May 1, 2007.

32. There is no provision in the Dunfords' contract which allows the Respondent to not pay a claim when it disagrees with the decision of a primary health insurance carrier.

33. As of the date of the hearing, the Respondent has still not paid any of Mrs. Dunford's claims.

34. The total loss incurred by the Dunfords excluding the amount of premium is 3,058.73.

35. A limited portion of the Respondent's Emergency Accidental Medical and Accidental Death coverage was arranged through a blanket policy with the Chesapeake Life Insurance Company, a North Carolina licensed insurer.

36. The Chesapeake Life Insurance Company policy had a \$5,000 deductible and was limited to accidental death and emergency accidental medical coverage. The first \$5,000 of accidental death and emergency accidental medical coverage under the Respondent's contract with the Dunfords was provided by the Respondent.

37. The Dunfords never received any certificate or correspondence from the Chesapeake Life Insurance Company indicating that she was covered under its blanket policy issued to the Respondent.

38. The Respondent's first \$5,000 of emergency accidental medical coverage of the Dunfords was not underwritten by a North Carolina licensed or authorized insurer.

39. The Respondent's \$1,000 lost or stolen baggage coverage was not underwritten by a North Carolina licensed or authorized insurer.

40. The Respondent's Trip Cancellation and Interruption coverage was not underwritten by a North Carolina licensed or authorized insurer.

41. The Respondent's Trip Cost Default Protection coverage was not underwritten by a North Carolina licensed or authorized insurer.

42. The Respondent's \$1,000 Trip Delay coverage was not underwritten by a North Carolina licensed or authorized insurer.

43. The Respondent's \$200,000 Flight Insurance coverage was not underwritten by a North Carolina licensed or authorized insurer.

44. The Respondent's \$50 Airline Penalty Protection coverage was not underwritten by a North Carolina licensed or authorized insurer.

45. The Respondent knew the requirements of the Cease and Desist Agreement and was aware of North Carolina's statutory prohibitions against unauthorized insurance. The Respondent willfully conducted unlicensed and unauthorized insurance business in North Carolina and willfully violated the Cease and Desist Agreement.

46. There is substantial evidence that supports the foregoing findings. Additionally, due to the Respondent's failure to appear at the administrative hearing, the undersigned Hearing Officer finds, pursuant to 11 NCAC 1.0423(a)(1), that the allegations set out in the notice of hearing are taken as true and are deemed to be proved without the need of further evidence. The allegations set out in the Notice of Hearing are incorporated by reference as if set forth herein.

Based on the forgoing Findings of Fact, the Hearing Officer makes the following:

Conclusions of Law

1. This matter is properly before the Commissioner. The Commissioner has jurisdiction over the parties and the subject matter pursuant to North Carolina General Statutes §58-33-46, 150B-38, 150B-40, 11 NCAC 1.0401 et seq. and other applicable statutes and regulations.

2. The trip protection product sold to the Dunfords by the Respondent is a contract of insurance as defined by N.C. Gen. Stat. § 58-1-10.

3. The Respondent has issued and delivered a contract of insurance to a resident of this State while not authorized to do the business of insurance in this State, in violation of N.C. Gen. Stat. § 58-28-10 and the Cease and Desist Agreement.

4. The Respondent has solicited the application for a contract of insurance through the use of a sales brochure in this State while not authorized to do the business of insurance in this State, in violation of N.C. Gen. Stat. § 58-28-10 and the Cease and Desist Agreement.

5. The Respondent has collected membership fees for a contract of insurance in this State while not authorized to do the business of insurance in this State, in violation of N.C. Gen. Stat. § 58-28-10 and the Cease and Desist Agreement.

6. The Respondent has transacted matters subsequent to the execution of a contract of insurance and arising out of the contract of insurance in this State while not authorized to do the business of insurance in this State, in violation of N.C. Gen. Stat. § 58-28-10 and the Cease and Desist Agreement.

7. The Respondent has provided insurance coverage to residents of North Carolina in violation of N.C. Gen. Stat. § 58-28-10 and the Cease and Desist Agreement.

8. The Respondent has unlawfully transacted the business of insurance in this State, in violation of N.C. Gen. Stat. § 58-28-5 and the Cease and Desist Agreement.

9. The Respondent has violated N.C. Gen. Stat. § 58-28-5 and the Cease and Desist Agreement.

10. The September 23, 2005 Cease and Desist Agreement voluntarily entered into by the Respondent and the Department is a valid agreement and has the full force and effect of an order of the Commissioner.

11. The Respondent violated the terms of the Cease and Desist Agreement by issuing a contract of insurance to the Dunfords that was not fully underwritten by North Carolina licensed or authorized insurers.

12. The Dunfords' claims for reimbursement for lost baggage, medical expenses and trip interruption were valid claims under the Respondent's contract of insurance. The Respondent violated the terms of the Cease and Desist Agreement by either denying or failing to pay the claims made by the Dunfords.

13. The violations of the Cease and Desist Agreement were willful.

14. Pursuant to N.C. Gen. Stat. §§ 58-28-30 and 58-2-70, the Commissioner may order the payment of a monetary penalties. Under N.C. Gen. Stat. § 58-2-70(c), each day during which a violation occurs constitutes a separate violation. The violations of the cease and desist agreement began in February of 2006 on the day of the application and continued through claim disputes which were ongoing as of the date of the hearing – January 30, 2008. Throughout this time period, the Respondent engaged in unauthorized insurance activities. The Respondent's unauthorized insurance activities included, but were not limited to, providing the brochure, accepting the application for insurance and the membership fees, issuing the contract to North Carolina residents, providing seven days of insurance coverage for a seven day trip and taking other actions concerning the unauthorized insurance policy. The record shows unauthorized insurance activity occurring on more than eight days. There are well in excess of eight violations for penalty purposes. The undersigned concludes that penalties should be imposed for eight violations of the Cease and Desist Agreement.

15. In accordance with N.C. Gen. Stat. §§ 58-28-30 and 58-2-70, the undersigned has considered the penalty factors set out in N.C. Gen. Stat. § 58-2-70. The undersigned has considered the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. This included, but was not limited to, consideration of the following: During their trip, the Dunfords suffered financial losses in the amount of \$3,058.73 for which they should have been reimbursed by the Respondent. The Dunfords also suffered other personal hardship and inconvenience as a result of the Respondent's sale of an unauthorized insurance product in this State. Trip Assured, Inc. received the benefit of \$218 in premium money from this unauthorized insurance transaction. As of the close of evidence in this matter, the Respondent had not paid any portion of the Dunfords' claims.

16. Pursuant to N.C. Gen. Stat. §§ 58-2-70 and 58-28-30, the undersigned assesses penalties for eight violations at a rate of \$765 per violation. The total amount of civil money penalties imposed on the Respondent is \$6,120.

17. An important factor in the penalty decision is that the Respondent has not yet paid any portion of the Dunfords' claims. If the Respondent pays the Dunfords' claims for \$3,058.73 or any portion of the Dunfords' claims within 30 days of this order and provides satisfactory proof of payment to the undersigned within 30 days of this order, it is appropriate to reduce the penalty amount in this matter by an amount which corresponds to that paid by the Respondent to the Dunfords. This possible penalty reduction is offered solely for the purpose of encouraging the Respondent to correct some of the harm caused by its conduct as soon as possible.

18. The evidence presented at the hearing, in the form of testimony and the exhibits introduced, is sufficient to support the entry of an order fining the Respondent and ordering it to cease and desist from violating N.C. Gen. Stat. § 58-28-5.

19. Additionally, the allegations contained in the Notice of Hearing, when taken as true pursuant to 11 NCAC 1.0423(a)(1), are also sufficient to support the entry of an order fining the Respondent and ordering it to cease and desist from violating N.C. Gen. Stat. § 58-28-5.

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following:

Order

NOW THEREFORE, it is hereby ordered that:

1. The Respondent shall immediately, with the exception of any affirmative acts required by this Order, cease and desist from soliciting, marketing, issuing, administering and conducting all insurance business in this State, within the meaning of the North Carolina statutes

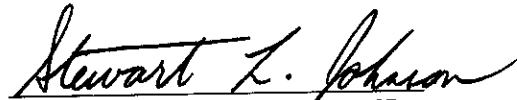
relating to insurance in this State;

2. The Respondent shall pay and otherwise fully service all valid claims on all contracts issued to North Carolina residents;

3. The Respondent shall pay monetary penalties in the amount of \$6,120 within 30 days of this order. If the Respondent pays the Dunfords' claims for \$3,058.73 or any portion of those claims within 30 days of this order and provides satisfactory proof of payment to the undersigned within 30 days of this order, the penalty amount imposed in this matter will be reduced by an amount which corresponds to that paid by the Respondent to the Dunfords. Any such reduced penalties shall also be paid within 30 days of this order.

4. The above-referenced civil monetary penalties shall be paid to the N.C. Department of Insurance within thirty days of this order. The check shall be made payable to the "North Carolina Department of Insurance." The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of the public schools.

This the 29th day of February, 2008.


Stewart Johnson, Hearing Officer
N.C. Department of Insurance

APPEAL RIGHTS: This Order may be appealed to Superior Court within 30 days of receipt, as set forth in the General Statutes of North Carolina.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing ORDER AND FINAL AGENCY DECISION by mailing a copy of the same via certified U.S. mail, return receipt requested, in a first class postage prepaid envelope addressed as follows:

Trip Assured
80 Miller Avenue, Suite 105
Crossville, TN 38555

Pacific Registered Agents, Inc.
200 Prosperity Dr.
Knoxville, TN 37923
Tennessee Registered Agent for Trip Assured, Inc.

This the 3rd day of March, 2008.



Robert D. Croom
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