

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

STATE OF NORTH CAROLINA

**BEFORE THE COMMISSIONER
OF INSURANCE**

COUNTY OF WAKE

**IN THE MATTER OF)
OWNER OPERATOR RESOURCES)
CORPORATION, WAYNE WICKARD,)
and BERNIE CLEGG)**

**CONSENT CEASE AND
DESIST ORDER**

Docket # 1238

THIS CAUSE came on to be heard by the undersigned Hearing Officer of the North Carolina Department of Insurance; and

WHEREAS the Commissioner of Insurance of the State of North Carolina (hereinafter "Commissioner") is a duly authorized and elected official of the State of North Carolina, having the authority and responsibility for the enforcement of the insurance laws of the State; and

WHEREAS this administrative proceeding was instituted by the North Carolina Department of Insurance (hereinafter "NCDOI") with a May 26, 2005, Notice of Administrative Hearing by reason of Respondents' alleged violations of the unauthorized insurance provisions of the North Carolina General Statutes; and

WHEREAS Respondents represent to NCDOI that they have not transacted insurance in North Carolina since April 1, 2005; and

WHEREAS Respondents and NCDOI have reached a mutually-agreeable resolution of this proceeding as set out in this Consent Order; and

WHEREAS Respondents stipulate and agree that NCDOI, by entering into this Consent Order, shall not be construed as approving or validating any amounts of payment that Respondents have paid or will pay to persons or entities for workers' compensation claims; nor shall NCDOI, by entering into this Consent Order, be construed as affecting the legal rights of any third party; further, nothing shall prevent OORC from continuing to act as an administrative service provider to independent owner operators engaged in the commercial trucking industry, including, but not limited to, working with licensed insurance

brokers to secure valid workers' compensation coverage, from insurers licensed by NCDOI, for the North Carolina resident owner operators participating in OORC's workers' compensation program, provided OORC fully and wholly complies with North Carolina insurance laws and regulations in doing so; and

WHEREAS Respondents stipulate and agree that this Consent Order shall not be construed as affecting the right of NCDOI to pursue administrative action against the licensure of any person or entity who has engaged in any unlawful transaction or activity related to the matters and things set forth herein; and nothing in this Consent Order shall prevent OORC and/or Wickard from pursuing any civil action or other remedy from any other person or entity not a party to this administrative proceeding; and it is not the intent of NCDOI or the Respondents to release or discharge any person or entity not specifically identified herein

WHEREAS THE PARTIES STIPULATE AND AGREE TO THE FOLLOWING FINDINGS OF FACT:

FINDINGS OF FACT

1. A Notice of Administrative Hearing was served upon the Respondents.
2. Respondent Owner Operator Resources Corporation (hereinafter "OORC") is an Indiana corporation.
3. OORC and Respondent Wayne Wickard have also done business as OORA, LLC. For all purposes herein, OORC and OORA, LLC shall be collectively referred to as "OORC."
4. OORC is currently operating out of offices in Angola, Indiana, Fremont, Indiana, and Tulsa, Oklahoma.
5. Respondent Wayne Wickard (hereinafter "Wickard") is the President of OORC, and he controls OORC's business affairs.
6. Respondent Bernie Clegg (hereinafter "Clegg") is a Vice President of OORC. At all times herein, Clegg acted at the direction of Wickard.
7. OORC and Wickard assert and allege that OORC and Wickard did not solicit, operate or administer a workers' compensation insurance plan through the internet, and that OORC and Wickard only utilized licensed North Carolina insurance agents to market their Plan and collect premiums for the Plan. OORC and Wickard assert and allege that OORC and Wickard did not transact unlawful insurance business in North Carolina. OORC and Wickard assert and allege that OORC and Wickard attempted to secure and place valid workers' compensation coverage through a licensed carrier.

8. OORC and Wickard have been soliciting, operating and administering a workers' compensation insurance plan (hereinafter sometimes referred to as "the Plan") to residents in North Carolina through the internet and through licensed North Carolina insurance agents.

9. OORC has not been licensed under Chapter 58 or Chapter 97 of the North Carolina General Statutes by the Commissioner to provide workers' compensation insurance coverage in North Carolina.

10. OORC and Wickard have solicited, operated, and administered the Plan to OORC's truck owner-operator clients in North Carolina. Hereinafter, OORC's truck owner-operator clients who participate in the Plan shall be referred to as "clients."

11. The operation and administering of the Plan in North Carolina by OORC and Wickard includes, but is not limited to, collecting premium, providing sales support to licensed North Carolina insurance agents, providing administration for the management and organization of information needed to service OORC's clients.

12. OORC and Wickard attempted to secure valid workers' compensation coverage for its clients, but have failed to contract with any authorized insurer for the purpose of securing and placing lawful workers' compensation coverage for its North Carolina clients.

13. For a period prior to November 2004, OORC and Wickard enrolled their clients into a self-insured workers' compensation insurance plan provided by an entity named Phoenix Fund.

14. NCDOI determined that North Carolina insurance laws did not permit Phoenix Fund to provide self-insured workers' compensation insurance to OORC's clients because OORC's clients were not eligible to participate in such coverage under North Carolina General Statutes, Chapter 58, Article 47, *inter alia*. In or about October 2004, Phoenix Fund agreed to terminate the self-insured workers' compensation insurance coverage it provided to OORC's clients.

15. In October 2004, Clegg, at the direction of Wickard, sent a written notice to OORC's clients, representing that Phoenix Fund was being replaced as the workers compensation insurance provider by ACE/INA Group Inc. (hereinafter "ACE/INA"), effective as of November 1, 2004. The notice stated, *inter alia*, that "[u]nlike your previous provider, The Phoenix Fund, ACE is licensed and admitted in all states and provides true 'All States Coverage.'"

16. NCDOI sent a certified letter, dated December 22, 2004, addressed to Wickard and to Clegg, which letter was received by Wickard and Clegg on or about December 28, 2004. In said letter, NCDOI outlined the pertinent provisions of Chapter 58 of the North Carolina General Statutes regarding NCDOI's jurisdiction over workers' compensation insurance coverage, and explained that it is unlawful to transact insurance business in North Carolina without a certificate of authority from the Commissioner of Insurance. In the

December 22, 2004, letter, NCDOI also requested that Wickard provide certain information and documentation regarding the Plan's business activities in North Carolina.

17. On January 10, 2005, Wickard provided NCDOI with a list of the Plan's members in North Carolina. As of January 10, 2005, the Plan had approximately 146 members in North Carolina.

18. In a letter to OORC and Wayne Wickard dated January 14, 2005, in response to NCDOI's December 22, 2004, letter, Wickard informed NCDOI that OORC makes workers' compensation insurance coverage available to its North Carolina clients by use of agents. Wickard asserted that OORC functions as a third party administrator for its owner operator clients and stated that OORC provides to its North Carolina clients numerous services, including "bill paying, tax payments, financial statements, insurance, etc."

19. In the January 14, 2005, response, Wickard stated that OORC collects workers' compensation premium from its owner operator clients on a monthly basis, included with fees for other OORC services.

20. During the period between November 1, 2004, and April 1, 2005, OORC and Wickard repeatedly asserted to NCDOI that OORC was making attempts to obtain workers' compensation coverage through a lawful provider in North Carolina.

21. In January 2005, OORC and Wickard informed NCDOI that OORC was providing the Plan via ACE/INA acting as a lawful workers' compensation insurance provider. Wickard informed NCDOI that ACE/INA policy certificates had been issued to its owner operator clients. OORC and Wickard alleged that they received certificates of insurance from agents indicating that workers' compensation coverage had been placed with ACE/INA. NCDOI subsequently inquired with ACE/INA to confirm its status as the provider.

22. In a letter dated January 25, 2005, the Special Investigations department of ACE/INA demanded that OORC and Wickard not use the ACE/INA company name on insurance certificates, binders, policies, or communications related to the Plan. The January 25, 2005, letter instructed OORC and Wickard that they were not authorized to issue certificates of insurance on behalf of ACE/INA.

23. In a letter dated March 1, 2005, the Special Investigations department of ACE/INA informed NCDOI that ACE/INA had never issued any binders or certificates relating to OORC, nor did ACE/INA authorize any individuals to do so on behalf of ACE/INA. The March 1, 2005 letter stated that the purported certificates of insurance were "fraudulent certificates." The March 1, 2005, letter stated that ACE/INA sent letters to parties involved with the issuance of the certificates, demanding the said parties not to use the ACE/INA company name on insurance certificates, binders, policies, or communications related to the Plan.

24. Even after NCDOI informed OORC and Wickard in December 2004 that they were conducting unlawful business in North Carolina, OORC and Wickard continued to accept premiums from North Carolina residents and OORC and Wickard continued to administer the Plan until April 1, 2005.

25. OORC and Wickard have been unable to show that OORC's workers' compensation insurance coverage has been issued by an authorized insurance carrier during the period of November 1, 2004, to the present.

26. OORC and Wickard have paid three workers' compensation claims under the Plan subsequent to November 1, 2004.

Based upon the foregoing Findings of Fact, the Hearing Officer makes the following:

CONCLUSIONS OF LAW

1. Notice in this matter was timely and properly effected.
2. This matter is properly before the Commissioner of Insurance, and he has jurisdiction over the parties and the subject matter pursuant to Article 28 of Chapter 58 of the General Statutes of North Carolina.
3. The workers' compensation insurance coverage provided by OORC and Wickard to North Carolina residents under the Plan was issued pursuant to contracts of insurance.
4. Wickard controls the operations of OORC and he is responsible for the activities of the corporation.
5. For purposes of N.C. Gen. Stat. §§ 58-28-5 and 58-28-10, OORC and Wickard acted as a "company."
6. Neither OORC nor Wickard is licensed or otherwise authorized to transact the business of insurance in North Carolina.
7. Under N.C. Gen. Stat. § 58-28-5, it is unlawful for any company to transact insurance business in this State without a license issued by the Commissioner of Insurance.
8. Under N.C. Gen. Stat. § 58-28-10(2), the transaction of insurance business in this State includes, but is not limited to, the following acts, whether effected by mail or otherwise by an unauthorized insurer: the issuance or delivery of contracts of insurance to North Carolina residents or to corporations authorized to do business therein; the solicitation of applications for contracts of insurance through the use of the United States mail or any other media, method or device; the collections of premiums, membership fees, assessments or other considerations for such contracts; or the transaction of any matters prior to or subsequent to the execution of such contracts in contemplation thereof or arising out of them.

9. Under N.C. Gen. Stat. § 58-28-45, no person, corporation, association or partnership shall in this State aid any unauthorized insurer in effecting insurance or in transacting insurance business in this State.

10. OORC and Wickard have violated N.C. Gen. Stat. §§ 58-28-5 and 58-28-10(2) by transacting insurance business in North Carolina without authority or licensure.

11. OORC and Wickard have violated N.C. Gen. Stat. §§ 58-28-5 and 58-28-10(2) by transacting insurance business by collecting premiums and other considerations for contracts of insurance issued under the Plan in North Carolina.

12. OORC and Wickard have violated N.C. Gen. Stat. §§ 58-28-5 and 58-28-10(2) by transacting insurance business by administering and paying claims arising out of the contracts of insurance issued in North Carolina.

13. OORC and Wickard have violated N.C. Gen. Stat. § 58-28-45 by aiding an unauthorized insurer in effecting insurance or in transacting insurance business in this State.

14. N.C. Gen. Stat. § 58-28-20(a) authorizes the Commissioner of Insurance to issue an order to cease and desist from violating N.C. Gen. Stat. § 58-28-5, after notice and opportunity for hearing have been given and after the Commissioner has reduced his findings to writing.

15. Pursuant to N.C. Gen. Stat. § 58-28-20(a), a Cease and Desist Order should be issued immediately against OORC and Wickard.

16. Pursuant to N.C. Gen. Stat. § 58-28-10, the Commissioner of Insurance may order a penalty not exceeding \$5,000.00 for each violation of that statute.

17. Under N.C. Gen. Stat. § 58-28-10, a penalty of \$42,500.00 is warranted against OORC and Wickard.

18. Respondents and NCDOI represent that they have relied upon the legal advice of their attorneys, who are attorneys of their own choice. Respondents and NCDOI further represent that the terms of this Consent Order have been completely read and explained to them by their attorneys, that those terms are fully understood and voluntarily accepted by them, and that the persons who have signed this Consent Order are fully authorized and empowered to bind their respective parties hereto as represented below.

IT IS THEREFORE, BY CONSENT, ORDERED as follows:

1. OORC, Wickard, and Clegg shall **CEASE AND DESIST** from violating the provisions of N.C. Gen. Stat. § 58-28-5, including, but not limited to, the following activities:

A. Issuing or delivering contracts of insurance or certificates of coverage to residents of this State, without first complying fully with North Carolina insurance statutes and regulations of NCDOI.

B. Receiving or collecting any premiums or other consideration for workers' compensation or employer's liability coverage or any other insurance coverage in this State, without first complying fully with North Carolina insurance statutes and regulations of NCDOI.

C. Transacting any insurance business in this State within the meaning of the North Carolina statutes relating to insurance, or acting as an insurer in this State, without first complying fully with North Carolina insurance statutes and regulations of NCDOI.

2. NCDOI takes a voluntary dismissal as to Clegg in exchange for Clegg's agreement to Cease and Desist from the activities set forth in the immediately preceding paragraph.

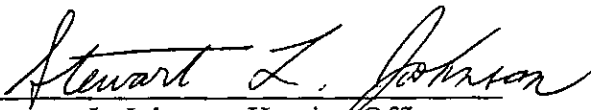
3. OORC and Wickard shall promptly pay and fully service all valid claims that have been incurred under the contracts of insurance issued under the Plan.

4. Pursuant to N.C. Gen. Stat. § 58-28-10, OORC and Wickard shall jointly and severally pay a civil penalty in the amount of \$42,500.00 to be paid as follows:

A. OORC shall pay a civil penalty to the North Carolina Department of Insurance in the amount of \$32,500.00. OORC shall pay \$16,250.00 of this amount upon the signing and entry of this Consent Order, and OORC shall pay the remaining balance of \$16,250.00 no later than February 28, 2006.

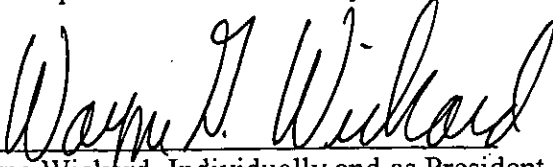
B. Wickard shall pay a civil penalty to the North Carolina Department of Insurance in the amount of \$10,000.00. Wickard shall pay \$5,000.00 of this amount upon the signing and entry of this Consent Order, and Wickard shall pay the remaining balance of \$5,000.00 no later than February 28, 2006.

This 28th day of February 2006.

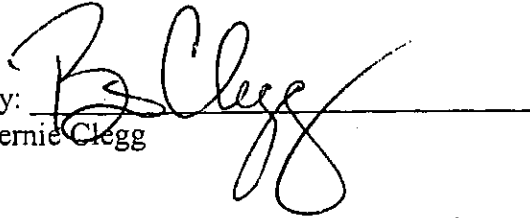

Stewart L. Johnson, Hearing Officer
North Carolina Department of Insurance
1201 Mail Service Center
Raleigh, North Carolina 27699-1201

WE CONSENT:

Owner Operator Resources Corporation

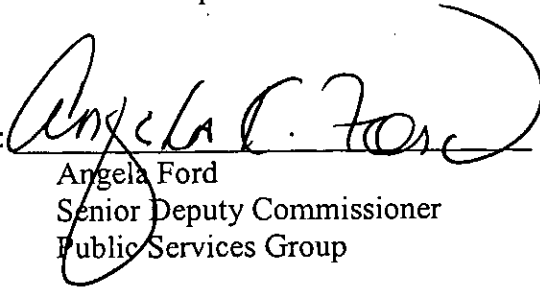
By: 

Wayne Wickard, Individually and as President of "OORC",
Owner Operator Resources Corporation

By: 

Bernie Clegg

North Carolina Department of Insurance

By: 

Angela Ford
Senior Deputy Commissioner
Public Services Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served the foregoing CONSENT CEASE AND DESIST ORDER upon counsel for all Respondents by mailing a copy thereof via certified mail, return receipt requested, postage prepaid, addressed as follows:

Mr. John E. Spainhour, Esq.
McAngus, Goudelock & Courie L.L.C.
Post Office Box 30307
Charlotte, North Carolina 28230-0307

This the 1st day of March 2006.

ROY COOPER
Attorney General



Brandon L. Truman
Assistant Attorney General
North Carolina Department of Justice
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