

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

IN THE MATTER OF
AMERICAN BENEFITS &
INSURANCE SERVICES, INC.,
dba AMERICAN BENEFITS &
INSURANCE GROUP, AND
TALMAGE POND

CEASE AND DESIST ORDER

Docket Number: D-1160

THIS MATTER was heard by the undersigned Hearing Officer, as designated by the Commissioner of Insurance pursuant to N.C.G.S. § 58-2-55, on May 26, 2004, in the Dobbs Building, located at 430 North Salisbury Street, Raleigh, North Carolina. The Unlicensed Plan Investigations Unit of the Department of Insurance ("the Department") was represented at the hearing by Sue Y. Little, Assistant Attorney General. Neither American Benefits & Insurance Services, Inc., dba American Benefits & Insurance Group, nor Talmage Pond made an appearance at the hearing.

The Hearing Officer, after careful consideration of the evidence, including oral testimony and documentary exhibits, and arguments presented by the Department, makes the following:

FINDINGS OF FACT

1. A Notice of Administrative Hearing was served on the parties named in the above caption, based upon the Affidavit of Service presented by the Department as Exhibit 2.

2. American Benefits & Insurance Services, Inc., is a corporation organized under the laws of Utah, doing business as American Benefits & Insurance Group (hereinafter "American Benefits").

3. On May 14, 2002, American Benefits applied for a Certificate of Authority to transact business in North Carolina. The application was signed by Talmage Pond ("Pond").

4. Pond is a citizen and resident of Utah and is the President of American Benefits & Insurance Services, Inc.

5. According to the Department's Exhibit 4, Pond is the only officer of American Benefits.

6. American Benefits and Pond have issued and administered contracts of workers' compensation insurance and employer's liability insurance to residents of the State of North Carolina over the past few years.

7. In an Agreement, dated April 10, 2002, between American Benefits and Employer Options, LLC, a North Carolina corporation ("the Agreement"), American Benefits agreed to act as an agent and broker for Employer Options in obtaining workers' compensation policies and other policies as agreed upon by the parties.

8. The Agreement expressly described itself as a contract of insurance and was signed by Talmage Pond, on behalf of American Benefits.

9. The Agreement includes words, phrases, conditions, duties and responsibilities of the insurer and the insured, which are typically included in an insurance policy.

10. In a letter to the Department, dated July 25, 2003, and written on American Benefits letterhead, Pond informed the Department that American Benefits began to administer workers' compensation claims for North Carolina companies in 2002.

11. Pond stated that American Benefits was unsuccessful in obtaining a licensed insurer to "front and reinsure" its business; American Benefits continued "taking care of the companies and looking for coverage."
12. Pond admitted that American Benefits received monies each month to pay claims.
13. Pond admitted that American Benefits had a contract with Employer Options, LLC, to find coverage for employers in North Carolina.
14. Pond forwarded to the Department a list of 39 North Carolina companies for which American Benefits administered claims.
15. Pond forwarded to the Department, on American Benefits letterhead, a "Loss Summary" for Employer Options.
16. The Loss Summary included a column headed "Reserves" and reflected paid and incurred claims.
17. A Certificate of Liability Insurance ("the Certificate"), identified as Exhibit 11, reflected that American Benefits and Insurance Group was the "PRODUCER" and the "INSURER AFFORDING COVERAGE" for the insured, Floor Action, Inc., located in Wilson, North Carolina.
18. The Certificate, dated May 8, 2003, contained the facsimile signature of "T. Pond" as the "AUTHORIZED REPRESENTATIVE."
19. In a facsimile transmitted to the Department on January 21, 2004, from Tally Pond, Pond admitted that American Benefits continued to have clients in North Carolina.
20. In a notarized letter to an attorney for the Department, dated February 18, 2004, and written on American Benefits letterhead, Pond stated that American Benefits had ceased writing any new business in North Carolina and would not renew any of the existing business.

21. Pond enclosed with that letter a list of all current North Carolina employers for whom American Benefits was paying claims, along with a list of Professional Employer Organizations in North Carolina with whom American Benefits had been doing business in the past two years.

22. The Department has learned from the North Carolina Industrial Commission that checks written and issued by American Benefits to medical providers, who received compensation for their medical services to employees injured during the course of their employment, have been returned to the medical providers by financial institutions because of insufficient funds in the checking accounts of American Benefits.

23. American Benefits has not been licensed or otherwise authorized by the Department to act as an insurer in this State.

24. Pond has not been licensed by the Department to act as an agent or broker in this State.

25. The Department has neither communicated with, nor received information from, any other representative of American Benefits other than Pond.

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 (Unauthorized Insurers).
3. The Agreement between American Benefits and Employer Options, LLC, is a contract of insurance, as a matter of law.

4. Pond controls the operations of American Benefits and is responsible for the activities of the corporation.

5. Talmage Pond is the "alter ego" of American Benefits with regard to his insurance-related activities in North Carolina.

6. For purposes of N.C.G.S. § 58-28-10, Pond acted as a "company" and an "insurer."

7. Neither American Benefits nor Pond is licensed or otherwise authorized to transact the business of insurance in North Carolina.

8. American Benefits and Pond have issued contracts of insurance to residents of North Carolina and to corporations authorized to do business in North Carolina.

9. The issuance of contracts of insurance in North Carolina is deemed to constitute transacting insurance business in this State, pursuant to N.C.G.S. § 58-28-10(2).

10. American Benefits and Pond have collected premiums or other considerations for contracts of insurance issued in North Carolina.

11. The collection of premiums or other considerations is deemed to constitute transacting insurance business in this State, pursuant to N.C.G.S. § 58-28-10(2).

12. American Benefits and Pond have administered and paid claims arising out of the contracts of insurance issued in North Carolina.

13. The administration and payment of claims is deemed to constitute transacting insurance business in this State, pursuant to N.C.G.S. § 58-28-10(2).

14. American Benefits and Pond have violated N.C.G.S. § 58-28-5, which makes it unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State without a license issued by the Commissioner of Insurance.

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

16. Pursuant to N.C.G.S. § 58-28-20(a), a Cease and Desist Order should be issued immediately against American Benefits and Pond.

17. In addition, pursuant to N.C.G.S. § 58-28-10, a maximum penalty of \$5,000 for each violation of that statute is warranted under the facts and circumstances of this case.

18. Based upon the fact that at least 39 employers in North Carolina were insured by American Benefits and Pond, a penalty of \$195,000 is warranted against American Benefits and a penalty of \$195,000 is warranted against Pond.

Based upon the foregoing Conclusions of Law, the Hearing Officer enters the following:

CEASE AND DESIST ORDER

1. Effective upon the signing of this Cease and Desist Order, American Benefits and Pond shall immediately **CEASE AND DESIST** from violating the provisions of N.C.G.S. § 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.

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.

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

2. American Benefits and Pond shall promptly pay and fully service all valid claims incurred under the contracts issued by American Benefits and Pond.

3. American Benefits and Pond shall each be penalized in the amount of \$195,000.

This 8~~th~~ day of June, 2004.



Peter A. Kolbe
Hearing Officer
North Carolina Department of Insurance

APPEAL RIGHTS: You may obtain judicial review of this Cease and Desist Order by filing a petition in the Superior Court of Wake County, North Carolina, within 30 days from the date of the service of the Order, pursuant to N.C.G.S. § 58-28-25(a).


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing CEASE AND DESIST ORDER by U.S. mail, first-class postage prepaid, addressed as follows:

Talmage Pond
6159 Karos Circle
Salt Lake City, UT 84123

Talmage Pond
5296 S. Commerce Drive
Suite 204
Murray, UT 84107

This the 29th day of June, 2004.



Sue Y. Little
Assistant Attorney General
N. C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
(919) 716-6610