



OFFICE OF
INSURANCE COMMISSIONER

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)	
)	No. 10-0039
GLOBAL RESCUE, LLC)	
)	FINDINGS OF FACTS,
)	CONCLUSIONS OF LAW AND
)	FINAL DECLARATORY ORDER
)	

TO: Dan Richards, President
Global Rescue, LLC
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AND TO: Lee Calligaro, Esq.
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COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Carol Sureau, Esq., Deputy Commissioner, Legal Affairs
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Pursuant to Title 34 RCW, particularly RCW 34.05.434; and 34.05.461, Title 48 RCW, particularly 48.04.010; and Chapter 10-08 WAC, particularly WAC 10-08-210 and 10-08-250; and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Office of Insurance Commissioner for the state of Washington commencing at 10:00 a.m., on April 19, 2010. Global Rescue, LLC requested that the hearing be held by telephone and, after consideration of the nature of this case and the provisions of WAC 10-08-180, the undersigned granted said request and all parties appeared by telephone. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence and present oral and written statements. The Insurance Commissioner appeared pro se, by and through Marcia Stickler, Esq., Staff Attorney in his Legal Affairs Division of the Office of Insurance Commissioner. Lee Calligaro, Esq., of Epstein Becker & Green, P.C., in Washington, D.C., appeared on behalf of Global Rescue, LLC. Global Rescue, LLC requested the right to appear by telephone and, there being no objection from the Insurance Commissioner, the undersigned determined that the standards set forth in RCW 34.05.449 were met and said request was granted. Therefore, all parties appeared by telephone during all stages of this proceeding.

NATURE OF PROCEEDING

The purpose of the hearing was to hear argument as to whether the product which Global Rescue, LLC is selling and underwriting is "insurance" in Washington State as defined in the Washington State Insurance Code and therefore whether Global Rescue, LLC, in selling and underwriting this product is acting as an insurance company in Washington State. The Insurance Commissioner's position is that Global Rescue LLC's product which Global Rescue, LLC is selling is insurance and therefore in selling and underwriting this product, Global Rescue, LLC is acting as an insurer in Washington State. Global Rescue, LLC asserts that its product is not insurance and therefore it is not acting as an insurer in Washington State. On February 18, 2010, Global Rescue, LLC, with agreement of the Insurance Commissioner, filed a demand for hearing herein pursuant to RCW 48.04.010, requesting the undersigned to consider the facts and applicable law involved in this matter and to enter a Declaratory Order determining whether or not the Global Rescue, LLC product is "insurance" in the state of Washington and therefore subject to the jurisdiction of the Washington State Insurance Commissioner.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of Washington State have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; and Title 34 RCW and specifically, for good cause shown, RCW 34.05.461(8).

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2. The parties agree on the facts of this case. [Insurance Commissioner's OIC Hearing Memorandum filed March 23, 2010 at p. 1; Global Rescue, LLC's Respondent's Hearing Memorandum filed April 13, 2010 at p. 2.] Global Rescue, LLC ("Global Rescue") is a for-profit company that, for a membership fee, will evacuate and transport a medically-compromised subscriber to the hospital of his or her choice from anywhere in the world, with a maximum cost limit of \$500,000 per subscriber during the term of the contract. Subscribers can sign up for as little as a one-week subscription or annual subscriptions. It uses in-house medical and paramilitary-type personnel as well as medically-equipped air ambulances, surface transportation, charter aircraft, helicopters, and commercial aircraft. For an additional fee, Global Rescue will evacuate a subscriber who is in personal danger for a security-related reason, e.g. a coup, natural disaster, etc., back to his or her home. Global Rescue has individual consumer subscriptions as well as corporate subscriptions. [Exs. 1 and 2 to OIC Hearing Memorandum.] Other core "member services" which Global Rescue provides its subscribers on a 365 day per year, 24 hours per day basis include medical consultations, visa and passport services, emergency message relay to family members, and transport of mortal remains. [Ex. 3 to OIC Hearing Memorandum.] Global Rescue solicits its product nationwide. [Ex. 3 to OIC Hearing Memorandum.]

3. The parties also agree that Washington residents have purchased Global Rescue subscriptions in Washington and that Global Rescue does not hold, and has not applied for, a certificate of authority from the Washington State Insurance Commissioner ("OIC") to act as an insurer in Washington State. [Insurance Commissioner's OIC Hearing Memorandum filed March 23, 2010 at p. 1; Global Rescue, LLC's Respondent's Hearing Memorandum filed April 13, 2010 at p. 2.]

4. The parties also agree that, in the event a subscriber requires evacuation covered under the Global Rescue contract, Global Rescue itself provides the services, using its own staff, in-house medical and paramilitary-type personnel as well as medically-equipped air ambulances, surface transportation, charter aircraft, helicopters, and commercial aircraft. While Global Rescue may charter e.g. a helicopter or other equipment necessary to perform these evacuation services, it uses its own staff to actually perform the evacuation services and does not contract with any other entity to provide the evacuation services. [Insurance Commissioner's OIC Hearing Memorandum filed March 23, 2010 at p. 1; Global Rescue, LLC's Respondent's Hearing Memorandum filed April 13, 2010 at p. 2.]

5. The parties also agree that Global Rescue is not licensed under RCW 18.73.130 which requires the applicant to demonstrate that the ambulance service's operation is consistent with the statewide and regional emergency medical services and trauma care plans established by the Department of Health under Chapter 70.168 RCW, indicating the general area to be served and the number of vehicles to be used, each of which must be individually licensed. Further, Global Rescue is not exclusively an air ambulance service, does not perform services compatible with the statewide or regional trauma care plan and often uses vehicles that do not fit the definition of "ambulance" in RCW 18.73.130. Finally, there is currently no alternate registration or licensing framework for ambulance/evacuation services in Washington into which Global

Rescue otherwise fits. [Insurance Commissioner's OIC Hearing Memorandum filed March 23, 2010 at p. 1; Global Rescue, LLC's Respondent's Hearing Memorandum filed April 13, 2010 at p. 2.]

CONCLUSIONS OF LAW

1. The facts, as set forth in Findings of Facts above, are not in dispute. This case solely concerns a question of law, and therefore the parties have requested the undersigned to enter a declaratory ruling herein.

2. An alternate form of authorization exists in RCW 18.73.130 for air ambulance services, however Global Rescue is not authorized to operate under that statute. Specifically, Global Rescue is not exclusively an air ambulance service; does not perform services compatible with the statewide or regional trauma care plan contemplated in that statute; often uses vehicles that do not fit the definition of "ambulance" therein; and is not and has never sought authorization under RCW 18.73.130 to do business in Washington State. Further, there is currently no alternate registration or licensing framework for ambulance/evacuation services in Washington into which Global Rescue otherwise fits. Therefore, correctly, the parties agree that a declaratory ruling herein properly falls under Title 48, the Washington State Insurance Code.

3. The legal issue in this case is whether the product which Global Rescue sells is "insurance" as defined in RCW 48.01.040. If Global Rescue's product is "insurance" as defined therein, then, in order to sell its product to Washington residents, RCW 48.05.030(1) requires that Global Rescue must be *authorized by a certificate of authority issued to it by the Commissioner*.

4. RCW 48.01.040, enacted in 1947, defines "insurance" as follows:

Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.

5. The OIC does not contend that Global Rescue contracts to pay a specified amount upon determinable contingencies. More specifically, therefore, the issue in this case is whether the product which Global Rescue sells is *a contract whereby [Global Rescue] undertakes to indemnify another ... upon determinable contingencies* and is therefore "insurance" as defined in RCW 48.01.040. [Emphasis added.]

- The OIC argues that for Global Rescue to promise to "indemnify" its subscribers includes promising to provide services such as those the Global Rescue contract promises its subscribers in the event of an occurrence covered under the contract. For this reason, the OIC argues, the Global Rescue contract is "insurance" as defined in RCW 48.01.040.
- In contrast, Global Rescue argues that its contract does not promise to "indemnify" its subscribers because it only promises to provide services in the

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event of an occurrence covered under the contract. Specifically, Global Rescue argues, 1) the staff of Global Rescue itself actually provides the services rather than hiring another entity to do so; and 2) Global Rescue pays no money to, and does not reimburse, subscribers any amounts of money in the event of an occurrence covered under the contract. For this reason, Global Rescue argues, its contract is not “insurance” as defined in RCW 48.01.040.

6. While, as above, Washington’s statute defining “insurance” was changed in 1947, it is somewhat informative to consider that its predecessor, the 1911 Washington statute defining “insurance” (Laws 1911, Ch. 49, p.161; 3 Rem. & Bal. Code, Sec. 6059-1), Rem.Rev.Stat., Sec. 7032, stated:

Insurance is a contract whereby one party called the ‘insurer,’ for a consideration, undertakes to pay money or its equivalent, or to do an act valuable to another party called the ‘insured,’ or to his ‘beneficiary,’ upon the happening of the hazard or peril insured against, whereby the party insured or his beneficiary suffers loss or injury. [Emphasis added.]

Accordingly, the 1911 definition of “insurance” was uniformly adopted in case law, which determined that a contract was “insurance” and therefore subject to the authority of the Insurance Commissioner if it is a contract whereby one party, called the “insurer,” for a consideration, undertakes to pay money or its equivalent, or to do an act valuable to another party, called the “insured,” or his beneficiary, upon the happening of the hazard or peril insured against, whereby the party insured or his beneficiary suffers loss or injury, State v. Universal Service Agency (1915) 87 Wash. 413, 151 P. 768, Am. Ann. Cas. 1916C, 1017.

7. In 1948, the year after the current 1947 statute was enacted, the Washington State Supreme Court, in In re Knight’s Estate, 31 Wash.2d 813, 199 P.2d 89 (1948), noted that it would be helpful to define “insurance” in order to better understand the issue in that case. In defining “insurance,” the Knight court first adopted the definition provided by multiple authoritative treatises, and then promptly went on to cite the new 1947 statute, presenting no distinction between the two definitions: “*Insurance, in its general sense, may be defined as an agreement by which one person, for a consideration, promises to pay money or its equivalent, or to perform some act of value, to or for the benefit of another person, upon the ... loss, or injury of someone or something as the result of specified perils. ... In Sec. 48 .01.04, p. 189, of the present insurance code of the state of Washington, Laws of 1947, chapter 79, p. 189, “insurance” is defined as a contract whereby one undertakes to indemnify or pay a specified amount to another upon determinable contingencies. [Emphasis added.]* While, as Global Rescue points out, the issue in Knight concerned tax on cash values of life insurance policies, it is still telling that the Washington Supreme Court adopted the general definition of insurance provided by Washington’s 1911 statute and authoritative treatises right along with Washington’s 1947 statute at issue herein. Further, the Knight definition of insurance is also cited in RCWA 48.01.040 decision note 1, para. 3 (West 2010).

8. In further effort to determine whether the 1947 Washington Stage Legislature had any

intent at all to change the definition of "insurance" in enacting RCW 48.01.040, the undersigned has also carefully reviewed Session Laws of the State of Washington, Twelfth Session, 1911, compiled in chapters with marginal notes by the then Secretary of State; has reviewed Session Laws of the State of Washington Thirtieth Session 1947 compiled in chapters by the then Secretary of State and marginal notes by the then Attorney General; House and Senate Journals from 1947, the 1947 Bill Book, and the Insurance Code of the State of Washington 1947 along with an appendix attached thereto. There is literally no discussion, notes or other indication of any intent by the 1947 Washington State Legislature, in enacting RCW 48.04.010, to do anything other than simply streamline – modernize – the language of the definition of "insurance." There is no indication that the Legislature intended to narrow, broaden or otherwise change the 1911 definition of "insurance."

9. Further, there is a plethora of authority provided in case law aside from Knight, supra, and authoritative treatises advising that whether an entity contracts to pay money to a subscriber in the event of specified occurrences or whether it contracts to perform specified activities in the event of specified occurrences is of no significance in a determination of whether the contract is insurance: e.g., Appleman, Insurance Law and Practice § 7003 (Revised Vol 12 1981, Pt. 49, Ch. 256). Appleman, Insurance Law and Practice § 7001 (Revised Volume 12 1981) confirms that *it is not necessary to constitute an insurance contract that the insurer's obligation be one for the payment of money, since it may be its equivalent or some act of value to the insured on the occurrence of the loss. Further, Insurance being a contract of indemnity, the loss must be adjusted with the principle of replacing the insured as nearly as possible as he was when the risk began, the object being to make the insured whole at the insurer's expense.* Id. Further, J.G. Crouch, Cyclopedia of Insurance Law § 1:9 (2d ed. 1984) confirms that *although ordinarily thought of as requiring the payment of money, an insurance contract need not require the payment of money, but may require compensation of another by giving the equivalent of money or rendering some act of value to the insured.* Finally, e.g., in Guaranteed Warranty Corp., Inc. v. State ex rel. Humphrey, 533 P.2d 87, 23 Ariz.App. 327 (1975) cited in Appleman, Insurance Law and Practice § 7003 (Revised Vol. 12 1981), the court held that a proposed "warranty agreement" contract whereby defendant would replace television picture tubes which failed as a result of manufacturing defects after manufacturer's warranty period had expired and would provide services and labor and/or maintenance of a television set in the event of a faulty picture tube caused by manufacturing defects involved a plan to indemnify purchasers and constituted an insurance contract which could not be sold without license to sell insurance. In this case and others, clearly the court includes performance of specified activities in the event of specified occurrences within the definition of the term "indemnification."

10. Based upon the Conclusions above, although it is more streamlined, neither a reading of the applicable RCW 48.01.040, applicable case law, authoritative treatises, or the arguments presented by Global Rescue can reasonably be read to support a conclusion that the current RCW 48.01.040 narrows the definition of "insurance" in this state from the wording of the aforementioned 1911 statute and the definition provided in authoritative treatises: "Insurance" as set forth in RCW 48.01.040 is a contractual commitment to "indemnify" an insured or beneficiary in the event of specified occurrences. To "indemnify" includes a commitment to

perform specified activities in the event of specified perils; it is not limited just to the payment of money to the insured or beneficiary.

11. Based upon the above Conclusions, the Global Rescue contract at issue herein constitutes "insurance" under the definition of insurance set forth in RCW 48.01.040.¹

12. Because it has been concluded that the subject Global Rescue contract is "insurance" as set forth in RCW 48.01.040, then pursuant to RCW 48.05.030(1) Global Rescue may not act as an insurer and shall not transact insurance in Washington State unless it is authorized to do so by a certificate of authority issued to it by the Washington State Insurance Commissioner.

13. Based upon the Conclusions above, and pursuant to RCW 48.01.040 and RCW 48.05.030(1), it is reasonable that the Washington State Insurance Commissioner require Global Rescue to be authorized as an insurer by a certificate of authority issued to it by the Washington State Insurance Commissioner before it acts as an insurer and before it transacts insurance in Washington State.

DECLARATORY ORDER

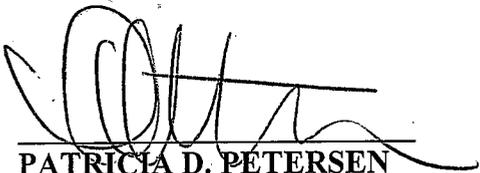
On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY DECLARED AND ORDERED that the Global Rescue, LLC contract at issue herein is "insurance" under the definition of insurance set forth in RCW 48.04.040.

IT IS FURTHER DECLARED AND ORDERED that, pursuant to RCW 48.05.030(1), in order to act as an insurer in Washington State, and in order to transact insurance in Washington State, Global Rescue, LLC must be authorized by a certificate of authority issued to it by the Washington State Insurance Commissioner.

This Declaratory Order is entered pursuant to Title 34 RCW, particularly RCW 34.05.434 and 34.05.461; Title 48 RCW, particularly 48.01.040 and 48.05.030(1); Title 284 WAC; Chapter 10-08 WAC, particularly WAC 10-08-210 and 10-08-250; and the aforementioned case law and authoritative treatises.

This Order is entered at Tumwater, Washington, this 11th day of October 2010.



PATRICIA D. PETERSEN
PRESIDING OFFICER

¹ The only significant change in the 1947 statute might be the absence of the element of compensation to be received by the insurer for assuming responsibility under the insurance contract, which is not at issue herein and which would be included as a matter of contract law.

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Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Lee Calligaro, Esq., Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Marcia Stickler, Esq., and James T. Odiorne, CPA, JD.

DATED this 11th day of October, 2010.


NICOLE KELLY