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2010 APR 13 A 2:39

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

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April 8, 2010

**VIA OVERNIGHT DELIVERY**

Patricia D. Petersen
Chief Hearing Officer
State of Washington Office of Insurance Commissioner
Hearings Unit
5000 Capitol Blvd.
Tumwater, WA 98501

Re: Global Rescue, LLC
No. 10-0039

Dear Chief Hearing Officer Petersen:

Enclosed are an original and one copy of Respondent's Hearing Memorandum in the above matter. A copy is being served on Counsel for the Office of the Insurance Commissioner, Marcia Stickler, Esq.

Very truly yours,

Lee Calligaro /RP

Lee Calligaro

Enclosure

cc: Marcia Stickler, Staff Attorney, WA OIC w/encl
Nicole Kelly, Paralegal w/encl.

FILED

**BEFORE THE WASHINGTON STATE**
**OFFICE OF THE INSURANCE COMMISSIONER**

2010 APR 13 A 2:39

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

| In Re: Global Rescue, LLC Respondent. | No. 10-0039 Respondent's Hearing Memorandum |
|---|---|

## I. SUMMARY OF ARGUMENT

The issue presented here is straightforward: whether the Commissioner was correct in his conclusion that the definition of "insurance" in Washington's Insurance Code (RCW § 48.01.040) applies to the operations of Respondent Global Rescue.

Contrary to what the Commissioner's Hearing Memorandum might appear to suggest, the issue is *not* whether Global Rescue would be considered to be in the business of insurance under the pre-1947 statutory definition; it is *not* whether Global Rescue might be deemed to be an insurer under definitions of insurance contained in treatises, the insurance codes of other states, or under various federal laws such as the McCarren-Ferguson Act exempting "the business of insurance" from the antitrust laws; it is *not* whether Global Rescue qualifies for the exemption for air ambulance services contained in RCW § 18.73.130; it is *not* whether other companies such as those named in Exhibit 7 of the Commissioner's Memorandum are in the business of insurance. Nor is the question whether the term "insurance" *could* be defined so as to bring Global Rescue within its ambit, or whether it should be so defined.

In fact, even the definition of the term insurance itself is not an issue in the case. Instead, "insurance" already has been defined in this state by the legislature in statutory language that is specific and clear-cut:

> Insurance is a contract whereby one undertakes to <u>indemnify</u> another or <u>pay a specified amount</u> upon determinable contingencies. RCW § 48.01.040 (emphases added).

Further, because the legislature has provided a straightforward definition of insurance, the meaning of the term is not a matter presented for decision here, nor is there any issue of complicated statutory construction. Accordingly, the arguments in the Commissioner's Memorandum to define or redefine "insurance" are entirely beside the point. On its face, the definition of insurance and hence the Commissioner's authority to regulate Global Rescue applies only if Global Rescue "undertakes to indemnify another" or agrees to "pay a specified amount." Global Rescue does neither. As is clear even from the Commissioner's introductory

statement of facts, Global Rescue makes no payments whatsoever, but instead is a direct service provider. It neither indemnifies nor pays any specified amount. Instead, it sends a rescue party to evacuate clients in need of medical care or, in some instances, at peril because of security risks, or directly provides the other services listed in its member agreements. Whatever other definitions of insurance exist elsewhere, these activities by Global Rescue simply are not the business of insurance as the term has been defined by the Washington legislature. We respectfully submit that if the citizens of Washington are to be deprived of access to emergency rescue services of the kind offered by Global Rescue when they are confronted by crises such as the recent earthquake in Haiti, it should be by virtue of a deliberate decision by the Washington legislature, and not by strained application of statutory language that plainly does not apply. At the risk of repetition, Global Rescue neither undertakes "to indemnify another" nor agrees to "pay a specified amount," and hence does not come within the unambiguous definition of insurance as codified by the Washington legislature.

## II. FACTS

Global Rescue has no quibble with the facts as set out in the first paragraph of the Commissioner's Memorandum.[1] Some additional background might be helpful however. Global Rescue's operations are entirely different from the companies whose materials are attached to the Commissioner's Memorandum as Exhibit 7. As review of those materials makes clear, none provide a direct service, but instead reimburse their customers for covered expenses customers may incur, including transportation expenses incurred by the customer to obtain evacuation services (e.g. Ex. 7, p.1 "designed to pay for transport back home" [not to provide transport]; p.3 "Travel Basic includes coverage for: [followed by a list of expenses that will be reimbursed within policy limits];" p.7 "you may recover nonrefundable unused payments and deposits when a trip is cancelled or interrupted....benefits are also provided for baggage delays, emergency medical treatment and medical evacuation;" p. 8 "helps you recoup the monetary part of your investment..." Moreover, all of the companies represented in Exhibit 7 explicitly describe their services as "insurance."[2]

In fact, very much to the contrary, in its web site (referenced by the Commissioner in his Memorandum) Global Rescue expressly distinguishes itself from companies like those in Exhibit 7. The following has appeared in the Frequently Asked Questions (FAQs) section of Global Rescue's website since 2005:

> Q. Will Global Rescue reimburse me for medical expenses or the cost of my vacation?

[1] The Commissioner's statement of facts tracks those contained in the proposed Stipulation of Facts which the parties previously discussed.

[2] Of course, what other kinds of companies may do has nothing at all to do with what Global Rescue does or whether it falls within the Insurance Code definition of insurance. Moreover, nothing has been presented to demonstrate that the business of those companies is the same as Global Rescue's. Accordingly, Respondent respectfully objects to Exhibit 7 as irrelevant and not probative of any matter at issue.

> A. Global Rescue is not an insurance company and thus cannot reimburse members for either the cost of treatment arranged by the member or the member's trip costs. Global Rescue will arrange and pay for all consultative and transport services for our members, provided the member contacts Global Rescue and requests these services. www.globalrescue.com (emphases added).

As the Commissioner points out in his Memorandum, additional information about the kind of services provided by Global Rescue are described on the web site. Attached as Exhibit 1 are some articles from the website which provide good examples of Global Rescue's services. As indicated, its rescue teams frequently are deployed to remote or dangerous locations such as the Himalayas, the Republic of Georgia, Lebanon, Haiti, Chile, Uganda, Burkina Faso, and similar locations. Absent Global Rescue, these services likely would be unavailable.

Most pertinently, as is clear from its membership agreements attached as Exhibit 1 and 2 to the Commissioner's Memorandum and the web site materials included with the Commissioner's Memorandum as Exhibit 3, the expenses incurred in the course of a rescue are not the responsibility of the member, but of Global Rescue, and hence there is no reimbursement of expenses to the members in the form of indemnification or otherwise. Instead, Global Rescue deploys its own resources and makes all necessary arrangements for evacuations when necessary, and likewise is the direct provider of all its other services.

## III. DISCUSSION

Global Rescue's basic position is set forth in the letter of January 21, 2010 previously submitted to the Office of the Insurance Commissioner and attached as Exhibit 9 to the Commissioner's Memorandum. Rather than restating each of the points made in the January 21 letter here, we respectfully request that Commissioner's Exhibit 9 be deemed to be part of Respondent's Hearing Memorandum as if set forth herein.

### A. The Statutory Language

As stated at the outset, it should be reemphasized that the question here is a very narrow inquiry: whether Global Rescue's operations fall within the Washington Insurance Code definition of insurance set out at RCW § 48.01.040. Clearly, if Global Rescue is not in the business of "insurance" as so defined it is not subject to regulation by the Commissioner. As also noted, the statutory definition includes two separate and distinct definitional elements: either an undertaking "to pay a specified amount upon determinable contingencies" or an undertaking "to indemnify another." If Global Rescue does neither, it does not fall under the Commissioner's regulatory authority.

1. "*To pay a specified amount*" The Commissioner does not appear to contend that Global Rescue falls within the statutory definition by reason of any undertaking "to pay a specified amount upon determinable contingencies," nor could he. As is clear from Global Rescue's membership agreements and web site, Global Rescue does not make any payments

whatsoever to its members, let alone a specified amount. Clearly this portion of the statutory language refers to products, such as traditional life insurance, in which a carrier promises to pay an agreed-upon amount on the death of the insured. Nothing in Global Rescue's program resembles anything of the kind. Accordingly, Global Rescue's business is not "insurance" under this branch of the statutory definition.

2. "*To indemnify another*" In fact, the case turns on the applicability of this distinct element of the statutory definition, and hence the meaning of the phrase "indemnify" is the key issue to be determined. Whatever other terms or elements might be used elsewhere to define insurance, unless Global Rescue undertakes to indemnify its members, it simply does not fall within the scope of insurance as the term is used in the Washington Insurance Code. It cannot be over-emphasized that however the term insurance may be defined elsewhere, the Commissioner cannot expand his regulatory reach beyond the narrow definition of insurance tied to the concept of indemnification which the Washington legislature chose to adopt. If as a matter of public policy it were determined that operations like those of Global Rescue should be regulated, that is a decision for the Washington legislature to make by enactment of an appropriate—and applicable – statute. See Washington Attorney General Opinion appended, as Exhibit 10 to the Commissioner's Memorandum: "We would, however, think it well if this matter were to be clarified by specific amendatory legislation...." (Comm. Ex.10, p. 4)).

As Global Rescue pointed out in our January 21, 2010 letter to the Commissioner (Comm. Ex. 9), the Washington Supreme Court has been explicit in repeatedly defining indemnification as meaning "to reimburse for any loss," *Weyerhaeuser v. Commercial Union Ins. Co.,* 142 Wn.2d 654, 672-673 (2000), or a "contractual contribution, whereby one ... may look to another for reimbursement." *Stocker v. Shell Oil Co.*, 105 Wn.2d 546, 549 (1986) (emphases added). Expanding on the definition of indemnification, the Supreme Court's *en banc* panel in *Weyerhaeuser* went on to describe indemnification as "to make whole" and as "payment of all sums which the Assured shall be obligated to pay." *Weyerhaeuser*, 142 Wn.2d 654 at 672 & 679. Other Washington Supreme Court and Appellate court cases have described the principle of indemnity using similar terms. See e.g., *Central Wash. Refrigeration v. Barbee*, 133 Wn.2d 509, 513 (1997) ("indemnity requires full reimbursement and transfers liability from the one who has been compelled to pay damages to another who should bear the entire loss.") (emphases added); *State v. Anderson*, 72 Wn. App. 253, 263 (Wash.App. Div. 1993) ("'indemnify' means [t]o restore the victim of a loss, in whole or in part, by payment, repair, or replacement") (emphases added) (internal quotations omitted). These definitions from Washington's Supreme and Appellate courts are consistent with the meaning of "indemnify" in Black's Law Dictionary[3] ("to reimburse for a loss suffered because of a third party's or one's own act or default) as well as at least two well known insurance law treatises: "indemnity" is described by Appleman as "the compensation necessary to reimburse the insured's loss";[4] and by Keeton & Widiss as an arrangement "structured to provide funds to offset a loss."[5] Indeed, even the Washington

[3] BLACK'S LAW DICTIONARY 783 (8th ed. 2004).

[4] 1-1 NEW APPLEMAN ON INSURANCE LAW LIBRARY EDITION § 1.05.

[5] Robert E. Keeton & Alan I. Widiss, Insurance Law: A Guide to Fundamental Principles, Legal Doctrines and Commercial Practices 134-135 (practitioners ed. 1988).

Attorney General, in the Opinion attached as Exhibit 10 to the Commissioner's Memorandum, recognizes that, in Washington, insurance involves payments, characterized either as reimbursement or compensation: "...insurance is a contract by which one party ... promises to pay .... a certain sum of money on a specified contingency. As regards property and liability insurance, it is a contract by which one party promises ... to compensate or reimburse the other..." (Comm. Mem. Ex. 10, p. 2 (emphases added).

In fact, the Commissioner in his Memorandum concedes that "Indemnify traditionally is used to mean reimbursement..."[6] As noted, however, Global Rescue provides services: it does not reimburse, pay compensation, or make any payments of sums which its members become obligated to pay. Accordingly, it does not "undertake to indemnify another" and therefore is not in the business of insurance as defined in RCW § 48.01.040.[7]

B. The Commissioner's "Legal Authorities"

At page 3 of his Memorandum, the Commissioner refers to several sections of the Insurance Code as the "relevant legal authority." Of course, RCW § 48.05.030(1) and 48.02.080(3)(a) (requiring an insurer to have a certificate of authority and authorizing issuance of cease and desist orders, respectively) are pertinent if, and only if, it is first is determined that Global Rescue is an insurer within the definition codified in Section 48.01.040 which, as discussed immediately above, is the critical issue presented.[8]

Global Rescue likewise respectfully disagrees with the Commissioner's inclusion of RCW § 48.01.250(1)(a) as among relevant legal authorities. None of the activities to which this section refers involve activities in which Global Rescue engages:

> Any person, firm partnership, corporation or association promising, in exchange for dues, assessments, or periodic lump-sum payments, to furnish members or subscribers with assistance in matters relating to trip cancellation, bail bond service or any accident, sickness, or death insurance benefit program must have a certificate of authority, issued by the insurance Commissioner, authorizing the person, firm, partnership, corporation, or association to sell that coverage in this state . . .

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[6] Comm. Mem., p. 3 (emphasis added). The Commissioner's arguments based on case law and treatises to avoid the traditional definition of indemnification as reimbursement are discussed below.

[7] As noted above, this is a critical distinction between Global Rescue and companies such as those described in the Commissioner's Exhibit 7, many or all of which are not service providers, but merely reimburse for costs the client incurs, or for losses (like lost luggage or trip cancellation) he suffered. As is clear from the "Frequently Asked Questions" excerpt from Global Rescue's web site quoted at page 3, above, this is not what Global Rescue does. Global Rescue neither reimburses or has anything to do with lost luggage, cancelled trips, or the like.

[8] Since the applicability of RCW § 48.01.040 is the pivotal issue in the case, it is unclear why the Commissioner omitted reference to this key statutory section in his list of "Legal Authority."

Any suggestion that the reference to "insurance benefit programs'' for accident, sickness, or death somehow makes the section applicable to Global Rescue would be circular in that it begs the seminal question of whether Global Rescue's activities constitute "insurance benefit programs." It is self evident that if Global Rescue's business is not insurance, statutes dealing with insurance are not applicable. Accordingly, we suggest that this statutory section is not material to a decision in this case as to whether Global Rescue is in the business of insurance offering "insurance benefit programs." To reiterate, the case hinges not on the above referenced statutes, but on the applicability to Global Rescue of the definition of insurance set out at RCW § 48.01.040 and, more specifically, whether Global Rescue undertakes to provide indemnification as that term is used in the statute and universally understood.

C. The Case Law

The Commissioner's effort to support his position with several cases cited in his Memorandum is misplaced:

1. *Fishback v. Globe Casket*, 82 Wash. 124 (1914) As the Commissioner concedes, this nearly hundred year old case was decided under the pre-1947 definition of insurance, prior to what even the Commissioner describes as the current "pared down" definition (Comm.Mem., p.3). Accordingly, *Fishback v. Global Casket* itself sheds no light on the meaning of the current definition of insurance as indemnification. The Commissioner is quite correct in stating the question as "is *Fishback v. Globe Casket* still good law after 1947?" (Comm. Mem. P.3). Unfortunately for the Commissioner's argument, however, his answer to the question is incorrect, as discussed immediately below.

2. *In re Estate of Martha J. Knight*, 31 Wn.2d 813 (1948). In contending that *Fishback* remains good law, the Commissioner relies solely on the *Knight* decision. *Knight*, however, offers no support for the Commissioner's position. First, *Knight* involved a traditional life insurance policy under which, in the terms of the current statutory definition the issuer agreed "to pay a specified amount upon determinable contingencies," namely the death of the insured. There was no issue in the case as to whether or not the policy was one of insurance, and no-one would dispute that it was. Instead, the case involved the somewhat far-fetched claim that a husband should have included the cash surrender value of a life insurance policy on the husband's life in his deceased wife's estate for inheritance tax purposes. The policy named the deceased wife as the beneficiary and, upon her death, the husband cancelled the policy and received the cash surrender value since there no longer was any need for the policy. Neither the proceeds of the policy nor its surrender value passed through the estate, and the question whether the policy was insurance was neither at issue nor decided. Moreover, contrary to the Commissioner's contention at page 4 of his Memorandum, the Court never "ruled" that insurance continued to be defined by the language in the pre-1947 Code. Instead, the court merely noted in passing and not as part of, or germane to, its decision that "in its general sense" insurance 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 ... as a result of specified perils." *In Re Estate of Knight,* 31 Wn.2d at 816 (emphases added). As the source of this "general sense," the court did not cite Washington's Insurance Code, but instead referred to various general treatises. Even more tellingly, the court went on to note specifically the change in the statutory definition accomplished by the 1947 amendment, but made no effort to construe or apply the new language. In fact, our research has disclosed no Washington case reading the statutory phrase "to indemnify another" as meaning anything other than to pay reimbursement, the uniformly accepted meaning of the term (See Heading A, above). Moreover, reading the current definition of insurance to be no different than the pre-1947 language, as the Commissioner urges, would render the legislature's action in passing the 1947 definitional amendment to be a futile and meaningless act. Obviously, the adoption of a new definition must have worked a change from the old.

3. *Washington Physicians Service Association v. Gregoire,* 147 F.3d 1039, 1046 (9th Cir. 1998). Most notably, the United States Court of Appeals in *Gregoire* was not seeking to define insurance under Washington law, and never even cited RCW § 48.01.040 let alone attempted to construe it. Instead, the only issue in the case was whether the requirement in Washington's "Alternative Provider Statute" that every health plan in the state cover services provided by "every category of health provider" (RCW § 48.43.005, *et seq.*) fell within an exception to the federal ERISA statute for any law "which regulates insurance, banking, or securities." The federal court in *Gregoire* dealt solely with federal law, looking to "common-sense definition," "traditional" versus "innovative" regulation, the law of various states, and the test established under the federal McCarren-Ferguson Act for determining whether a particular activity falls with the exception to the federal antitrust laws carved out for the business of insurance. *Washington Physicians Service Association,* 147 F.3d 1039 at 1045-46. While all of this may be elucidating as to how the term insurance is used in various contexts, it provides no assistance to construction of the definition adopted by the Washington legislature, particularly since it never cited or mentioned the RCW § 48.01.040 definition at issue here.

4. *Group Life & Health Insurance Company v. Royal Drug Company, 440 U.S. 205* (1979); *Jordan v. Group Health Association,* 107 F.2d 239 (D.C. Cir. 1939). In these cases the United States Supreme Court and the United States Court of Appeals, respectively, held that the firms involved in each of the cases were <u>not</u> engaged in the business of insurance. It is unclear how the Commissioner believes that these decisions, under federal law, finding certain business not to be insurance assists his argument. These cases were cited in Global Rescue's January 21, 2010 letter (Comm. Mem., Ex. 9) not for their result or even their exposition of federal law. Instead the significance of these cases for present purposes is the articulation by two of the Nation's most prominent courts of a basic principle rebutting the Commissioner's suggestion that Global Rescue's program includes an element of risk sharing and on that account must be deemed to be

insurance (See discussion of this issue below, p. 9 under Heading Risk of Loss). The Court of Appeals stated, and the United States Supreme Court agreed:

> That an incidental element of risk distribution or assumption may be present should not outweigh all other factors .... Care must be taken to distinguish mere contracts to render services on the happening of a contingency from true contracts of insurance. 107 F.2d at 248. See 440 U.S. at 226.

5. *Fishback v. Universal Services Agency,* 87 Wash. 413 (1915); *McCarty v. King County Medical Services Corporation,* 26 Wn.2d 660 (1946). Both of these older cases predate the 1947 amendment to Washington's definition of insurance. Moreover, even under the prior more expansive definition the court in *Fishback v. Universal Services Agency* found that the contract at issue there was not one of insurance. In *McCarty*, the principle issues were questions of employment status and principal–agency relationships, with the issue of insurance being only a collateral matter. Moreover, to the extent *McCarty* might be read as determining whether the arrangement before it was insurance, its result is unremarkable since it appears that the defendant service plan, like any insurance carrier, agreed that "...the bills [for medical expenses] would be paid by the service corporation; that this included medical expenses, doctors' fees, nursing care, and hospital charges." Consistent with this undertaking, judgment was entered holding the service corporation liable for the medical expenses at issue.

D. Service Contracts

Although a subsidiary point, we respectfully disagree with the Commissioner's attempt to rebut our contention that the passage of specific statutory provisions governing service contracts indicates that such contracts do not fall within the definition of insurance in RCW § 48.01.040. Although the Final Bill Report of Senate House Bill 2553 (Comm. Mem. Ex. 11) recites that certain transactions that fall within the definition of insurance have been exempted from the Insurance Code, the report does not indicate that this exemption includes the service contracts to be brought within the regulatory regime by the Bill. To the contrary, we respectfully suggest that review of the legislative materials submitted by the Commissioner as a whole (Comm. Ex. 11 and 12), together with the Attorney General Opinion (Comm. Ex. 10) indicates that such contracts did not fall within the definition of insurance, and that new legislation was necessary if they were to be regulated. Indeed, if not the case, why the need for the legislation at all?[9] The Legislative Finding supporting the enactment governing service contracts (Comm. Ex. 12) expressly states that "the legislature declares that it is necessary to establish standards that will safeguard the public..." If safeguards with respect to such service contracts already existed

[9] The Commissioner's Memorandum appears inadvertently to mischaracterize the Attorney General Opinion attached thereto as exhibit 10. In fact, the Attorney General concluded that the warranties at issue were not insurance, and recommended new legislation, presumably precisely of the kind that was enacted to cover automobile and other consumer product service warranties.

because they were deemed insurance and subject to the Insurance Code, there hardly would be the necessity the legislature found to exist requiring enactment of safeguards.

The same issue arose in a number of states with similar definitions of insurance, especially with respect to HMOs, and special legislation was required to extend regulatory coverage to them. Without belaboring the point, see note 5 to Global Rescue's January 21, 2009 letter (Comm. Ex. 9, p. 5) and the discussion of the issue by the Supreme Court in *Group Life* referenced there.

E. The Treatises

Neither Crouch's *Cyclopedia of Insurance Law* nor Appleman's *Insurance Law and Practice,* cited by the Commissioner, purport to discuss Washington law or address a definition of insurance such as contained in RCW § 48.01.040. Accordingly, their academic discussions are of little aid here. To the degree useful, however, they confirm Global Rescue's position: "A contract of insurance is a contract to indemnify the person or persons secured thereby.... It involves a contract ... to compensate the insured ... for loss sustained ...usually involving the payment of a designated or ascertainable sum of money...." (Appleman, *Ibid.* § 7001). "[A] ... primary requisite essential to a contract of insurance is....the undertaking to indemnify the insured against such loss." Couch, *Ibid.* § 1.9 (emphases added). That reimbursement or compensation may take a form other than money (for example, by replacing damaged, lost, or stolen property) does not detract from the fact that it constitutes compensation and reimbursement. As noted, Global Rescue does not indemnify, compensate, or reimburse a loss, but instead delivers rescue and other services by trained teams: hardly the business of insurance.

F. Risk of Loss

The Commissioner suggests that because Global Rescue's services may involve an element of risk sharing, its activities should be characterized as insurance. The short but dispositive answer is that, although the legislature could have defined insurance as involving risk sharing, it did not do so, and RCW § 48.01.040 makes no mention of risk. Again, we respectfully submit that the Commissioner must take the definition as enacted by the legislature, not as he might write it or prefer it to read.

Further, even if Global Rescue's operations do involve an element of risk sharing, even under general concepts of insurance, this would not suffice to make its activities the business of insurance. The warning expressed by the Court of Appeals for the District of Columbia Circuit and adopted by the United Sates Supreme Court in *Jordan* and the Royal Drug cases is directly on point, and most apt here: "Care must be taken to distinguish mere contracts to render services on the happening of a contingency from true contracts of insurance." (See p.7, *supra).* No better language can be found to describe Global Rescue's business: the rendering of services [evacuation, security, etc] on the happening of a contingency [illness, injury, emergency] distinctly not the activities of an insurance company.

This distinction likewise has been recognized by the legal commentators. As we referenced in our January 21 letter: "all insurance contracts concern risk transference, but not all contracts concerning risk transference are insurance." (Keeton, Basic Text on Insurance Law 6 (1973).[10] Indeed, the authority cited by the Commissioner himself articulates the very same principle: ....presence of risk is not determinative, since an agreement is not insurance when the element of risk is merely an incident of the contract." Couch, *On Insurance* § 1.9 (emphasis added) (See Comm. Mem. P.4). Again, the caveat is directly applicable: Global Rescue's web site makes clear it does not market itself on the basis of spreading risk, but as having critical services available if needed. Any risk sharing therefore most certainly is only incidental and not so essential a part of its activities to make those activities the business of insurance even if, contrary to fact, the Washington legislature had chosen to make risk sharing part of the definition of insurance.

## IV. CONCLUSION

As noted initially, defining insurance is not at issue here: the Washington Legislature already has done so. It elected to adopt what the Commissioner himself recognizes is a "pared down definition (Comm. Mem. p.3), dependent for its applicability either on an agreement to "pay a specified amount" or undertaking "to indemnify another."

It is not contested that Global Rescue does not make any payments whatsoever, let alone in a "specified amount."

As discussed above, "to indemnify" universally is understood to mean to reimburse or compensate a loss. Again, it cannot be disputed that Global Rescue does not reimburse or compensate; it directly delivers services. The Commissioner can not avoid the fact that insurance under Washington's Insurance Code is limited to indemnification, nor can he expand the meaning of indemnification to embrace concepts embodied in other definitions of insurance, whether in the law of other states, federal law, legal treatises, or otherwise. If the regulation of insurance in this state is to be extended beyond undertakings of indemnity, it is up to the legislature, not the Commissioner, and not through tortured construction of straightforward and unambiguous statutory language. And this is as it should be: if the citizens of Washington are to be denied access when away from home, often in high-risk locations, to the protections afforded by Global Rescue's proven ability to dispatch a trained evacuation or rescue team, it should be by a deliberate and considered choice of the Washington legislature. If regulation is deemed necessary or appropriate, the recommendation of the State's Attorney General bears repeating: "it [would] be well if this matter were clarified by specific amendatory legislation." (Comm. Mem. Ex. 10, p. 4).

[10] Perhaps an extreme example, a racetrack or gambling casino is exposed to the risk that wining might exceed amounts bet. Accordingly, it spreads this risk by setting odds favoring the house. Despite this spreading of risk, no-one would mistake a pari-mutual window or a Las Vegas roulette table for an insurance company.

## V. EXHIBITS PRESENTED

Exhibit 1 Excerpts from Global Rescue's web site

Respectfully submitted, this 8th day of April, 2010.

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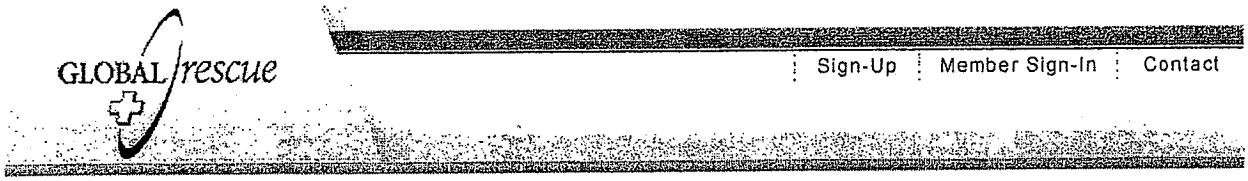
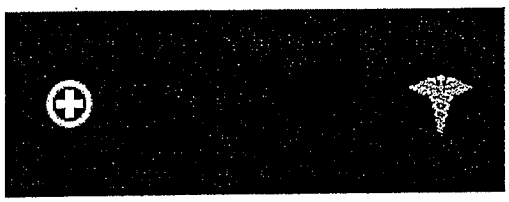


## OUR MISSION

Global Rescue's mission is to provide the highest quality medical, security, transport, and other critical services for our members anytime, anywhere in the world.



Global Rescue operates by a simple credo:
*"If you need us, we'll be there"*

**SIGN UP NOW**
"We use one word to describe our commitment to helping members in need: unwavering."
*Daniel L. Richards, Chief Executive Officer*

## NEWS

**Global Rescue deploys personnel to Haiti**
January 15, 2010

Global Rescue has tasked a rescue team comprised of former Navy SEALS and other security and medical personnel as part of the emergency evacuation service's mission to support its clients and relief efforts in the troubled Haitian capital.

Global Rescue's team, consisting of more than 25 personnel, is led by a former Navy SEAL, a member of the Army's Special Forces and the Company's Chief Paramedic. Members of the team arrived in the Dominican Republic Thursday morning and immediately deployed to the impacted areas to extract and evacuate clients trapped by the region's devastating earthquake. Their mission also includes the recovery of mortal remains. The overall relief effort has been thus far hampered by a shortage of medical personnel and a deteriorating security situation.

If you have family or relatives trapped in Haiti, Global Rescue may be able to help. Contact the company's operations center at 617-459-4200.

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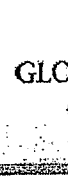
Global Rescue is the Official Provider of aeromedical services to the U.S. Ski and Snowboard Team

**EXHIBIT 1 PAGE 1**



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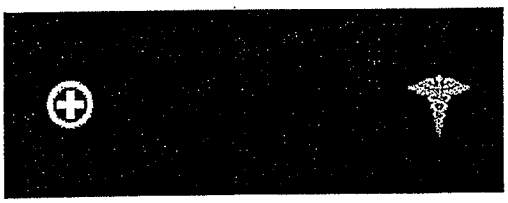
Global Rescue's mission is to provide the highest quality medical, security, transport, and other critical services for our members anytime, anywhere in the world.



Global Rescue operates by a simple credo:
*"If you need us, we'll be there"*

### SIGN UP NOW

"We use one word to describe our commitment to helping members in need: unwavering."
*Daniel L. Richards, Chief Executive Officer*

## NEWS

**Global Rescue evacuates climber in the Himalayas; search for Argentine alpinist unsuccessful**
May 19, 2008

Search and rescue parties have stopped looking for climber Dario Bracali, ten days after the Argentine made a solo attempt to summit Mt. Dhaulagiri, the world's seventh-tallest peak. Bracali's climbing partners last saw him on May 3, departing from camp 3, located at 7,400 meters above sea level.

Teams from Global Rescue LLC, in coordination with the Himalaya Rescue Association Nepal (HRAN), successfully evacuated Bracali's Argentine climbing partner who suffered severe frostbite and exposure after spending the night in an open bivouac. In addition to using contracted helicopters and a Sherpa-led team who searched the mountain for Bracali, Global Rescue sent two mountain rescue specialists to Nepal to coordinate logistics and aid in the effort. Bad weather and an airspace closure for the Olympic torch's ascent up Mt. Everest resulted in repeated delays. The teams ultimately found no trace of Bracali.

The climbers were part of an expedition filming a documentary on Dhaulagiri, widely considered to be more technically challenging than Everest. It is the site of one of Nepal's worst mountaineering disasters in which seven climbers died after an ice-bridge collapsed into a crevasse in 1969. Dhaulagiri has claimed the lives of two other Argentines: Francisco Ibañez in 1954 and Mario Serrano in 1981. A Spanish climber, Rafael Carrion, also perished on May 9 when he slid into a crevasse.

Global Rescue is a Boston-based crisis-response company that performs medical and security evacuations worldwide. The company has a partnership with Johns Hopkins Medicine, the #1 ranked hospital in the U.S. for the past 17 consecutive years. In addition to the Himalayan operation, Global Rescue has recently performed evacuation missions from Lebanon, Qatar, Mexico, Ghana, Togo and Argentina.

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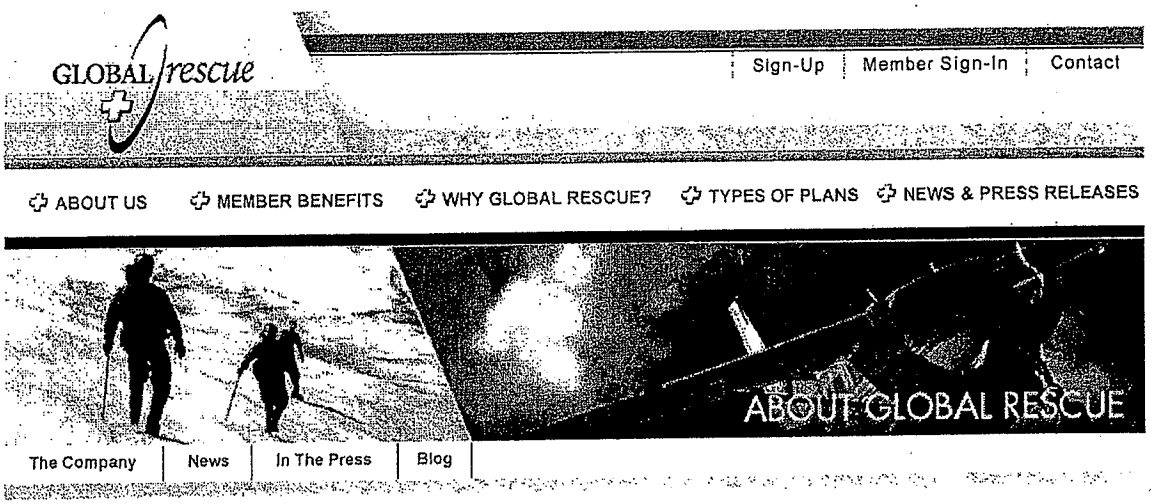


## OUR MISSION

Global Rescue's mission is to provide the highest quality medical, security, transport, and other critical services for our members anytime, anywhere in the world.

Global Rescue operates by a simple credo:
*"If you need us, we'll be there"*

**SIGN UP NOW**
"We use one word to describe our commitment to helping members in need: unwavering."
*Daniel L. Richards, Chief Executive Officer*

## NEWS

**Global Rescue medically evacuates Haitian patient with spinal injury**
January 20, 2010

Global Rescue medically evacuated a Haitian national with a spinal injury on Tuesday, transporting her from a facility in Port-au-Prince to a hospital in Florida for immediate surgery. The cervical injury she suffered will paralyze her unless she receives appropriate care.

The woman, in her 20s, arrived in the Ft. Lauderdale area Tuesday afternoon. She had been trapped under the concrete of a collapsed building with her legs pressed to her chest for more than 30 hours.

The Global Rescue team in Haiti, led by the Company's Chief Paramedic, a former Navy SEAL and a member of the Army's Special Forces, has grown to more than 20 security specialists and critical care paramedics.

If you have family or relatives trapped in Haiti, Global Rescue may be able to help. Contact the company's operations center at 617-459-4200.

Global Rescue is an emergency services company that provides best-in-class medical, evacuation, search and rescue and security services to individuals, corporations, travelers and expeditions worldwide. The company's emergency response teams are comprised of paramedics, physicians and security personnel, many of whom are veterans of elite special operations units of the U.S. Military. Through an exclusive relationship with the physicians of Johns Hopkins, Global Rescue members also benefit from the advisory services of some of the world's finest physicians.

Recent examples of Global Rescue's work include rescuing a safari client from Mozambique and dispatching a special operations team to Africa to protect and prepare to evacuate Americans from a country experiencing political unrest. Other recent missions include evacuations from Lebanon, The Republic of Georgia, Romania, Saudi Arabia, Afghanistan, Mexico, Alaska, Argentina, Ethiopia, Ghana, and Thailand. For more information, visit www.globalrescue.com.

For press inquiries, please contact our press office at (617) 459 4200 or email press@globalrescue.com.

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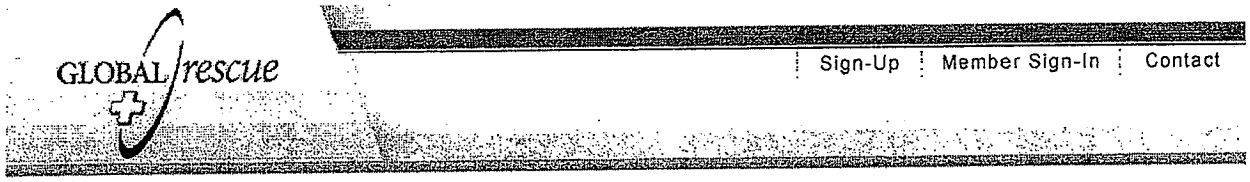

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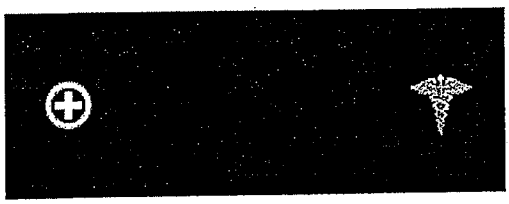

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## IN THE PRESS

**Global Rescue rescues missionaries from Haiti after U.S. Embassy fails to help**
The Reading Eagle Newspaper
January 20, 2010

Armed rescuers whisk Berks missionaries out of Haiti - By Greta Cuyler

Six armed men whisked a group of Berks County missionaries out of Haiti over concerns for their safety following last week's devastating earthquake.

Following two days of rest in Santa Domingo, Dominican Republic, the group of 14 people from Christ (Mertz) Evangelical Lutheran Church in Dryville, near Fleetwood, returned home Tuesday night.

"We wanted to come home to our families, but we also wanted to stay and help," said Sara J. Trupp, 19, of Oley.

The group was in Haiti for nearly a week to do missionary work at a church and orphanage. The earthquake struck Jan. 12, a few days after they arrived.

The group's travel insurance company, Brotherhood Mutual, hired employees of Global Rescue to get the group out of Haiti.

The men arrived at the compound in the town of Croix des Bouquets on Saturday night, each armed with automatic weapons, said Courtney Renshaw, 20, who is a junior at Alvernia University.

One of the men was an ex-Navy SEAL. Two others were former Green Berets. One didn't speak English, Renshaw said.

On Sunday morning at 5, the men drove the group in a four-vehicle caravan to the nearby Port-au-Prince airport.

They boarded the first charter plane out of Haiti, Renshaw said.

Each was allowed to take only a small bag of belongings. The rest of their luggage either was left behind or will be shipped back in a few months.

Megan S. Trupp, 21, Sara's sister, said she boarded the plane with two days worth of

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clothes, toothpaste, a camera and a journal in her backpack.

"We were told we're 'blancs' or foreigners," said Lauren Williams, 20, another Oley resident and a student at Shippensburg University. "That means we have wealth. So even though the Haitians know we're helping them, they also know we have the money to come down there."

The group first tried to get help to leave Haiti through the U.S. Embassy just outside of Port-au-Prince.

But when they arrived at the embassy, they couldn't even get inside, Renshaw said.

A guard told them the embassy had taken in 100 Americans who were staying inside, she said. A line of more than 100 people extended beyond the embassy gates.

They were told that if they had a safe place to stay, they should return to it.

The group went back to the compound. Shortly afterward, arrangements were made with the insurance company to return them to safety.

Helping orphans

The group spent the first several days after the earthquake assisting a nearby orphanage - bringing food and water and playing with the children.

Port-au-Prince was the hardest hit, Renshaw said.

The quake's epicenter was about 10 miles southwest of the capital.

"The downtown was 100 times worse than us," she said of Croix des Bouquets, which is about 8 miles from the capital.

The first night, the group slept outside. The next night they returned inside, but quickly fled outdoors as aftershocks hit.

The group could hear people singing throughout the first night, a comforting sound in the midst of chaos.

"After every aftershock, the singing just got louder," Williams said.

Although they were largely isolated from the devastation in Port-au-Prince, they did see plenty of footage on the Internet when they hooked up an emergency generator for about four hours a day.

"We never saw the disaster that you saw on TV," Williams said.

The group had to secure the compound where they were staying after portions of a 12-foot-tall exterior brick wall fell, said Courtney's father, Patrick Renshaw.

While the women held flashlights, the three males on the trip - Patrick, 48, Joshua Christman, 21, and Aaron Messersmith, 16 - strung barbed wire 4 feet high to keep looters out.

Patrick Renshaw, the compound's gardener and two neighbors stayed up during the night of the quake to keep guard while the others slept. They were armed with a machete and hammers.

The men remained on guard through Thursday night, Patrick Renshaw said.

"I probably didn't sleep until Friday," Patrick Renshaw said. "When we got to the Dominican Republic (on Sunday) my body hit the bed and I was out."

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Haitian hospitality

Before the group left, they experienced the hospitality of the Haitians.

People they had met on their trip walked hours to see them just to make sure they were all right, Courtney Renshaw said.

A man named Jarrel Carte, who played the accordion for the church service, walked for six hours, through the debris-strewn streets of Port-au-Prince to check on the group's safety, she said.

Carte told the group the homes in his neighborhood were either damaged or gone and about 500 people were gathered together to live communally.

The missionaries gave him about 4 pounds of rice, and the snacks that they had. Christman gave Carte his backpack to carry the supplies.

Several members of the group said they hope to return to Haiti.

"I could see myself and Josh (Christman) going back again within a year," Patrick Renshaw said.

Christman agreed.

"They need that much more help now," he said.

Contact Greta Cuyler: 610-371-5042 or gcuyler@readingeagle.com.

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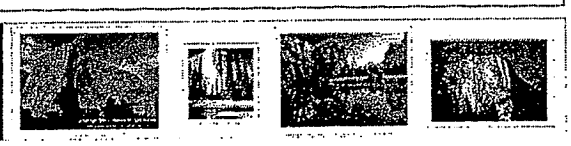



SECURITY CONCERNS

The Boston Globe

# In crises, private firms can be a safety net

By Megan Woolhouse and Katie Johnston Chase
Globe Staff / January 16, 2010



Britney Gengel's family and friends were overcome with relief to hear that a mysterious security agency had rescued the 19-year-old college student from Rutland, who had been missing in the aftermath of the Haiti earthquake. Then came the bad news: Reports were wrong and Gengel was still missing.

Officials at Lynn University in Boca Raton, Fla., which sponsored the relief-mission group Gengel that had been part of, said the unnamed agency had received "bad intelligence."

"We don't know how it is that we got a report like that only to find out it was in fact wrong," said school spokesman Jason Hughes.

Some reports identified the agency as red24, a security firm headquartered in England that conducts hundreds of privately funded rescue efforts every year.

Red24, whose website says it is actively helping clients in Haiti, is one of several companies that assist people in high-risk situations like kidnappings, terrorist attacks, and natural disasters. They thrive in regions of the world where police or government aid may be inadequate or nonexistent. And they are often staffed by former members of the military, CIA, or FBI. Company officials at red24 did not return calls for this story.

"They're operating in trouble spots all over the world," said Kevin Lapwood, an analyst with Seymour Pierce Research in London. "They're in Afghanistan, they're operating in Iraq, they're operating in Somalia. They're in Sudan."

In recent years, red24 and security firms like it have built something of a niche industry by offering their services to corporations, governments, and others who can pay large sums to extract people from disaster zones or war-torn regions.

Red24, for example, charges companies a monthly retainer premium and in the event of a disaster or threat, it accesses a database of security specialists worldwide who act as contractors and conduct the actual missions.

"We call it the contingency operations industry," said Doug Brooks, president of the International Peace Operations Association in Washington, which represents about 60 companies worldwide that offer a range of relief services, including the quick delivery of field hospital set-ups, off-road vehicles, and construction equipment to help save lives in the immediate aftermath of disasters like the Haiti quake.

Another private security and rescue firm, Boston-based Global Rescue, is searching for hundreds of people in Haiti, some of whom work for corporations. Chief executive Daniel Richards said an insurance company asked it to find 200 people, but he declined to provide specifics.

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The first Global Rescue team, led by a former Navy SEAL and a member of the US Army's Special Forces, arrived in Haiti Thursday, Richards said, and the company expects to have 30 people on the ground by this morning. Richard said his clients include NASA, the State Department, the Chicago Tribune, and local companies Bain & Co. and EMC Corp.

EMC, whose 40,000 employees around the world are covered by Global Rescue when out of their country of origin, has been a client for two years. The Hopkinton data storage company has used Global Rescue's services about 10 times for medical emergencies, including to assist an employee who had a cardiac condition, said spokesman Patrick Cooley.

International SOS Assistance, a Philadelphia-based security firm, has about 60 clients in Haiti, according to Erin Giordano, its communications director, including 11 universities.

She said that company policy prevented her from identifying clients, which also include private companies, but added that many university students were in Haiti to study public health at the time of the earthquake.

The company dispatched two security specialists to Haiti Tuesday night, just after the quake, to link up with staff in the country. They immediately began searching for missing clients and planning evacuations. "We are in the heat of it now," she said, adding that as of last night the company was working 100 separate cases.

Lynn University officials said yesterday evening that they had hired a second company to assist in their search and recovery efforts. They would not identify the company by name, but an official at International SOS, who was not authorized to speak publicly about the case, said it was working with the school.

Meanwhile, Britney Gengel's father, Leonard, appeared on television yesterday and implored President Obama to send more rescue workers to Haiti.

"Father to father, I'm pleading with you to please, please get help and rescue to these folks," he said, his voice breaking.

*Bryan Bender of the Globe staff contributed to this report. Megan Woolhouse can be reached at mwoolhouse@globe.com. Katie Johnston Chase can be reached at johnstonchase@globe.com.* ■

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