

JUN 21 2010

FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

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STATE OF NEBRASKA

In the Matter of the Unauthorized)	SUMMARY ORDER
Insurance Activities of)	TO CEASE AND DESIST
)	
E AND O COVERAGE OF AMERICA)	AND NOTICE OF RIGHTS
d/b/a E&O COVERAGE OF AMERICA,)	
E AND O INSURANCE OF AMERICA,)	
d/b/a E&O INSURANCE OF AMERICA,)	
ERRORS AND OMISSION INSURANCE)	CAUSE NO.: I-83
OF AMERICA,)	
E AND O COVERAGE POOL, and)	
E AND O COVERAGE OF AMERICA)	
d/b/a E AND O COVERAGE POOL,)	
)	
Unauthorized Entities,)	
)	
and)	
)	
CARL D. ANDERSON,)	
SCOTT D. ROUGHEN, and)	
DAVE ELBERT,)	
)	
Individual Respondents.)	

The Department of Insurance (herein the "Department"), by and through its Director, Ann M. Frohman, upon Petition for Cease and Desist filed by Department counsel, Joel F. Green, hereby orders E and O Coverage of America d/b/a E&O Coverage of America, E and O Insurance of America d/b/a E&O Insurance of America, Errors and Omission Insurance of America, E and O Coverage Pool, E and O Coverage of America d/b/a E and O Coverage Pool, Carl D. Anderson, Scott D. Roughen, and Dave Elbert (collectively and herein "Respondents") to immediately CEASE AND DESIST issuing, making, providing, selling or offering, either directly or indirectly, insurance or insurance type benefits in the State of Nebraska which are not insured by an insurer licensed to transact insurance in the state. Specifically, pursuant to NEB. REV. STAT. § 44-2002, NOTICE IS HEREBY GIVEN:

1. That the Director of Insurance is charged with enforcement of the insurance laws of the State of Nebraska. See, NEB. REV. STAT. § 44-101 ET SEQ., including unauthorized activities of insurers;
2. That NEB. REV. STAT. § 44-2002(2) defines an insurer to include all corporations, associations, partnerships, and individuals engaged as principals in the business of insurance and shall also include interinsurance exchanges and mutual benefit societies;
3. That NEB. REV. STAT. § 44-303 provides that an insurer must obtain a certificate of authority before transacting the business of insurance in the State of Nebraska;
4. That NEB. REV. STAT. § 44-201(10) defines liability insurance, which shall include errors and omissions coverage, to mean insurance against legal liability for the death, injury, or disability of any person, for injury or damage to any person, or for damage to property, and the providing of medical, hospital, surgical, or disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance, except that liability insurance shall not include workers' compensation and employers liability insurance specified in NEB. REV. STAT. § 44-201(11);
5. That the Unauthorized Insurers Act, NEB. REV. STAT. § 44-2001 ET SEQ., provides that "[i]t shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (2) of this section without a certificate of authority from the director." Subsection (2) provides that "[t]he following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer shall constitute the transaction of an insurance business in this state . . . :
 - (a) The making of or proposing to make, as an insurer, an insurance contract;
 - (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;
 - (c) The taking or receiving of any application for insurance;
 - (d) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof;

- (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
 - (f) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. This subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of such employer;
 - (g) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or
 - (h) The transacting or proposing to transact any insurance business in substance equivalent to any of the provisions of subdivisions (a) through (g) of this subsection in a manner designed to evade the provisions of the statutes”;
6. That the Respondents are not licensed or authorized to transact business as insurers, insurance producers or insurance agencies in the State of Nebraska at all relevant times hereto;
 7. That following an investigation into this matter, the Department of Insurance has reasonable cause to believe that Respondents are engaged, either directly or on behalf of an unauthorized insurer, in the business of transacting insurance in the state without a license, in particular, are violating and have violated NEB. REV. STAT. § 44-2002(a), (c) – (h) in that:
 - (a) Respondents have acted in concert to market and sell errors and omissions coverage insurance, or similar type products, to Nebraska residents. Respondents have caused this product to be advertised and sold to Nebraska consumers through the internet at the following website: www.eandocoverageofamerica.com. That website is no longer published.

- (b) Respondents have issued, underwritten insurance, or transacted insurance in Nebraska affecting subjects located wholly or in part in Nebraska and to be performed in Nebraska, including plans or policies of errors and omissions coverage covering Nebraska residents. Specifically, in April of 2009, Respondents sold or caused to be sold a two million dollar aggregate errors and omissions policy to Nebraska resident, Lila K. Driver (“Consumer Driver”). On April 21, 2009, Consumer Driver provided \$583.60 to the company via credit card transaction as an upfront payment of a year’s worth of premium for the errors and omissions policy offered by Respondents.
- (c) Respondents have been the subjects of an Emergency Cease and Desist Orders filed by the State of Colorado Division of Insurance on or around June 24, 2009, entitled IN THE MATTER OF E AND O COVERAGE OF AMERICA, a Colorado Nonprofit Corporation, d/b/a E&O Coverage of America; E AND O INSURANCE OF AMERICA, a Colorado General Partnership or Trade Name, d/b/a E&O Insurance of America; ERRORS AND OMISSION INSURANCE OF AMERICA, a Colorado General Partnership or Trade Name; E and O COVERAGE POOL, a Colorado Trust; E and O COVERAGE OF AMERICA, d/b/a E&O Coverage Pool, a Colorado trust; PROFESSIONAL BENEFITS SOCIETY, a Colorado Nonprofit Corporation; CARL D. ANDERSON, Resident Insurance Producer License Number 72344; and SCOTT D. ROUGEN, Resident Insurance Producer License Number 58050, Case File 215231, alleging in part that Respondents engaged in the unauthorized business of insurance in the State of Colorado by collectively or individually, either directly or indirectly, soliciting, negotiating, procuring, providing, underwriting, processing, administering, or otherwise engaging in the effectuation of a type of errors and omission insurance and that Respondents’ transaction of the insurance business was conducted directly through the internet at www.eandocoverageofamerica.com for which they were not duly licensed as insurance producers with the proper lines of authority or otherwise, insurance companies.
- (d) The Order to Cease and Desist filed by the State of Colorado Division of Insurance was finalized and remains in effect subject to further Order of the Insurance Commissioner of the State of Colorado.
- (e) The Respondents, allegations, and findings of fact set forth in the Colorado Cease and Desist Order are almost identical in content to the allegations set forth in detail in the Petition for Cease and Desist in this matter.

8. That the aforementioned acts described in Paragraph 7 are unlawful and constitute violations of the Unauthorized Insurers Act and the Insurance

Producers Licensing Act and fall within the purview of the Department's authority to exercise powers authorized by law including the issuance of a summary order to cease and desist such activities pursuant to NEB. REV. STAT. § 44-2003(2);

9. That the Unauthorized Insurers Act, NEB. REV. STAT. § 44-2002(3)(a) provides that "[t]he failure of an insurer transacting insurance business in this state to obtain a certificate of authority shall not impair the validity of any act or contract of such insurer and shall not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim, or demand arising out of the transaction of such business until such insurer shall have obtained a certificate of authority;
10. And, finally, that NEB. REV. STAT. § 44-2002(3)(b) provides that "[i]n the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of any insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract *shall be liable* to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract." (Emphasis added).

WHEREFORE, pursuant to the Nebraska Insurance Code, specifically NEB. REV. STAT. §§ 44-2003(2) and 44-4050, I, Ann M. Frohman, do hereby find that the continued transaction of insurance by Respondents without a Certificate of Authority or appropriate producers license issued by the Department of Insurance, are violations of the Nebraska Insurance Code and, as such, constitute an immediate danger to the public welfare by placing the public in grave harm so as to necessitate this immediate issuance of an Order.

ACCORDINGLY, IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that Respondents shall immediately CEASE AND DESIST from transacting the business of insurance in this State including acting or holding themselves out as insurers exempt from regulation in this State or insurance producers, either directly or indirectly, whether under Respondents' own names or any other name whatsoever used by any Respondent individually.

IT IS ORDERED that Respondents shall forthwith notify each and every Nebraska resident of the cessation of all insurance business because Respondents are unlicensed, that no additional premium funds or consideration will be accepted by Respondents from said Nebraska residents.


IT IS FURTHER ORDERED that Respondents shall add a disclaimer to any and all websites advertising Respondents products or services that said products and services "are not available in the State of Nebraska."

NOTICE OF RIGHTS

A hearing on this matter may be requested in writing within ten (10) business days after receipt of this Order as authorized under NEB. REV. STAT. § 44-2003(2). If a hearing is requested, the Director shall schedule a hearing within ten (10) business days after receipt of the request.

Dated this 21st day of June, 2010.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE,



ANN M. FROHMAN
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing SUMMARY ORDER TO CEASE AND DESIST was served upon Respondents by certified mail, return receipt requested, on this 21st day of June, 2010, to the following:

E and O Coverage of America
314 Comanche Street
Kiowa, Colorado 80117
and
14525 SW Millikan Way
Beaverton, Oregon 97005
and
14655 SW Millikan Way
Beaverton, Oregon 97005
and
P.O. Box 1772
Castle Rock, Colorado 80104
and
10256 Kelliwood Way
Highlands Ranch, Colorado 80126

Carl D. Anderson
10256 Kelliwood Way
Highlands Ranch, Colorado 80126

Scott D. Roughen
14525 SW Millikan Way
Beaverton, Oregon 97005
and
14655 SW Millikan Way
Beaverton, Oregon 97005
and
5540 Tech Ctr. Drive, Suite 201
Colorado Springs, Colorado 80919

E and O Insurance of America
300 East Miller Court, #1772
Castle Rock, Colorado 80109

Errors and Omissions Insurance of America
300 East Miller Court, #1772
Castle Rock, Colorado 80109

E and O Coverage Pool
314 Comanche Street
Kiowa, Colorado 80109
and
P.O. Box 1772
Castle Rock, Colorado 80109

Dave Elbert
314 Comanche Street
Kiowa, Colorado 80117

