STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

IN RE: NATION MOTOR CLUB, INC., d/b/a NATION SAFE DRIVERS, RESPONDENT	))))	DOCKET NO. 12-002-I

ORDER ADOPTING HEARING OFFICER'S PROPOSAL FOR DECISION AND CONTINUING IN FORCE THE ORDER REQUIRING RESPONDENT TO CEASE AND DESIST

Introduction

This matter arose from the issuance of an *ex parte* order pursuant to 8 V.S.A. § 3661 requiring Nation Motor Club, Inc. d/b/a Nation Safe Drivers (Respondent) to cease and desist from transacting insurance business in the State of Vermont (Cease and Desist Order). A hearing was held on this matter and the hearing officer submitted to me Findings of Fact, Conclusions of Law and a Proposed Decision and Order (Proposed Decision). Respondent submitted exceptions to those findings of fact and conclusions of law (Exceptions), and oral arguments were held before the Commissioner of the Department of Financial Regulation (Commissioner) at the request of Respondent.

This order considers the entire record in this matter, and ultimately adopts the hearing officer's recommendation to continue in force the Cease and Desist Order. Certain of the hearing officer's findings of fact are also adopted.

Procedural History

On February 14, 2012, the Commissioner concluded an investigation by the Department of Financial Regulation (Department) into Respondent's activities in Vermont by issuing the Cease and Desist Order. Respondent timely requested a hearing, and after settlement discussions failed to bear fruit, a hearing officer was appointed for the matter on August 24, 2012. Multiple

motions were filed by each party, and after the Department failed to authenticate certain exhibits, a hearing was scheduled for June 10, 2013.

In the Proposed Decision issued on July 23, 2013, the hearing officer recommended that the Cease and Desist Order continue in force. The Proposed Decision includes relevant details of the hearing. On August 2, 2013, Respondent filed Exceptions to the Proposed Decision, including a legal brief in support and request for oral argument before the Commissioner. Oral argument was held on September 11, 2013.

Findings of Fact

The findings of fact made by the hearing officer are adopted in the form attached hereto, with the following exceptions:

- Finding of Fact #8 is rejected. In its place, the Commissioner makes the following finding of fact:
    - Respondent's clients (i.e., the associations and other groups with which Respondent contracts for the sale of Travel Club memberships to the individual members of those groups) are not direct insureds with respect to the liability policy between Respondent and certain underwriters at Lloyd's. Ex. 5B, T:51:22-53:10
- Finding of Fact #10 is rejected. In its place, the Commissioner makes the following finding of fact:
    - Between the period of January 1, 2010 – May 25, 2011, at least 12 Vermont residents were members of the Nation Safe Drivers Travel Club (Travel Club), and roughly 20 Vermont residents have been members of the Travel Club in the five year period ending June 2013. Ex.5C, T:38:1-3

- Finding of Fact #13 is rejected.
- Finding of Fact #18 is rejected.

If the substance of any proposed finding has not been adopted, the Commissioner has rejected that proposed finding. References to the evidentiary record for the above findings of fact identify support for each finding, but are not necessarily exhaustive or exclusive.

Discussion and Conclusions of Law

The conclusions of law and ensuing discussions are based on the above findings of fact and the central question to be decided: whether the Cease and Desist Order, which is based on the claim that Respondent was transacting insurance business in Vermont without being licensed to do so as required under 8 V.S.A. § 3361, should continue in force or be rescinded. It is established that Respondent is not licensed in Vermont to transact the business of insurance. Finding of Fact (F):2. To answer the central question of whether the Cease and Desist Order should continue in force, the following fundamental background points must be established: (1) whether the product placed with Vermonters was insurance; (2) if so, who is the insurer for that insurance product; and finally, (3) if Respondent is the insurer, did it transact the business of insurance in Vermont? Conclusions for each point are discussed in turn.

1. *Conclusion*: The Hospital Indemnity benefit, which is included as part of Travel Club membership, is insurance.

Discussion: 8 V.S.A. § 3301a defines "insurance" as follows:

> As used in this title, "insurance means an agreement to indemnify or otherwise assume an obligation, provide services or any other thing of value on the happening of a particular event or contingency, or to provide indemnity for loss with respect to a specified subject by specified circumstances in return for a consideration.

As the hearing officer appropriately explained, the Hospital Indemnity benefits provided to Vermonters through the Travel Club are insurance under Vermont law:

> These benefits are: the "Accidental Death & Dismemberment" benefit; the excess "Medical Benefit" and "Daily In-Hospital Confinement Benefit." Each of these benefits meets the definition of "insurance" under Vermont law because, in each case, upon becoming a member of the Travel Club (which includes payment of a fee) NSD agrees to make a monetary payment to the person "whose name appears on the application" ("named member") in the event that person dies, or incurs a specific injury or specific expense as a result of being involved in an auto accident under specific circumstances. F:5, 6, 15, 16.

Proposed Decision, p.5.[1] It is also important to look to the name of the benefits: Hospital *Indemnity*. While the name of a benefit is not dispositive, it is significant that the description for the benefit at issue used by Respondent aligns with the definition of insurance provided by Vermont law.

Respondent has acknowledged throughout this process that these benefits are insurance benefits. A representative of Respondent testified that some benefits that are provided, such as the accidental death & dismemberment benefit, are insurance benefits. F:6. Respondent's counsel affirmatively noted that the testimony regarding the status of these benefits as insurance by the representative was undisputed. Exceptions p.3. Though Respondent's counsel would not make the same acknowledgment during oral argument, the Hospital Indemnity benefits offered as part of the Travel Club meet the statutory definition of insurance, and thus are insurance benefits as a matter of law.

That these benefits are insurance provide a foundation for the further analysis of whether Respondent transacted the business of insurance in Vermont. Vermonters who become members of the travel club receive the Hospital Indemnity benefit, which is insurance, making such

[1] Throughout the Proposed Decision, Respondent is referred to as "NSD" (Nation Safe Drivers).

Vermonters insureds. The next step in the analysis is to determine which entity is the insurer opposite these insured Vermonters.

2. *Conclusion*: The Hospital Indemnity insurance is provided by Respondent, not Lloyd's of London.

Discussion: Certain underwriters at Lloyd's of London have entered into an insurance policy with Respondent as the insured (Lloyd's Policy).[2] Ex. 5B. The Lloyd's Policy covers all valid claims occurring on Respondent's Hospital Indemnity portion of its Travel Club benefits. Ex. 5B, p.6. Respondent points to this policy to argue that it is not an insurer, but rather an insured, and that Lloyd's of London is the insurer with respect to Vermonters who are members of the Travel Club with Hospital Indemnity benefits. T:43:1-7. However, the Lloyd's Policy also states "indemnity by underwriters (if any) for all section(s) is to Nations Safe Drivers, et al only," and "The Nation Safe Driver clients are not direct insured(s) on this account." Ex.5B, p.6. Thus, Lloyd's cannot be providing insurance benefits to Vermonters because the Lloyd's Policy, which creates and defines the coverage provided by Lloyd's, clearly severs any connection between it and any Travel Club members. Travel club members, however, are still provided with insurance benefits.

It is instructive to note that the Lloyd's Policy is entitled "Reimbursement Insurance." As noted above, the policy also states "indemnity by underwriters (if any) for all section(s) is to Nations Safe Drivers, et al only." Indemnity is a duty to make good any loss, damage or liability incurred by another. Black's Law Dictionary (9th ed. 2009). This language, coupled with the characterization of this policy by Lloyd's as *reimbursement* insurance, implies that Lloyd's will pay Respondent in the event that Respondent pays claims to Travel Club members for the

[2] Lloyd's of London is an insurance market, not an insurance company, wherein member underwriters form syndicates to insure risks. Additional information about Lloyd's of London can be found on its website: http://www.lloyds.com/

Hospital Indemnity benefits. Respondent's booklet confirms this structure.[3] As the hearing officer noted:

> For instance, the booklet says that when a Travel Club member (including a Vermont member) makes a claim for the Travel Club's Hospital Indemnity benefits, s/he contacts NSD – not Lloyd's. It is NSD which makes the ultimate determination as to whether to honor the claim – not Lloyd's. A Vermont Travel Club member cannot look directly to Lloyd's for payment of his/her claim. The claim is paid by NSD – not Lloyd's. If a Vermont member's claim is paid, NSD – not Lloyd's – "is subrogated to all the member's rights of recovery."

Proposed Decision, p.7. Respondent points out that the Lloyd's Policy states clearly that the National Adjustment Bureau (NAB) is the entity that handles all aspects of claims associated with the Hospital Indemnity benefits. Exceptions, p.4. In fact, the Lloyd's Policy only instructs that it is essential that "we" (i.e., Lloyd's) be advised immediately of any claim, and that NAB should be notified in the event of a claim. Ex.5B, p.4. Even assuming NAB "handles" claims, there is no further indication that NAB is the party responsible for paying claims when incurred.

Respondent acknowledges in its exceptions that NAB is an "affiliated but separate company," and Respondent's booklet directs insureds to contact NAB to provide notice of a claim. Exceptions, p.4. After directing claim notification to NAB, the booklet states "once *we* receive notice of a claim, *we* will provide claim forms." Ex.1, p.4 (Emphasis added). Here, context shows that "we" as used in the booklet refers to Respondent, not Lloyd's or NAB. It further states that "*we* will *pay* any benefits due within 30 days from the receipt of written proof of loss…" Ex.1, p.4 (Emphasis added). The pronouns "we" and "us" are used throughout the

[3] Respondent's booklet is described in the findings of fact. *See* F:14-17. Respondent argues that there is not sufficient evidence to show that the booklet, in the form submitted into evidence, was ever provided to Vermonters. Exceptions, p.7. This argument is not persuasive. An NCOA representative provided a copy of the booklet that is sent to NCOA members, and the same representative gave the names of eight Vermonters who became members of the Travel Club since 2006. Further, a major part of Respondent's claim is that individuals sign up for the Travel Club through clients such as the NCOA, which evidence shows, does provide the booklet. If no enrollment applications (which are part of the booklet) were provided to Vermonters by clients such as the NCOA, no Vermonters would be members. Respondent has not claimed that the findings of fact related to the number of Vermont members of the Travel Club are incorrect.

booklet, and the booklet very directly states that it is Respondent that will "pay" any benefits due, thus confirming Respondent's role as the party responsible to insureds to "provide services or any other thing of value on the happening of a particular event." 8 V.S.A. § 3301a. In short, Respondent is an insurance company.

That Respondent does not ultimately bear the risk of loss or directly underwrite the Travel Club memberships is irrelevant under Vermont law. To argue that the terms "insurance" and the "business of insurance" are limited to the final bearer of risk, as Respondent does, ignores the role played by such common products as reinsurance, stop-loss insurance, and other products that shift and allocate risk. If Respondent provides the coverage described in the booklet, it is an insurance company, regardless of whether or how it subsequently limits, transfers, or eliminates its risk associated with that coverage.

Because Respondent is an insurance company with respect to its Travel Club Hospital Indemnity benefits, there is no need to discuss the Department's alternative argument that Respondent is an insurance producer under 8 V.S.A. § 4793(b), nor Respondent's claim of exemption under the "enroller's exception" within 8 V.S.A. § 4813d(b)(2). The remaining issue to be resolved is the foundational question of whether Respondent transacted the business of insurance.

3. *Conclusion*: Respondent's clients act as agents for Respondent in soliciting, issuing, and delivering Travel Club memberships, as well as collecting consideration for Travel Club memberships.

Discussion: The record is clear that Respondent does not directly interact with Vermonters prior to their enrollment in the Travel Club. It is the Respondent's clients, such as the National Corvette Owners Association (NCOA), that provide their individual members with

materials related to the Travel Club, enroll individuals in the Travel Club, and collect money for entry into the Travel Club. However, the result is that individual members of the NCOA (or Respondent's other clients) become members of the Travel Club, and Respondent has a direct contractual relationship with the NCOA and its other clients. If the relationship between Respondent and its clients meets the definition of principal and agent, then Respondent will be liable for the authorized acts of its clients. *See Gross v. Rell*, 40 A.3d 240, 246 (Conn. 2012) quoting Restatement (Second), Agency § 140, p.349 (1958). The hearing officer characterized the establishment of an agency relationship as follows: "(1) a manifestation by the principal that the agent will act for him; (2) acceptance by the agent of the undertaking; and (3) an understanding between the parties that the principal will be in control of the undertaking." *Gateway Company v. Dinoia*, 654 A.2d 342, 350 (Conn. 1995).

With respect to the first criterion of an agency relationship, Respondent maintains that its relationship with clients is limited to selling Travel Club packages to them, and that it does not authorize associations to solicit members of the associations to purchase Travel Club memberships. Respondent Proposed Findings of Fact and Conclusions of Law (Respondent Proposal), p.4. The hearing officer articulated the inconsistency with this claim:

> NSD is not paid for its product until after an association member has paid the association for the Travel Club Membership. After that, the associations "send Nation Safe Drivers a contracted amount for the sale of the hospital indemnity benefit." Exhibit (Ex.) 4. Mr. Wiener described that per member "contracted amount" as "the fee I charge the association for the Travel Club." T:57:18
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> The process described by NSD's representatives is consistent with an arrangement whereby the association sells the Travel Club to its members on NSD's behalf. The evidence shows that NSD is not paid until the association sells the Travel Club product to one of its members and the association member has paid the association. It is only upon "sale of" each individual membership that the association pays NSD its "contracted" price for its Travel Club benefit.

Proposed Decision, p.9. Thus, Respondent does not receive fees for Travel Club memberships unless and until those memberships are placed with individual members. Respondent's business model depends on its clients placing Travel Club memberships with their members. It is not reasonable for Respondent to claim that it did not manifest that the clients would act on its behalf regarding solicitation, placement, and payment for memberships when such action was a necessary and contemplated part of Respondent's relationship with the clients. Even assuming that Respondent did not authorize its clients to act for it in soliciting, delivering, and accepting consideration for Travel Club memberships, it is well established that subsequent ratification is equivalent to prior authority. *Couture v. Lowery*, 122 Vt. 239, 245 (1961). Respondent has accepted and ratified the actions of its clients that resulted in memberships for Respondent's Travel Club.

The second criterion for an agency relationship, that the agent accepts the undertaking, is evidenced by clients of Respondent agreeing to a relationship with Respondent and delivering Respondent's booklets to their individual members, and accepting enrollment forms and fees. *See* Ex.9, p.3. The third criterion for an agency relationship requires that the parties have an understanding that that the principal will be in control of the undertaking. Here, Respondent sets the cost to the client of each Travel Club membership sold, sets the terms and conditions of the policy (F:12, 17), and requires that the client deliver the booklets and collect Respondent's fees (F:12, 14).

The hearing officer points to a particularly apt example from the Vermont Supreme Court regarding an insurance company and an association as its agent, and the similarities with that case are convincing. In *Rule v. New Hampshire – Vermont Health Service*, 144 Vt. 323, 325-27, 477 A.2d 622 (1984), a trade association provided group health insurance as an association

benefit, and collected premiums for such health insurance on behalf of the health insurer, Blue Cross. When the association did not remit collected premiums to Blue Cross, Blue Cross cancelled the insurance benefits and association members sued Blue Cross for return of their premiums and damages. The circumstances were similar in many ways to the issue at hand: (i) Blue Cross provided the association with literature regarding the insurance benefits for the association to distribute to its members; (ii) Members provided their premium directly to the association; and (iii) the association in turn paid Blue Cross. In determining that the association was an agent of Blue Cross, the Vermont Supreme Court reasoned, in part, that the association performed a task (collection and remittance of premiums) for the benefit of Blue Cross.

The same benefit is enjoyed by Respondent when associations solicit, enroll, and remit payment for Travel Club memberships. Merely pointing to the fact that consideration is paid to Respondent's clients for the entire package of Travel Club benefits rather than specifically for the Hospital Indemnity benefits, as Respondent does, does not weaken the similarity to *Rule*. Respondent Proposal, p.8. Under Vermont law, Respondent's clients acted as agents when soliciting, enrolling, and collecting consideration for the Travel Club.

4. *Conclusion*: With its clients as its agents, Respondent transacts the business of insurance in Vermont.

Discussion: Because Respondent's clients act as its agents, Respondent is liable for the authorized acts of those agents. Restatement (Second), Agency 140, p.349 (1958). As discussed above, Respondent is an insurance company, and it has authorized its clients to act for it in soliciting, enrolling, and collecting consideration for Respondent's Travel Club memberships. These transactions fall squarely within the umbrella of transacting "the business of insurance" in Vermont. *See* 8 V.S.A. 3368(b).

Neither Vermont statutes nor case law create a restrictive definition of insurance business. 8 V.S.A. § 3368(b) creates a non-exclusive list of examples of insurance business:

> (1) The issuance or delivery of contracts of insurance to residents of this state;
> (2) The solicitation of applications for such contracts;
> (3) The collection of premium, membership fees, assessments or other considerations for such contracts; or
> (4) The transaction of matters subsequent to the execution of such contracts and arising out of them.

8 V.S.A. § 3368(b). The hearing officer capably described how each example of insurance business was transacted by Respondent, and those descriptions are adopted here. *See* Proposed Decision, pp.11-12. Respondent argues that a three-part test created by the U.S. Supreme Court for practices that constitute the business of insurance should control. Respondent Proposal, p.10. The hearing officer correctly dismissed this argument, as the test articulated by the Supreme Court was designed to determine whether a state statute regulated the business of insurance as permitted under the McCarran-Fergusson Act, or whether such statute would be preempted by federal law. *Pilot Life Insurance Company v. Dedeaux*, 481 U.S. 41, 48-49 (1987). Even if the test in *Pilot Life* applied here, the determination that Respondent is an insurance company would place all of its practices well within the three articulated criteria.

5. *Conclusion*: The Department has jurisdiction over Respondent, which is an insurance company transacting the business of insurance in Vermont with residents of Vermont as insureds.

Discussion: Having found that Respondent is an insurance company transacting the business of insurance in Vermont without a license to do so, it only remains to address Respondent's final argument that the Department does not have jurisdiction to regulate Respondent. The argument comes in two parts: first, that Respondent's actions do not constitute

the business of insurance, and thus are beyond the jurisdiction of the Department; and second, that Vermont law does not regulate travel clubs explicitly, and therefore the Department cannot reach the Travel Club. The first part of the argument fails because Respondent is an insurance company and does transact the business of insurance in Vermont through its agents.

The second part of the argument also fails, as it does not recognize the purpose and scope of state insurance regulation. Simply labeling an insurance product as part of a "travel club" and placing additional entities into the risk allocation scheme does not change the nature of that insurance product. Vermont's legislature has chosen not to create a specific set of regulatory criteria for "travel club" benefits. This decision does not mean that no travel club benefits can be regulated in any instance. Rather, where "travel club" benefits include insurance, those benefits and the companies that offer them are regulated just as any other insurance or insurer is regulated in the State, including being subject to all licensing requirements. Any other result would defeat the aims of the legislature in creating the Department, which are to supervise the business of organizations that offer financial services and products in a manner to assure solvency, liquidity, stability and efficiency , to assure reasonable and orderly competition, and to protect consumers against unfair and unconscionable practices. It is the nature of the service, not its name, which provides jurisdiction for the Department to regulate.

Decision and Order

The record establishes that Respondent is an insurance company, and its Travel Club includes an insurance product under 8 V.S.A. § 3301a. The Department has shown that Respondent has transacted the business of insurance in Vermont, as defined in 8 V.S.A. § 3368(b). Respondent does not have the appropriate authority to transact the business

of insurance in Vermont. Thus, the ORDER requiring RESPONDENT to CEASE and DESIST transacting insurance business in Vermont will continue in force.

Right to Appeal

This order exhausts all administrative remedies within the Department. Respondent may appeal this decision to the Vermont Superior Court, Washington County Unit, in accordance with 8 V.S.A. § 3661.

Dated at Montpelier, Vermont this 26th day of September, 2013.

/s/ Susan L. Donegan
Susan L. Donegan, Commissioner

STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

In Re:		
Nation Motor Club, Inc., d/b/a/	)	Docket No. 12-002-I
Nation Safe Drivers	)	
Respondent	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSAL FOR DECISION

Introduction

On February 14, 2012, the Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration[1] (Department) concluded that Nation Motor Club, Inc. d/b/a Nation Safe Drivers (NSD) had "sold Vermont residents insurance plans without the requisite license to do so"[2] and ordered NSD, pursuant to 8 VSA § 3661, to "cease and desist from transacting any insurance business in the State of Vermont."

NSD has consistently maintained that it has never transacted insurance business in Vermont and that, as a consequence, the Order must be rescinded because the Commissioner lacked the authority to issue it.

This matter came on for a Merits Hearing [3] on June 10, 2013 to determine whether the Cease and Desist Order would remain in effect. The Department was represented by Attorneys Karla Nuissl and Shannon Salembier. NSD was represented by Attorney Gregory M. Eaton.

The Department called one witness, Charles Piasecki, Administrative Insurance Examiner, and admitted eight exhibits in an effort to meet its burden of proof. In order to uphold the Order the Department must prove by a preponderance of the evidence that NSD transacted insurance business in Vermont without being licensed to do so.

NSD called two witnesses, Michael L. Wiener, Senior Vice President of Marketing for NSD and Attorney Charles J. Grimsley, an expert in Florida Insurance Law.

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[1] Now the Vermont Department of Financial Regulation

[2] The Department's Motion for the Ex Parte Cease and Desist Order cited 8 VSA § 3361 which provides that a" foreign or alien insurer" must be licensed in order to transact insurance business in Vermont. Acts constituting "transaction insurance business" are set out in 8 VSA § 3368 (b).

[3] This is a "contested case" as set out in Department Procedural Rule Sections 10, 11 and 3 VSA §§809- 10. This merits hearing follows denial of dueling Motions for Summary Judgment from the parties.

As hearing officer, I make the following findings of fact after careful consideration of the proposals from both parties and after careful review of the evidence admitted at the June 10 hearing. If I have not included the gist of a party's proposed finding in any of my findings, I have rejected that proposed finding.

Findings of Fact

1. Nation Motor Club, Inc. d/b/a/Nation Safe Drivers (NSD) is a Florida Corporation and Nation Safe Drivers, LLC is a Florida limited liability company. The corporation and the LLC share the same address in Boca Raton, Florida. Exhibit 1, Transcript of the June 10, 2013 Merits Hearing (t) at page 45,lines 7-8 (45:7-8)

2. NSD is not licensed to transact insurance business in Vermont. Transcript of June 10, 2013 Merits Hearing (T) at T 46:16-18, T:38: 20 – T39:4

3. NSD created a product called the Nation Safe Drivers Travel Club (Travel Club). T53: 3-4, Exhibit 1

4. The first five Travel Club Benefits are:

   - "Travel" – enables members "to access online travel reservation discounts for hotel, airfare and car rental" of up to 5%.

   - "Credit Card Protection" – if a member loses cards, NSD will "notify all your credit card companies of your loss and request replacements."

   - "Rent –A-Car Discounts" – Members are "furnished with discount cards for automobile rentals honored at thousands of locations in the United States and abroad."

   - "Lost Luggage Protection – If a member's luggage is lost and the carrier's lost baggage claim process is unsatisfactory, NSD "will endeavor to follow up on your claim to assure a fair settlement."

   - "Emergency Cash" – If a member's credit cards or cash are stolen, the member is 250 miles from home and the member presents NSD with a police report confirming the loss, miles from home, NSD will loan the member up to $100 (to be repaid in 30 days).

   These five benefits are described in Exhibit 1 (p.2)

5. The sixth (and final) Travel Club benefit is a "Hospital Indemnity" Benefits package which makes Travel Club members eligible for benefits of up to $10,000 (e.g. Accidental Death & Dismemberment) as long as the membership fee has been paid and the member's "name appears on the application" for enrollment in the Nation Safe Drivers Travel Club. Exhibit 1 (pp. 2-6), T 57:1-4

6. Mr. Wiener, Senior Vice President of Marketing for NSD accurately characterized the Hospital Indemnity Benefits in NSD's Travel Club product as "insurance benefits." T 43:1-3

7. NSD is the insured under a liability insurance policy procured from Lloyd's syndicate through Mitchel Kalmanson of the Lester Kalmanson Agency, a Florida-licensed surplus lines broker. Exhibit 5 B, T 51:22-53:10

8. Lloyd's does not have a direct insurance link, or relationship, with individual Travel Club members, including Vermont members, who have purchased the Travel Club's Hospital Indemnity insurance benefits. T 51:22- T 53:10, Exhibit 5 B (p.6)

9. NSD "contracts with "agents and associations" to sell" NSD's Travel Club benefits package. Exhibit 1 and 4, T 48:16-21

10. These "agents and associations" sold the Travel Club with the Hospital Indemnity Benefits to twelve Vermont residents during the period from January 1, 2010 – May 25, 2011 and a total of twenty Vermont residents during a five year period ending in June 2013. Exhibit 5C and Exhibit 6 (p.2), T 38:1-3

11. One of those associations, the National Corvette Owner's Association (NCOA) has sold NSD's Travel Club with the Hospital Indemnity benefits package to eight of its Vermont resident members since 2006. Exhibit 8

12. NSD receives a contracted amount - the amount NSD charges for its Travel Club product with the Hospital Indemnity benefits - from an association each time the association sells a Travel Club membership to an association member, including an association member in Vermont. Exhibit 4, T 38, 1-17, T 57:14-19

13. An association also generates revenue for itself when it sells the Travel Club with Hospital Indemnity Benefits. T 47: 11-18

14. Once a Vermont resident chooses the Travel Club benefits package through associations such as the NCOA, the association provides a booklet, titled "Nation Safe Drivers Travel Club. Exhibits 4 and 8, T 58:1-2

15. The Travel Club booklet, created by NSD, contains an "Enrollment Application." The booklet also describes and defines: (1) the terms and conditions of the Hospital Indemnity Benefits the Vermonter has purchased with his/her Travel Club membership, (2) the rights and responsibilities of NSD and the Vermont Travel Club member under the Travel Club program and (3), "specific policy exclusions/limitations." T 58: 1-4, Exhibit 1 (pp.2-6)

16. The Travel Club's Hospital Indemnity "insurance benefits" are described in the Travel Club booklet:

    - "Benefit A" -"<u>Accidental Death & Dismemberment</u>": This benefit "applies" to the "named member" – the person or persons "whose name appears on the application" - who suffers loss of life, loss of limb(s), loss of "speech and hearing (both ears)" while that person is involved in an auto accident in which that person is driving or riding in a private passenger auto.

- NSD offers several options for payments under Benefit A ranging, for instance, from a $10,000 principal sum under "Option 215" to a principal sum of $2,500 under "Option 204."

- "Benefit B" - "Excess Accident Medical Expense" – This benefit package provides two basic benefits: the excess "Medical Benefit" and the "Daily In-Hospital Confinement Benefit" which apply to the "named member" while that person is involved in an auto accident in which that person is driving or riding in a private passenger auto.

  - NSD agrees to make payments under the excess Medical Benefit ranging from, for example, $5,000 under Option 215 and $250 under Option 204

  - NSD agrees to make payments under the Daily In-Hospital Confinement Benefit ranging from, for example, $200 per day under Option 215 to $50 per day under Option 204 (365 days)

Exhibit 1 (pp.2-3)

17. The Travel Club benefits package that NSD created (Exhibit 1, pp.4-5) provides the following , in part, under **"SPECIFIC POLICY EXCLUSIONS/ LIMITATIONS"**:

- NSD will provide claim forms once it receives notice of a claim (#5)
- NSD will pay "any benefits due within 30 days from receipt of written proof of loss and any additional documents/paperwork requested/ required."(#6)
- NSD reserves the right to require a physical examination while a claim is pending or payment is being made.(#8)
- NSD reserves the right to require anyone seeking "benefits under this agreement" to submit to examination under oath. (#9)
- If NSD makes a payment to a named member, "Nation Safe Drivers shall be subrogated to all of the member's rights of recovery…" (#13)

Exhibit 1 (pp.4-5)

18. The Hospital Indemnity benefits purchased by Vermont residents, and set out in the Travel Club booklet, are administered by NSD once the Vermont resident is enrolled in the program by associations such as NCOA under the terms of their contracts with NSD. Exhibit 8, Exhibit 1 (pp. 4-5)

19. NSD contracted with associations to act on NSD's behalf when these associations: (1) solicited their members to become Travel Club members, (2) provided their members with the Travel Club booklet describing the insurance benefits they obtain upon membership and (3) paid NSD's fee for providing Travel Club benefits, including the insurance benefits to each new Travel Club member the association signed up. Exhibits, 1,4, 8, T: 38:1-17; T 57: 14-58:1

Conclusions of Law

The Commissioner's Cease and Desist Order is based on the claim that Nation Safe is "transacting insurance business" in Vermont without being licensed to do so as required under 8 VSA 3361 (a) which says: "A foreign or alien insurer shall not transact business in this state unless it first obtains from the commissioner a license authorizing it to do so."

I. License

NSD is not licensed to transact insurance business in Vermont as required under 8VSA 3361 (a). NSD does not claim otherwise. Finding June 10, 2013(F) 2

II. Insurance

There is also little dispute that the "Hospital Indemnity" benefits that NSD created and agrees to administer through it Travel Club product are "insurance" under Vermont law. Mr. Wiener, NSD's Senior Vice President of Marketing, described these benefits as "insurance benefits." F 6

"Insurance" is defined as follows under 8 VSA 3301a:

> As used in this title, "insurance" means an agreement to indemnify or otherwise assume an obligation, provide services or any other thing of value on the happening of a particular event or contingency, or to provide indemnity for loss with respect to a specified subject by specified circumstances in return for a consideration.

The" Hospital Indemnity" benefits which NSD provides to Vermont residents through its Travel Club product are "insurance" under Vermont law. These benefits are: the "Accidental Death & Dismemberment" benefit; the excess "Medical Benefit" and "Daily In-Hospital Confinement Benefit." Each of these benefits meets the definition of "insurance" under Vermont law because, in each case, upon becoming a member of the Travel Club (which includes payment of a fee) NSD agrees to make a monetary payment to the person "whose name appears on the application" ("named member') in the event that person dies, or incurs a specific injury or specific expense as a result of being involved in an auto accident under specific circumstances. Findings (F) 5, 6, 15, 16 and 18

- For example, NSD's Accidental Death & Dismemberment" benefit is "insurance" because NSD agrees to pay up to $10,000 in the event the "named member" dies in automobile accident while either driving or riding in a private passenger auto. F 16, 18

As the Department points out, NSD's Hospital Indemnity Benefits package also meets the definition of insurance under the "Miscellaneous" category of Casualty Insurance in 8 VSA 3301(a)(3)(R): "Insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter . . ."

III. NSD's Argues That It Does "Transact Insurance Business in Vermont"

NSD has consistently argued that there is a very basic reason why it does not need a license[4] - it has never transacted insurance business in Vermont. It describes itself as a "middleman" for those who do. T 76:23

NSD makes two basic arguments.[5] First, it says it does not provide any insurance benefits to Vermont residents – Lloyd's of London does. T 43: 1-7, T 52:1-3 Second, NSD says it doesn't actually sell its Travel Club benefits package directly to Vermont residents. It contracts with "agents and associations" who do. T 34:1 – 36:1

A. First Argument: Lloyd's Provides Hospital Indemnity Insurance Benefits to Vermonters

NSD points out that it is the "insured" on a liability policy procured from Lloyd's. Mr. Wiener contended that it is Lloyd's – not NSD- that is providing "insurance benefits" to Vermont members of the Travel Club:

> There (are) some benefits that are provided by an insurance carrier that offer certain insurance benefits accidental death and things like that.
> Nation Safe Drivers buys a policy from a carrier, and that insurance carrier is the one that provides those benefits and services to members of our club." T 43:1-7
>
> * * *
>
> So if I purchase an insurance policy from Lloyd's, that's the one providing those benefits. T 52: 1-3

Atty. Grimsley followed up on Mr. Weiner's claim that Lloyd's –not NSD- is providing Hospital Indemnity insurance benefits to Vermont. He argued that NSD could not be transacting insurance business because it does not meet any of the following criteria:

(1) Underwriting - NSD has "no underwriting criteria whatsoever;" (T 72:11- 73:2); (2) Risk bearing element - NSD is not a "risk bearer" – it's a policyholder; (T 73:3-8); (3) Premiums - While he admits that some of the Travel Club benefits "are insurance," Atty. Grimsley insists that the "fee" that NSD charges for its package of benefits "has nothing to do with insurance;" (T 73: 9-23) and (4) Payment of losses - NSD "never pays losses." (T 72:11-74:3)

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[4] NSD says that it would obtain a license if Vermont had a "Motor Club" licensing scheme; but, since Vermont does not have such a regulatory scheme, NSD says Vermont has no basis for requiring it to be licensed. T38:18-39:4 Since the Vermont Legislature has decided to enact a regulatory scheme that requires licensure of entities that "transact insurance business" in Vermont as defined by Vermont law, the fact that other states have a different scheme is not relevant on the issue of what is required under Vermont law.

[5] NSD also contends that the Department has failed to prove that NSD meets any of the Vermont statutory indicia of "transacting insurance business." These claims are discussed in part "IV."

First, as to Atty. Grimsley's argument, when the Vermont Legislature defined "transacting the business of insurance" in 8 VSA 3368(b) (discussed in "IV" below), it simply did not adopt Atty. Grimsley's position. (The statute does not mention the "underwriting" or "risk element," for instance.)

The argument that NSD need not be licensed because it is Lloyd's –not NSD- that provides the Travel Club's insurance benefits to Vermonters also misses the mark. This argument is undermined by the terms and conditions of the Travel Club Hospital Indemnity Benefits as described by NSD, itself, in the Travel Club booklet that it created. (Exhibit 1, pp.4-5) It is also undermined by the terms of the policy NSD purchased from Lloyds. (Exhibit 5 B, p. "6") F 3, 7, 16, 18

Lloyd's evidently provides a source of funds to enable NSD to pay claims under certain circumstances. But the Lloyd's policy says that Lloyd's does not have a direct insurance link/ relationship with any Travel Club members, including, of course, Vermont residents who are members. F 7, Exhibit 5 B (p.6)

It is NSD, the entity that created and defined the Hospital Indemnity benefit that has the direct insurance link with Vermont residents who have the Hospital Indemnity insurance. According to the terms of the Travel Club booklet that NSD created (Exhibit 1, pp 4-5), it is NSD that administers Hospital Indemnity benefits. For, instance, the booklet says that when a Travel Club member (including a Vermont member) makes a claim for the Travel Club's Hospital Indemnity benefits, s/he contacts NSD-not Lloyd's. It is NSD which makes the ultimate determination as to whether to honor the claim – not Lloyd's. A Vermont Travel Club member cannot look directly to Lloyd's for payment of his/her claim. The claim is paid by NSD –not Lloyds. If a Vermont member's claim is paid, NSD-not Lloyd's- "is subrogated to all the member's rights of recovery."Ultimately it is NSD that has contracted[6] with the Vermont resident to provide the "insurance benefit" –not Lloyd's. F 7, 8, 15-18

NSD's direct link to Vermont residents in administering the Hospital Indemnity policy is important in Vermont's statutory scheme. As discussed in more detail in "IV" (below) the Vermont Legislature has decided that when an entity such as NSD administers[7] the insurance benefit it is transacting insurance business in Vermont (and must be licensed).

<u>"Enroller's Exception"</u>

The Department argued that even if Lloyd's were to be considered the "insurer" and NSD the "insured," NSD would still have to be licensed as an insurance producer under 8 VSA 7993 (b) Department's Proposed Conclusion of Law #6

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[6] "Nation Safe Drivers Travel Program Enrollment Application" (Exhibit 1, p.6) Only those "whose name appears on the application" can be "named members" who are eligible to claim Hospital Indemnity benefits. (Exhibit 1 pp.3-4)

[7] Under 8 VSA 3368 (b)(4) a person transacts insurance business if s/he engages in the "transaction of matter subsequent to the execution of (insurance) contracts that "arise out of" such contracts and must be licensed.

The Legislature has tasked the Department with protecting Vermont consumers. 8 VSA 102 In light of this, it makes sense to required licensure of those, such as NSD, who have the ultimate decision on whether to honor a the claim of a Vermonter who is a "named member" on a Hospital Indemnity claim.

NSD acknowledges, citing 8 VSA 4813 c, that anyone who "sells, solicits or negotiates an insurance policy" must in most circumstances be licensed as an insurance producer. However, it claims that it is exempt from licensure because it is entitled to the "enroller's exception" under 8 VSA 4813 (d) (b) (2).[8] According to NSD, the enroller's exception exempts a person from licensure requirements for insurance producers if that person merely "secures and furnishes information" about a policy for purposes of enrolling people in group policies providing no commission is paid. NSD Proposed Conclusion of Law (pp.5-6)

NSD does not qualify for the "enroller's exception." It does more than merely "secure and furnish information" about the Hospital Indemnity policy. As discussed in "B" below, NSD "sells and solicits" its Hospital Indemnity insurance benefits through associations that act as its agents. Beyond that, it is paid a fee for providing Travel Club benefits, including Hospital Indemnity benefits. (F12) In addition, NSD's contract with each Travel Club member provides that it (NSD) will administer the Hospital Indemnity insurance benefits. T16-18, Exhibit 1 (pp 4-5)

B. Second Argument: NSD Does Not Sell Travel Club Hospital Indemnity Insurance

NSD argues that there is no basis for finding it has transacted insurance business in Vermont because it plays no direct role in soliciting Vermont residents to apply to become Travel Club members, no direct role in delivering the Travel Club booklet to Vermont residents and receives no direct payment for its Travel Club product from Vermont residents. NSD Proposed Conclusions of Law pp.3-4

The Department responds that although NSD did not directly solicit association members, NSD was transacting insurance business as a matter of law. This is because, it argues, associations such as the NCOA act as NSD's agent when they ask their members to sign an application to become a member of NSD's Travel Club with Hospital Indemnity insurance benefits. Under the law, the acts of the agent (an association such as NCOA) are the acts of the principal (NSD) when the agent is acting within the scope of its agency. Therefore, the argument goes, as a matter of law, NSD is soliciting "applications for contracts of insurance" (8 VSA 3368 (b (2)) from Vermont residents. Department's Proposed Findings #10, Department Proposed Conclusions of Law #7-9

The basic principle of agency law involved here was set out in *Gross v. Rell*, 40 A3d 240, 246 (Conn. 2012) :"It is black letter law that '(a) principal is generally liable for the authorized act of his agent; 1 Restatement (Second), Agency140, p. 349 (1958) …"

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[8] A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass-marketed property and casualty insurance; no commission is paid to the person for the service; (NSD's emphasis)

Three elements must be shown to establish an agency relationship: "(1) a manifestation by the principal that the agent will act for him; (2) acceptance by the agent of the undertaking; and (3) an understanding between the parties that the principal will be in control of the undertaking." *Gateway Company v. Dinoia*, 654 A2d 342, 350 (Conn. 1995)

NSD responds that these associations were not acting as its agents because they were "not authorized" to act on NSD's behalf when they sold NSD's Travel Club memberships to association members. NSD Proposed Findings #4

This argument does not square with the evidence. NSD contracted with NCOA "to sell" the Travel Club. F 9, Exhibit 4, In doing so, NSD plainly showed ("manifested") that it had authorized NCOA to act for it in selling NSD's product[9]. There is no reasonable explanation for NSD's decision to enter such contracts other than that NSD intended to authorize associations such as NCOA to solicit their members to become Travel Club members. By contracting with these associations as it did, NSD was able to: (1) introduce its product to people in Vermont (and elsewhere) who the Travel Club benefits package was most likely to appeal to; (2) sell its product under the terms and conditions that NSD had written (Exhibit 1 pp.2-5) and (3) receive payment for its product– all without dispatching NSD employees from Florida. As for the association, it is able to offer members a benefit that makes membership in the association more attractive (and "generate revenue") without spending any of its money.

The Vermont Supreme Court has found a principal-agency relationship on facts similar to those here. The Court held in *Rule v. New Hampshire –Vermont Health Service,* 144 Vt. 323, 325 -27, 477 A2d 622 (1984) that a trade association, which provided group health insurance as an association benefit, acted as agent for the health insurer in collecting premiums.

Eastern Seaboard was a trade association (association) whose members were primarily engaged in the operation of gasoline service stations. Association members (members) were

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[9] NSD says that the "evidence is undisputed" that the associations purchase the Travel Club from NSD rather than selling the Travel Club on NSD's behalf. NSD Proposed Conclusions of Law (NSD Conclusions) p.3 To the contrary, all the evidence is inconsistent with NSD's characterization of the transaction as "purchase" by the associations. NSD's Compliance Director provided the following in "clarification on the Nation Safe Driver's Hospital Indemnity Program": "Nation Safe Driver's contracts with agents and associations to sell the Travel Club that has the hospital indemnity as a benefit." Exhibit 4 (emphasis added) NSD is not paid for its product until after an association member has paid the association for the Travel Club membership. After that, the associations "send Nation Safe Drivers a contracted amount for the sale of the hospital indemnity benefit." Exhibit 4 Mr. Wiener described that per member "contracted amount" as "the fee I charge the association for the Travel Club." T 57:18

The process described by NSD's representatives is consistent with an arrangement whereby the association sells the Travel Club to its members on NSD's behalf. The evidence shows that NSD is not paid until the association sells the Travel Club product to one of its members and the association member has paid the association. It is only upon "sale of" each individual membership that the association pays NSD its "contracted" price for its Travel Club benefit. Under the process described in the evidence, associations can offer members a benefit (and "generate revenue" F13) without tying up any association money. Under NSD's implausible scenario, the association pays NSD for ("purchases") the Travel Club and then pays NSD again for the Travel Club each time the association sells an individual membership.

entitled to a number of "service-station related" benefits as well as a Blue Cross-Blue Shield (Blue Cross) group health insurance benefit. Blue Cross gave the association "literature, printed by (Blue Cross) explaining the Plan's benefits and coverage for distribution to association members. The association also collected health insurance premiums from its members on a regular basis on behalf of Blue Cross.

Although the association collected payments from members, it failed to forward all the money to Blue Cross. Eventually Blue Cross cancelled the association's group insurance policy for failure to make timely payments of premiums. Association members sued Blue Cross for return of their health insurance premiums and "damages" relying on an agency theory. . 144 Vt. 325-26

The Vermont Supreme Court upheld the lower Court's determination that the association had acted as Blue Cross's agent as to "receipt and forwarding of premiums" and rejected Blue Cross's claim that lower court had been "wrong as a matter of law" on the agency issue. In doing so, the Court pointed out that in collecting the premiums on behalf of Blue Cross the associations had saved Blue Cross administrative expense. The Court also rejected Blue Cross's reliance on the fact that literature distributed to the members had stated explicitly that when the association collected premiums from members, the association was acting as the agent of the members – not Blue Cross. It said that this "express disavowal of the agency relationship" was "inconsistent with the realities of the arrangement." 144 Vt. 327

Associations Acted As NSD's Agents in Soliciting and Delivering Contracts of Insurance

The relationship between NSD (principal) and the association (agent) meets the elements of an agency relationship. NSD "manifests" its intent to have the association act for it when NSD contracts with the association to sell NSD's travel Club product to association members. The association "accepts the undertaking" by agreeing to the terms of the contract. NSD "controls the undertaking" not only by getting the price it charges for the Travel Club with Hospital Indemnity Benefits and controlling the terms and conditions under which insurance claims are paid (F12, F17); but also by requiring the associations to take responsibility for delivery of the travel club booklets and payment of NSD's fee (thereby sparing NSD the time and expense of dealing directly with the new Travel Club member). F 12, F14

Because associations, such as NCOA, act as NSD's agent as to Vermont members of their associations when they solicit sell the NSD Travel Club with Hospital Indemnity insurance benefits (Exhibit 4) to these association members, the law imputes these acts of soliciting and selling to NSD. Under the law then, NSD solicited and sold the Travel Club's Hospital Indemnity insurance benefits to Vermont residents.

IV. "Transacting Insurance Business" in Vermont - 8 VSA 3668 (b)

To prove NSD has transacted the business of insurance in Vermont as defined in 8 VSA 3368 (b), the Department must show by a preponderance of the evidence that NSD engaged in any one of the following (1) the "issuance or delivery of contracts of insurance to" Vermont

residents; (2) the "solicitation of applications for such contracts;" (3) the" collection of premium, membership fees, assessments or other considerations for such contracts; or" (4) the "transaction of matters subsequent to the execution of such contracts and arising out of them."

Solicitation of Applications for Contracts of Insurance (b) (2)

The NSD Hospital Indemnity benefits are "insurance" under Vermont law. NSD has admitted that the Hospital Indemnity component of its Travel Club product is an "insurance benefit." F 6 NSD's agents sold the Travel Club with Hospital Indemnity benefits to twenty Vermont members of their associations during the five-year period ending June 10, 2013. F 10 Each time NSD's agents did so, they provided the new Travel Club member with a booklet, created by NSD, which set out the terms and conditions of NSD benefits, the respective rights and responsibilities of NSD and the new member under the insurance benefit plan as well as "specific policy exclusions/ limitations". F14-17 The booklet, which also contained an NSD Travel Club benefit enrollment application, is a contract of insurance.

The evidence establishes that NSD, acting through its agents, solicited applications for contracts of insurance to Vermont residents.

Issuance or Delivery of Contracts of Insurance (b) (1)

The associations, acting as NSD's agents, issued and delivered the NSD booklet/ insurance contract (described above) to the Vermont members of their associations they had successfully solicited to join the Travel Club. F 14-15 The booklet also contains an "application" which states the "fee to enroll" and identifies the "beneficiary." The application must be signed by the member in order to be eligible for the Hospital Indemnity Benefits that have been selected by the member. F17, Exhibit 1 (pp.3-4, 6)

The evidence establishes that NSD, acting through its agents, delivered contracts of insurance to Vermont residents.

(b) (3) "The Collection of Premium, Membership Fees …Or Other Consideration for Such Contracts"

Associations pay NSD a contracted fee - a fee that Mr. Wiener, NSD's Director of Marketing described as "the fee that I charge the association for the Travel Club"- each time a member of an association joins the Travel Club. F12 NSD has acknowledged that the Hospital Indemnity benefits portion of the Travel Club is an insurance benefit. F 6 This insurance benefit is one of the most substantial benefits in the Travel Club. F4, 5 It is reasonable to believe that a portion of the fee NSD was paid each time a Vermont resident became a Travel Club member was meant to cover NSD's costs in providing the Hospital Indemnity benefits (e.g. Lloyd's policy).

The evidence establishes that NSD received consideration for contracting to provide its Hospital Indemnity insurance benefit to Vermont residents.

"Transaction of Matters Subsequent to the Execution of Contracts of Insurance and Arising Out of Them (b) (4)

Once an association member, including a Vermont NCOA member, enrolls in the Travel Club, NSD's booklet/ insurance contract explains in detail how NSD will administer insurance claims arising out of NSD's contract to provide Hospital Indemnity insurance benefits to the Travel Club member. NSD will provide claim forms to the Vermont resident claiming Hospital Indemnity benefits. The Vermont resident claiming these benefits must file his/her written proof of loss with NSD. If NSD approves the claim, NSD will pay the claim. F 16 -17, Exhibit 1 (pp.4-5)

The evidence has established that NSD engages in "transaction of matters subsequent to the execution of contracts of insurance and arising out of them."

PROPOSED DECISION AND ORDER

NSD admits that it is not licensed to transact insurance business in Vermont. The Department meets its burden if it proves that NSD has transacted insurance business as defined in any one of the four sections of 8 VSA 3368 (b) (1)-(4). Since the Department has proven that the NSD transacted insurance[10] as defined in 8 VSA 3368 (b) (1), (2), (3) and (4), the Department has met its burden under 8 VSA 3361. Accordingly, the undersigned respectfully recommends that the Commissioner continue in force the ORDER requiring NSD to CEASE and DESIST transacting insurance business in Vermont.

RIGHT TO FILE WRITTEN EXCEPTIONS

Any party adversely affected by the proposed decision of the hearing officer shall have 10 days from the date of the proposed decision to file written exceptions, legal briefs or request oral argument before the Commissioner. The parties, by written stipulation may waive these opportunities. Regulation No. 82-1 (Revised) Section 7 (c)

Bob Simpson 7/23/2013

Robert V. Simpson, Jr.
Hearing Officer

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[10] NSD argues that its action in Vermont do not constitute the "business of insurance" as set out by the U.S. Supreme Court in *Pilot Life Insurance Co. v. Dedeaux,* 481 US 481 (1987) . NSD Legal Brief, pp. 11-12 The three-part "business of insurance" test referred to in *Pilot Life* was used to determine whether a state statute was exempt from federal (ERISA) preemption because it regulated the "business" of insurance." NSD does not claim, nor could it, that 8 VSA 3668 does not meet the test.

NSD argues that the Department's attempt to regulate it violate its 14th Amendment because NSD has insufficient contact with Vermont to warrant regulation. It relies on *State Board of Insurance v. Todd Shipyards,* 370 US 451 (1962) a case in which the U.S. Supreme Court held that Texas did have the power to tax insurance coverage purchased in New York by an insured "domiciled" in New York. The insurer was "domiciled" in England and did not do any business in Texas. This case is quite different. Here the Commissioner seeks to exercise her authority to protect the interests of twenty Vermont residents who are insured under a policy that NSD sold and administers.