



**IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
R.S.B.C. 1996, C. 141**

and

**TRUNORTH WARRANTY PLANS OF NORTH AMERICA, LLC
and TRUNORTH WARRANTY PLANS OF NORTH AMERICA, LLC
doing business as TRUNORTH WARRANTY**

**ORDERS
UNDER SECTIONS 244(2) AND 238**

**NOTICE OF RIGHT OF HEARING OR APPEAL
UNDER SECTIONS 238(2) AND 242**

UPON REVIEWING THE SUBMISSIONS AND EXHIBITS OF STAFF, I make the following findings and orders:

Nature of the complaint

1. In the Spring of 2017 FICOM received a complaint regarding two heavy truck warranty companies that were allegedly operating in British Columbia. The complainant provided information about companies based in the United States conducting insurance business, namely vehicle warranty insurance business, in British Columbia without a business authorization.
2. One of the companies went by the name TruNorth Warranty and it provided a product called TruNorth Superannuated Component Breakdown Limited Warranty for trucks.
3. The complainant provided FICOM Staff with documents in support of the complaint, including TruNorth's Superannuated Component Breakdown Limited Warranty Agreement (Superannuated Agreement), All-Inclusive Component Breakdown Limited Warranty Agreement (All-Inclusive Agreement), and statement entitled TruNorth Warranty Coverage Options.
4. The agreements state that they are governed by the laws of the State of North Carolina, United States of America and that they are not subject to state insurance laws but are regulated by state laws governing warranties.

Superintendent of Financial Institutions

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5. The agreements list an email contact at ‘...@trunorthwarranty.com’.

TruNorth Warranty Plans of North America LLC

6. FICOM Staff conducted an investigation into the activities of TruNorth Warranty in British Columbia.
7. There is no company with the phrase TruNorth in its name authorized to conduct insurance business in British Columbia, or registered with the Registrar of Companies to do business in British Columbia.
8. There is a company named TruNorth Warranty Plans of North America, LLC (“TruNorth”) registered as a limited liability company with the Secretary of State for North Carolina. As at March 13, 2019, a search of the North Carolina Secretary of State website confirms that TruNorth’s registered office address is 16740 Birkdale Commons Parkway, Huntersville, NC, 28078, United States of America. The principal office address is 20311 Chartwell Center Drive, Suite 2518, Cornelius, NC, 28031, United States of America.
9. On August 17, 2017, staff consulted the TruNorth Warranty website at www.trunorthwarranty.com. The webpage contact information lists 16740 Birkdale Commons Parkway, Huntersville, NC, 28078 as the address for TruNorth Warranty.
10. Staff then used the ‘Message Us’ chat function to obtain information regarding TruNorth’s business in Canada. M.W. replied through the chat function and provided the following information about TruNorth Warranty in response to a staff inquiry about obtaining insurance coverage for the engines and transmissions for four trucks in Vancouver, British Columbia:
 - (a) TruNorth did not sell warranties out of its corporate office but the warranties were sold through dealerships.
 - (b) M.W. asked for city and province information and advised that she would email a list of dealerships for that area.
 - (c) TruNorth did not have an office in British Columbia and the corporate office was located in Huntersville, North Carolina.
 - (d) M.W. advised the dealerships on the list she would send would have all of the pricing.
11. On August 17, 2017, Staff received an email from M.W. who stated she was able to find a dealership in the Vancouver area that currently sold TruNorth Warranties. She provided the name and contact information for Western Star & Sterling Trucks of Vancouver, Inc., in Surrey, British Columbia.
12. On April 25, 2018, Staff contacted TruNorth Warranty again through their ‘Contact us’ webpage and asked about the identity of the insurer or underwriter for TruNorth warranties. On April 26, 2018, C.E. responded by email and stated that TruNorth did not have an insurer or underwriter because TruNorth was not an insurance company. He explained that TruNorth was a limited warranty company and TruNorth was the owner of the warranties.

13. On April 26, 2018, Staff asked C.E. for a list of dealerships in British Columbia that sold the TruNorth Warranty and he provided a list of 24 dealers located throughout British Columbia.

Dealership inquiries

14. In April and May of 2018 and March of 2019 Staff made inquiries to four separate British Columbia dealers named on the list received from TruNorth Warranty. They are located in Surrey, Nanaimo, Prince George, and Langley, British Columbia.
15. Each confirmed that TruNorth Warranties could be purchased from the dealership. One quoted a price range of \$2,300 to \$7,500 for warranties from 6 to 48 months.
16. A document named 'Component Breakdown' provided by one dealer stated the company name is TruNorth Warranty Plans of North America, again listing the website address of www.trunorthwarranty.com. The document listed the various heavy truck components covered by the warranty.
17. One dealer in response to an inquiry about what insurer was behind the product forwarded a response from L.S. at TruNorth Warranty stating TruNorth is "self-insured."
18. One dealership advised that for a Peterbilt Cummins ISX15 engine the dealer might be able to provide a more suitable warranty than the one provided by TruNorth but they would look into both warranties.
19. Two of the dealerships confirmed that a consumer did not have to purchase the warranty for a truck which was purchased from that dealership.
20. One dealer directed Staff to the TruNorth Warranty website which sets out a variety of warranties on offer: <https://www.trunorthwarranty.com/customer-warranty-programs>. This website outlines the various warranties and packages TruNorth offers including: Heavy Duty warranties, Medium Duty warranties, Turbo Packages, and Emissions Packages.
21. The TruNorth Heavy Duty Warranty Program offered five options where the coverage ranges from 90 days to 48 months. The vehicle must be ten years old or newer and must have less than 1,150,000 miles on the odometer and engine control module. For the 36 month and 48 month warranties, the vehicle must have less than 700,000 miles. The components covered for each of the warranties include: the engine, the transmission, and the differential.
22. The TruNorth Medium Duty Warranty Program offers four options where the coverage ranges from 90 days to 36 months. The vehicle must be ten years old or newer and must have less than 350,000 miles on the odometer and the engine control module. The components covered for each of the warranties include: the engine, the transmission, and the differential.
23. The TruNorth Turbo Packages include a 12 month and 24 month option and covers the turbocharger, engine fuel injectors, water pump, and engine control module.

24. The TruNorth Emissions Packages include a 12 month and 24 month option and covers the diesel particulate filter, exhaust gas recirculation(s), selective catalytic reduction, and dozer valve.
25. That same dealer also attached the following documents to his email providing more information on the warranties he could sell: TruNorth All-Inclusive Warranty Coverage Information, and TruNorth 6 Month All-Inclusive Component Breakdown Limited Warranty Agreement ("6 Month All-Inclusive Agreement").
26. As at July 31, 2018, the link at <https://www.trunorthwarranty.com/customer-warranty-programs/> was no longer valid.
27. The dealerships confirmed that an inspection of the truck to be covered would have to be completed before the warranty could be purchased.

The terms of the TruNorth Warranties

28. The Superannuated Agreement, All-Inclusive Agreement, and 6 Month All-Inclusive Agreement (the "Warranty Agreements") contain the following terms:
 - (a) TruNorth is a heavy truck warranty company based in Huntersville, NC.
 - (b) TruNorth is the Authorized Administrator of the warranty agreements, including claims.
 - (c) Each warranty agreement "is a Limited Warranty Agreement and is not subject to State Insurance Laws but is regulated by State Laws governing warranties. The warranty gives [the client] specific legal rights and [the client] may also have other rights which vary from state to state or province."
 - (d) The Superannuated Agreement appears to be a plan offered to residents of the United States as the 'Customer Information' section requires a state and zip code to be provided.
 - (e) The All-Inclusive Agreement and 6 Month All-Inclusive Agreement appear to be plans offered to Canadian residents as the "Customer Information" section requires a province and postal code to be provided.
 - (f) The All-Inclusive Agreement and the 6 Month All-Inclusive Agreement are uniform in policy wording; however, the coverage period length and the limits of liability differ.
 - (g) TruNorth undertakes to cover a specific vehicle, in the event of loss due to mechanical failure of a number of certain vehicle components listed in the terms of the agreements, to pay, for a specified period (months up to a maximum of kilometres) and up to a maximum dollar amount for certain mechanical components (e.g. \$15,000USD per engine, \$6,000USD per transmission) with a maximum aggregate dollar amount (e.g. \$20,000USD) after the motor vehicle is purchased.

- (h) The warranties contain a provision for a towing reimbursement up to a maximum (e.g. \$350 per occurrence and a limit of three occurrences).
- (i) The warranties contain a deductible provision (e.g. \$300USD), as well as a list of excluded coverages.
- (j) There is an option to have the coverage start immediately after the original equipment manufacturer warranty applies.

Relevant Legislation

29. Section 1(1) of the *Financial Institutions Act* (the Act) defines insurance business:

"insurance business" means

- (a) *undertaking or offering to undertake to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed,*
- (b) *soliciting or accepting any risk,*
- (c) *soliciting an application for a contract of insurance,*
- (d) *issuing or delivering a*
 - (i) *receipt for any contract of insurance, or*
 - (ii) *contract of insurance,*
- (e) *in consideration of any premium or payment, granting an annuity on a life or lives,*
- (f) *collecting or receiving any premium for a contract of insurance,*
- (g) *adjusting any loss covered by a contract of insurance, or*
- (h) *advertising for any business described in paragraphs (a) to (g),*

whether or not the person undertaking an activity or activities set out in paragraphs (a) to (h) can or does distribute any gain, profit or dividend, or otherwise disposes of the person's assets, to a member or shareholder of the person other than during winding up or on dissolution;

30. Section 1(5) of the Act provides that where the risk covered by the insurance is located in British Columbia, the activity referred to in the definition of insurance business is deemed to be activity in British Columbia:

1(5) An activity referred to in paragraph (a) of the definition of "insurance business" in subsection (1), whether or not the activity is conducted in British Columbia, is conclusively deemed for the purposes of this Act to constitute the carrying on of insurance business in British Columbia if the risk or peril is located in British Columbia.

31. Section 1(1) of *Classes of Insurance Regulation* under the Act and the *Insurance Act* defines vehicle warranty insurance as follows:

1(1) In this regulation:

...

"vehicle warranty insurance" means insurance, not being insurance included in or incidental to automobile insurance, under which the insurer undertakes, in the event of loss of, or damage to, a motor vehicle arising from mechanical failure, to pay, for a specified period after the motor vehicle is purchased,

- (a) the cost of repairing or replacing the motor vehicle,*
- (b) towing fees,*
- (c) the cost of renting a substitute motor vehicle, or*
- (d) the cost of accommodation required because of the mechanical failure.*

32. Section 1 of the *Insurance Act* defines "insurance" and "contract":

1 In this Act:

...

"contract" means a contract of insurance and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

...

"insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event;

33. Section 2 of the *Insurance Act* applies the *Insurance Act* to all contracts of insurance made or deemed to be made in British Columbia:

2 (1) This Act, except as provided under an enactment, applies to every contract of insurance made or deemed made in British Columbia.

34. Section 75 of the Act prohibits unauthorized insurance business:

75 A person must not carry on insurance business in British Columbia unless the person is

- (a) an insurance company or extraprovincial insurance corporation that has a business authorization to carry on insurance business,*
- (b) a company registered under the Insurance (Captive Company) Act,*
- (c) a member of a reciprocal exchange as defined in Section 186 for which a permit under Section 187 has been issued and is in effect,*

- (d) *licensed under Division 2 of Part 6 as an insurance agent, insurance salesperson, insurance adjuster or employed insurance adjuster and is carrying on the insurance business only in that capacity,*
- (e) *the deposit insurance corporation, the Canada Deposit Insurance Corporation or the Insurance Corporation of British Columbia,*
- (f) *an insurer*
 - (i) *[Repealed 2004-48-48.]*
 - (ii) *that administers an insurance compensation plan designated by regulation for the purpose of Section 66 (2),*
- (g) *a society described in Section 193 (1) (a) to (g) that, immediately before September 15, 1990, was carrying on the business of insurance,*
- (h) *a credit union that is carrying on insurance business only by making or participating in contracts of insurance as permitted by Section 82 of the Credit Union Incorporation Act, or(i) a central credit union that is carrying on insurance business only by providing or arranging insurance as permitted by Section 90 (2) of the Credit Union Incorporation Act.*

35. Section 168 of the Act defines "insurance agent" and "insurance sales person":

"insurance agent" means a person, other than an insurance company or an extraprovincial insurance corporation, who solicits, obtains or takes an application for insurance, or negotiates for or procures insurance, or signs or delivers a policy, or collects or receives a premium;

"insurance salesperson" means an individual who is employed by an insurance agent or by an insurer to solicit, obtain or take an application for general insurance, or to negotiate for or procure general insurance, or to collect or receive a premium for general insurance;

36. Section 171 of the Act provides that only licensed persons may act as an insurance agent or salesperson in British Columbia unless they are exempt by regulation:

Prohibition of unlicensed agents and salespersons

- 171 (1) *[Repealed 2004-48-79.]*
- (2) *A person must not act in British Columbia as an insurance agent or insurance salesperson unless the person is licensed as an insurance agent or insurance salesperson, as the case may be.*
- (3) *Subsection (2) does not apply to a person or class of persons exempted by the regulations.*

37. The Act's *Insurance Licensing Exemptions Regulation* outlines the exemption that exists for motor vehicle dealers and sales representatives only when sold incidentally to the ordinary business of the motor vehicle dealer:

Exemption from section 171 (2) of the Act

2 (1) Section 171 (2) of the Act does not apply

...

- (g) *to a motor vehicle dealer or an employee or commissioned sales representative of a motor vehicle dealer whose only activity as an insurance agent or insurance salesperson is in connection with vehicle warranty insurance sold incidentally to the ordinary business of the motor vehicle dealer as such,...*

38. Section 244 of the Act grants the commission (or superintendent by delegation) the authority to order compliance

244 (1) *In this Section, "committing an act or pursuing a course of conduct" includes failing or neglecting to perform an act or failing or neglecting to pursue a course of conduct.*

(2) *If, in the opinion of the commission, a person is committing an act or pursuing a course of conduct that*

- (a) *does not comply with this Act or the regulations,*

...

- (c) *might reasonably be expected to result in a state of affairs not in compliance with*
 (i) *this Act or the regulations,*

...

then, the commission [superintendent by delegation] may

- (f) *order the person to*
 (i) *cease doing the act,*
 (ii) *cease pursuing the course of conduct, or*
 (iii) *do anything that the commission considers to be necessary to remedy the situation,*

...

39. Section 238 of the Act provides a summary procedure for issuing immediate orders:

238 (1) *If the superintendent acting in accordance with a delegation by the commission, or the council, depending on which of them has the power to make the order,*

- (a) *intends to make an order under Section 48 (2), 93 (1) or (2), 99 (2), 144 (3), 231 (1) (g), (h), (i) or (j), 244 (2) or (5), 245 (1), 275 or 277 (d) to (f), and*

- (b) *considers that the length of time that would be required to hold a hearing would be detrimental to the due administration of this Act, then, despite Section 237, the superintendent or council, as applicable, may make the intended order without giving a person directly affected by it an opportunity to be heard, but the superintendent or council, as soon as practicable after making the order, must deliver to that person*
- (c) *a copy of the order and written reasons for it, and*
- (d) *written notice of the person's rights under subsection (2).*

(2) *A person directly affected by an order made under subsection (1) may, within 14 days of receiving a copy of the order,*

- (a) *require a hearing before the superintendent or council, as applicable, by delivering written notice to the superintendent or council, or*
- (b) *appeal the order to the tribunal.*

(3) *Within a reasonable time after receiving written notice referred to in subsection (2) (a), the superintendent or council, as applicable, must hold the required hearing and following the hearing must confirm, revoke or vary the order.*

40. By way of an Instrument of Delegation dated April 4, 2018, the Financial Institutions Commission has delegated to the Superintendent the power to issue orders under section 244 of the Act by way of summary procedure under section 238.

Application of the legislative scheme to the TruNorth warranties

41. Based on the terms of the Warranty Agreements, the TruNorth Warranty website, and the corporate searches, I find that the Warranty Agreements are offered and issued by TruNorth Warranty Plans of North America, LLC which does business under the name TruNorth Warranty in British Columbia.
42. Based on the terms of the Warranty Agreements, I find that they are contracts of insurance in British Columbia, in particular contracts for vehicle warranty insurance, as set out in the Act and the *Insurance Act*, for the following reasons:
- (a) TruNorth Warranty undertakes to cover a specific vehicle, in the event of loss or damages to the vehicle due to mechanical failure of a number of certain vehicle components listed in the terms of the agreements, to pay, for a specified period (months up to a maximum of kilometres) and up to a maximum dollar amount for certain mechanical components (e.g. \$15,000USD per engine, \$6,000USD per transmission) with a maximum aggregate dollar amount (e.g. \$20,000USD) after the motor vehicle is purchased.
 - (b) The warranties contain a provision for a towing reimbursement up to a maximum (e.g. \$350 per occurrence and a limit of three occurrences) incurred by reason of loss incurred due to mechanical failure of a motor vehicle.
 - (c) The warranties contain terms which are other hallmarks of insurance:

- i. a deductible provision (e.g. \$300USD), as well as a list of excluded coverages;
 - ii. excluded coverages provisions;
 - iii. information on making claims and contact information as to who administers claims; and
 - iv. there is a separate and distinct charge for the warranty coverage.
- (d) A distinct hallmark of third party vehicle warranty coverage is the fact that there is an option to have the coverage start immediately after the original equipment manufacturer warranty applies.

43. I find that TruNorth Warranty is offering to undertake to insure British Columbia residents and soliciting for sale vehicle warranty insurance without the necessary authorization to do so. This is activity which is not in compliance with the Act.
44. I also find that TruNorth Warranty is enlisting British Columbia motor vehicle dealers and their employees to act as sales agents and/or sales persons on its behalf. Those dealers are required to be licensed under the Act to sell the Warranty Agreements since they are not being sold incidentally to the sale of motor vehicles. This results in activity which might reasonably be expected to result in a state of affairs not in compliance with the Act or its regulations, including the *Insurance Licensing Exemptions Regulation*.
45. These warranties are costly, and they are insuring very costly heavy vehicle equipment. TruNorth Warranty is not subject to any regulatory supervision in British Columbia, nor anywhere else in Canada. Because TruNorth Warranty is not regulated as an insurance company, it is not subject to any licensing suitability rigour, ongoing capital requirements, or regulatory oversight. This means consumers may become vulnerable if TruNorth warranty is unable to fulfill its financial obligations. Purchasers of the Warranty Agreements also have no recourse to the Property and Casualty Insurance Compensation Corporation fund.
46. As set out in *Re Bridgepoint Indemnity Company (Canada) Inc.*, Order dated June 30, 2016, absence of market conduct oversight and control from a regulatory body in the distribution of TruNorth Warranty's insurance products means there is no protection for certificate holders if TruNorth Warranty is operating in a way that is harmful to the public.
47. The unauthorized operation of TruNorth Warranty is recent and ongoing. Its insurance activities are non-compliant with the Act and pose a risk to the public.
48. I agree with Staff's estimate that approximately twelve witnesses would be required for a hearing and that the ability to schedule witnesses, including some who may be from out of province, counsel, and the hearing officer would likely mean that a hearing would take approximately ten days and likely not take place until at least six months from now. I find that the length of time that would be required to hold a hearing would be detrimental to the due administration of the Act.

WHEREAS the Financial Institutions Commission has delegated to the Superintendent certain powers and duties under section 244 of the Act in the Instrument of Delegation dated April 4, 2018;

NOW THEREFORE I order pursuant to Sections 244(2)(a), (c), (e)(ii), and (f), and 238 of the Act that:

- 1) TruNorth Warranty Plans of North America, LLC and TruNorth Warranty Plans of North America, LLC doing business as TruNorth Warranty immediately cease conducting insurance business in the Province of British Columbia, including the soliciting, offering, sale, and adjusting of vehicle warranty insurance under the product names TruNorth Superannuated Agreement, TruNorth All-Inclusive Agreement, and TruNorth 6 Month All-Inclusive Agreement;
- 2) TruNorth Warranty Plans of North America, LLC provide the Superintendent with a copy of every contract issued by it which insures risk located in British Columbia and is in force as of the date of this Order, within 14 days of the date of this Order; and
- 3) TruNorth Warranty Plans of North America, LLC, within 90 days of the date of this Order, arrange for the assumption of all contracts in place as of the date of this Order insuring risk located in British Columbia, including the handling and adjusting of claims related to those contracts, by an insurance company authorized to issue vehicle warranty insurance in British Columbia. The assumption will be at the sole expense of TruNorth Warranty Plans of North America, LLC and without penalty to any insured under those contracts; or
- 4) TruNorth Warranty Plans of North America, LLC will otherwise deal with current contracts in a manner satisfactory to the Superintendent.

TAKE NOTICE that TruNorth Warranty Plans of North America, LLC may request a hearing before the Superintendent under section 238(2)(a) of the Act or appeal the Order to the Financial Services Tribunal under section 238(2)(b) of the Act.

Dated at the City of Vancouver,
Province of British Columbia
this 15 day of APRIL, 2019.



Frank Chong
Acting Superintendent of Financial Institutions
Province of British Columbia