

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

IN THE MATTER OF)
AFFINITY GROUP BENEFITS ASSOCIATION,)
INC., SMART DATA SOLUTIONS, LLC,)
NATIONAL TRADE BUSINESS ALLIANCE OF)
AMERICA d/b/a NATIONAL ALLIANCE OF)
ASSOCIATIONS, PROFESSIONAL BENEFITS)
CONSULTANTS, INC., a.k.a. PBC DIRECT,)
RICHARD H. BACHMAN, BART POSEY, OBED)
KIRKPATRICK, THOMAS SULLIVAN, JAMES)
M. DOYLE, CHRISTOPHER ASHIOTES,)
ASSOCIATION OF FRANCHISE AND)
INDEPENDENT DISTRIBUTORS, LLC, PAUL)
OLZESKI, SPENCER AND ASSOCIATES, LLC,)
BRUCE E. SPENCER, MARC MORROW,)
REAL BENEFITS ASSOCIATION, DAVID L.)
CLARK, AMERICAN TRADE ASSOCIATION,)
STEPHENS-MATTHEWS MARKETING, INC.,)
AND LARRY MATTHEWS)

DOCKET NUMBER 1417

**FINAL AGENCY DECISION
AND ORDER**

This matter was heard on October 28, 29, and 30, 2008, by the undersigned pursuant to North Carolina General Statute §§ 58-2-50, 58-2-55, 58-2-70, 58-3-125, 58-3-5, 58-28-5, 58-28-10, 58-28-13, 58-28-20, 58-28-45, 58-33-46, 58-33-95, 58-63-32, 58-63-40, 150B-38, and 150B-40; 11 NCAC 1.400; and other applicable statutes and administrative rules. The undersigned was designated by the Commissioner of Insurance ["Commissioner"] pursuant to N.C. General Statute § 58-2-55 to serve as the hearing officer in this matter. The North Carolina Department of Insurance ["Department"] was represented by Assistant Attorney General Anne Goco Kirby. Respondents Smart Data Solutions, LLC ["SDS"], Richard H. Bachman ["Bachman"], Obed Kirkpatrick ["Kirkpatrick"], National Trade Business Alliance of America ["NTBAA"], National Alliance of Associations ["NAA"], Professional Business Consultants, Inc., a.k.a. PBC Direct ["PBC"], Thomas Sullivan ["Sullivan"], Christopher Ashiotes ["Ashiotes"], James M. Doyle ["Doyle"], Marc Morrow ["Morrow"], Real Benefits Association ["RBA"], David L. Clark ["Clark"], and American Trade Association ["ATA"] did not appear and were not represented by counsel at the hearing. Respondents Stephens-Matthews Marketing, Inc. ["SMM"], Larry Matthews ["Matthews"], Paul Olzeski ["Olzeski"], Association of Franchise and Independent Distributors, LLC ["AFID"], Bruce E. Spencer ["Spencer"], and Spencer & Associates, LLC ["S&A"] entered into consent orders with the Commissioner.

Prehearing motions made by Bart Posey, Smart Data Solutions, LLC, and the Department

Respondent Bart Posey ["Posey"] appeared at the hearing on the morning of 28 October 2008. Posey requested additional time to hire an attorney to represent Smart Data Solutions, LLC ["SDS"]. William Hendricks, a Tennessee lawyer who represents Posey and SDS, also faxed a continuance request to the undersigned just before the hearing was convened on 28 October 2008. In his request, Mr. Hendricks stated that he was not served with the original or amended Notice of Hearing and Emergency Cease and Desist Order and that he learned about the hearing approximately ten days before the date of his 28 October 2008 request. Mr. Hendricks is not licensed to practice law in North Carolina. The Department objected to the continuance request on the grounds that the request was untimely and failed to show good cause for a continuance. The undersigned denied the continuance request pursuant to 11 NCAC 1.0426¹ on the grounds that Posey and SDS could have ascertained the reasons for requesting a continuance on or before 23 October 2008.

Before the hearing, the Department requested that Posey and SDS be prohibited, under 11 NCAC 1.0423(a), from offering any evidence as sanctions for their failure to comply with the Department's Order to Produce Documents and Information.² The undersigned granted the Department's request for sanctions.

Posey was present only on the morning of the first day of the hearing.

The following individuals were present and testified at the hearing as witnesses for the Department: (a) Wally Gray, (b) Ernest Beall, (c) Richard Hatton, (d) Dave Stephens, (e) William I. Etheridge, (f) Kimberly Whitehurst, and (g) Terry Dorman.

Any finding of fact contained in this Final Agency Decision and Order that also constitutes a conclusion of law is hereby adopted as a conclusion of law. Likewise, any conclusion of law contained in this Final Agency Decision and Order that constitutes a finding of fact is hereby adopted as a finding of fact.

In determining the amount of civil and monetary penalties imposed in this Final Agency Decision and Order, the undersigned considered all of the factors in North Carolina General Statute §§ 58-2-70 and 58-28-14. The 26 January 2009 memorandum from the Attorney General that addresses the civil and monetary penalties attendant to this matter is attached to this Final Agency Decision and Order and is incorporated by reference as supplemental Findings of Fact and Conclusions of Law.

¹ 11 NCAC 1.0426(c) provides in pertinent part: "A request for a continuance filed within five days before a hearing shall be denied unless the reason for the request could not have been ascertained earlier."

² 11 NCAC 01.04239(a) provides in pertinent part: "If a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may: "[d]ismiss or grant the motion or petition ... or [s]uppress a claim or defense...."

After careful consideration of the evidence presented, and based upon the record as a whole, the undersigned renders the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. NTBAA was a non-profit New Jersey corporation located at 141 Ganttown Road, Turnersville, NJ 08012. NTBAA purportedly provided health insurance, health-related discounts, and accidental death benefits to its "members." Sullivan was the President of NTBAA. In October 2008, Sullivan told Mr. Terry Dorman, the Chief Examiner in the Department's Unlicensed Plan Investigations Unit, that NTBAA was dissolved after the death of Raymond McCarthy and that he formed NAA to replace NTBAA.
2. Mr. Dorman asked Sullivan to produce documentation proving that NTBAA was in fact dissolved. The only documentation that Sullivan produced in response to that request was a copy of an 11 May 2007 letter from HofflerSmith, LLC to the Internal Revenue Service, which letter informed the Internal Revenue Service that NTBAA would cease all operations on 31 May 2007.
3. Sullivan is the President of NAA. An Online Business Entity Filing for NAA for the State of New Jersey that Sullivan provided to Mr. Dorman shows that: (a) NAA registered with the State of New Jersey as a nonprofit corporation on 02 October 2007 and (b) Sullivan is one of NAA's trustees.
4. PBC is purportedly an insurance producer³ and was also located the Ganttown Road address. PBC and NTBAA were operated by the same individuals from the same address, and is essentially each other's alter ego. Sullivan was the incorporator agent of PBC. Doyle is an officer and owner of PBC. Ashiotes was a vice president and marketing director of and insurance producer for PBC.
5. NTBAA/NAA, PBC, Sullivan, Ashiotes, and Doyle contracted with marketing companies to market and sell bogus health insurance plans to residents of North Carolina and numerous other states via illegal and unauthorized "blast fax" solicitations.⁴ Hereinafter, Sullivan, Ashiotes, and Doyle will be referred to as "principals" of NTBAA/NAA and PBC.
6. NTBAA/NAA and PBC required individuals to join NTBAA/NAA and to pay a \$125.00 enrollment fee in order to obtain health insurance benefits that were purportedly provided through a group policy issued to NTBAA/NAA. These individuals were not aware that they were becoming "members" of NTBAA/NAA when they enrolled in NTBAA/NAA's health insurance plans.
7. Although no licensed insurer has ever issued a group insurance policy to NTBAA/NAA, NTBAA/NAA, PBC and their principals; and the marketing companies acting under contract

³ Under N.C. General Statute 58-33-10(7), "insurance producer" is defined as "a person required to be licensed [by the Department] to sell, solicit, or negotiate insurance" and includes an agent or broker.

⁴ A blast fax is a facsimile that is sent out to multiple recipients from a single document transmission.

with NTBAA/NAA; NTBAA/NAA, PBC, and their principals misrepresented to these individuals that NTBAA/NAA provided comprehensive health insurance benefits through policies issued by various licensed insurers, including Stanford Life, Assurity Life, Bankers Fidelity, and AIG. Once enrolled, members were repeatedly moved by NTBAA/NAA, PBC, and their principals from one bogus insurance policy to another without the members' knowledge and consent.

8. NTBAA/NAA, PBC, and their principals also fraudulently prepared insurance cards and fulfillment packages bearing the names of licensed insurers and distributed these cards and packages to NTBAA/NAA enrollees. Several insurance companies (i) demanded that NTBAA/NAA, PBC, and their principals cease and desist from these unauthorized activities and (ii) posted consumer alerts on the insurance companies' Web sites after learning about these unauthorized activities.

9. Although NTBAA and NAA do not meet the underwriting guidelines for a group policy because they are not bona fide associations, NTBAA, NAA, PBC, and their principals attempted to procure a group health insurance policy for NTBAA and NAA from licensed insurance companies. NTBAA, NAA, PBC, and their principals also purported to provide health insurance coverage to NTBAA and NAA members through group policies that were issued by licensed insurers to other associations with which NTBAA and NAA were allegedly affiliated.

10. Since April 2006, NTBAA/NAA, PBC, and their principals enrolled at least one hundred twenty-three North Carolina residents in NTBAA/NAA's bogus insurance plans and collected premiums and enrollment fees from these residents. As of June 2007, thirty-two of NTBAA/NAA's existing members were North Carolina residents.

11. In August 2007, the Department held a hearing regarding violations of North Carolina's unauthorized insurance laws allegedly committed by NTBAA, NAA, PBC, their principals, and other named respondents.⁵ In an order entered on 31 January 2008, the Commissioner found and concluded that NTBAA, NAA, PBC, their principals, and other respondents named in the order had violated N.C. General Statute §§ 58-28-5 and 58-28-10; and ordered that all named respondents in that case immediately cease and desist transacting insurance business in North Carolina.

12. SDS is a Tennessee corporation located at 4676 Highway 41 North in Springfield, Tennessee 37172. SDS is licensed as a third party administrator ["TPA"] in Tennessee. Posey is the president of SDS and Bachman is the vice president of SDS. Posey is a resident of Tennessee. Bachman has a nonresident life and health insurance agent license that was issued by the Department on 23 February 2006.

13. Kirkpatrick is a Tennessee resident and a business associate of SDS. On 22 January 2004 the Commissioner entered an order that: (1) concluded that Kirkpatrick and other named respondents therein had transacted insurance business in violation of N.C. General Statute §§ 58-

⁵ Department of Insurance Docket Number 1375

28-5 and 58-33-95 and (2) ordered Kirkpatrick and other named respondents in the order to cease and desist transacting insurance business in North Carolina and to pay all unpaid claims.⁶

14. SDS and its principals have marketed and sold bogus health insurance coverage to the general public, including residents of North Carolina, through one or more associations, including RBA, ATA, and Affinity Group Benefits Association, Inc. ["AGBA"]. SDS and its principals operate ATA and provide TPA services for these associations. In their capacity as a TPA, SDS and its principals have prepared and distributed insurance cards and fulfillment packages to enrollees of these associations for this bogus health insurance coverage, including North Carolina residents; and have collected premiums for this bogus health insurance coverage from enrollees of these associations, including North Carolina residents.

Arrangements Made by Kirkpatrick and Posey for the Use of AGBA

15. Ernest Beall is the president, registered agent, and owner of AGBA. Mr. Beall is also a licensed North Carolina insurance agent. Mr. Beall contemplated using AGBA to provide insurance and other benefits to individuals and organizations. However, Mr. Beall never used AGBA. Thus, AGBA was a dormant association with no members and no board of directors.

16. Kirkpatrick was a friend and business acquaintance of Mr. Beall. In 2006, Kirkpatrick and Posey offered to purchase AGBA from Mr. Beall. Mr. Beall initially agreed to sell AGBA to Posey and Kirkpatrick for \$5,000.00. However, Mr. Beall decided not to sell AGBA after he received a \$5,000.00 check from Kirkpatrick's wife.

17. In June 2007, Mr. Beall told Kirkpatrick that he had decided not to sell AGBA. At that time, Kirkpatrick and Posey told Mr. Beall that they had a large group of individuals they needed to bring into AGBA and they would lose that business if they could not purchase AGBA. Mr. Beall did not change his mind, but he did agree to let Kirkpatrick and Posey use AGBA. Mr. Beall testified that it was his understanding that Posey and Kirkpatrick were trying to acquire another association and that the use of AGBA by Posey and Kirkpatrick would be a short-lived arrangement that would last no longer than 90 days.

18. Kirkpatrick and Posey told Mr. Beall that he could keep the \$5,000.00 check as compensation for use of the association and that they would pay Mr. Beall an additional fee of \$0.50 per member per month for use of AGBA. In checks dated 22 January 2008, SDS paid Mr. Beall \$302.00 and \$531.00 respectively for September and October 2007 fees. Kirkpatrick paid Mr. Beall \$690.00 for the November and December 2007 fees in a check dated 06 March 2008 and \$650.00 for the January 2008 fees in a check dated 10 April 2008. The name AGBA and the Kirkpatricks' home address appeared at the top left corner of the 10 April 2008 check. Mr. Beall never deposited the 10 April 2008 check.

19. Although the AGBA members never elected a board of directors, Kirkpatrick drafted minutes of a 13 June 2007 meeting regarding the amendment of AGBA's bylaws, which meeting

⁶ Department of Insurance Docket Number 1102

the Kirkpatricks purportedly held as members of AGBA's board of directors. Kirkpatrick also submitted a memorandum dated 15 June 2007 regarding the amendment of AGBA's bylaws to the North Carolina Secretary of State. Mr. Beall was unaware of the purported meeting and the memorandum.

Procurement of Limited Indemnity Policy Issued to AGBA by Transamerica

20. In July 2007, Bachman and SDS became appointed as agents to represent Transamerica Life Insurance Company ["Transamerica"] through its Transamerica Worksite Marketing ["TWM"] division in the marketing and sale of TransChoice. TransChoice is a group voluntary limited-benefit medical indemnity insurance policy issued by Transamerica. Transamerica is a licensed insurance company. TWM is Transamerica's marketing arm.

21. On or about August 2007, Bachman approached TWM about obtaining a TransChoice Plus policy for AGBA. In September 2007, Bachman submitted a group submission form and policyholder application to TWM for a TransChoice Plus policy to be issued to AGBA. In the group submission form, which was signed by Bachman and Kirkpatrick as secretary of AGBA, Bachman and Kirkpatrick falsely stated that AGBA had 1,400 members. Bachman also submitted to TWM a premium collection agreement between AGBA and SDS, which agreement authorized SDS to serve as AGBA's premium collection administrator. In that capacity, SDS would bill and collect premiums from AGBA enrollees and remit them to Transamerica.

22. Transamerica issued a TransChoice Plus group master policy for hospital indemnity insurance with optional term life insurance and accidental death and dismemberment coverage to AGBA with an effective date of 01 September 2007. The TransChoice Plus policy offers four different benefit levels of group hospital indemnity insurance coverage. The TransChoice Plus policy limited medical indemnity insurance costs that were less than comprehensive major medical insurance, and only provided limited benefits as specified in the policy and certificates of insurance. The policy identified North Carolina as the governing jurisdiction.

Marketing of AGBA by SDS, Posey, and Bachman

23. Transamerica produced a spreadsheet of AGBA enrollees to the Department that showed that SDS enrolled over 5,000 individuals from forty-nine states, including twelve North Carolina residents, in the TransChoice policy issued to AGBA. During a February 2008 on-site audit of SDS, Posey told TWM representatives that he and Bachman solicited business for AGBA face-to-face, over the Internet via Web sites that SDS maintained for AGBA and SDS, and via referrals from "friends" who received a referral fee for each member enrolled. Posey also told TWM representatives that anyone interested in joining AGBA was referred to SDS and that he and Bachman answered all questions and personally enrolled individuals in AGBA.

24. SDS promoted AGBA's health insurance to the general public through a Web site at www.agbai.org. Bachman and SDS registered and created the Web site on 15 January 2008. The AGBA Web site stated that AGBA is an association domiciled in North Carolina. However, the Web site listed SDS's address in Tennessee as AGBA's address.

25. The AGBA Web site described different levels of health insurance benefits available to AGBA members under a group limited benefit indemnity insurance plan and an accident medical plan. The Web site did not identify the name of the insurance company providing the group limited benefit indemnity insurance. However, a Web page summarizing the policy benefits referenced the TransChoice Plus policy. The Web site instructed members to send claims notices under the accident medical plan to Consumer Driven Benefits Association ["CDBA"] and indicated that the accident policy was underwritten by the United States Fire Insurance company ["US Fire"].

26. Interested individuals could apply for AGBA membership and benefits on the AGBA Web site. Members were required to pay a one time \$125.00 processing fee and to complete an online bank draft authorization permitting SDS to draft their bank accounts for membership dues and premiums.

27. In February 2008, Mr. Dorman discovered a complaint about AGBA and NAA that was posted on the Internet. The complaint referenced AGBA's Web site. On or about 17 February 2008 Mr. Dorman called Mr. Beall to ask about AGBA's insurance activities. Mr. Beall told Mr. Dorman that he was not involved in the operations of AGBA; and suggested Mr. Dorman speak to Kirkpatrick, whom he identified as the secretary of AGBA. Mr. Dorman later called Kirkpatrick and spoke with him. Kirkpatrick stated that AGBA began enrolling members in September 2007 and has been enrolling 100 to 150 new members per month. Kirkpatrick told Mr. Dorman that SDS was responsible for marketing the AGBA membership and insurance benefits, securing insurance benefits offered to members, and handling billing, fees, and other administrative processes for AGBA. Kirkpatrick said he was responsible for the day-to-day operations of the association and for writing and distributing articles for the association's newsletter.

28. SDS and AGBA executed a marketing agreement that provided, among other things, that SDS would: (i) market the day-to-day operations of AGBA; (ii) negotiate services and products on behalf of AGBA; (iii) make available to persons a general membership of AGBA as well as four optional benefits; (iv) be responsible for billing and collecting monthly dues for all members and the benefits that they chose, and forward the dues to the various entities selected, (e) secure a Web site to promote and market AGBA's products and services; and (v) provide live customer support operators at its location in Springfield, Tennessee to answer any membership issues or questions and have licensed representatives to discuss insurance benefits and sign new members up for services. The marketing agreement was signed by Kirkpatrick as secretary of AGBA and by Posey as president of SDS and was dated 24 August 2007.

29. Posey, SDS and AGBA executed another marketing agreement that provided that Posey would pay AGBA an administrative fee of \$1.00 per person per month for persons who enrolled in AGBA for as long as the program was active and membership dues were paid. Mr. Beall testified that the Kirkpatricks kept one-half of the \$1.00 per person per month fee and sent Mr. Beall the remaining one-half. This marketing agreement was dated 24 August 2007 and was executed by Posey and Kirkpatrick.

SDS, NAA, and PBC's Unauthorized Marketing of the TransChoice Plus Policy Issued to AGBA

30. NAA and PBC marketed the TransChoice policy issued to AGBA via blast faxes to the general public and purported to enroll individuals in the TransChoice policy. NAA and SDS contended that NAA was authorized to market the TransChoice policy issued to AGBA pursuant to an affiliation agreement between AGBA and NAA. In a 13 October 2008 letter to Mr. Dorman, Sullivan stated that NAA contended that the affiliation agreement and documentation provided by SDS showed that NAA members were to be placed in the TransChoice plan issued to AGBA.

31. The affiliation agreement was executed in September 2007 by Sullivan for NAA and by Bachman for AGBA. The agreement stated that AGBA's principal place of business was in North Carolina. Under the agreement, AGBA granted NAA the right to be known as an affiliate association of AGBA and agreed to assist NAA by providing NAA members insurance benefits that AGBA offered to its clients. NAA agreed to "take all appropriate action to sustain and promote membership growth" and to "provide membership services consistent with those offered by AGBA." In the event of termination of the agreement, the agreement provided that "the block of business brought to AGBA by NAA shall remain the clients of NAA and that AGBA shall have no ownership or right to maintain this book of business should NAA or its brokers or assigns resolve to move this business to another carrier."

32. From September 2007 through December 2007, NAA used Paylogix®⁷ to draft premiums and other fees from the bank accounts of NAA members. After NAA received the payments from Paylogix®, NAA sent the premiums to SDS, net of NAA's fees. Beginning in January 2008, SDS collected premiums directly from the bank accounts of NAA members enrolled in AGBA.

33. Transamerica was unaware of the AGBA/NAA affiliation agreement and did not approve NAA to market the TransChoice product as a sub-association of AGBA. Transamerica does not allow an association to market Transamerica insurance policies via an affiliation agreement with another association to which Transamerica has issued a group policy. Rather, Transamerica requires every association to apply to Transamerica for a policy to be issued directly to the association so that Transamerica can vet each association and ensure that Transamerica is in compliance with state insurance laws. Because Transamerica had not appointed and approved PBC and its marketing companies to market the TransChoice policy, NAA, PBC, and SDS were not authorized to market the TransChoice policy to NAA members.

34. Key Benefits Administrators, Inc. ["KBA"] is the TPA for Transamerica's TWM suite of products. Wally Gray, who is KBA's vice president, general counsel, and corporate secretary, testified that on 13 September 2007 an investigator with the Washington Department of

⁷ Paylogix® is a company that handles worksite benefits management. It provides third party billing services for work-related benefits, premium collection, reconciliation, and multi-carrier delivery.

Insurance ["Washington DOI"] informed him that NAA was marketing the TransChoice Plus limited indemnity policy via blast faxes and the NAA marketers were falsely representing that they were offering major medical insurance. A Washington resident had received one of these blast faxes.

35. Mr. Gray determined that the blast faxes that NAA marketers were using to market the TransChoice product violated state laws regarding the advertisement of insurance and violated Transamerica's marketing guidelines because they contained misleading statements about the levels of coverage and failed to identify the name of the insurance company offering the policy.

36. Mr. Gray opened an investigatory file on SDS and Bachman after reviewing documents pertaining to SDS and Bachman that the Washington DOI investigator sent him. These documents showed that Bachman and SDS falsely claimed that: (i) SDS had an affiliation agreement with the Transportation Workers Benefits Association, Inc. that authorized it to administer and market Stanford Life Insurance Company's ["Stanford Life"] limited benefit health insurance plans as its master general agent and (ii) NTBAA and SDS had an affiliation agreement that allowed NTBAA to market and sell the Stanford Life products designed for NTBAA nationwide. The documents included a 26 January 2007 letter from Bachman to NTBAA and the affidavits of Larry Haynes, Stanford Life's President. In his affidavits, Mr. Haynes stated that the statements that Bachman made in his 26 January 2007 letter about Stanford Life were false and fraudulent.

37. On 26 September 2007 Mr. Gray participated in a telephone conference with Bachman, Sullivan, Robert Fortier, and Chris Casinak about NAA's marketing of the TransChoice Plus. Sullivan identified himself as the president and a director of NAA. Mr. Fortier identified himself as a NAA director and former NAA compliance officer. During the 26 September 2007 telephone conference, Sullivan told Mr. Gray that PBC was doing all the marketing for NAA. Mr. Gray told Bachman and NAA's principals that blast faxes being used to market the TransChoice product violated state laws regarding the advertisement of insurance and violated Transamerica's marketing guidelines.

38. During the 26 September 2007 conference, Robert Fortier assured Mr. Gray that NAA was "cleaning up" the marketing and that they would discontinue all blast faxes. However, on 27 September 2007 Karen McGhee, a marketing vice president for TWM, told Mr. Gray that she had received a blast fax distributed by NAA and AGBA that TWM had not approved. Ms. McGhee also told Mr. Gray that NAA was not authorized to market the TransChoice plus policy issued to AGBA because Transamerica requires every association to apply to Transamerica for a policy to be issued directly to the association.

39. After speaking with Ms. McGhee on 27 September 2007 Mr. Gray and Clay Simpson, TWM's general counsel, decided that Transamerica should stop all marketing of the TransChoice product by SDS, AGBA, NAA, and entities that may have been selling or marketing the TransChoice product on behalf of SDS, AGBA, and NAA until they resolved the issues about NAA's marketing of TransChoice. Accordingly, Mr. Gray sent an e-mail message to Bachman and Robert Fortier on 27 September 2007 that directed SDS, AGBA, NAA, and any of their

companies, associations, agents, customer service employees, marketers, telemarketing firms, or other entities that may have been selling or marketing the Transamerica TransChoice Plus program and other Transamerica insurance programs to immediately cease and desist: (i) selling or marketing the programs, (ii) accepting applications for the programs, and (iii) using or issuing any marketing materials or fulfillment materials that name Transamerica or KBA until and unless the directive was lifted. On 27 September 2007 Mr. Fortier and Bachman separately acknowledged receipt of Mr. Gray's directive. Mr. Fortier also stated that he had forwarded the directive to the appropriate individuals at NAA and its marketing entities.

40. In his 27 September 2007 e-mail message, Mr. Gray asked Bachman and Robert Fortier to send him copies of all materials used by SDS, AGBA, NAA, or any other entities that in any way mentioned Transamerica or KBA. In response to Mr. Gray's request, Bachman sent a packet by overnight delivery that contained marketing and fulfillment materials used by NAA. The packet included written summaries of benefits under various Transamerica plans. Transamerica had never approved these summaries. The descriptions contained in the benefit summaries were inconsistent with Transamerica's plans in various respects. For example, the summaries: (i) described a separate wellness benefit that was not included in the TransChoice plan, (ii) indicated that it provided more accident coverage than was provided under the TransChoice plan, (iii) falsely stated that there was no annual maximum daily hospital confinement benefit, and (iv) falsely stated that there were separate inpatient substance abuse and inpatient mental/nervous benefits.

41. In October 2007, TWM representatives met with Bachman and Posey to review Transamerica's marketing guidelines. During this meeting, TWM representatives told Bachman and Posey that TWM did not allow associations, such as NAA, to market Transamerica policies issued to another association. Bachman and Posey assured TWM representatives that NAA would no longer market the product. Thus, on 06 October 2007, Transamerica lifted the cease and desist directive as to SDS, AGBA, and Bachman; and requested KBA to fulfill all AGBA applications for a 01 October 2007 effective date. Mr. Gray informed Bachman and Mr. Fortier of this change via e-mail on 06 October 2007. Mr. Fortier acknowledged receipt of Mr. Gray's 06 October 2007 e-mail and stated that he forwarded Mr. Gray's message to NAA.

42. NAA, PBC, and their principals ignored Transamerica's directive to cease and desist from marketing the TransChoice product. SDS also ignored Transamerica's directive to not submit NAA members for enrollment in the TransChoice product. In October 2007, Transamerica informed Mr. Gray that it had discovered another blast fax that had been distributed by an NAA marketer who was selling the TransChoice Plus program. A Washington DOI investigator also told Mr. Gray that Washington residents received additional blast faxes from NAA marketers who were selling the TransChoice Plus program.

43. On 25 October 2007, TWM received a copy of an insurance complaint from Julie Holmes, an Oregon resident who had enrolled in a health insurance plan in September 2007 that was marketed by NAA. Although NAA marketers represented the plan as being a major medical plan, Ms. Holmes received a fulfillment package for the limited indemnity insurance plan issued to AGBA by Transamerica.

44. After receiving Ms. Holmes' complaint, Sheila Parker, TWM's assistant manager of compliance and general counsel, called Sullivan and reminded him that NAA could not use Transamerica's name; and that the NAA/AGBA affiliation agreement was not valid and therefore did not authorize NAA to sell the TransChoice product.

45. Immediately after KBA sent the fulfillment materials with 01 October 2007 effective dates to AGBA enrollees, KBA was inundated with telephone calls from enrollees who received the fulfillment packets. The enrollees complained that: (i) they did not know what Transamerica was, (ii) they had signed up for coverage with NAA, not Transamerica, (iii) the marketers told them that they were signing up for major medical insurance, and (iv) they would not have bought the coverage if they had known it was a limited medical indemnity plan. Many of the complainants had been rolled over from another insurance company without their knowledge. The enrollee complaints increased when KBA began processing claims and paying only the limited medical benefit available under the TransChoice Plan.

46. Subsequently, SDS submitted a large group of 1,812 AGBA enrollees for a 01 January 2008 effective date. Mr. Gray initially put a hold on this group because he was concerned that the group was being rolled over from other problematic coverage. However, TWM directed KBA to fulfill the 01 January 2008 enrollments after Bachman told TWM representatives that these individuals had been enrolled in a policy issued by AIG and were being rolled over into the Transamerica policy. KBA later obtained information that indicated that AIG did not cover these AGBA enrollees.

47. In January and February 2008, KBA began receiving various complaints and refund requests from January enrollees, which made it evident that SDS and NAA were violating Transamerica's cease and desist directive as to NAA. Many of the complainants indicated that they had not signed up for the TransChoice policy or that they had enrolled in another insurance plan. Some of the complainants also indicated that the marketers had misrepresented the benefits under the policy.

48. Complainants submitted along with their complaints copies of blast faxes and fulfillment materials that they received from NAA. NAA fulfillment materials included a welcome letter from NAA and phony optional limited benefit insurance identification cards for coverage issued by Transamerica to AGBA. One of the blast faxes falsely stated that enrollees only had to pay \$25.00 per doctor's office visit. The blast faxes showed that the monthly premiums that NAA and SDS charged to enrollees were significantly higher than the actual monthly premiums charged by Transamerica.

49. KBA refunded any premiums it received from SDS to AGBA enrollees who requested refunds. KBA could not refund all moneys that were drafted from enrollees' accounts because NAA and SDS charged higher monthly premiums and SDS remitted only Transamerica insurance premium monies to KBA. For example, although NAA collected \$185.00 in premiums from Margaret Giles in November and December 2007 in addition to a \$125.00 enrollment fee,

KBA could only refund Ms. Giles the monthly premium of \$44.86 for each month since her effective date.

50. KBA instructed Bachman and SDS to refund any premiums that SDS had not forwarded to KBA to enrollees that requested refunds. Although SDS made refunds to a number of these enrollees, SDS did not honor all refund requests. For example, SDS never refunded two drafts of \$194.00 that SDS collected from Paul Maxwell in January and February 2008 for coverage that Mr. Maxwell did not request.

51. After receiving complaints from January 2008 enrollees, TWM representatives repeatedly asked SDS to produce documents proving that the January block of business was in fact a rollover of individuals who were insured with AIG. SDS never produced those documents. Instead, SDS produced a copy of a 16 January 2008 letter to NAA members from Sullivan, "President of NAA," and Kirkpatrick, "Vice President of AGBA." Posey told TWM that this letter was sent to AIG enrollees to inform them of the change in coverage to Transamerica. However, the letter merely announced that "On January 1, 2008, AGBA assumed the members of NAA" and stated that "this was done to take advantage of AGBA's great benefits program"

52. During separate telephone conferences with Mr. Dorman, Ashiotes, Sullivan, and Doyle answered the Mr. Dorman's questions about NAA and PBC's involvement with AGBA and SDS. Ashiotes, Sullivan, and Doyle told Mr. Dorman that the Consolidated Workers Association acquired the majority of NAA's members and that NAA transferred approximately 1,200 remaining NAA members to AGBA in late December 2007 or early January 2008 pursuant to an arrangement with SDS. They claimed that NAA was dissolved after these remaining NAA members were "transferred" to AGBA and that there was no written contract between NAA, PBC, SDS, and AGBA regarding the transfer of NAA members to AGBA. Mr. Doyle stated that SDS agreed to pay \$20.00 per month for each NAA member transferred beginning in January 2008 as compensation for the transfer of business. However, SDS only made the agreed upon payments from January through April 2008. SDS made the payments by checks payable to a company named Eagle Administrative Services, Inc., which Ashiotes created.

53. Mr. Dorman requested Ashiotes, Sullivan, and Doyle to produce documents to show that NAA members were in fact "transferred" to AGBA and that NAA was subsequently dissolved. Although Ashiotes and Sullivan produced some documents in response to those requests, they never produced any documents to corroborate their statements about the transfer of NAA members and subsequent dissolution of NAA. One of the documents Sullivan produced to the Department by letter dated 13 October 2008 was the 16 January 2008 letter from NAA and AGBA to NAA members that merely showed that NAA purportedly began providing benefits to NAA members through an arrangement with AGBA and that SDS began drafting NAA members' bank accounts and providing customer service to NAA members in January 2008.

54. SDS submitted two large files to KBA for a 01 February 2008 effective date. Because a large number of these enrollees had New York addresses, TWM's vice president of sales and marketing support asked Bachman if the February 2008 enrollees were new enrollees or rollovers, to provide the names of the producers who actually took these enrollments, and to state

where the business was coming from if it was a rollover. Bachman falsely stated that the New York enrollees came from insurance producers who were appointed and in place with TWM. On 07 February 2008, TWM rejected the files since these agents were not in fact appointed with TWM.

55. On 13 February 2008 TWM terminated Bachman's and SDS's appointments with Transamerica for cause and informed Bachman and SDS that it would not accept any new enrollments in connection with the AGBA account. In the 13 February 2008 termination letter, TWM stated that it was terminating Bachman and SDS because TWM's investigation into the business practices of SDS regarding AGBA revealed that SDS and Bachman failed to comply with their agreement under the appointment contract "not to perpetrate any fraud against us or any policyowner," and "not to violate any applicable state or other insurance laws, rules, or regulations."

56. Posey called Randy Clarkson, TWM's president and chief marketing officer, and protested the termination of SDS. Posey told Clarkson that Bachman was only an independent contractor and that any documents that SDS submitted to TWM that identified Bachman as vice president of SDS were a mistake. In apparent reliance on Posey's representations, TWM executed a contract on 18 February 2008 that appointed Posey as a producer and entered into a new contract with SDS. This contract enabled SDS to continue collecting and remitting premiums for AGBA enrollees.

Affidavits of NAA/AGBA Enrollees

57. The Department introduced the affidavits of Amy Tiller and Laurie DeCrotie into evidence. Ms. Tiller was one of the North Carolina residents listed on Transamerica's spreadsheet of AGBA enrollees. Ms. DeCrotie is a Florida resident whose complaint against SDS and AGBA was forwarded to Mr. Dorman.

58. Both Ms. Tiller and Ms. DeCrotie enrolled in a health insurance plan after receiving and responding to unsolicited fax solicitations for a health insurance plan. The fax solicitation that Ms. Tiller received in August 2007 falsely stated that "all plans include a \$25.00 Doctor co-pay." The individuals who enrolled Ms. Tiller and Ms. DeCrotie led them to believe that the plan provided comprehensive major medical coverage. Ms. Tiller stated that the enroller told her that the insurance was comprehensive major medical insurance that was being offered by AIG and that it would cover any medical expenses associated with Ms. Tiller's maternity care and childbirth.

59. After enrolling in August 2007, Ms. Tiller received a fulfillment packet from NAA, which packet included certificates of insurance for policies issued by several insurance companies to other associations. These policies only provided limited health insurance coverage. Ms. Tiller submitted claims totaling \$36,000.00 to one of these companies for obstetrician visits

and for two months of hospitalization before the birth of her third child in February 2008. NUFIC only paid \$5,062.00 of these claims.

60. In January 2008 NAA and SDS transferred Ms. Tiller to the TransChoice policy issued to AGBA. Ms. Tiller received a fulfillment packet from Transamerica and the 16 January 2008 letter from NAA and AGBA that announced that AGBA had assumed the members of NAA. The 16 January 2008 letter instructed members to contact "AGBA-SDS" at SDS's Tennessee business address if they wanted to cancel, and informed members that their monthly bank drafts will now say Smart Data Solutions. Ms. Tiller had never heard of AGBA or Transamerica.

61. Ms. DeCrotie enrolled herself and her employee in an insurance plan with a January 2008 effective date. Although the enroller promised Ms. DeCrotie that she would receive insurance cards and information within a few weeks, Ms. DeCrotie never received the cards and information as promised. After Ms. DeCrotie repeatedly requested the cards and information, NAA faxed a letter to her on 30 January 2008 that listed ID, group numbers, and claims information. NAA instructed Ms. DeCrotie to give this information to her health care providers until she received her permanent ID cards. The name Affinity Group Benefits Association, Inc. appeared at the top of NAA's fax. Ms. DeCrotie had never heard of NAA or AGBA.

62. Subsequently, Ms. DeCrotie received a Transamerica voluntary group term life insurance certificate for a group policy issued to AGBA and a fulfillment packet for the TransChoice Plus certificate issued to AGBA. Ms. DeCrotie reviewed the schedule of benefits enclosed in the TransChoice packet and determined that it did not provide the insurance benefits that the enroller told her that it would include.

63. Ms. Tiller canceled her coverage with Transamerica in March 2008. From the date of her initial enrollment in August 2007 to March 2008, Ms. Tiller paid \$2,128.00 in insurance premiums in addition to a \$125.00 enrollment fee for the coverage that she initially purchased through NAA. The first payment of \$391.00 was made by debit from Ms. Tiller's checking account by Paylogix® Premium Insurance in August 2007. Ms. Tiller's bank statements show that "PBC Insurance" debited monthly premium payments of \$266.00 from her checking account from September through December 2007 and that "SDS, LLC" debited monthly premium payments of \$266.00 from her checking account during January, February, and March 2008. PBC Insurance debited \$484.00 and \$324.00 in premiums from Ms. DeCrotie's checking account on 10 December 2008 and SDS, LLC debited monthly premiums of \$199.00 and \$359.00 from Ms. DeCrotie's checking account from January 2008 until May 2008.

Inquiries That the Department Made to Kirkpatrick, Posey, Bachman, and SDS About AGBA'S Insurance Activities

64. In letters dated 19 February and 20 February 2008 Mr. Dorman asked Kirkpatrick, Posey, and Bachman to provide documents and information pertaining to AGBA's insurance activities. Kirkpatrick responded to Mr. Dorman by letter dated 24 February 2008. In his response, Kirkpatrick identified TWM as the carrier providing medical and life insurance to AGBA members and US Fire as the carrier providing accident and medical insurance to AGBA

members. However, Kirkpatrick did not answer most of Mr. Dorman's questions, was vague in his response, and failed to produce any of the documents requested, except a marketing agreement between AGBA and SDS.

65. On 26 February 2008 Mr. Dorman received a telephone call from Posey and SDS's attorney, Bill Hendricks. Mr. Hendricks told Mr. Dorman that Posey and SDS would cooperate and respond to Mr. Dorman's requests. However, in a follow up letter sent to Mr. Dorman the same day, Mr. Hendricks stated that he was not sure if it was plausible to respond to some of Mr. Dorman's requests. On 10 March 2008 Mr. Hendricks produced a copy of the master policy issued to AGBA by Transamerica to Mr. Dorman. This was the only documentation that Mr. Dorman ever received from Posey and SDS in response to his 19 February 2008 letter. Bachman never responded to Mr. Dorman's 19 February 2008 letter.

SDS's Unauthorized Use of US Fire's Name

66. The Department introduced the affidavit of Felicia Garland, Vice President of US Fire. Mr. Dorman contacted Ms. Garland in May 2008 to verify whether US Fire had in fact issued coverage to AGBA. Ms. Garland stated that US Fire has never been and is not currently contracted or affiliated with AGBA; and that US Fire worked with authorities of another state to have US Fire's name removed from AGBA's Web site after US Fire learned that the Web site included language that certain programs offered by AGBA were underwritten by US Fire.

67. In a letter to Mr. Dorman dated 10 June 2008, Charles Boyd, Chairman of the Board of the CDBA, explained the circumstances that led to the US Fire product being advertised and promoted on the AGBA webpage. Mr. Boyd is also the Chief Executive Officer of WIMG Inc., CDBA's administrator. Mr. Boyd stated that Robert Fortier contacted him in late December 2007 and told him that SDS wanted to place approximately 2,700 members of an unnamed association into the CDBA so that the members could have access to an accident medical expense benefit. Although Mr. Boyd had no authority to bind the US Fire benefits, he agreed to accept these association members into the CDBA. Mr. Boyd terminated his relationship with SDS and asked SDS to remove the US Fire material from the AGBA Web site after he received information that showed that SDS had the same address as AGBA, an unlicensed entity that was using US Fire's name without authorization.

68. Steve Ferguson, a nonresident North Carolina agent who represents US Fire and a number of other insurers that provide insured membership benefits to associations, told Mr. Dorman that he had taken various actions to get US Fire's name removed from AGBA's Web site.

69. In a 22 April 2008 e-mail, Bachman told Mr. Ferguson that SDS received the US Fire material from Robert Fortier for inclusion on AGBA's Web site and as an information tool for AGBA members, and that AGBA has since removed the material from its Web site. Bachman denied that SDS and AGBA were affiliated with NAA, NTBAA, or the Affinity Health Plans Group. However, he admitted that SDS accepted an existing block of business from NAA in January 2008 "as the administrator for AGBA" and placed it with Transamerica. Bachman

further admitted that AGBA paid between \$65,000.00 and \$70,000.00 in premiums for a US Fire accident plan for NAA members through WIMG for the months of January, February, and March 2008.

70. In a 22 April 2008 response to Bachman, Steve Ferguson informed SDS that he could not allow the AGBA members to be included in those programs because AGBA was never approved to market any existing membership programs that used the insured programs that Mr. Ferguson's agency provided. Mr. Ferguson also requested the CDBA to immediately return any and all non-approved memberships funds to any non-approved marketing organization.

Marketing of Beema Insurance

71. Since Transamerica stopped accepting new enrollments in the AGBA case in February 2008, SDS, Kirkpatrick, Bachman, Posey, NAA, PBC, and their principals began placing new AGBA/NAA enrollees in a group limited benefit indemnity plan purportedly issued to AGBA by Beema Insurance Company ["Beema"]. In a 13 October 2008 letter to Mr. Dorman, Sullivan admitted that in late February 2008, NAA became aware that NAA members were being transferred to Beema. Beema is purportedly a Pakistani company and is not licensed as an insurance company in North Carolina or any other state. Mr. Dorman was unable to confirm that a company named Beema actually existed.

72. The Department introduced the affidavit of Terri Hart Hunter into evidence. In February 2008, Ms. Hunter enrolled in a health insurance plan in response to a fax solicitation from "Affinity Group." On 25 February 2008, Michael Lopez of the Affinity Group faxed Ms. Hunter an application and a benefits summary that stated that the plan provided hospitalization/accidental injury benefits that would pay up to \$10,000 per person per injury with a \$100 deductible or \$25,000 per person per injury with a \$1,000 deductible. The summary further stated that if the dollar amount of the hospitalization benefit was exceeded, "you will be responsible for only 20% over the cost," that the insured only had to pay \$25.00 for a doctor's visit, and that there was a tiered co-pay between \$10 and \$40 for generic drug prescriptions.

73. After reviewing the benefits summary, Ms. Hunter spoke with Mr. Lopez, who confirmed that the benefits were as described in the summary. On 26 February 2008 Ms. Hunter enrolled in the plan for a premium of \$281.00 per month and an initial \$125.00 enrollment fee. Ms. Hunter completed a billing information form that authorized these amounts to be drafted from her bank account.

74. Ms. Hunter informed Mr. Lopez by voicemail on 29 February 2008 and by fax on 02 March 2008 that she was canceling the policy and instructed him not to debit her bank account. Nevertheless, SDS debited \$406.00 from Ms. Hunter's bank account on 06 March 2008 and sent Ms. Hunter a fulfillment packet that included: (i) letters from AGBA/SDS, (ii) an insurance card with a 01 March 2008 effective date, and (iii) a certificate for limited group hospital indemnity insurance underwritten by Beema. The Beema certificate listed AGBA as the policyholder and stated that North Carolina was the governing jurisdiction. The only address given for Beema on

the certificate was SDS's business address. The Beema policy did not provide as many benefits as described in the benefits summary that Mr. Lopez faxed to Ms. Hunter.

75. A letter from SDS was enclosed with the information on Beema that Ms. Hunter received. The letter thanked Ms. Hunter "for choosing to become a member of the [AGBA] and our insurance product underwritten by Beema Insurance Company," and identified SDS as the representative and TPA for AGBA. A letter dated 03 March 2008 from Kirkpatrick, secretary of AGBA, was also included in the packet.

76. In March 2008, Ms. Hunter repeatedly requested SDS to refund her the \$406.00, which SDS debited from her account and associated overdraft charges. In an e-mail reply to one such request, Bachman told Ms. Hunter that SDS is the TPA and asked her to call him. During a subsequent telephone conversation on 19 March 2008 Bachman told Ms. Hunter that he was the head of SDS and that she could still be covered under the Beema policy. Bachman promised to reimburse Ms. Hunter. On 01 April 2008 SDS credited Ms. Hunter's checking account for \$507.00.

77. On 18 April 2008 Mr. Dorman wrote a letter of inquiry to Ernest Beall about AGBA, SDS, and NAA. In his letter, Mr. Dorman alleged that AGBA, SDS, and NAA had committed unfair and deceptive acts and practices in violation of N.C. General Statute § 58-63-10 and that NAA's provision of insurance to individuals through an affiliation with AGBA is in violation of the 31 January 2008 Cease and Desist Order entered against NAA, PBC Insurance, and their principals in Department of Insurance Docket Number 1375.

78. Mr. Beall had never heard of NTBAA, NAA, or Beema until he received Mr. Dorman's 18 April 2008 letter; and he was unaware of the activities of AGBA, SDS, and NAA that were described in Mr. Dorman's letter. Accordingly, by letter to Kirkpatrick dated 20 April 2008, Mr. Beall requested Kirkpatrick and his associates to immediately cease and desist from using AGBA and terminated any and all business relationships he had with Kirkpatrick. SDS took the AGBA Web site down some time between 07 May 2008 and 12 May 2008. However, SDS continued to use the AGBA name to market insurance.

79. On 16 May 2008 the Commissioner entered an Emergency Cease and Desist Order, Notice Of Hearing, and Order to Produce Documents and Information in this matter against Respondents SDS, AGBA, Posey, Bachman, Kirkpatrick, NAA, NTBAA, PBC, Ashiotes, Sullivan, and Doyle.

Transamerica's Termination of SDS and Posey and Subsequent Consumer Complaints about SDS and AGBA

80. In a letter to Posey dated 12 June 2008 TWM requested SDS to remit any premiums from certificate holders covered under the Transamerica policy issued to AGBA because the 16 May 2008 emergency cease and desist order prohibited SDS and other parties from receiving or collecting insurance premiums and from engaging in various other insurance-related activities. TWM also for cause terminated SDS's appointment contract and any individual agent

appointments under that contract. The termination letter stated that TWM was terminating these appointments because the emergency cease and desist order alleged various violations of law by SDS and others, and information accumulated by TWM supported many of those allegations.

81. In letters dated 25 June 2008, TWM informed all AGBA certificate holders of the emergency cease and desist order and informed them that they could keep their coverage in force by paying their insurance premiums directly to KBA. Subsequently, TWM and KBA began receiving complaints from AGBA enrollees that had been terminated by TWM for nonpayment of premiums. These individuals provided bank statements and other documentation showing that they had in fact paid premiums to SDS. As of 27 October 2008 KBA had received twelve such complaints from residents of many states, including North Carolina. Transamerica had no records showing that SDS ever submitted any premiums for six of these twelve complainants. With only one exception, the amount that SDS debited from these individuals was significantly higher than the actual premiums that Transamerica charged for the coverage.

82. The Department introduced the affidavit of Jerry Lou Long, one of the complainants, into evidence. Ms. Long is a Florida resident who enrolled in NAA in October 2007. Ms. Long initially received a packet from NAA. In December 2007 she received the Transamerica fulfillment packet for AGBA enrollees. In January 2008 Ms. Long received the 16 January 2008 letter announcing that AGBA was "assuming" NAA members. From October through December 2007, ALH debited \$310.00, \$185.00, and \$185.00, respectively, from Ms. Long's checking account for the monthly \$185.00 premium and initial \$125.00 enrollment fee. From January through March 2008, SDS, LLC debited Ms. Long's account for the monthly premium of \$185.00.

83. In September 2008 Transamerica denied claims totaling \$27,785.39 for a February 2008 gall bladder surgery performed on Ms. Long. KBA denied the claims because their records showed that her coverage was terminated in January 2008. Subsequently, Ms. Long asked SDS to assist her in handling her claims. Acting upon SDS's instructions, Ms. Long faxed SDS copies of bank statements showing the premiums that SDS drafted from her account. Ms. Long never heard from SDS again.

84. Transamerica reinstated coverage for the twelve complainants. Transamerica will reinstate coverage for any other complainants who provide proof of their payments to SDS and will reprocess the claims of these complainants that had previously been denied, including Ms. Long's claims, for payment under the terms of the TransChoice policy.

Insurance Activities of SDS, RBA, and AFID

85. RBA is an association located in Basking Ridge, New Jersey. Clark is the chairman of RBA. AFID is a limited liability company that is owned, managed, and operated by Olzeski and Spencer.

86. RBA and AFID jointly marketed a health insurance program called "The One Advantage Plan" ["One Advantage"]. At various times, AFID referred to One Advantage as the "Per4mance

Plus” plan. One Advantage purportedly provided major medical, limited medical, and other insurance benefits to members of AFID and RBA. AFID also offered optional vision, dental, life, and disability insurance benefits to members. One Advantage was “guaranteed issue,” which means that coverage was provided regardless of the individual applicant’s health.

87. A one-page summary used to market One Advantage states that it comprises two parts: (i) “Part A, which is several indemnity contracts fully insured by American International Group (AIG), Guarantee Trust Life (GTL), and American Insurance Company (ACE)” and (ii) “Part B, a fully insured Medical Expense contract which Beema offers to organizations and associations in the United States through a contract issued to a North Carolina domiciled association named AGBA.” The summary further stated that RBA had an affiliation agreement with AGBA and that SDS served as Beema’s TPA for risks in the United States.

88. RBA markets One Advantage on its Web site at www.rbausa.com. On its Web site, RBA has stated that certain insurance benefits it offers are “composed of several indemnity contracts fully insured by American International Group (AIG), Guarantee Trust Life (GTL), and American Insurance Company (ACE).”

89. The Department introduced the affidavits of representatives of ACE USA, GTL, and AIG into evidence. These affidavits show that RBA never had a relationship with these companies and that RBA was not authorized to use these companies’ names on RBA Web site.

90. In October 2005 RBA and AFID entered into an exclusive organizational agreement and a bargaining agreement. The exclusive organizational agreement provided that AFID had the exclusive organizational rights for RBA nationwide, that AFID would directly contract with all RBA organizers, and that AFID had the ability to enroll RBA members in the insurance programs offered to RBA members. The bargaining agreement purportedly provided that RBA would be the bargaining agent for AFID’s employees with respect to the terms and conditions of employment, including voluntary employee benefits, and that AFID would allow payments into a health trust fund known as RBA Employee Welfare Benefit Plan.

91. AFID marketed One Advantage nationwide through insurance agents and agencies with which AFID had brokerage agreements. Pursuant to the terms of the brokerage agreements, AFID paid agents commissions for the members that they “referred” to AFID. AFID collected the premiums from consumers via direct drafts to their bank accounts. Consumers were instructed to submit claims to AFID to be processed.

92. Morrow was a master general agent for AFID and acted as the national sales director for AFID from the office of The Morrow Group in Houston, Texas. As national sales director, Morrow recruited and trained agents to market and sell AFID’s products, including the major medical benefits made available through RBA. Pursuant to a 05 December 2005 broker commission agreement, AFID and S&A paid Morrow monthly commissions for each individual that he enrolled as a member, based upon the member’s insured status as single member, member plus spouse, members plus child or children, or family.

93. During a telephone interview with Mr. Dorman, Morrow stated that AFID's Part A benefits were made available through policies issued to AFID by a few carriers and that the Part B major medical benefits were made available through policies issued to RBA by either Beema or Trustmark. Morrow did not identify the carriers that provided the Part A benefits. In a letter dated 10 June 2008 Mr. Dorman requested additional information and documents from Morrow about AFID, RBA, One Advantage, AGBA, and Beema. Morrow failed to provide any of the requested information and documents.

94. Morrow recruited SMM to market and sell One Advantage. SMM has a business entity license issued by the Department. SMM is an Ohio company that primarily contracts with insurance agents for the purpose of marketing health insurance. In April 2007 SMM entered into a brokerage agreement with AFID and S&A.

95. Between November 2007 and July 2008, AFID enrolled at least twenty-four North Carolina residents in One Advantage. AFID and SMM collectively produced the applications for these twenty-four residents in response to the Department's requests. One of the applications was submitted by a North Carolina resident who enrolled himself online through AFID's Web site. The remaining twenty-three applications were taken by North Carolina licensed agents and submitted to AFID online through AFID's Web site or through SMM. All but one of the agents learned from SMM about AFID and had entered into brokerage agreements with AFID. The other agent learned about AFID through RBA and Clark.

96. Mr. Dorman contacted each of the North Carolina agents who submitted applications to AFID and requested information on their involvement in the sale of One Advantage. The agents told Mr. Dorman that they were told that the program had been approved for use in all fifty states.

97. Dave Stephens, a partner in SMM, testified about SMM's involvement in the marketing and sale of health and other insurance benefits offered through AFID. In 2006 and in early 2007 Morrow approached SMM about AFID. In the spring of 2007 Mr. Stephens met with Morrow and with AFID's owners, Olzeski and Spencer, at AFID's office. During that meeting, Morrow and Olzeski told Mr. Stephens that: (i) the Part A benefits were provided through a collection of carriers for different states, (ii) the Part B benefits were provided by Perfect Health of New York, and (iii) that AFID members had access to the major medical benefits through a Taft Hartley⁸ union named RBA.

98. Morrow and Olzeski told Mr. Stephens that AFID's affiliation with RBA allowed them to go around the state departments of insurance and market the program nationwide. Mr. Stephens understood that this was the real purpose of the union. Morrow and Olzeski also told Mr. Stephens that they were looking for a national carrier to replace PerfectHealth, which was only licensed in a few states, and instructed Mr. Stephens not to market the AFID program until they got a national carrier.

⁸ The Taft-Hartley Act, formally the Labor-Management Relations Act, is a federal law that greatly restricts the activities and power of labor unions.

99. In September 2007 AFID announced that Protective Life of Birmingham Alabama ["Protective Life"] was going to provide the Part B major medical insurance benefits to AFID members. Upon learning this, SMM made the AFID program available to agents. In particular, SMM posted application forms and information about One Advantage on its company Web site, assisted agents with the application process, and forwarded e-mail announcements from AFID and Morrow to agents.

100. SMM repeatedly requested a copy of the Protective Life policy from Morrow and AFID. However, neither Morrow nor AFID ever produced a copy of the policy. In the meantime, AFID told Mr. Stephens that AFID members were sent fulfillment packets that included insurance cards and a copy of the policy.

101. On 22 January 2008, via e-mail AFID informed SMM and all other AFID marketing groups that they were unable to confirm that Protective Life was providing the Part B major medical benefits, that AFID could not provide a certificate of coverage from Protective Life, and that AFID had "taken steps to insure the legitimacy of [the] program" by obtaining a certificate of coverage from Beema to provide major medical benefits to AFID members. The e-mail further stated that "Although Beema is not rated, the Certificate is filed as an Association program. This allows us to market and sell our program-Per4mance Plan Plus-through AFID to its membership in all states."

102. Morrow told Mr. Stephens that existing policyholders would get coverage with Beema that would be retroactive to their effective dates. Morrow later provided Mr. Stephens with a copy of the Beema policy. The Beema policy was issued to AGBA.

103. AFID purportedly enrolled all AFID/RBA members who had selected major medical insurance with effective dates of 01 October 2007 or later in the major medical insurance policy issued to AGBA by Beema. AFID sent an announcement to these members that stated that "As of January 1, 2008, the new carrier is Beema Insurance Company." Since thirteen of the twenty-four North Carolina AFID/RBA enrollees selected major medical insurance and the earliest effective date for these enrollees was 01 November 2007, thirteen North Carolina residents were purportedly enrolled in the Beema policy issued to AGBA.

104. On 19 February 2008 Morrow e-mailed SMM a one page "description" of One Advantage that referred to RBA, AFID, Beema, AGBA, and SDS. Morrow stated that the description "helps explain the 'structure' of the plan and all parties involved" The description stated that the Beema contract was "issued in the United States through [AGBA], an association domiciled in North Carolina with whom RBA has an Affiliation Agreement." Mr. Dorman obtained from Charles Boyd a copy of an unexecuted affiliation agreement between RBA and AGBA dated 21 January 2008. The agreement listed SDS's Tennessee business address as the address for AGBA. The agreement provided, among other things, that AGBA would assist RBA by making certain benefit programs, including health benefits, available to RBA members.

105. SMM and AFID produced a copy of the Beema and PerfectHealth policies in response to the Mr. Dorman's requests for copies of policies covering or issued to North Carolina residents enrolled in the insurance programs that AFID/RBA offered to its members. The Beema policy purportedly provided high deductible major medical excess coverage and identified AGBA as the policyholder. The address listed for AGBA on the policy schedule is SDS's Tennessee address. The PerfectHealth policy that SMM produced appeared to be a specimen policy. AFID produced a major medical policy issued by PerfectHealth to Realty Benefits Associates.

North Carolina AFID/RBA Enrollees

106. On their benefit applications thirteen of the twenty-four North Carolina AFID enrollees selected limited indemnity and major medical coverages under One Advantage or Performance Health Plan. In order to obtain these insurance benefits, applicants were required to apply for membership in AFID. Many of the applicants were also required to become RBA members by signifying on the benefit application form that they: "hereby request and accept membership in the [RBA] and authorize the Association to represent me in matters regarding terms and conditions of employment to include, but not necessarily be limited to, voluntary employee benefits. The Association has authority on my behalf to negotiate and conclude any and all agreements as to these medical benefits and collect for that cost as well as the dues for my membership."

107. Eleven of the twenty-four North Carolina AFID applications were for employees of Scarborough Nursery in Durham and requested March or April 2008 effective dates. Scarborough Nursery chose to pay for limited indemnity coverage and optional dental, vision, life, and disability insurance benefits for its employees instead of major medical coverage. Six Scarborough Nursery employees selected life and disability insurance. Those employees were required to complete applications for such coverage with Fort Dearborn Life Insurance Company ["Fort Dearborn"]. The agent who took the applications was not appointed with Fort Dearborn.

108. On 07 August 2008 John Honeycutt, one of the 24 North Carolina AFID enrollees, submitted a written complaint to the Department about AFID. Mr. Honeycutt stated that he enrolled in AFID through the Internet and that AFID represented that it was licensed. After he enrolled, Mr. Honeycutt received an insurance card from AFID showing that he was enrolled effective 01 June 2008 but never received a certificate of coverage. The insurance card did not state the name of the insurance company and listed AFID as the entity to which claims should be forwarded. Subsequently, Mr. Honeycutt received a master policy for high deductible major medical excess coverage issued by Beema and a group limited benefit accident & sickness policy. The Beema policy did not identify the name of the insured. The limited benefit policy identified the eligible persons as all employees of "ABC Company." The name of the insurance company that purportedly issued the limited benefit policy did not appear on the policy.

109. In a letter dated 23 July 2008 AFID terminated Mr. Honeycutt. In the letter, AFID stated that it had chosen to no longer do business in North Carolina, that the benefit program in which Mr. Honeycutt enrolled was no longer available through AFID membership, and that all benefits

would be terminated. AFID had already deducted \$800.00 from Mr. Honeycutt's account when it terminated him.

110. Two North Carolina AFID enrollees, William Etheridge and Kimberly Whitehurst, testified about their experiences with AFID. Mr. Etheridge enrolled in family coverage with AFID for a 01 March 2008 effective date and for a monthly premium of \$830.07. AFID debited Mr. Etheridge's credit card for the monthly premium from March through July 2008. Mrs. Whitehurst's husband David enrolled in family coverage with AFID for a 01 June 2008 effective date. AFID drafted \$840.07 and \$850.07 from the Whitehurst's bank account for the months of June and July 2008, respectively. Mr. Etheridge and Mrs. Whitehurst received insurance cards after they enrolled, but never received any certificate of coverage. They both were under the impression that AFID was the insurance company.

111. AFID failed to pay claims totaling \$324.00 for doctors' office visits for the Etheridge family. AFID also failed to pay the following claims for Mrs. Whitehurst: (i) \$166.00 for two visits to a primary care physician in June and July 2008, (ii) \$228.00 for an x-ray, (iii) \$1,630.27 for a bone scan performed on July 2, 2008, (iv) \$3,324.27 for a bone infusion cancer treatment performed on 07 July 2008, and (v) \$4,142.26 for a CT scan performed on 14 July 2008. Neither Mr. Etheridge nor Mrs. Whitehurst ever received from AFID any explanation of benefits forms for these claims.

112. Mrs. Whitehurst called AFID after she received a 18 July 2008 termination letter to check on the status of her unpaid claims. The AFID representative she spoke with told her that her doctors' visits were covered under Part A of the Plan. Although the AFID representative also assured her that the claims would be paid within the next two weeks, AFID never paid those claims. The AFID representative also told Mrs. Whitehurst that all other claims were covered under Part B of the plan and instructed her to call the primary carrier, One Advantage. The telephone number for One Advantage that the AFID representative gave Mrs. Whitehurst was SDS's number. Mrs. Whitehurst called SDS and was told that she was not in their system. Subsequently, Mrs. Whitehurst spoke again with an AFID representative who told her that RBA was their master contract holder and instructed her to contact "Dave Clark" of RBA. Mrs. Whitehurst left voicemails for Clark at the number that the AFID representative gave her. Clark never returned her calls.

113. Mr. Dorman repeatedly requested Olzeski to provide information and documents, including the names and addresses of all North Carolina AFID/RBA enrollees and the names and addresses of all insurance companies providing insurance benefits to the AFID/RBA enrollees under One Advantage. In partial response to that request, Olzeski produced a chart to Mr. Dorman in July 2008. The chart listed the names of all North Carolina AFID enrollees and gave the initials of the insurance companies that purportedly provided insurance benefits to each enrollee. The chart indicated that RBA and Perfect Health purportedly provided the insurance benefits to sixteen of the North Carolina enrollees and that Continental American Insurance Company ["CAIC"] and GE-PIC provided the insurance benefits to eight of the North Carolina enrollees.

114. In July 2008 Mr. Stephens asked Morrow to identify the carriers providing the optional benefits under AFID's plan. Morrow told Mr. Stephens that Central United Life ["Central United"] provided the optional dental benefits to AFID members. Morrow failed to identify the carriers providing the other optional benefits.

115. Mr. Dorman contacted representatives of Perfect Health, Sun Life Financial, Fort Dearborn, Central United, and CAIC to verify whether these companies provided coverage to the North Carolina AFID enrollees. PIC is a member of the Sun Life Financial group of companies. The Department introduced the affidavits of these company representatives into evidence. These affidavits show that: (i) Perfect Health and Sun Life Financial have never provided coverage to AFID or to the North Carolina AFID enrollees listed on the chart that Olzeski produced, (ii) Fort Dearborn did not issue a policy to AFID or the Scarborough Nursery and did not issue coverage for the six Scarborough Nursery employees who completed Fort Dearborn applications, (iii) Central United did not provide dental benefits to AFID members since 2006 and had never provided dental insurance to any of the twelve North Carolina residents that enrolled in the AFID dental coverage, and (iv) CAIC did not issue a policy to AFID.

116. CAIC's records showed that twenty-one of the North Carolina AFID enrollees were covered under a group critical illness policy issued to an association named Americans for Affordable Healthcare ["AFAH"] through a group policy effective 01 May 2008. That policy only provided \$5,000 of critical illness coverage. AFID was not authorized to market the AFAH critical illness coverage to AFID members.

117. PerfectHealth did provide benefits to the members of Realty Benefits Associates under PerfectHealth's Employee Security Program Trust ["the Program"] effective 01 December 2004. Clark, president of Realty Benefits Associates, LLC, completed the employer request for coverage and subscription to trust to subscribe to the Program and become a participating employer under the Program in June 2004. Upon Clark's request, PerfectHealth began showing the Realty Benefits Associates' trade name, Real Benefits Association, as the employer on each booklet certificate issued to each insured member.

118. Although PerfectHealth is only licensed in the state of New York, PerfectHealth accepted enrollments for non-New York RBA members because of RBA's apparent status as a union operating in New York. PerfectHealth decided to cease enrollments effective 01 May 2007. Subsequently, Clark told PerfectHealth that RBA was moving non-New York members to RBA's new benefits program and requested PerfectHealth to terminate those members effective 01 December 2007.

Attempts to Evade State Insurance Regulation by Use of Sham Union

119. In 2006 and 2007 Mr. Dorman wrote letters to Clark requesting information on RBA's insurance activities in North Carolina. Clark provided incomplete responses to those inquiries and claimed that RBA was a bona fide union and was therefore exempt from state insurance regulation. For example, in an 18 January 2007 response to Mr. Dorman, Clark stated that PerfectHealth provided a high deductible health plan to RBA members and that RBA will have

two new North Carolina residents in February 2007. However, Clark refused to identify any North Carolina enrollees and to provide any other information and documents that Mr. Dorman requested.

120. In a letter dated 10 June 2008 Mr. Dorman requested RBA to provide information and documents regarding RBA, One Advantage Program, AFID, AGBA, and Beema, including the following: (i) a list of all North Carolina residents enrolled in the AFID/RBA sponsored insurance programs, (ii) copies of policy contracts covering or issued to North Carolina residents enrolled in the insurance programs that AFID/RBA offers to its members, (iii) the names and addresses of all insurance companies that provided the various benefits offered to North Carolina AFID/RBA members, and (iv) a list of all agents and brokers marketing the coverage in North Carolina.

121. On 11 June 2008 Clark responded to Mr. Dorman's letter on behalf of RBA. In his response, Clark did not provide any of the information or documents that Mr. Dorman requested and again asserted that RBA is a union.

122. The evidence shows that RBA is not a bona fide labor organization and that it was formed for the sole purpose of evading state insurance regulations. Although Mr. Dorman requested Clark to provide documentation showing that RBA is subject to the exclusive jurisdiction of another agency, Clark failed to provide such documentation. During a July 2008 telephone conference with the Department, Olzeski told Mr. Dorman that AFID established a relationship with RBA for the sole purpose of securing major medical benefits for AFID members and that he was unaware that RBA had performed any collective bargaining activities.

123. The Department introduced the declaration of Andrew Davis into evidence. Mr. Davis is the acting chief of the Division of Interpretations and Standards ["DIS"] within the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor ["USDOL"]. Mr. Davis made the declaration under penalty of perjury, in accordance with the provisions of 28 U.S.C. § 1746. The OLMS administers and enforces provision of the Labor-Management Reporting and Disclosure Act of 1959 ["LMRDA"], which regulates the internal affairs of private sector labor organizations.

124. In his declaration, Mr. Davis reported the findings and conclusions of an investigation that the New York District Office of OLMS conducted related to the status of RBA as a "labor organization" pursuant to section 3(i) of the LMRDA, 29 U.S.C. § 402(i). The investigation focused on whether RBA "... exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other conditions of employment."

125. Mr. Davis stated that following the OLMS investigation, the former Chief of DIS rendered an opinion that RBA was not a "labor organization," because it did not exist "for the purpose, in whole or in part, of dealing with employers concerning grievances . . . or other terms or conditions of employment" as required under Section 3(i) of the LMRDA. The former Chief's

opinion was based on a review of various documents, including RBA's constitution, bylaws, and collective bargaining agreements, and statements from AFID and other employers.

126. On 21 August 2008 the OLMS New York District Office wrote to Clark and informed him of the agency's conclusion that RBA did not meet the definition of "labor organization" for the purposes of the LMRDA and that the OLMS had terminated RBA's file number.

Notwithstanding the OLMS determination, Clark continues to assert that RBA is a valid union. In a letter dated 23 September 2008 from RBA's attorney to the USDOL's counsel, RBA again asserted that it is a union under the jurisdiction of the USDOL. RBA's counsel further stated that RBA has two members who were North Carolina residents, but failed to identify those residents.

127. In a 19 September 2008 response to the Commissioner's Order to Produce Documents, Morrow also asserted that RBA is a union. In particular, Morrow stated that "our due diligence in these program [sic] (AFID & RBA) years ago and most recently still conclude that the AFID & RBA- Union Association are valid Associations and or Union Associations filed with the DOL for which the benefits are managed through for its members"

AFID's Termination of North Carolina Enrollees in July 2008

128. In a letter dated 10 June 2008 Mr. Dorman requested Olzeski to provide information and documents regarding One Advantage, AFID, AGBA, RBA, and Beema. In a letter dated 25 June 2008 Olzeski responded to Mr. Dorman's 10 June 2008 letter. In his response, Olzeski stated that One Advantage is a union plan accessed through RBA and that he could not answer any of Mr. Dorman's questions because he was not a union officer and was not authorized to release information on RBA's behalf. Olzeski also stated that AFID had ceased marketing the program "as a result of the concerns brought to light by [Mr. Dorman's] inquiry."

129. On 30 June 2008 AFID notified SMM by e-mail that it would no longer be providing access to RBA to its members. Subsequently, Morrow told Mr. Stephens that AFID was looking for another carrier. On 16 July 2008, AFID notified SMM by e-mail that AFID would no longer accept enrollments for membership. Morrow told Mr. Stephens that AFID was not taking new enrollments because it had lost access to RBA and AFID was still looking for another carrier.

130. In letters dated 18 July 2008 AFID informed North Carolina AFID enrollees that it is no longer marketing membership in North Carolina and that the high deductible program that had been offered to enrollees in conjunction with RBA was no longer available through AFID membership. The termination letter instructed enrollees to contact RBA with any questions or concerns about claims or benefits. AFID did not give any notice to AFID members before terminating them in July 2008.

131. On 15 August 2008, the Department entered an Amended Emergency Cease and Desist Order, Order to Produce Documents and Information, and Notice of Hearing in this matter. The Amended Order and Notice added RBA, ATA, Clark, AFID, Olzeski, Spencer, S&A, Morrow, SMM, and Matthews as respondents. The Order to Produce Documents requested the newly added parties to produce responses to fifty-nine requests for documents and information.

SDS and RBA's Use of ATA and AGBA to Market and Sell Beema Insurance

132. The evidence shows that SDS and RBA used AGBA and ATA to market and sell health insurance purportedly issued by Beema or Serve America Assurance Ltd. ["Serve America"]. Serve America is a purported subsidiary of Beema and is not licensed in North Carolina or any other state. The evidence also shows that SDS and RBA solicited AGBA and AFID enrollees to purchase insurance with Beema or Serve America through ATA, RBA, and AGBA after AFID terminated its North Carolina members and after Transamerica terminated SDS's appointment.

133. In a 07 July 2008 e-mail to Olzeski, Clark stated that the "RBA has a contract with Serve America LLC, the off shore captive established to fully reinsure the plan of benefits available to RBA members through the Welfare fund. The Administrative offices for Beema/Serve America is the SDS office in TN. SDS serves as the US TPA."

134. SDS promoted ATA and RBA's health insurance to the general public through a Web site at www.atafirst.com. SDS created and registered the Web site on 04 March 2008. The Web site lists SDS's Tennessee address as ATA's address. The Web site contains summaries of various benefit plans made available to ATA members, an authorization form for SDS bank draft, and applications for membership and insurance benefits. It also includes a summary of a high deductible PPO plan offered to ATA members that provides coverage up to one million dollars per person per lifetime. The Web site identifies "Serve America Assurance" as the insurance company underwriting the various insurance plans offered to ATA members and instructs members to send claims to SDS, Serve America's TPA.

135. The format and content of the ATA Web site is nearly identical to the AGBA Web site. The ATA Web site contains a few references to AGBA and the TransChoice Plus policy issued to AGBA. It thus appears that the SDS adapted ATA Web site from the AGBA Web site.

136. Sometime between May 2008 and October 2008, SDS revised the home page of www.atafirst.com to (i) state that ATA is affiliated with a Taft-Hartley Union Association named RBA and (ii) reference the RBA Web site at www.rbausa.com. ATA began requiring individuals to apply for membership in both ATA and RBA in order to enroll in insurance plans marketed by ATA. The insurance plan enrollment form on ATA's Web site contained RBA's name and logo at the top and required applicants to sign a statement: (a) "request[ing] and accept[ing] membership in the [ATA] a bridge association of [RBA]", (b) authorizing the Association to represent them "in matters regarding terms and conditions of employment to include, but not necessarily be limited to, voluntary employee benefits," and (c) authorizing the Association to "negotiate and conclude [on their behalf] any and all agreements as to these medical benefits and collect for that cost as well as the dues for [their] membership."

137. Mr. Dorman obtained an unexecuted copy of an affiliation agreement between RBA and ATA dated 08 March 2008. The agreement listed SDS's Tennessee business address as the address for ATA. The agreement provides, among other things, that RBA will assist ATA by making certain benefit programs, including health benefits, available to ATA members.

138. Laurie DeCrotie received a letter from SDS that was postmarked 03 July 2008. Ms. DeCrotie had been enrolled in the TransChoice policy issued to AGBA and had received a notice from Transamerica informing her that it had terminated its relationship with SDS. In the SDS letter, SDS announced that Transamerica had discontinued its relationship with AGBA and that SDS, in its capacity as TPA, had arranged for a new plan sponsor through its association with RBA. The letter described some of the health benefits under the "RBA/ATA" plan and requested that Ms. DeCrotie complete and fax an enclosed authorization form to SDS if she wished to change to the plan offered through "RBA/ATA." The letter instructed Ms. DeCrotie to review the plan and benefits in more detail at www.atafirst.com.

139. SDS enclosed in the 03 July 2008 letter insurance cards for the "ATA Health Plan" with a 01 July 2008 effective date and an enrollment form. SDS advised Ms. DeCrotie that "[s]hould you decide to accept this new plan, the enclosed cards are evidence that you are already in our system and active as of 6-1-08. Your June and July dues have already been paid." SDS also informed Ms. DeCrotie that "[a]ny claims incurred since June 1, 2008 need to be sent to SDS for processing and payment under the new schedule of benefits." The insurance cards bore SDS's name and had white labels on the back that instructed one to call SDS's number to activate the cards.

140. The ATA/RBA enrollment form that SDS enclosed in the letter to Ms. DeCrotie required members to acknowledge by their signature that they "understand that the new plan is effective 6-1-08" and that "[c]laims need to be sent to SDS, LLC as of 6-1-08 for processing and payment." The form also required applicants to become members of RBA and to authorize RBA to represent them in matters about terms and conditions of employment.

141. Ms. DeCrotie did not request the information and insurance cards for the RBA/ATA plan. Moreover, on 24 July 2008, after Transamerica terminated SDS, SDS debited premium amounts of \$199.00 and \$359.00 from Ms. DeCrotie's account. Because Ms. DeCrotie did not authorize SDS to make those debits, she disputed the debits with her bank and had these amounts credited back to her account.

142. SDS's purported transfer of Ms. DeCrotie from the AGBA plan to the RBA/ATA plan was in violation of the Department's 16 May 2008 Cease and Desist Order that prohibited respondents from transferring or moving AGBA enrollees into new insurance coverage and from transacting insurance business in violation of N.C. General Statute § 58-28-5.

143. The Department introduced the affidavits of Kay Tolbert, a North Carolina AFID enrollee, and Claire Juliano, her insurance agent, into evidence. AFID terminated Ms. Tolbert in July 2008 after it had debited a total of \$1,123.50 from Ms. Tolbert's bank account for her May, June, and July 2008 premiums and fees. After Ms. Tolbert received the July termination letter from AFID, RBA advised Ms. Juliano that her insurance benefits would continue without any changes and instructed Ms. Juliano to have Ms. Tolbert complete and submit another application for enrollment online at RBA's Web site, <http://www.rbausa.com>. Ms. Tolbert completed and

submitted the RBA application online. The application included a form authorizing RBA to debit premiums from the Ms. Tolbert's bank account.

144. In August 2008 Ms. Tolbert became concerned about the status of her insurance because RBA had not debited any premium from her bank account, she had not received any information from RBA, and she was unable to fill her prescriptions without the new insurance information. Ms. Juliano e-mailed Clark in late August and early September 2008 to request that RBA contact Ms. Tolbert. In response, Clark sent several e-mails to SDS about Ms. Tolbert, including a 03 September 2008 e-mail, in which he instructed SDS to contact Ms. Tolbert and send her a fulfillment kit for Protection Plus. In the 03 September 2008 e-mail to SDS, Clark identified Ms. Tolbert as "one of the AFID takeovers for RBA . . ." On 03 September 2008 Ms. Tolbert's agent e-mailed Bachman and asked him where he fit into the scenario. Bachman replied that SDS was the administrator for the insurance carrier and that its role was to "[p]ay claims and handle fulfillment and customer service."

145. On 04 September 2008 an SDS representative spoke with Ms. Tolbert and e-mailed her a fulfillment kit that included: (i) a letter from SDS welcoming Ms. Tolbert to RBA, (ii) instructions for filing a claim, (iii) an insurance card, and (iv) a certificate of limited group hospital indemnity insurance issued by Serve America to ATA. The welcome letter stated that RBA was a Taft Hartley Union Association and that SDS was RBA's authorized TPA. The Serve America certificate listed SDS's Tennessee address as the address for ATA and instructed policyholders to contact the insurance company issuing the policy at SDS's address and telephone number. The Serve America policy appeared identical to the Beema policy and was signed by the same individual as President.

146. Ms. Tolbert stated that the new insurance benefits appeared to be different from the insurance benefits that she had with AFID. In September 2008 Ms. Tolbert instructed SDS and RBA not to debit her account after she received a consumer bulletin about the Department's Amended Emergency Cease and Desist Order.

147. Respondents ATA, SDS, RBA, Posey, Bachman, and Clark violated the Department's Amended Emergency Cease and Desist Order by soliciting Ms. Tolbert to apply for coverage with ATA/RBA and by issuing a purported certificate of insurance to Ms. Tolbert.

148. The Department introduced the affidavits of Craig Sweeney and his wife. Mr. Sweeney was a North Carolina AFID enrollee. AFID terminated Mr. Sweeney in July 2008 after it had debited \$413.97 from Mr. Sweeney's bank account for his first month premium. After Mr. Sweeney received the July termination letter from AFID, RBA advised Mrs. Sweeney that her husband's insurance benefits would continue without any changes and instructed her to have Mr. Sweeney complete and submit another application for enrollment online at RBA's Web site, <http://www.rbausa.com>. Mr. Sweeney completed and submitted RBA applications online as instructed.

149. On 20 August 2008 Mr. Sweeney received a fulfillment packet for an insurance plan called "Protection Plus" from SDS. The packet included a letter welcoming Mr. Sweeney to

"AGBA", instructions on how to file a claim, insurance cards for the AGBA Health Plan, and a master policy of insurance issued by Serve America to AGBA. The back of the insurance card had RBA's name and listed SDS's name and address for filing medical claims.

150. Mr. Sweeney stated that the benefits under the Protection Plus plan were different from the AFID plan and the deductible was much higher. In response to an inquiry from Mrs. Sweeney, Clark stated that Protection Plus is a replacement for the One Advantage Plan and that the benefits are slightly modified because RBA was forced to use a new carrier. Clark sent a Summary Plan Description to Mrs. Sweeney. By e-mail on 22 August 2008, Mr. Sweeney told Clark that he did not want the coverage.

151. Respondents SDS, RBA, Kirkpatrick, Posey, Bachman, and Clark violated the Department's Amended Emergency Cease and Desist Order by soliciting Mr. Sweeney to apply for coverage through RBA and by purportedly issuing coverage to Mr. Sweeney through a policy issued by Serve America to AGBA.

152. On 25 August 2008 Bachman called Mr. Sweeney and proposed that Mr. Sweeney enroll in a "1500 per occurrence" plan. Mr. Sweeney agreed to enroll in the 1500 per occurrence plan after Bachman explained it to him. After he received a consumer bulletin in September 2008 about the Department's Amended Emergency Cease and Desist Order, Mr. Sweeney e-mailed questions about the cease and desist order to Clark and Bachman. Since then, Mr. Sweeney has not received or heard anything further from SDS or RBA. Respondents SDS, RBA, Kirkpatrick, Posey, Bachman, and Clark violated the Department's Amended Emergency Cease and Desist Order by soliciting Mr. Sweeney to enroll in the "1500 per occurrence" plan.

153. Two other North Carolina AFID members, Randy Doby and William Etheridge, also received a fulfillment packet from SDS that included a letter welcoming them to AGBA and a policy for high deductible major medical excess coverage issued to AGBA by Serve America. Both packages were postmarked August 2008. The insurance card for the AGBA Health Plan enclosed in Mr. Etheridge's packet was the same card that Mr. Sweeney received.

154. Respondents RBA, SDS, Kirkpatrick, Posey, Bachman, and Clark violated the Department's 16 May 2008 Emergency Cease and Desist Order by purportedly issuing coverage to Mr. Doby and Mr. Etheridge through a policy issued by Serve America to AGBA.

Other Insurance Activities in North Carolina Conducted by SDS, Posey, and Bachman

Complaint of Arthur Davis

155. Mr. Dorman spoke with Arthur Davis, one of the North Carolina residents whose name appeared on the list of AGBA enrollees produced by Transamerica. In February 2005 Mr. Davis, who was a truck driver, enrolled in a health insurance plan that was offered through his employer, CHTL Trucking ["CHTL"]. From February 2005 until March 2008 CHTL paid weekly premiums of \$26.30 for Mr. Davis's coverage, for a total of \$4,446.00. CHTL deducted these weekly premium payments from Mr. Davis's paycheck.

156. After speaking with Mr. Dorman, Mr. Davis submitted a written complaint about SDS to Mr. Dorman dated 10 June 2008. Mr. Davis had unpaid claims for medical bills that he incurred in September 2007 for the treatment of an injury to his finger. In his complaint, Mr. Davis stated that although he injured himself while working at home on his tractor, his claims were denied on grounds that they were covered by workers compensation.

157. The Department introduced the affidavits of Ella Lint, administrative manager for CHTL, and Randy Abernathy, general manager of CHTL, into evidence. In October 2004, Mr. Abernathy received a written proposal for a limited benefit medical plan from Bachman. The proposal stated that a national marketing company named Fleetcare Group LLC had put together a limited benefit plan that was underwritten by TIG Premier Insurance Company ["TIG"]. After corresponding with Bachman by e-mail, Mr. Abernathy decided to offer the health benefit plan to CHTL's truck owner-operators beginning February 2005.

158. From February 2005 to December 2005 Fleetcare sent monthly invoices to CHTL for the premiums due for all CHTL truck owner-operators enrolled in the TIG plan. CHTL deducted the monthly premiums that it paid to Fleetcare from the monthly 1099 payments for each owner-operator. Beginning January 2006, the invoices to CHTL instructed that payments be made by check payable to SDS at 4676 Highway 41 North, Springfield, Tennessee 37172. Mr. Abernathy called Bachman and asked him about the name and address change. Bachman confirmed that Fleetcare had merely changed its name and address.

159. The Department introduced the affidavit of Sharon Mattingly, vice president, claims & administration for Fairmont Specialty. Fairmont Specialty previously underwrote and administered insurance plans offered by TIG until 2004, when the company was renamed Fairmont Premier Insurance Company. Ms. Mattingly stated that the CHTL truck owner-operators who were enrolled in the health plan marketed by Fleetcare Group/SDS appeared under a group listed as "Kossuth Trucking" and that coverage for all of these truck owner-operators, including an Arthur Davis and Larry Richard Hatton, was terminated 31 October 2005, which is the last date that Fairmont received premiums for the Kossuth Trucking group.

160. From February 2005 through March 2008, CHTL paid Fleetcare/SDS a total of \$35,519.65 in invoiced premiums for its owner-operators. Neither Fleetcare nor SDS ever informed CHTL that it was terminating the TIG coverage in October 2005 and there is no evidence that SDS moved CHTL's truck owner-operators to another insurance carrier after it stopped paying premiums for the Kossuth Trucking group in October 2005. \$19,818.65 of the total \$35,519.65 in premiums that CHTL paid Fleetcare/SDS was for coverage for its owner operators from November 2005 through March 2008.

Complaint of Richard Larry Hatton

161. Richard Larry Hatton is a North Carolina resident who filed a complaint about SDS with the Department in September 2007. Mr. Hatton testified that he received a fax solicitation for health insurance from SDS at his workplace around November of 2006. Mr. Hatton called the

toll-free number on the fax and asked about the insurance plan. The SDS representative with whom he spoke explained that SDS was offering a plan that paid a limited amount of \$500.00, \$750.00, or \$1000.00 for each day of hospitalization. The SDS representative also told Mr. Hatton that the insurance was underwritten by Nationwide Insurance.

162. Mr. Hatton asked the representative to send him information about SDS. After receiving and reviewing this information from SDS, Mr. Hatton enrolled in an "employee and spouse" plan that was supposed to pay \$1000.00 for each day of hospitalization. SDS charged Mr. Hatton a monthly premium of \$302.00 for this coverage.

163. SDS sent Mr. Hatton a packet containing insurance and drug cards for an 01 December 2006 effective date and information on preferred provider organization re-pricing, a prescription plan, and a lab benefit. Mr. Hatton never received a certificate of coverage or any other documents from SDS pertaining to his insurance benefits, except for a monthly premium statement.

164. Mr. Hatton's wife was hospitalized for twenty-two days from 05 February through 27 February 2007. The hospital submitted the claims for Mrs. Hatton's hospitalization twice, but SDS never paid the claims. Afterwards, Mr. Hatton called SDS to check on the status of these claims and spoke with Posey. Posey told him that the hospital had not sent the papers that SDS needed to process the claims. Mr. Hatton obtained the papers from the hospital and sent them to SDS. A few weeks later, Mr. Hatton called Posey. Posey then told Mr. Hatton that the carrier would pay the claims by check within ten to fourteen days. Mr. Hatton never received the check.

165. After ten to fourteen days had passed, Mr. Hatton began calling SDS daily and asked to speak with Posey or Bachman. Each time he called, Mr. Hatton identified himself and was told that neither Posey nor Bachman were there. Although Mr. Hatton left messages for Posey and Bachman to return his calls, they never did so. On one occasion Mr. Hatton did reach Bachman. Bachman told him that he thought the claims were paid and promised to make sure that Mr. Hatton got the check within 10 to 14 days. Mr. Hatton never received the check.

166. In July 2007 Mr. Hatton's wife was again hospitalized for ten days. The hospital also filed those claims with SDS. After SDS failed to pay those claims, Mr. Hatton canceled the coverage. By that time, Mr. Hatton had paid \$2,725.47 in premiums to SDS.

167. In letters dated 18 October, 06 November, 03 December 2007, and 10 January 2008 Mr. Dorman asked Posey and Bachman to provide certain information and documents in response to Mr. Hatton's complaint, including the names and addresses of the insurance companies that insured the Hattons and a copy of the insurance contracts issued to the Hattons.

168. Posey and Bachman failed to provide the names and addresses of the insurance companies insuring the Hattons during the period in which SDS collected premiums from Mr. Hatton, a copy of the contracts of insurance issued to the Hattons, or any of the other information and documents that Mr. Dorman requested. Thus, SDS never confirmed that the health insurance coverage that Mr. Hatton purchased was issued by a legitimate licensed insurance company.

169. In a letter dated 10 December 2007 Posey and Bachman told Mr. Dorman that SDS determined that Mrs. Hatton was ineligible for coverage because she was disabled; and SDS gave Mr. Hatton a full refund of \$2,725.47 for all of the premiums that Mr. Hatton paid SDS from December 2006 through July 2007. Posey and Bachman stated that they explained to Mr. Hatton the reason for the refund and denial of Mr. Hatton's claims for his wife's hospitalization. Mr. Hatton testified that although he received the refund check from SDS, SDS never told him that his wife was ineligible for coverage and SDS did not ask him whether he and his wife were both working when he enrolled in the plan.

Violations of the Unauthorized Insurance Laws and Cease and Desist Orders

170. Respondents AGBA, SDS, NTBAA, NAA, PBC, Bachman, Posey, Kirkpatrick, Sullivan, Doyle, and Ashiotes were properly served with the initial Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information. All Respondents were properly served with the Amended Notice of Hearing, Emergency Cease and Desist Order, Notice of Hearing, and Order to Produce Documents and Information.

171. 11 NCAC 1.0423(a) provides that: "If a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may: (1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed to be proved without further evidence; (2) Dismiss or grant the motion or petition; (3) Suppress a claim or defense; or (4) Exclude evidence."

172. None of the Respondents except Posey appeared at the hearing. Posey left the hearing during the lunch break on the first day and did not return. Respondents SDS, NTBAA, NAA, PBC, Bachman, Posey, Kirkpatrick, Sullivan, Doyle, and Ashiotes did not comply with the Department's 16 May 2008 Order to Produce Documents and Information. Respondents RBA and Clark did not respond to the Department's 15 August 2008 Order to Produce Documents and Information. Although Morrow responded to the 15 August 2008 Order by letter dated 19 September 2008, Morrow did not provide any of the requested information and only produced a copy of his broker commission agreement with AFID and some promotional materials for One Advantage.

173. The undersigned draws an adverse inference against all respondents based on their failure to comply with the Department's Orders to Produce Documents and their failure to appear, testify, or otherwise offer any evidence in their defense.

174. The evidence shows that beginning on or about August 2007, NAA, PBC, and marketing companies acting under contract with NAA or PBC, or both, used illegal blast faxes⁹ to market and sell coverage under a Transamerica group limited indemnity policy issued in North Carolina to a North Carolina association named AGBA. These entities were not authorized to market the

⁹ See Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005), *codified at* 47 U.S.C. § 227; *see also* Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991).

Transamerica policy. These entities made misrepresentations to individuals that led the individuals to believe that their policies provided comprehensive major medical coverage.

175. From September 2007 through January 2008 SDS, NAA, PBC, and marketing companies acting under contract with NAA or PBC, or both, enrolled at least 1,200 NAA members in the Transamerica policy issued to AGBA. The enrollment of NAA members in the Transamerica policy was done in violation of Transamerica's marketing guidelines and Transamerica's 27 September 2007 demand to cease and desist.

176. In February 2008 Kirkpatrick, SDS, NAA, PBC, the principals of these entities, and marketing companies acting under contract with these entities began marketing and selling health insurance purportedly issued in North Carolina to AGBA by Beema, an unauthorized alien insurance company.¹⁰ SDS, NAA, PBC, and their principals (i) solicited applications for that insurance, (ii) distributed bogus insurance cards and group insurance certificates for the Beema coverage to NAA/AGBA enrollees, and (iii) collected premiums, enrollment fees, and other consideration for that insurance. The acts of Kirkpatrick, SDS, NAA, PBC, the principals of these entities, and marketing companies acting under contract with these entities before and after the issuance of insurance cards and certificates violated N.C. General Statute §§ 58-28-5, 58-28-10, and 58-28-13(a) through (c).

177. Because the Cease and Desist Order against Respondents NAA, PBC, and their principals entered in Department Docket Number 1375 prohibits these Respondents from transacting any insurance business in North Carolina, the provision of insurance after 31 January 2008 to NAA members through insurance policies issued to AGBA in North Carolina is a willful violation of that Cease and Desist Order.

178. N.C. General Statute § 58-28-30 authorizes the Department to impose penalties against these respondents for their willful violations in accordance with N.C. General Statute § 58-2-70. Subsection (c) of that statute provides that "[i]n determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator." Given the severity of these violations, the extent of harm to consumers, the money that NAA collected from SDS for these NAA members, the willful nature of the violations, and NAA's prior record of violations of the insurance laws, the maximum penalty of \$1,000.00 should be jointly and severally imposed on NAA, PBC, James Doyle, Sullivan, and Ashiotes for each of the 1,200 NAA members enrolled in AGBA, for a total penalty of \$120,000.

179. Respondent Kirkpatrick willfully violated the Cease and Desist Order that the Department entered against him in Department Docket Number 1102 by marketing and selling insurance

¹⁰ An "alien company" is a company incorporated or organized under the laws of any jurisdiction outside of the United States.

purportedly issued to AGBA by Beema or Serve America, or both, by acting as an agent for Beema or Serve America, or both, and by negotiating, placing, or aiding in placing insurance coverage in North Carolina for others with Beema or Serve America, or both.

180. Respondents RBA, SDS, Kirkpatrick, Posey, Bachman, Morrow, and Clark marketed and sold insurance purportedly issued to AGBA by Beema or Serve America, or both. Respondents RBA, SDS, Kirkpatrick, Posey, Bachman, Morrow, and Clark solicited applications for that insurance, distributed bogus insurance cards and bogus group insurance certificates for the Beema/Serve America coverage, and collected premiums, enrollment fees, and other consideration for that insurance. The acts of RBA, SDS, Kirkpatrick, Posey, Bachman, Morrow, and Clark before and after the issuance of insurance cards and certificates violated N.C. General Statute §§ 58-28-5, 58-28-10, and 58-28-13(a) through (c).

181. Respondents ATA, RBA, SDS, Posey, Bachman, and Clark marketed and sold insurance purportedly issued to ATA by Serve America to residents of North Carolina. Respondents ATA, RBA, SDS, Posey, Bachman, and Clark solicited applications for that insurance, distributed bogus insurance cards and bogus group insurance certificates for the Serve America coverage, and collected premiums, enrollment fees, and other consideration for that insurance. The acts of Respondents ATA, RBA, SDS, Posey, Bachman, and Clark before and after the issuance of insurance cards and certificates violated N.C. General Statute §§ 58-28-5, 58-28-10, and 58-28-13(a) through (c).

182. Respondent Morrow violated N.C. General Statute §§ 58-28-5 and 58-28-10 by marketing and selling insurance to North Carolina residents that was not provided by a licensed insurer and by enrolling twenty-four North Carolina residents in insurance plans purportedly made available through AFID memberships. Respondents RBA, SDS, Kirkpatrick, Posey, Bachman, Morrow, and Clark also violated N.C. General Statute §§ 58-28-5 and 58-28-10 by enrolling thirteen of the twenty-four North Carolina AFID/RBA members in a major medical insurance policy purportedly issued by Beema to AGBA pursuant to an affiliation agreement between RBA and AGBA. Because N.C. General Statute § 58-28-10 requires that a minimum penalty of \$1,000.00 be imposed for each violation, the minimum penalty of \$1,000.00 should be imposed on Morrow for each North Carolina AFID/RBA member, for a total penalty of \$24,000.00. The minimum penalty of \$1,000.00 should also be separately imposed on Respondents RBA, SDS, Kirkpatrick, Posey, Bachman, and Clark for each of the thirteen North Carolina AFID/RBA members purportedly enrolled in the Beema policy, for a total penalty of \$13,000.00 against each of these respondents.

183. Respondents ATA, RBA, SDS, Kirkpatrick, Posey, Bachman, Morrow, and Clark knowingly solicited, negotiated, and sold insurance in this State for an unauthorized insurer in violation of N.C. General Statute § 58-33-95(a)(3).

184. Respondents ATA, RBA, SDS, Kirkpatrick, Posey, Bachman, Morrow, Clark, NAA, PBC, Sullivan, Doyle, and Ashiotes acted as agents for an insurer that was not authorized to transact business in North Carolina and negotiated, placed, or aided in placing insurance

coverage in North Carolina for others with an insurer that was not authorized to transact business in North Carolina in violation of N.C. General Statute § 58-28-45(a).

185. Respondent Sullivan acted as an officer or controlling person for NTBAA and NAA in violation of N.C. General Statute § 58-28-45(k).

186. Respondents Doyle and Ashiotes acted as officers or controlling persons for PBC in violation of N.C. General Statute § 58-28-45(k).

187. Respondents Posey and Bachman acted as officers for SDS in violation of N.C. General Statute § 58-28-45(k).

188. Respondent Kirkpatrick acted as an officer, director, or controlling person for AGBA in violation of N.C. General Statute § 58-28-45(k).

189. Respondent Clark acted as an officer, director, or controlling person for the RBA in violation of N.C. General Statute § 58-28-45(k).

190. Respondents SDS, Kirkpatrick, Posey, and Bachman violated N.C. General Statute §§ 58-28-5 and 58-28-10 and willfully violated the Department's 16 May 2008 Cease and Desist Order in this matter by attempting to transfer Laurie DeCrotie, an AGBA enrollee, to an insurance plan with ATA/RBA. Because N.C. General Statute § 58-28-10 requires that a minimum penalty of \$1,000.00 be imposed for each violation, the minimum penalty of \$1,000.00 should be imposed on each of these Respondents for violating N.C. General Statute § 58-28-10.

191. Respondents RBA, SDS, Kirkpatrick, Posey, Bachman, and Clark violated N.C. General Statute §§ 58-28-5 and 58-28-13(a) through (c) by soliciting North Carolina residents William Etheridge and Randy Dobey to enroll in insurance purportedly issued by Serve America to AGBA. The solicitation of Mr. Etheridge and Mr. Dobey by Respondents SDS, Kirkpatrick, Posey, and Bachman was also in willful violation of the 16 May 2008 Cease and Desist Order entered in this matter.

192. Respondents ATA, RBA, SDS, Posey, Bachman, and Clark also violated N.C. General Statute §§ 58-28-5 and 58-28-13(a) through (c) and willfully violated the 15 August 2008 Amended Cease and Desist Order by soliciting North Carolina resident Kay Tolbert to purchase and enroll in insurance coverage purportedly issued to ATA by Serve America after the Amended Cease and Desist Order was entered in this matter.

193. Respondents SDS, RBA, Kirkpatrick, Posey, Bachman, and Clark violated N.C. General Statute §§ 58-28-5 and 58-28-13(a) through (c) and the 15 August 2008 Amended Cease and Desist Order by soliciting Todd Sweeney to apply for coverage through RBA and by purportedly issuing coverage to Mr. Sweeney through a policy issued by Serve America to AGBA. Respondents SDS, RBA, Kirkpatrick, Posey, Bachman, and Clark also violated N.C. General Statute §§ 58-28-5 and 58-28-13(a) through (c) and willfully violated the 15 August 2008

Amended Cease and Desist Order by soliciting Mr. Sweeney to enroll in the "1500 per occurrence" plan.

194. The maximum monetary penalty of \$5,000.00 should be imposed on each respondent for the first violation of N.C. General Statute § 58-28-13 and the maximum penalty of \$10,000.00 should be imposed on each Respondent for each succeeding violation given: (1) the willful nature of these violations, (2) Kirkpatrick's prior record of violations with the Department, (3) the respondents' failure to provide timely and complete responses to the Department's inquiries about their insurance activities, and (4) the respondents' failure to comply with the Commissioner's Orders to Produce Documents and Information. Accordingly, a monetary penalty of \$45,000.00 should be imposed on each of the respondents SDS, Posey, Bachman, RBA and Clark; a monetary penalty of \$35,000.00 should be imposed on respondent Kirkpatrick; and a monetary penalty of \$5,000.00 should be imposed on respondent ATA.

195. Although SDS and its principals stopped remitting premiums to TIG in October 2005 that SDS collected from CHTL for health insurance on CHTL's truck owner-operators and although TIG terminated the group on 31 October 2005, SDS continued to collect premiums from CHTL from November 2005 through March 2008 after TIG terminated insurance coverage for the group in which CHTL's truck owner-operators were enrolled. Because SDS did not find replacement insurance coverage for CHTL's truck owner-operators, SDS and its principals, Bachman and Posey, violated N.C. General Statute § 58-28-10 by collecting premiums for that insurance. The minimum penalty of \$1,000.00 should be separately imposed on SDS, Posey, and Bachman for this violation, as required by N.C. General Statute § 58-28-10.

196. SDS collected premiums from Richard Larry Hatton from December 2006 through July 2007, although SDS never secured insurance coverage for Mr. Hatton with a licensed insurer. SDS and its principals, Bachman and Posey, violated N.C. General Statute § 58-28-10 by collecting premiums from Mr. Hatton for that insurance. The minimum \$1,000.00 penalty required by N.C. General Statute § 58-28-10 should be separately imposed for these violations on SDS, Posey, and Bachman for each of the nine months that SDS collected premiums from Mr. Hatton, for a total penalty of \$9,000.00.

197. Respondents ATA, RBA, SDS, Kirkpatrick, Posey, Bachman, Morrow, and Clark should be ordered pursuant to N.C. General Statute § 58-28-20 to cease and desist from violating N.C. General Statute §§ 58-28-5, 58-28-13, 58-28-45, and 58-33-95. Respondents NTBAA, NAA, PBC, Doyle, Sullivan, and Ashiotes continue to be subject to the Cease and Desist Order that the Department entered against them in Department of Insurance Docket Number 1375.

Unfair and Deceptive Acts or Practices in Violation of N.C. General Statute § 58-63-10

198. Respondents NAA, PBC, Doyle, Ashiotes, SDS, Kirkpatrick, Posey, Bachman, ATA, RBA, Morrow, and Clark have engaged in unfair and deceptive methods, acts, or practices in the business of insurance in violation of N.C. General Statute § 58-63-10 by making, issuing,

circulating, or causing to be made, issued, or circulated illustrations, circulars, or statements that misrepresent the terms of and benefits provided under policies of insurance and statements with respect to the business of insurance that are untrue, deceptive, and misleading.

199. Respondents SDS, Posey, Bachman, ATA, RBA, Morrow, and Clark have engaged in other methods, acts, or practices that constitute unfair and deceptive acts or practices in the business of insurance in violation of N.C. General Statute § 58-63-10 but that are not defined as unfair and deceptive acts or practices in the business of insurance under N.C. General Statute § 58-63-15. In particular, these Respondents have used associations such as AGBA, ATA, and an illegitimate sham union or association known as RBA for the purpose of selling, soliciting, and negotiating insurance that is not provided through contracts with licensed insurance companies. Because Respondents will be ordered pursuant to N.C. General Statute § 58-28-20 to cease and desist from violating N.C. General Statute §§ 58-28-5, 58-28-13, 58-28-45, and 58-33-95, Respondents will effectively be prohibited from transacting insurance business in this State. Thus, the Department's request for an order pursuant to N.C. General Statute 58-63-32(a) requiring Respondents to cease and desist from engaging in these methods, acts, or practices is moot.

CONCLUSIONS OF LAW

1. This matter is properly before the undersigned, and the undersigned has personal jurisdiction over all respondents and subject matter jurisdiction pursuant to North Carolina General Statute §§ 58-28-5, 58-28-12, 58-33-46, 150B-38, and 150B-40; 11 NCAC. 1. 0400; and other applicable statutes and administrative rules.
2. Respondents NAA, PBC, Doyle, Ashiotes, SDS, Kirkpatrick, Posey, Bachman, ATA, RBA, Morrow, and Clark have engaged in unfair and deceptive methods, acts, or practices in the business of insurance in violation of N.C. General Statute § 58-63-10.
3. Respondents NAA, PBC, Doyle, Sullivan, and Ashiotes violated N.C. General Statute §§ 58-28-5, 58-28-10, 58-28-13(a) through (c), and 58-28-45(a) and (k).
4. Respondents NAA, PBC, Doyle, Sullivan, and Ashiotes willfully violated the Cease and Desist Order that the Commissioner entered in Department of Insurance Docket Number 1375 by providing insurance to NAA members after 31 January 2008 through policies issued in North Carolina to a North Carolina association.
5. Respondents RBA, ATA, SDS, Posey, Bachman, Kirkpatrick, Morrow, and Clark violated N.C. General Statute §§ 58-28-5, 58-28-10, 58-28-13(a) through (c), 58-28-45(a) and (k), and 58-33-95(a)(3).
6. Respondents SDS, Posey, and Bachman willfully violated the Commissioner's 16 May 2008 and 15 August 2008 Cease and Desist Orders entered in this matter.

7. Respondents ATA, RBA, and Clark willfully violated the Commissioner's 15 August 2008 Cease and Desist Order entered in this matter.
8. Respondent Kirkpatrick willfully violated the Cease and Desist Order that the Commissioner entered against him in Department of Insurance Docket Number 1102 and the 16 May 2008 and 15 August 2008 Cease and Desist Orders that the Commissioner entered against him in this matter.
9. Respondents RBA, ATA, SDS, Posey, Bachman, Kirkpatrick, Morrow, and Clark should be ordered pursuant to N.C. General Statute § 58-28-20 to cease and desist from violating N.C. General Statute §§ 58-28-5, 58-28-13, 58-28-45, and 58-33-95. Respondents NTBAA, NAA, PBC, Doyle, Sullivan, and Ashiotes continue to be subject to the Cease and Desist Order that the Commissioner entered against them in Department of Insurance Docket Number 1375.
10. Pursuant to N.C. General Statute § 58-28-30, Respondents NAA, PBC, Doyle, Sullivan, and Ashiotes should be ordered to jointly and severally pay a monetary penalty of \$120,000.00 for their willful violations of the Commissioner's Cease and Desist Order entered in Department of Insurance Docket Number 1375.
11. Pursuant to N.C. General Statute §§ 58-28-10 and 58-28-13, Respondent Kirkpatrick should be ordered to pay a monetary penalty of \$49,000.00 for his violations of N.C. General Statute §§ 58-28-10 and 58-28-13(a) through (c) and for his willful violations of the Cease and Desist Order that the Commissioner entered against him in Department of Insurance Docket Number 1102 and the 16 May 2008 and 15 August 2008 Cease and Desist Orders entered in this matter.
12. Pursuant to N.C. General Statute §§ 58-28-10 and 58-28-13, Respondents SDS, Posey, and Bachman should each be ordered to pay monetary penalties of \$69,000.00 for their violations of N.C. General Statute §§ 58-28-10 and 58-28-13(a) through (c) and for their willful violations of the Commissioner's 16 May 2008 and 15 August 2008 Cease and Desist Orders in this matter.
13. Pursuant to N.C. General Statute §§ 58-28-10 and 58-28-13, Respondents RBA and Clark should each be ordered to pay monetary penalties of \$58,000.00 for their violations of N.C. General Statute § 58-28-10 and 58-28-13(a) through (c) and for their willful violations of the Commissioner's 15 August 2008 Cease and Desist Order in this matter.
14. Pursuant to N.C. General Statute § 58-28-10, Respondent Morrow should be ordered to pay monetary penalties of \$24,000.00 for his violations of N.C. General Statute § 58-28-10.
15. Pursuant to N.C. General Statute § 58-28-13, Respondent ATA should be ordered to pay a monetary penalty of \$5,000.00 for violating N.C. General Statute §§ 58-28-5 and 58-28-13(a) through (c) and for willfully violating the 15 August 2008 Cease and Desist Order.

16. Bachman's agent license should be revoked pursuant to N.C. General Statute § 58-33-95(b) for knowingly soliciting, negotiating, or selling insurance in this State for an unauthorized insurer in violation of N.C. General Statute § 58-33-95(a)(3).

17. Bachman's agent license should be revoked pursuant to N.C. General Statute § 58-33-46(a)(2) for his violations of N.C. General Statute §§ 58-28-5, 58-28-10, 58-28-13(a) through (c), 58-28-45(a) and (k), 58-33-95(a)(3), and 58-63-10.

18. Bachman has used fraudulent and dishonest practices and has demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business. Thus, Bachman's agent license should be revoked pursuant to N.C. General Statute § 58-33-46(a)(8).

19. Bachman's agent license should be revoked pursuant to N.C. General Statute § 58-33-46(a)(12a) for soliciting, negotiating, or selling insurance in this State for an unauthorized insurer.

20. Bachman is subject to monetary penalties under N.C. General Statute § 58-2-70 for his violations of the insurance laws.

THEREFORE, IT IS ORDERED THAT:

1. Respondent Richard Bachman's agent license is hereby permanently revoked.
2. Respondents NAA, PBC, James M. Doyle, Thomas Sullivan, and Christopher Ashiotes shall jointly and severally pay a monetary penalty of \$120,000.00 for their willful violations of the Cease and Desist Order entered against them in Department of Insurance Docket Number 1375 no later than 10 days after receiving service of this Final Agency Decision and Order.
3. Respondent Obed Kirkpatrick shall pay a monetary penalty of \$49,000.00 for violations of N.C. General Statute §§ 58-28-10 and 58-28-13(a) through (c) and for willful violations of the Cease and Desist Order that the Commissioner entered against him in Department of Insurance Docket Number 1102 and the 16 May 2008 and 15 August 2008 Cease and Desist Orders no later than 10 days after receiving service of this Final Agency Decision and Order.
4. Respondents SDS, Posey, and Richard Bachman shall each pay monetary penalties of \$69,000.00 for violations of N.C. General Statute §§ 58-28-10 and 58-28-13(a) through (c) and for willful violations of the Commissioner's 16 May 2008 and 15 August 2008 Cease and Desist Orders no later than 10 days after receiving service of this Final Agency Decision and Order.
5. Respondents RBA and Clark shall each pay monetary penalties of \$58,000.00 for their violations of N.C. General Statute §§ 58-28-10 and 58-28-13(a) through (c) and for their willful

violations of the Commissioner's 15 August 2008 Cease and Desist Order no later than 10 days after receiving service of this Final Agency Decision and Order.

6. Respondent Marc Morrow shall pay monetary penalties of \$24,000.00 for violations of N.C. General Statute § 58-28-10 no later than 10 days after receiving service of this Final Agency Decision and Order.

7. Respondent ATA shall pay a monetary penalty of \$5,000.00 for violating N.C. General Statute § 58-28-13 and for willfully violating the 15 August 2008 Amended Emergency Cease and Desist Order no later than 10 days after receiving service of this Final Agency Decision and Order.

8. Payment of these monetary penalties shall be made by cashier's check, certified check, or money order payable to the "North Carolina Department of Insurance." This monetary penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of the public schools.

9. Respondents RBA, ATA, SDS, Posey, Richard Bachman, Obed Kirkpatrick, Marc Morrow, and David L. Clark shall **CEASE AND DESIST** from performing any acts in violation of N.C. General Statute §§ 58-28-5, 58-28-13, 58-28-45, and 58-33-95, including:

- a. Contracting to provide insurance in this state for risks located in this State, whether as an insurer, agent, or by any other method;
- b. Offering, selling, and marketing insurance in this State for risks located in this State, whether as an insurer, agent, or by any other method;
- c. Taking or receiving an application for insurance offered by Beema, Serve America, or any other entity;
- d. Issuing or delivering contracts of insurance and certificates of insurance or other evidence of insurance coverage issued by Beema, Serve America or any other entity;
- e. Soliciting, negotiating, procuring or effectuating insurance coverage, or renewals thereof, disseminating information as to coverage or rates, forwarding applications, delivering policies or contracts, or in any other manner representing or assisting Beema, Serve America or any other insurer;
- f. Directly or indirectly acting as an agent for, or otherwise representing or aiding in the solicitation, negotiation, procurement or effectuation of insurance coverage issued by Beema, Serve America or by any other entity;
- g. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed

before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement for or regarding any insurance issued by Beema, Serve America, or any other entity;

h. Conducting insurance business within the meaning of the North Carolina General Statutes relating to insurance, or otherwise acting as an insurer in this State; and

i. Receiving or collecting any premiums, commissions, or other consideration for insurance issued by Beema, Serve America, or any other entity.

This 19th day of February 2009.



William K. Hale
Hearing Officer and Special Counsel
N.C. Department of Insurance
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NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE COMMISSIONER
OF INSURANCE

IN THE MATTER OF)
AFFINITY GROUP BENEFITS ASSOCIATION,)
INC., SMART DATA SOLUTIONS, LLC,)
NATIONAL TRADE BUSINESS ALLIANCE OF)
AMERICA d/b/a NATIONAL ALLIANCE OF)
ASSOCIATIONS, PROFESSIONAL BENEFITS)
CONSULTANTS, INC., a.k.a. PBC DIRECT,)
RICHARD H. BACHMAN, BART POSEY, OBED)
KIRKPATRICK, THOMAS SULLIVAN, JAMES)
M. DOYLE, CHRISTOPHER ASHIOTES,)
ASSOCIATION OF FRANCHISE AND)
INDEPENDENT DISTRIBUTORS, LLC, PAUL)
OLZESKI, SPENCER AND ASSOCIATES, LLC,)
BRUCE E. SPENCER, MARC MORROW,)
REAL BENEFITS ASSOCIATION, DAVID L.)
CLARK, AMERICAN TRADE ASSOCIATION,)
STEPHENS-MATTHEWS MARKETING, INC.,)
AND LARRY MATTHEWS)

DOCKET NUMBER 1417

**MEMORANDUM ON
PENALTIES FOR
VIOLATIONS OF
N.C.G.S. §§ 58-28-10 AND
58-28-13**

The purpose of Article 28 of Chapter 58 is "to abate and prevent the practices of unauthorized insurers within the State of North Carolina, and to provide methods for effectively enforcing the laws of this State against such practices." N.C.G.S. § 58-28-1. The legislature declared that the practices of unauthorized insurers are "harmful and contrary to public welfare fo the citizens of this State." The imposition of civil penalties against those who violate the unauthorized insurance laws is essential to enforce Article 28 and to deter Respondents and other would be violators from transacting unauthorized insurance business in North Carolina. The Department thus proposes that civil penalties be imposed against the Respondents for their violations of the unauthorized insurance laws and for their willful violations of the Department's Cease and Desist Orders. The Department submits this Memorandum to the Hearing Officer in order to explain the basis for the specific penalties which the Department is requesting the Commissioner to impose against Respondents for these violations.

Proposed penalties against NAA, PBC Direct, James Doyle, Thomas Sullivan, and Christopher Ashiotes for willful violation of the January 31, 2008 Cease and Desist Order in Docket #1375

The evidence showed that Respondents NAA/PBC Direct and their principals enrolled at

least 1200 NAA members in a group insurance policy issued in North Carolina to a North Carolina association named AGBAI pursuant to a September 2007 affiliation agreement between the NAA and AGBAI. The evidence further shows that the NAA was to be compensated \$20.00 per month for each NAA member enrolled in AGBAI (approximately \$24,000 a month) pursuant to an agreement between the NAA and SDS and that SDS complied with this agreement from January 2008 until April 2008. Thus, the NAA received approximately \$96,000.00 from SDS between January 2008 and April 2008.

The enrollment of NAA members in a policy issued in North Carolina to AGBAI after January 31, 2008 was in willful violation of the Department's Cease and Desist Order entered in Docket #1375. That order prohibited these Respondents from transacting any insurance business in this State.¹ N.C.G.S. § 58-28-30 authorizes the Department to impose penalties against Respondents for their willful violations in accordance with N.C.G.S. § 58-2-70. N.C.G.S. § 58-2-70(c) requires the Commissioner to impose a penalty not less than \$100.00 nor more than \$1,000.00 for each violation. Subsection (c) provides that "[i]n determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator."

The evidence shows that Transamerica and its third party administrator received numerous complaints from consumers who had enrolled with the NAA and had been led to believe that they were purchasing comprehensive major medical insurance. The premiums which the NAA charged and collected from these consumers were substantially higher than the

¹ The order prohibits Respondents from: "A. Providing or contracting to provide insurance in this State for risks located in this State, whether as an insurer, agent, association, association affiliate, arrangement with enroller or enrolment company, or by any other method; B. Offering, selling, or marketing insurance in this State for risks located in this State, whether as an insurer, agent, association, association affiliate, arrangement with enroller or enrolment company or by any other method; C. Taking or receiving an application for insurance and premiums or other consideration for insurance offered by or through the NTBAA, PBC, ABB, or any other entity for risks located in this state; D. Issuing or delivering contracts of insurance, certificates of insurance, or any other evidence of insurance coverage issued by or through the NTBAA, PBC, ABB, or any other entity for risks located in this State; E. Soliciting, negotiating, procuring or effectuating insurance coverage, or renewals thereof; disseminating information as to coverage or rates, forwarding applications, delivering policies or contracts; or in any other manner representing or assisting the NTBAA, PBC, ABB, or any other entity in the transaction of insurance for risks located in this State; F. Directly or indirectly acting as an agent for, or otherwise representing or aiding in the solicitation, negotiation, procurement or effectuation of insurance coverage issued by or through NTBAA, PBC, ABB, or any other entity for risks located in this State; G. Making, publishing, disseminating, circulating or placing before the public; or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, poster, fax, or Internet Web site, or over any radio or television station, or in any other way, an advertisement, announcement or statement for or regarding any insurance issued by or through NTBAA, PBC, ABB, or any other entity for risks located in this State; H. Conducting insurance business within the meaning of Chapter 58 of the North Carolina General Statutes and Title 11 of the North Carolina Administrative Code; and I. Receiving or collecting any premiums, commissions, or other consideration for insurance issued by or through the NTBAA, PBC, ABB, or any other entity for risks located in this State.

actual premiums which Transamerica charged consumers. Given the severity of these violations and the extent of harm to consumers, the money which the NAA collected from SDS for these NAA members, the willful nature of the violation, and the NAA's prior record of violations of the insurance laws, the Department proposes that the maximum penalty of \$1,000.00 be jointly and severally imposed on Respondents NAA, PBC Direct, James Doyle, Thomas Sullivan, and Christopher Ashiotes for each of the 1200 NAA members enrolled in AGBAI, for a total penalty of \$120,000.

Proposed penalties against SDS, RBA, Obed Kirkpatrick, Bart Posey, Richard Bachman, Marc Morrow, and David Clark for violations of N.C.G.S. § 58-28-10 and for willful violations of the Department's Cease and Desist Orders

The evidence shows that Respondent Marc Morrow violated N.C.G.S. §§ 58-28-5 and 58-28-10 by marketing and selling insurance which was not provided by any licensed insurer to North Carolina residents and by enrolling 24 North Carolina residents in insurance purportedly made available through AFID memberships. The evidence also shows that in January 2008, AFID purportedly enrolled all AFID members who had enrolled in major medical insurance with effective dates of October 1, 2007 or later in a high deductible major medical insurance policy issued to AGBAI by Beema. AFID's National Sales Director, Marc Morrow, told Dave Stephens that these AFID members would be retroactively enrolled in the Beema policy. Respondents represented that AFID/RBA members had access to the Beema coverage pursuant to an affiliation agreement between the RBA and AGBAI. Since thirteen (13) of the 24 North Carolina AFID/RBA enrollees selected major medical insurance and the earliest effective date for these enrollees was November 1, 2007, 13 North Carolina residents were purportedly enrolled in the Beema policy issued to AGBAI in violation of N.C.G.S. § 58-28-10. See proposed Final Agency Decision and Order, Findings of Fact # 102 and 103.

N.C.G.S. § 58-28-10 states that "Any company violating any of the provisions of this section, by doing any of the foregoing acts or transactions while not authorized to do business within this State, *shall be subject to penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each offense.*" (Emphasis added). Thus, *without exercising any discretion*, the Commissioner is required at a minimum to impose a penalty of \$1,000.00 against Respondent Marc Morrow for each North Carolina AFID/RBA member, for a total fine of \$24,000.00. The minimum required fine of \$1,000.00 should also be separately imposed on Respondents RBA, SDS, Obed Kirkpatrick, Bart Posey, Richard Bachman, and David L. Clark for each of the 13 North Carolina AFID/RBA members purportedly enrolled in the Beema policy, for a total fine of \$13,000.00 against each of these Respondents for these violations.

The evidence further shows that SDS willfully violated the May 16, 2008 Emergency Cease and Desist Order in this matter by attempting to transfer Laurie DeCrotie, an AGBAI enrollee, to an insurance plan with the ATA/RBA. Pursuant to N.C.G.S. §§ 58-28-30 and 58-2-70(c), the Commissioner is authorized to impose a maximum fine of \$1,000 for each willful violation. The Department thus proposes that an additional penalty of \$1,000.00 be separately imposed against SDS, Obed Kirkpatrick, Bart Posey and Richard Bachman for this willful

violation.

Although SDS and its principals stopped remitting premiums collected from CHTL Trucking for health insurance on its truck owner-operators to TIG Premium Insurance Company in October 2005 and TIG terminated the group on October 31, 2005, SDS continued to collect premiums from CHTL Trucking from November 2005 through March 2008. Since SDS did not find replacement insurance coverage for CHTL Trucking's truck owner-operators, SDS and its principals, Richard Bachman and Bart Posey, violated N.C.G.S. § 58-28-10 by collecting premiums for such insurance. The minimum civil penalty of \$1,000.00 should be separately imposed on Respondents SDS, Bart Posey, and Richard H. Bachman for these violations as required by N.C.G.S. § 58-28-10.

Although SDS never secured insurance coverage for Mr. Hatton with a licensed insurer, SDS collected premiums from Richard Larry Hatton from December 2006 through July 2007. SDS, Richard Bachman, and Bart Posey violated N.C.G.S. § 58-28-10 by collecting premiums for such insurance from Mr. Hatton. The minimum \$1,000.00 civil penalty required by N.C.G.S. § 58-28-10 should be separately imposed on Respondents SDS, Bart Posey, and Richard H. Bachman for each of the 9 months that SDS collected premiums from Mr. Hatton for these violations, for a total of \$9,000.00 for these violations.

Proposed penalties against ATA, SDS, RBA, Obed Kirkpatrick, Bart Posey, Richard Bachman, and David Clark for violations of N.C.G.S. § 58-28-13 and for willful violations of the Department's Cease and Desist Orders

The evidence showed that in August 2008, Respondents ATA, SDS, Bart Posey, Richard Bachman, RBA, and David Clark solicited North Carolina resident Kay Tolbert to enroll in insurance purportedly issued by Serve America to the ATA. The evidence further showed that Respondents SDS, Mr. Kirkpatrick, Bart Posey, Richard Bachman, RBA, and David Clark also solicited North Carolina residents William Etheridge, Randy Dobey, and Todd Sweeney to enroll in insurance purportedly issued by Serve America to AGBAI in August 2008. After Mr. Sweeney declined the first proposal in August 2008, Mr. Bachman solicited Mr. Sweeney to enroll in the "1500 per occurrence" plan. These acts of the Respondents were in violation of N.C.G.S. § 58-28-13(a)-(c). Moreover, the solicitation of Mr. Etheridge and Mr. Dobey was in willful violation of the May 16, 2008 Emergency Cease and Desist Order and the solicitation of Ms. Tolbert and Mr. Sweeney was in willful violation of the August 15, 2008 Emergency Cease and Desist Order. Mr. Kirkpatrick's involvement in the solicitation of Mr. Sweeney, Mr. Etheridge, and Mr. Dobey was also in willful violation of the Cease and Desist Order which the Department entered against him in Docket # 1102.

N.C.G.S. § 58-28-13(g) authorizes the Commissioner to impose a maximum penalty of \$5,000.00 for the first violation of N.C.G.S. § 58-28-13 and a maximum penalty of \$10,000.00 for each succeeding violation. N.C.G.S. § 58-28-13(c) further provides that "[a] person who represents or aids a nonadmitted insurer in violation of this section is subject to penalties or restitution, or both, as set forth in this section."

The Department submits that the maximum penalties should be imposed against Respondents given: (1) the willful nature of these violations; (2) Mr. Kirkpatrick's prior record of violations with the Department, (3) the Respondents' failure to provide timely and complete responses to the Department's inquiries about their insurance activities, and (4) Respondents' failure to comply with the Department's Orders to Produce Documents and Information. See N.C.G.S. § 58-28-14 (setting forth factors to consider in determining amount of penalty, including whether the violations were willful, the prior record of the violator, and the failure of the violators to provide timely and complete responses to the Department's inquiries regarding their insurance activities).

Accordingly, the Department proposes the following additional civil penalties be imposed against Respondent Obed Kirkpatrick: (1) \$5,000 for the first solicitation of Todd Sweeney, (2) \$10,000.00 for the second solicitation of Mr. Sweeney, (3) \$10,000.00 for the solicitation of William Etheridge, and (3) \$10,000.00 for the solicitation of Randy Dobey. The Department further proposes that the following additional civil penalties be separately imposed against the Respondents SDS, Bart Posey, Richard Bachman, RBA, and David Clark: (1) \$5,000 for the first solicitation of Todd Sweeney, (2) \$10,000.00 for the second solicitation of Mr. Sweeney, (3) \$10,000.00 for the solicitation of Kay Tolbert, (3) \$10,000.00 for the solicitation of William Etheridge, and (4) \$10,000.00 for the solicitation of Randy Dobey. The Department further proposes that a penalty of \$5,000.00 be imposed against Respondent ATA for the solicitation of Kay Tolbert.

CONCLUSION

The Department proposes that the Commissioner impose the following civil penalties:

- (a) \$120,000.00 to be imposed jointly and severally on Respondents NAA, PBC Direct, James Doyle, Thomas Sullivan, and Christopher Ashiotes for willful violations of the January 31, 2008 Cease and Desist Order in Docket #1375.
- (b) \$24,000 to be imposed on Respondent Marc Morrow for violations of N.C.G.S. § 58-28-10.
- (c) \$49,000 to be imposed on Respondent Obed Kirkpatrick for violations of N.C.G.S. §§ 58-28-10 and 58-28-13 and for his willful violations of the Department's Cease and Desist Orders.
- (d) \$69,000 to be imposed against each of the Respondents SDS, Bart Posey, and Richard Bachman for violations of N.C.G.S. §§ 58-28-10 and 58-28-13 and for their willful violations of the Department's Cease and Desist Orders.
- (e) \$58,000 to be imposed against each of the Respondents RBA and David Clark for violations of N.C.G.S. §§ 58-28-10 and 58-28-13 and for their willful violations of the Department's Cease and Desist Order.


- (f) \$5,000.00 to be imposed on the Respondent ATA for its violation of N.C.G.S. § 58-28-13 and for its willful violation of the Department's Amended Cease and Desist Order.

The Department submits that the penalty imposed on Respondents ATA, SDS, RBA, Obed Kirkpatrick, Bart Posey, Richard Bachman, Marc Morrow, and David L. Clark for their violations of N.C.G.S. § 58-28-10 should be at least as severe as the penalties which Respondents Stephens-Matthews Marketing, Larry Matthews, Paul Olzeski, AFID, Spencer & Associates, and Bruce E. Spencer paid for their violations of N.C.G.S. § 58-28-10 pursuant to separate Consent Orders entered in this matter. Pursuant to those Consent Orders, Stephens-Matthews Marketing and Larry Matthews paid a combined civil penalty of \$17,000, Paul Olzeski and AFID paid a combined civil penalty of \$30,000.00, and Bruce Spencer and Spencer & Associates paid a combined civil penalty of \$4,000.00.

Respectfully submitted,

This the 26th day of January, 2009.

ROY COOPER
Attorney General



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served the foregoing **MEMORANDUM ON PENALTIES FOR VIOLATIONS OF N.C.G.S. §§ 58-28-10 AND 58-28-13** by mailing a copy thereof by first class mail, postage prepaid, addressed as follows:

Thomas J. Sullivan
and National Alliance of Associations
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This the 26th day of January, 2009.

ROY COOPER
Attorney General


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North Carolina State Bar No. 19925

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I have served the foregoing Final Agency Decision and Order pursuant to Rule 4 of the North Carolina Rules of Civil Procedure by mailing a copy by mailing a copy thereof by Federal Express addressed as follows:

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This the 20th day of February, 2009.

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