

58.70.95

#2500 Robeson City  
#2500 Beaufort City

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

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE COMMISSIONER

RECEIVED IN AGENT SERVICES OF INSURANCE  
A.S. - N.C.D.O.I.

MAY 29 2000

CHECK NO. [REDACTED]  
CHECK AMT. 51000.00  
PROCESSOR [REDACTED]

IN THE MATTER OF THE LICENSURE  
OF COMMERCIAL  
RECOVERY SYSTEMS

VOLUNTARY SETTLEMENT  
AGREEMENT

**NOW COME** Commercial Recovery Systems, Inc. (hereinafter "Commercial") and the North Carolina Department of Insurance (hereinafter "NCDOI"), and hereby enter into the following Voluntary Settlement Agreement (hereinafter "this Agreement"):

**WHEREAS**, Commercial is a corporation organized and existing under the laws of the State of Texas; and

**WHEREAS**, NCDOI has the authority and responsibility for enforcement of the provisions of Chapter 58 of the North Carolina General Statutes applicable to collection agencies operating in the State of North Carolina; and

**WHEREAS**, N.C. Gen. Stat. § 58-70-105 (2) provides that "[n]o collection agency shall unreasonably publicize information regarding a consumer's debt . . . [s]uch unreasonable publication includes . . . [a]ny communication with any person other than the debtor or his attorney" and "[u]sing any form of communication which ordinarily would be seen or heard by any person other than the consumer that displays or conveys any information about the alleged debt other than the name, address and phone number of the collection agency;" and

**WHEREAS**, an employee of Commercial unreasonably publicized the debt of a consumer by contacting said consumer's place of employment, submitting information by fax to said consumer's place of employment which contained personal information and suggested that the debt was delinquent, as well as discussing said consumer's debt with individuals other than the debtor or debtor's attorney; and

**WHEREAS**, N.C. Gen. Stat. §§58-70-100(1),(3) and (4) provides that "[n]o collection agency shall use any conduct, the natural consequence of which is to oppress, harass, or abuse any person in connection with the attempt to collect any debt . . . [s]uch conduct includes . . . [u]sing profane or obscene language . . . [c]ausing a phone to ring or engaging any person in telephone conversation with such frequency as to be unreasonable . . . [p]lacing phone calls or

attempting to communicate with any person, contrary to his instructions, at his place of employment . . . ;” and

**WHEREAS**, an employee of Commercial sent a fax to the place of employment of a consumer without permission, telephoned said consumer’s employers without permission, discussed consumer’s debts with persons other than the debtor, used profanity and persisted to call and engage in telephone conversation with such frequency as to indicate harassment in an effort to collect a debt; and

**WHEREAS**, NC. Gen. Stat. §58-70-95 provides that “ [n]o collection agency shall collect or attempt to collect any debt alleged to be due and owed from a consumer by means of an unfair threat, coercion, or attempt to coerce . . . [s]uch unfair acts included . . . [t]hreatening to take any action not in fact taken in the usual course of business, unless it can be shown that such threat action was actually taken in the particular case in which the threat was made;” and

**WHEREAS**, an employee of Commercial made threats to a consumer that included the promise to sue said consumer and consumer’s supervisor in an attempt to collect a debt when Commercial had not intention of doing so; and

**WHEREAS**, Commercial has informed the Department that the employee whose actions resulted in the above-referenced violations of North Carolina laws has been terminated from employment with Commercial; and

**WHEREAS**, pursuant to N. C. Gen. Stat. § 58-2-70(g), the Commissioner of Insurance and NCDOI have the express authority to negotiate “a mutually acceptable agreement with any person as to the status of the person’s license or certificate or as to any civil penalty or restitution;” and

**WHEREAS**, the parties to this Agreement desire to resolve this matter by consent to avoid an administrative hearing regarding this matter; and

**WHEREAS**, the parties to this Agreement have reached a mutually agreeable resolution of this matter as set out in this Agreement;

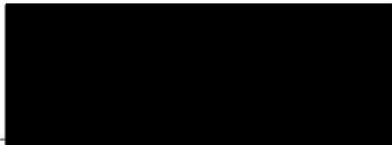
**NOW, THEREFORE**, in consideration of the promises and agreements set out herein, NCDOI and Commercial hereby agree to the following:

1. Commercial shall comply with all applicable provisions of Chapter 58 of the North Carolina General Statutes and Title 11 of the North Carolina Administrative Code.
2. Contemporaneously with the execution of this document, Commercial shall pay a civil penalty of \$ 5,000.00 to NCDOI. The check for the payment of this civil

penalty shall be payable to the "North Carolina Department of Insurance." This civil 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.

3. Commercial enters into this Settlement Agreement freely and voluntarily and with knowledge of its right to have an administrative hearing on this matter.
4. Commercial voluntarily waives any right to notice of an administrative hearing and any right to a hearing on the violations and disciplinary actions referenced in this Settlement Agreement. Commercial also waives any right to appeal and agrees not to challenge the validity of this Settlement Agreement in any way.
5. The promises, agreements, representations and consideration contained herein are not mere recitals but are contractual in nature.
6. The Department agrees that it will not initiate any additional administrative actions based on the violations referenced herein provided that Commercial does not violate the terms and conditions of this Settlement Agreement and provided that the Department does not discover any additional violations or grounds for discipline. This Settlement Agreement shall not preclude the Department from pursuing any criminal charges or civil restitution actions against Commercial. This agreement does not in any way affect the Department's disciplinary power in any other cases or complaints involving Commercial.
7. This written document contains the entire agreement between the Parties. There are no other oral or written agreements of any kind that alter or add to this agreement.
8. The Parties agree that the Superior Court of Wake County shall be the venue for any actions seeking to enforce this Settlement Agreement.
9. If, for any reason, any part or provision of this Settlement Agreement is found to be void or unenforceable, the other parts and provisions shall remain in full force and effect.
10. The Parties have read and understand this Settlement Agreement and agree to abide by the terms and conditions contained herein.

This the 23<sup>rd</sup> day of March, 2005.



Commercial Recovery Systems, Inc.

By: WADE A. THUN HORST  
President SECRETARY, GENERAL COUNSEL  
and CFO



North Carolina Department of Insurance

By: Angela Ford  
Senior Deputy Commissioner

3-30-05